

ROBERT WALKER et al., Appellants, v. ALL
TENANTS/OCCUPANTS OF MBC COMPOUND,
excluding MR. PRINCE MOORE AND BEATRICE
GOFFREY, Appellees.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT,
MONTERRADO COUNTY.

Heard: October 26, 1994. Decided: February 16, 1995.

1. A Court should not be too hasty in disposing of real property matters.
2. Courts cannot raise issues but are bound to decide them only when raised in the pleadings
3. A trial court cannot properly pass upon issues not raised in the pleadings.
4. Where fraud is alleged in the pleading, the case should be ruled to trial since fraud is a factual issue to be proven by evidence.

Petitioners/appellants are the attorneys-in-fact for the Brown Family. According to the records, the Brown family entered into a lease agreement in the year 1960 with the Monrovia Building Company (MBC) through its executive officer, Hans Haldman, for a period of 20 years certain, from 1960 up to April 1980. After the expiration of the twenty years, petitioners instituted an action of summary proceedings to recover possession of the property, then occupied by tenants of the Monrovia Breweries, Inc. The petitioners did not attach a copy of the 20 years lease agreement of 1960 to their petition but gave notice to have it produced at the trial. A motion for the sequestration of rents was also filed by the petitioners.

The respondents/appellees appeared and filed an answer in which it contended that the petitioners had no standing to sue by virtue of the fact that they had leased the premises to Monrovia Building Company up to and including the year A. D. 2000, and on this basis moved the court to dismiss the action. They too did not attach the lease agreement referred to but gave notice that at the trial they would apply for a writ of *sub-*

poena duces tecum to be served on the authorities of the Monrovia Building Company to produce the lease agreement.

From the records filed with the pleadings, it appears that prior to the expiration of the twenty year lease with the Monrovia Building Company, the Monrovia Breweries, Inc. (MBI) entered into an agreement with Mr. Hans Haldman, wherein it purchased the leasehold right to the property subject of the action up to May 1, 2000. Petitioners however contended that besides the first 20 years lease agreement entered into between them and the Monrovia Building Company, which ended in 1980, there was no further lease agreement existing between them, and the lease agreement of 1960 was never renewed between the parties. Both petitioners and respondents in their petition and returns charged each other with committing fraud but failed to produce evidence in support thereof

The Court consolidated the petition and the motion for sequestration of rents and ruled thereon together, dismissing the petition and denying the motion for sequestration of rents. The court held that there existed a binding lease agreement between the parties, either because of the agreement between MBC and Mrs. Beti Brown extended to 2000 A. D., or because upon the expiration of the 1960 agreement, the parties continued to conduct themselves in the same manner as when the agreement was in force, and so, by legal implication, a new contract arose on the same terms as the old agreement. Petitioners excepted to the ruling and announced an appeal to the Supreme Court.

The Supreme Court reversed and remanded the case for new trial, holding that this being a real property case, and each party having charged the other with fraud, and both parties having given notice in their pleadings to produce the 1960 lease agreement and the extension thereof, the judge should have ruled the case to trial and should not have been too hasty in disposing of it. The Court also noted that the judge failed to pass on the issue of customary marriage in which the woman has no authority to administer the intestate estate of the late husband as raised by the petitioner. Accordingly, the court

reversed the judgment and remanded the case for new trial commencing with the pleadings.

Marcus R. Jones appeared for appellants; *Theophilus C. Gould* appeared for appellee.

MR. JUSTICE MORRIS delivered the opinion of the Court.

The history of this case reveals that the Brown Family entered into a lease agreement in the year 1960 with the Monrovia Building Company (MBC) thru its executive officer, Mr. Hams Haldmann, a German national for a period of 20 years certain. The records further reveal that four thousand (US\$4,000.00) United States dollars was the rental amount agreed upon.

This lease was to expire on the 30th day of April 1980. The records further reveal that prior to the expiration of the 20 years lease, the Monrovia Breweries, Inc. (MBI) represented by its Chairman, Joshua Kwabena Siaw, a Ghanaian national, met Mr. Hans Haldmann in London where Mr. Siaw convinced Mr. Haldmann to buy the latter's 500 shares in the Monrovia Building Company. The respondents further argued that they bought the leasehold right up to May 1, 2000 according to the purchase agreement attached to the returns.

The petitioners are contending that besides the first 20 years lease agreement entered into between them and the Monrovia Building Company, which ended in 1980, there was no further lease agreement existing between them nor was the lease agreement of 1960 ever renewed between the parties.

Unfortunately, the petitioners never attached copy of the 20 years lease agreement of 1960 to their petition but rather gave notice to have it produced at the trial.

The respondents are contending seriously in count one of their returns, that the entire petition should be dismissed in that the petitioners have no standing to file this petition because they have leased the premises to Monrovia Building Company up to and including the year A.D. 2000. They gave notice that

at the trial they shall apply for a writ of *subpoena duces tecum* to be served on the authorities of the Monrovia Building Company to produce the said lease agreement.

A motion was also filed for the sequestration of rents which was first denied but later refiled by the petitioners. Both petitioners and respondents in their petition and returns charged each other for committing fraud. However, during the disposition of law issues, the judge consolidated the petition and the motion for sequestration of rents and ruled thereon together. He dismissed the petition and denied the motion for sequestration of rents on the following grounds:

"From this discussion, the court takes the view that there exists a binding lease agreement between the parties either"

- (a) because the agreement between MBC and Mrs. Beti Brown extends to 2000 A.D. as stated in the purchase agreement wherein respondents became subrogated to the rights of MBC, or
- (b) because the 1960 agreement did expire in 1980 and the parties continued to conduct themselves in the same manner as when the agreement was in force and so by legal implication, a new contract arose on the same terms of the old agreement. If it was due to sympathy by Mrs. Brown, then petitioner, must now live with the agreement that arose out of Mrs. Brown's sympathy."

The court is of the opinion that both parties having given notice in their pleadings to produce the 1960 lease agreement and the extension thereof which ends on May 1, A. D. 2000, coupled with the charge of fraud levied by each party on the other, the judge should have ruled the case to trial and let each party produce the lease agreement relied upon. This being a matter of real property, the court should not have been too hasty in disposing of it, especially so when the parties have given notice to produce their authorities at the trial.

The court observes that the May 1, A.D. 2000 agreement is only mentioned in the purchase lease agreement but there is no evidence of renewal of the lease agreement up to May 1, A.D. 2000 before court. Therefore, the respondents realizing this, gave notice that they will apply for a writ of *subpoena duces*

tecum to be served on the authorities of Monrovia Building Company to produce a copy of the said renewed lease agreement between Monrovia Building Company and the Brown Family which allegedly extends to May 1, A.D. 2000. The court further observes that the respondents relied heavily on the renewal of the lease agreement which extended to May 1, A. D. 2000 and not because the term of the lease agreement expired and the parties continued to act and therefore a new lease agreement by legal implication arose as relied upon by the judge.

This court has held that "Courts cannot raise issues but are bound to decide them only when raised in the pleadings". *Gallina Blanco, S.A. et al., v. Nestle Products, Ltd.*, 25 LLR 116 (1976) "A trial court cannot properly pass upon issues not raised in the pleadings." *Tetteh v. Stubblefield*, 15 LLR 3 (1962) "Courts will only decide upon issues joined between the parties specifically set forth in their pleadings". *Elliot v. Dent*, 3 LLR 111 (1929).

Where fraud is alleged in the pleading, the case should be ruled to trial, since fraud is a factual issue in order to be proven by evidence. Besides, the judge failed to pass on the issue of customary marriage in which the woman has no authority to administer the intestate estate of the late husband as raised by the petitioner. With these and other irregularities, the court has no alternative but to remand the case for new trial commencing with the pleadings.

Wherefore and in view of all we have said, it is the ruling of this court that the judgment is reversed and the case remanded for new trial commencing from the pleadings. Costs to abide final determination. And it is hereby so ordered.

Judgment reversed, case remanded.