

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2016

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.....CHIEF JUSTICE
 BEFORE HIS HONOR: KABINEH M. JA'NEH ASSOCIATE JUSTICE
 BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
 BEFORE HIS HONOR: PHILIP A.Z. BANKS, IIIASSOCIATE JUSTICE
 BEFORE HER HONOR: SIE-A-NYENE G. YUOHASSOCIATE JUSTICE

Seleke M. Kelleh, by and thru his Attorneys-In-Fact)
 Messrs. Vally Kelleh, Ansu Kelleh and Mohammed)
 Jarbete and others to be identified, also of the)
 City of Monrovia, Liberia.....APPELLANTS)

VERSUS) APPEAL

Rebecca Jacob Obiora and Jacob Brothers Auto)
 Spare Parts, represented by its General Manager)
 Jacob Emehige, of the City of Monrovia, Liberia)
APPELLEES)

GROWING OUT OF THE CASE:)

Rebecca Jacob Obiora and Jacob Brothers Auto)
 Spare Parts, represented by its General Manager)
 Jacob Emehige, of the City of Monrovia, Liberia)
MOVANTS)

VERSUS) MOTION FOR
) SUMMARY
) JUDGEMENT

Seleke M. Kelleh, by and thru his Attorney-In-Fact)
 Messrs. Vally Kelleh, Ansu Kelleh and Mohammed)
 Jarbete and others to be identified, also of the)
 City of Monrovia, Liberia.....RESPONDENTS)

GROWING OUT OF THE CASE)

Rebecca Jacob Obiora and Jacob Brothers Auto)
 Spare Parts, represented by its General Manager)
 Jacob Emehige, of the City of Monrovia, Liberia)
PETITIONERS)

VERSUS) PETITION FOR
) SPECIFIC
) PERFORMANCE

Seleke M. Kelleh, by and thru his Attorneys-In-Fact)
 Messrs Vally Kelleh, Ansu Kelleh and Mohammed)
 Jarbete and others to be identified, also of the)
 City of Monrovia, Liberia.....RESPONDENTS)

HEARD: November 3, 2014

DECIDED: July 14, 2016

MR. CHIEF JUSTICE KORKPOR DELIVERED THE OPINION OF THE COURT

The facts culled from the records in this case reveal that Seleke M. Kelleh, by and thru his Attorneys-in-Fact, Vally Kelleh, Ansu Kelleh, Mohammed Jarbete and others ("respondents/appellants"), leased two separate pieces of real properties situated in Clara Town, Bushrod Island, Monrovia, to Rebecca Jacob Obiora and Jacob Brothers Auto Spare Parts, represented by its General Manager, Jacob Emehige ("petitioners/appellees). The lease agreements were entered into at different times. The first lease agreement was entered into on February 14, 2009, with Jacob Brothers Auto Spare Parts for a certain period of twenty (20) years; whilst the second lease agreement was entered into with Rebecca Jacob Obiora on June 1st, 2010, also for a certain period of twenty (20) years. Both lease agreements provide for an optional period of five (5) years at the expiry of the certain periods on terms and conditions to be agreed upon. And both lease agreements stipulate that the lessees, paying rents and performing other covenants, shall have quiet, peaceful and uninterrupted enjoyment of the leased premises during the periods of the lease, amongst other clauses. Payments were made by the petitioners/appellees to the respondents/appellants consistent with the terms of the agreements.

The petitioners/appellees claimed that in keeping with the intents and purposes of the lease agreements, they began carrying out developments on the leased properties but the respondents/appellants reentered the said premises and started to construct structures over and on top of the premises already leased to them; that after failed attempts to have their legal counsels amicably resolve the matter, they filed a petition for specific performance at the Sixth Judicial Circuit Court for Montserrado County on March 18, 2013, claiming that the conduct of the respondents/appellants demonstrated that the respondents/appellants did not want to comply with the terms of the lease agreements. The petitioners/appellees therefore prayed the trial court to order the respondents/appellants to comply with the terms of the lease agreements by permitting the petitioners/appellees to peacefully and quietly enjoy the leased premises without interruption. They further prayed the trial court to issue a stay order to prevent the respondents/appellants from illegally reentering and constructing over the properties leased to them pending the determination of the petition for specific performance. We quote the full text of the petition for specific performance:

"PETITIONERS' PETITION

PETITIONERS in the above entitled cause of action most respectfully petition Your Honor for reasons showeth to wit:

1. Co-Petitioner Jacob Emehige says he entered into a twenty year lease agreement with the Respondents on February 14, 2009 for a piece of property lying and situated at Clara Town, Bushrod Island. Your Honor is respectfully requested to take judicial notice of the subject lease agreement hereto attached and marked as Exhibit "P/1 in Bulk" to form a cogent part of this Petition.
2. Co-Petitioner Rebecca Jacob Obiora says that, on the 1st day of June, A. D. 2010, she also entered into a twenty year lease agreement with Respondents for a filling station and a space measured 11x40ft adjacent her son's leased property. Your Honor is respectfully requested to take judicial notice of the subject lease agreement hereto attached and marked as Exhibit "P/2 in Bulk" to form a cogent part of this Petition.
3. That consistent with clauses 5(a) and (b) of Co-Petitioner Rebecca Jacob Obiora's lease agreement, she (Rebecca Jacob Obiora) made a settlement of US\$16,000.00 (United States Dollars Sixteen Thousand), representing payment for the first four (4) years into the leasehold period. Your Honor is respectfully requested to take judicial notice of payment receipts hereto attached and marked as Exhibit "P/3 in Bulk" to form a cogent part of this Petition.
4. Further to count three (3) above, Petitioners say that in keeping with the lease agreements, several rental payments were [made] to Respondents thru his Attorneys-In-Fact. Your Honor is respectfully requested to take judicial notice of the receipts and transfers, marked as Exhibit "P/4 in Bulk" to form a cogent part of this Petition.
5. Petitioners say that consistent with the intents and purposes of the lease agreements, they began carrying out construction on the subject property to suit present day's realities but were violently and forcefully stopped by Respondents. Petitioners gave notice to this Honorable Court to prove this averment.
6. Petitioners say that contrary to the [averments in the] lease agreements to quietly and peacefully possess and enjoy their leaseholds without hindrance, trouble or molestation, the Respondents, without the fear of God, have illegally re-entered, molested and hindered Petitioners' leaseholds by laying blocks and constructing above Petitioners constructed buildings. Petitioners gave notice to this Honorable Court to prove this averment.
7. That Petitioners in an effort to amicably resolve this matter, informed their counsels and Respondents were invited to a conference but all to no avail. Your Honor is respectfully requested to take judicial notice of instruments hereto attached and marked as Exhibit P/5 to form a cogent part of this Petition.
8. Petitioners say the acts of Respondents are demonstrative facts that Respondents do not want to comply with the terms of the lease agreement; thereby exposing Petitioners to undue financial hardship and severe mental anguish.

WHEREFORE and in view of the foregoing, Petitioners pray Your Honor to grant this Petition for Specific Performance against Respondents; issue a Stay Order preventing Respondents from illegally re-entering and constructing on Petitioners' lease properties pending the determination of this matter and grant unto Petitioners any and all further relief as Your Honor may deem just, legal and equitable in the premises.

Respectfully Submitted,
Petitioners, by and thru their legal
Counsel, Kemp & Associates
Legal Consultancy Chambers Inc.,
S & G Building Carey Street

COUNSELLORS & ATTORNEYS-AT-LAW"

On March 21, 2013, the respondents/appellants filed returns to the petition for specific performance, the full text of which we also quote.

"RESPONDENTS' RETURNS

Respondents in the above entitled cause of action file their returns to petitioners' petition in the manner and form showeth as follows, to wit:

1. That as to counts one and two of petitioners' petition, respondents admit that there exist lease agreements between the petitioners and the respondents.
2. And that as to counts three and four of the petition, respondents admit the payments referred to by the petitioners.
3. That as to count five of the petition, respondents says since the lease agreements were concluded, petitioners have been residing on said leased premises for many years like all other lessees on the same premises, which comprise of several stores, doing the same kind of business as spare parts dealers.
4. And that at no time respondents have violated a clause of the lease agreement, because the petitioners have never been molested or troubled for areas that were given them under the lease agreement.
5. And that respondents say it is true that respondents are constructing new structures over petitioners' premises, which is the standard agreement with all other lessees under petitioners' control or on respondents' premises.
6. And that respondents have constructed over all other leased premises except the particular petitioners who consider themselves to be the igwes of Liberia, who are

beyond normal understanding and whose powers are above all other powers. Nowhere in the lease agreement which provided the petitioners the right to build over the leased premises, because respondents have not given them that right to be in charge over the airspace over the leased premises.

7. Respondents request court to send the sheriff of this court to see on behalf of the court that all other leased premises have structures constructed by respondents in order to clear the doubts that only these petitioners who claim that above their structures, the respondent will not build there because they are the igwes of Liberia. Respondents request court to take judicial notice of the entire eight counts lease agreement, which is devoid of any clause awarding the right to petitioners to build an extended structure over their buildings.
8. Respondents submit and say that under our law in keeping with Chapter VII of the revised statutes, to grant an injunction to a party, said requesting party must file an injunction bond, which is not the case. In this case, the petitioners have been enjoying without the requisite requirement as provided for by law. Hence, respondents request Your Honor and this Honorable Court to lift said injunction or order which reads, "YOU ARE FURTHER COMMANDED TO INJOIN/PROHIBIT RESPONDENTS FROM ANY FURTHER CONSTRUCTION ON THE DISPUTED PROPERTY, UNTIL THE DETERMINATION OF THIS MATTER OR FURTHER ORDERS BY THIS COURT. While we agree with Your Honor in your discretionary power to issue an order based upon proven evidence of a specific violation but this is not the case. Petitioners' rights have not been violated in any manner, form or shape because they completely enjoy their leased premises without any disruption to their businesses.
9. And that respondents give notice that they will take advantage of clause twelve (12) of the lease agreements which provide for termination upon ninety (90) days' notice to the lessees, because the petitioners have become a destabilizing factor among lessees, comprising of twenty five (25) stores with their constant incitement of other lessees during normal business period and by incarcerating or jailing of lessors over the years for simple things that do not warrant even police matter. But that petitioners are in the habit of blowing anything of such out of proportion, which have made petitioners' lessors ridiculous in the eyes of the other lessees.
10. Respondents deny all and singular the averments as contained in the petitioners' petition that are not specifically traversed in this returns.

WHEREFORE, AND IN VIEW OF THE FOREGOING, respondents pray Your Honor and this Honorable Court to lift the Court's Order preventing respondents from constructing their structures as a normal thing with all other twenty-five (25) stores beside the petitioners who are igwes of Liberia, and grant unto the respondents all further reliefs as Your Honor may deem just, legal and proper in the instant."

The foregoing returns were filed by the Tulay and Associates Law Firm for and on behalf the respondents/appellants. On March 29, 2013, another law firm, this time the Taylor and Associates Law Firm, filed a second returns to the same petition for specific performance denying virtually all the averments contained in the petition for specific performance.

Kemp and Associates Law Firm, on behalf of the petitioners/appellees, filed reply to the first returns filed by Tulay and Associates Law Firm together with a motion to strike the second returns to the petition for specific performance filed by Taylor and Associates Law Firm on March 29, 2013. The Firm also filed a motion for summary judgment when pleadings rested. But before the motion to strike could be heard, Taylor and Associates Law Firm withdrew the second returns to the petition for specific performance. We must note here that it is rather a strange practice for two returns to be filed to a single petition by a lone respondent. But we will not belabor this point since the second returns filed on behalf of the respondents/appellants were withdrawn and therefore not before us.

We quote first, the reply to the first returns and then the motion for summary judgment filed by the petitioners/appellees on March 29, 2013:

" PETITIONERS' REPLY

PETITIONERS in the above entitled cause of action most respectfully pray Your Honor and this Honorable Court to ignore, deny and strike respondents' returns on the records for the following factual and legal reasons to wit:

1. Petitioners say and aver that respondents' two different returns/resistance filed by Tulay & Associates and Taylor & Associates are unintelligible, contradicting and should be stricken [from] the records of this Honorable Court. Petitioners say and aver that the returns filed by Tulay & Associates contradict the resistance filed by Taylor & Associates and said resistance was filed one day after the statutory time required by law. Your Honor is respectfully requested to take judicial notice of the records before this Honorable Court and strike the two different returns/resistances filed by the respondents' legal team.
2. Further to count one (1) above petitioners say that the respondents, after receiving several rental payments have admitted violating a clause of the lease agreement. Petitioners pray this Honorable Court to take judicial notice of counts two (2) and four (4) of respondents' returns filed by Tulay and Associates and pray that said counts should be stricken of the record.
3. Further to count two (2) of petitioners' reply, petitioners say the respondents, after admitting to violating the terms of the lease agreements, surprisingly contradicted

itself by denying all and singular the averments in petitioners' petition. Your Honor is respectfully requested to take judicial notice of count ten (10) of respondents' returns and pray this Honorable Court to deny and dismiss the entire returns for lack of consistency and coherency.

4. Further to count three (3) of petitioners' reply, petitioners say and aver that it is wrong and a bad a practice for respondents to admit to petitioners' averments by and thru Tulay and Associates and file another resistance thru Taylor & Associates denying those averments previously admitted to. Your Honor is respectfully requested to take judicial notice of count two of respondents' returns filed by Tulay & Associates and count two (2) of the resistance filed by Taylor & Associates. Both returns/resistance are unintelligible, contradicting and should be stricken [from] the record of this Honorable Court.
5. Petitioners say respondents' entire returns filed by Tulay & Associates is an admission to their illegal re-entry into the leased premises and their violation of petitioners' rights under the lease agreement to quietly and peaceably have, hold, possess and enjoy the demised premises without hindrance, trouble or molestation.
6. That as to counts six (6) and seven (7) of respondents' returns filed by Tulay & Associates, petitioner says the terms and conditions vividly expressed in the lease agreements are binding on respondents and respondents should not be allowed to abrogate their own doings or enforce a part or certain provisions of an agreement and at the same time disavow another part of the said agreement. Petitioners say respondents' possessory rights to the entire leased property including its airspace were leased, demised and transferred to petitioners by respondents after the signing of the lease agreements. Petitioners pray this Court to ignore and deny counts six (6) and seven (7) of respondents' returns.
7. Further to count six (6) of petitioners' reply, petitioners say the meeting of the minds, which was essential to the formation of the lease agreements should not be determined by the secret intentions of the parties, but by their expressed intentions as is vividly shown in the lease agreements; hence, petitioners say that it will be a waste of time and resources to send the Court's sheriff to verify respondents hidden intentions which are contrary to the lease agreements entered into.
8. As to count eight (8) of respondents' returns filed by Tulay and Associates, petitioners say that upon filing its petition and other supporting papers, this Honorable Court issued a stay order and not an injunction to prevent petitioners from suffering further injury pending final adjudication of the case. Petitioners say that even the stay order issued by the court was disobeyed by respondents. Your Honor is respectfully requested to take judicial notice of the Arrest Order charging the respondents with contempt of court. Petitioners pray this Honorable Court to deny and dismiss the said count eight (8) of respondent's returns.

That as to count nine of respondents' returns filed by Tulay & Associates, petitioners say that the lease agreement can only be terminated for substantial reasons which must be established by law and not at the whims and caprices of respondent. Petitioners pray this Honorable Court to deny and dismiss the said count nine (9) of the respondents' returns.

9. Petitioners say the illegal re-entry into the leased premises is unjust and detrimental to petitioners, hence, an action of specific performance will lie for the accomplishment of a contract by the party bound to do precisely what he ought to have done without being coerced by a court. Reason is specific performance is an equitable suit whose essence is to ensure that fair play is done or accomplished.
10. Petitioners confirm and reaffirm all the averments stipulated in their petition filed before this Honorable Court and further pray that, respondents' returns be stricken of the records.

WHEREFORE AND IN VIEW OF THE FOREGOING, Petitioners pray Your Honor to strike both of the respondents' returns/resistance of the record, rule respondents to bare denial for the lack of consistency and coherence and grant unto petitioners any and all further relief as Your Honor may deem just, legal and equitable in the premises."

" MOVANTS' MOTION FOR SUMMARY JUDGMENT

Movants in the above entitled cause of action most respectfully move this Honorable Court for summary judgment for the following factual and legal reasons to wit:

- 1 Co-movant Jacob Emehige says he entered into a twenty-year lease agreement with respondents on February 14, 2009 for a piece of property lying and situated at Clara Town, Bushrod Island. Your Honor is respectfully requested to take judicial notice of Co-Movant Jacob Emehige's lease agreement attached to the petition filed before this Honorable Court.
- 2 Co-movant Rebecca Jacob Obiora says that on the 1st day of June 2010, she also entered into a twenty-year lease agreement with respondents for a filling station and a space measured 11' x 40' adjacent her son's leased property. Your Honor is respectfully requested to take judicial notice of co-movant Rebecca Jacob Obiora's lease agreement attached to movants' petition filed before this Honorable Court.
- 3 That consistent with clause 5(a) and (b) of co-movant Rebecca Jacob Obiora's lease agreement, she (Rebecca Jacob Obiora) made a settlement of US\$16,000.00 (Sixteen Thousand United States Dollars) representing payment for the first four years into the leasehold period. Your Honor is respectfully

requested to take judicial notice of the payment receipts attached to movants' petition.

- 4 Further to count three (3) above, movants say that in keeping with the lease agreement, several rental payments were paid to respondent thru his attorneys-in-fact. Your Honor is respectfully requested to take judicial notice of receipts, and transfers attached to movants' petition.
- 5 Movants say that contrary to the lease agreement to quietly and peaceably possess and enjoy their leaseholds without hindrance, trouble or molestation, the respondents, without the fear of God, has illegally re-entered, molested and hindered movants' leaseholds by laying blocks and constructing above movants' constructed buildings.
- 6 Further to Count Five (5) above movants say and aver that due to respondents' illegal entry, it instituted an Action of Specific Performance against respondents on the 18th day of March A. D. 2013 praying this Honorable Court to compel respondents to comply with the lease agreements entered into on February 14, 2009 and June 1, 2010. Your Honor is respectfully requested to take judicial notice of the records before this Honorable Court.
- 7 Further to Count six (6) of movants' motion, movants say that the respondents in their returns filed by Tulay & Associates admitted to the lease agreements, receipts of rental payments and their illegal re-entry into the property leased by movants. Your Honor is respectfully requested to take judicial notice of counts one (1), two (2), four (4) and five (5) of respondents' returns filed before this Honorable Court.
- 8 Movants say and aver that in keeping with our law, summary judgment should be granted if the court is satisfied that there is no genuine issue as to any material fact and that the party in whose favor judgment is granted is entitled to it as a matter of law. Movants pray this Honorable Court to grant summary judgment in its favor since there is no genuine issue as to any material fact.

WHEREFORE, AND IN VIEW OF THE FOREGOING, movants pray Your Honor to grant movants' motion, enter summary judgment in favor of movants and grant unto movants any and all further relief as Your Honor may deem just, legal and equitable in the premises."

On April 5, 2013, the respondents/appellants filed resistance to the motion for summary judgment:

"RESPONDENTS' RESISTANCE

Respondents in resisting movants' motion for summary judgment pray court and Your Honor to deny and dismiss said motion for factual and legal reasons showeth as follows to wit:

1. That as to counts one (1) to four (4) of the motion, respondents say that they are all factual issues and respondents admit that those counts are true.
2. That as to count five of the motion, respondents deny that the movants' alleged peaceful and quiet possession and enjoyment of the leaseholds have been violated in any manner or form, for which a summary judgment can lie.
3. That further to the entire eight (8) counts of the motion for summary judgment, respondents submit and contend that the grounds for summary judgment are provided for by law and none of which is available in this motion for summary judgment; hence, movants' motion should be denied and dismissed as a matter of law.
4. That further to the above, respondents submit and contend that the leasehold title that the movants are depending on to file summary judgment does not in any count allow the movants the right to own the space above its shop structure. Such a right not being awarded to the movants, there can be no basis for summary judgment. This Court is requested to take judicial notice of the lease agreement.
5. And also because as to count five to eight of the motion, respondents submit and contend that under our law extant, a leasehold title is indeed a title for which summary judgment cannot lie because the movants hold title and the respondents hold title, in which case the Supreme Court says summary judgment cannot be granted since both parties hold title; it is unnecessary to grant summary judgment.
6. And more besides, respondents submit and contend that the motion for summary judgment contains more genuine issues of facts and law, for which summary judgment cannot lie because those issues of facts and law must be passed upon by court and jury. That is why one who holds leasehold title cannot be evicted by summary proceedings to recover possession of real property because a lease is prima facie evidence of title.
7. Respondents cite revised statute, 29 LLR and 40 LLR, all of which have to do with titles and lease agreements, which movants hold.
8. Respondents deny all and singular the averments as contained in the motion for summary judgment that are not specifically traversed in this Resistance.

WHEREFORE AND IN VIEW OF THE FOREGOING, respondents pray your Honor and this Honorable Court to deny and dismiss movants' motion for summary judgment, rule costs

against movants and grant unto the respondents all further relief as Your Honor may deem just, legal and proper in the instant case."

The motion for summary judgment was regularly heard and on May 28, 2013, His Honor Judge J. Boima Kontoe, presiding by assignment over the Sixth Judicial Circuit Court for Montserrado County, ruled in favor of the petitioners/appellees granting the summary judgment. The trial judge held that the petitioners/appellees were entitled to the quiet enjoyment of the premises they had leased and that respondents/appellants were precluded by law from reentering the demised premises during the pendency of the lease to construct over the structures already leased to the petitioners/appellees. He further held that since the respondents/appellants did not deny leasing the premises in question to the petitioners/appellees; and since the respondents/appellants did not also deny reentering the leased premises to construct over the premises already leased to the petitioners/appellees, there was no genuine issue of fact for trial. Hence, the trial judge held that the petitioners/appellees were entitled to summary judgment as a matter of law.

From the ruling of the trial judge granting summary judgment in favor of the petitioners/appellees, the respondents/appellants took exception and announced an appeal to this Court for appellate review.

In argument before this Court, the counsel for the respondents/appellants strenuously contended that the respondents/appellants did not "violently and forcefully reenter" to stop the petitioners/appellees from carrying on construction on the leased premises, subject of this case as stated in count 5 of the petition for specific performance. Rather, according to the counsel, the respondents/appellants constructed shops over the buildings leased by the petitioners/appellees. The counsel however maintained that this was not a violation of any clause of the lease agreement because the buildings leased to the petitioners/appellees were being treated in the same manner as the respondents/appellants have treated similar leased structures, by constructing additional shops over existing shops; that all tenants renting on the premises of the respondents/appellants were aware that they are to build flat-top structures on the leased premises to allow opportunity for the respondents/appellants to build over such flat-top structures whenever funds were available to do so; and that co-respondent/co-appellee Jacob Brothers Auto Parts was aware of this, that is why it deliberately built a flat-top in obvious recognition of the right of the respondents/appellants to build over the flat-top structure. The counsel for the respondents/appellants further argued that the petitioners/appellees cannot claim unfair treatment because all the tenants

who entered the premises before the petitioners/ appellees were treated in similar manner; that if the petitioners/appellees did not want such treatment, then they should have told respondents/appellants at the time of the negotiation of the leases, and in that way, the respondents/appellants would have had sufficient notice to make a decision whether to exclude the petitioners/appellees from being treated similar to all the other lessees and charge them a higher rent for such exclusion, or not to accept them as lessees at all. The respondents/appellants further argued that nearly all of the tenants that were on the premises being leased from respondents/appellants are all Nigerians of the Ibo ethnic group of Nigeria, like the petitioners/appellees in this case. Therefore, the petitioners/appellees were in a very good position to know the custom and practice regarding the premises in question. As a result, when the petitioners/appellees attempted to obstruct the construction of a shop over Jacob Brothers' leased property, the other tenants who are all Nigerians came in support of the respondents/appellants. The counsel for the respondents/appellants furthered argued that the petitioners/appellees were not entitled to the airspace above the premises leased to them.

The counsel for the petitioners/appellees, on the other hand, contended that the respondents/appellants indeed reentered the premises leased to the petitioners/appellees and disturbed their quiet use and enjoyment thereof by commencing to construct over the premises already leased to the petitioners/appellees; that there was no stipulation whatsoever in the lease contracts between the parties that at some point in time during the life of the lease agreement, the respondents/appellants would enter on the demised premises and build over them and that had this been the intentions of the parties, this would have been expressly stated in the lease agreements between the respondents/appellants and the petitioners/appellees. The counsel also contended that the petitioners/appellees were not aware of any custom and practice of other Nigerians leasing from the respondents/appellants whereby the respondents/appellants were given the right to construct over premises the respondents/appellants had leased to tenants. The counsel for petitioners/appellees further contended that a lease of property is tantamount in law, to the sale of the property during the period of the lease. Relying on the case: *Lerchel v. Fauzi and Eid*, 34 LLR 648 (1988), he maintained that when the estate of a landlord is leased, the tenant becomes the absolute owner of the demised premises for all practical purposes during the existence of the lease for the term granted, and the landlord's right is confined to reversionary interest. The counsel argued that the lease agreements by and between the respondents/appellants and the petitioners/appellees are valid contracts, as such, the respondents/appellants could not arbitrarily abrogate the terms and conditions of the said

contracts; that the Supreme Court has held that a contract is an agreement between two or more persons which creates an obligation to do or not to do a particular thing and parties to an agreement will not be permitted to abrogate and repudiate their own acts; that meeting of the minds which is essential for the formation of a contract, is not determined by the secret intentions of the parties, but by their express intentions made known and manifested by the terms of the contract.

As we see it, three issues are determinative of this case. They are:

1. Whether or not the respondents/appellants were in breach of the lease agreements signed with the petitioners/appellees when they entered on and began to construct over and on top of existing flat-top structures already leased to the petitioners/ appellees?
2. Whether or not specific performance, as prayed for by the petitioners/appellees would lie?
3. Whether or not given the facts and circumstances in this case, the petitioners/appellees are entitled to summary judgment as a matter of law?

For the purpose of this opinion and for the avoidance of doubt regarding the content of the lease agreements the respondents/appellants signed with the petitioners/appellees, we have deemed it essential to quote verbatim the two separate lease agreements the respondents/appellants signed with the petitioners/appellees.

First, we quote the lease agreement the respondents/appellants signed with co-petitioner/co-appellee Rebecca Jacob Obiora:

"LEASE AGREEMENT

THIS LEASE AGREEMENT made and entered into this 1st Day of June, A.D. 2010, by and between the Kanneh and Kelleh Trading Corporation, of the City of Monrovia, Montserrado County, Republic of Liberia, represented by and thru its President/CEO, Seleke M. Kelleh, (hereinafter known and referred to as "LESSOR"), and Madam Rebecca Jacob Obiora, also of the City of Monrovia, County and Republic aforesaid, (hereinafter known and referred to as "LESSEE"); HEREBY,

WITNESSETH

WHEREAS, Lessor is the owner of a gas station and a space measured 11ft. x 40ft. located in Clara Town, near the premises already leased by the Lessee representing a portion of land measured 45ft. 6" covering the entrance of the gas station; and,

WHEREAS, the Parties hereto have negotiated and concluded for Lessee to lease said premises, with appurtenances appertaining thereto belonging from Lessor, for the purpose of improving the gas station to an acceptable standard and operating same as stipulated herein, which shall take effect on the 25th Day of March, A.D. 2011; and

NOW, THEREFORE, for the general and specific purpose of this Lease Agreement, and in consideration of the above, the Parties hereto agree as follows to wit:-

1. That for and in consideration of the rents, covenants, stipulations and agreements herein mentioned, to be paid and strictly observed, Lessor has leased, granted, demised, and does hereby demise, lease, convey and grant unto Lessee a gas station and the two spots, as described herein, situated lying and being in the vicinity of Lessor's commercial center, Clara Town, Bushrod Island, Montserrado County, Republic of Liberia, for twenty (20) calendar years certain.
2. TO HAVE AND TO HOLD said demised premises with all and singular, the appurtenances and easements thereto belonging unto Lessee for a period of twenty (20) calendar years certain, commencing from the 25th Day of March, A.D. 2011, up to and including March 5, 2031, with an optional period of five (5) years, upon terms and conditions to be negotiated and agreed upon by the parties hereto within thirty (30) days prior to the expiration of the period herein granted.
3. That for and in consideration of the use, occupancy and enjoyment of the leased premises, it hereby covenants and mutually agrees that Lessee shall pay or cause to be paid unto Lessor an annual rental as follows:
 - a) US\$4,000.00 per annum for the first five years period.
 - b) US\$4,500.00 per annum for the second five years period.
 - c) US\$5,000.00 per annum for the third five years period.
 - d) US\$5,500.00 per annum for the fourth (last) five years period.
4. It further covenants and agrees that the rentals, including the advance payment and all other subsequent payments, shall be signed for and received by Ms. Mamayan S. Kelleh, Lessor's legal Representative and/or Attorney-In-Fact, who has been duly authorized and mandated to sign for and receive said amount (rentals), due to the absence of Lessor from the Country at the moment.
5. It also covenants that upon the preparation of the Agreement and subsequent signing thereof by the parties hereto, Lessee shall pay unto Lessor, the sum of US\$16,000.00 in advance, representing four (four (4) years of the first five (5) years period, as follows:

- a) US\$4,000.00 upon the immediate signing of the Agreement.
- b) US\$12,000.00 on the 5th Day of February, A.D. 2011.

6. It further agrees that this Agreement shall not be effective and in full force, until the US\$16,000.00 advance payment is fully made unto Lessor by Lessee, as stipulated hereinabove; and that the failure of Lessee to pay in full said US\$16,000.00 advance at the stipulated time, shall render this Agreement null et void with its intents and purposes and of no legal effect; and that Lessor shall refund Lessee the US\$4,000.00 paid upon the immediate signing of this Agreement, less US\$2,625.00.
7. It is mutually covenant and agreed that Lessee shall, as earlier stipulated herein, improve the gas station and two (2) said spots to an acceptable standard; and that the funds to be expended by lessee to renovate and/or improve the gas station shall not exceed US\$3,000.00, which shall be refunded by Lessor upon the presentation of genuine and relevant receipts for material cost and workmanship, after the completion of the renovation.
8. It further agrees that for and during the lifetime of this Agreement, Lessee shall be responsible to pay the Realty Lease Tax, which is otherwise known as Coast Guard Tax, while Lessor shall pay Real Estate Tax for the lease premises. It is also agreed and understood that Lessee shall pay, when due, all utility bills including water and sewer, electricity, etc. that may be consumed by the demised property; and that utility bills and taxes accrued from the demised premises prior to taking over the premises by the Lessee shall be on the account of Lessor. Notwithstanding in the event Lessor fails to pay said bills or taxes accrued, Lessee shall pay said bills or taxes, which shall be deducted from the rent.
9. The Lessor hereby covenants and agrees that the Lessee paying all rents herein agreed upon and performing the covenants and agreements herein provided, shall quietly and peaceably have, hold, possess and enjoy the said demised premises without hindrance, trouble or molestation from any person or persons whomsoever, in which quiet and peaceable enjoyment LESSOR herby undertakes to warrant and defend this Lease Agreement during the full period herein granted or any extension thereof.
10. It is also covenant and understood that LESSEE shall have the right to sub-lease said demised premises, without the expressed written consent and approval of LESSOR; and that in the event LESSEE sub-leases said property upon the consent and approval of LESSOR, LESSEE shall pay unto LESSOR 20% in difference of the rent paid to LESSEE sub-letting said property.
11. It is mutually agreed and understood that upon the expiration of this Lease or any extension thereof, the Lessee shall quietly and peaceably yield up and surrender to the Lessor, her administrator, executors and assigns said demised premises in as good a state and condition as reasonable wear and tear shall permit, acts of God and force majeure excepted.

12. It is further covenant and agreed by the both parties hereto that either party shall have the right to terminate this Agreement; and that the party desiring to terminate shall serve a ninety (90) days written notice of termination on the other party, indicating the reason for such termination, which of course shall be substantial, consistent with the terms and condition of this Agreement.

13. That this agreement shall be binding upon the parties hereto, their heirs/executors, administrators, assigns, legal representatives and successors-in-office, as if they were specifically named in this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and affixed their signatures on the date and in the year first written above.

In the present of:

FOR K & K TRADING CORPORATION

1. _____

Seleke M. Kelleh
PRESIDENT/CEO
LESSOR

2. _____

Rebecca Jacob Obiora
LESSEE

And secondly, we quote the lease agreement the respondents/appellants signed with co-competitioner/co-appellee Jacob & Brother Auto Spare Parts:

"LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into this 14th day of February A.D. 2009, by and between K & K trading Corporation, represented by and through its General Manager, Seleke Kelleh, of the City of Monrovia, County of Montserrado, Republic of Liberia, (hereinafter known and referred to as the "LESSOR" and Jacob & Brother Auto Spare Parts, represented by its General Manager/Proprietor, Jacob Emehige, also of the City of Monrovia, County of Montserrado, Republic of Liberia, also known and referred to as "LESSEE", hereby;

WITNESSETH:

WHEREAS, the Lessor, K & K Trading Corporation, Clara Town, is the owner of a piece of property lying and situated at Clara Town, Bushrod Island, Monrovia, Liberia, which it has offered for lease;

WHEREAS, the Lessee, a business entity, has accepted said offer for the lease purpose of selling auto spare parts on said premises; and,

AND NOW THEREFORE, both the LESSOR and LESSEE hereby stipulate and agree as follows to wit:

1. That for and in consideration of the rents, covenants, agreements and stipulations herein contained to be paid and performed by the LESSEE herein, the LESSOR hereby grants, demises, and leases unto the LESSEE the below described property lying and situated at Clara Town, Bushrod Island, Monrovia, Liberia.
2. TO HAVE AND TO HOLD, the said described premises unto the LESSEE together with all and singular the rights, privileges, easements and appurtenances thereto belonging and appertaining for a period of twenty (20) Calendar years certain commencing from the 1st day of February A.D. 2009 up to and including the 2nd day of February, A.D. 2029 with five (5) years optional period with terms and conditions to be agreed upon following the end of the twenty (20) years certain and that the payment terms shall be as follows:
 - a) For the first five (5) years, US\$4,500.00 per annum
 - b) For the second five (5) years, US\$5,000.00 per annum
 - c) For the third five (5) years, US\$5,500.00 per annum
 - d) For the fourth five (5) years, US\$6,000.00 per annum
3. That the Parties hereto agree that the Lessee has constructed the subject building and the appraised/approved cost of construction shall be deducted from the rental over the rental period.
4. That it is further mutually agreed and understood by the parties to this agreement that at the signing of this agreement, the lessee shall pay or cause to be paid US\$6,000.00 and thereafter all payments shall be paid in advance.
5. That the Parties hereto agree that the LESSEE has constructed the subject building and that the appraised/approved cost of construction shall be deducted from the rental over the rental period.
6. That it is further mutually agreed and understood by the parties to this agreement that at the expiration of the terms and conditions herein agreed upon, the LESSEE shall have the first right of refusal of an extension under this agreement, which refusal shall be expressed in writing; the LESSOR shall only negotiate with a third party should the LESSEE decline to exercise his right to an extension the manner expressed herein.
7. That it is mutually agreed and understood that the LESSEE shall have the right to sub-lease and/or assign any or all of the lease premises to a third party within the period and time herein

8. That it is also further mutually agreed and understood by the parties to this agreement that the LESSEE shall pay or caused to be paid all utility bill, including water, sewer, electricity, telephone, etc. which may be consumed on the demised premises by the LESSEE during the life of this agreement, as well as any other city taxes that may be assessed on the lease premises. All taxes and utility bills which have accrued on the demised premises prior to the execution of this agreement of this agreement shall be on the account of the LESSOR. However, in the event the LESSOR fails to pay upon notice, the LESSEE shall pay and said payment shall be deducted from future rental.

9. That the LESSOR hereby covenants and agreed that the LESSEE by paying rents aforesaid mentioned, and by performing the other covenants herein contained, shall at all times during the life of this lease agreement or any extension thereof, HAVE, HOLD, POSSESS, AND ENJOY the leased premises without any trouble, hindrance, or molestation from the LESSOR or anyone whosoever.

10. That it is further and mutually agreed and understood by the parties to this agreement that at the expiration of this agreement, meaning the period certain of the optional, LESSEE shall peacefully surrender the said lease premises to the LESSOR in good and tenable conditions as reasonable wear and tear may permit; and Acts of God and decay caused by the elements thereof, excepted.

11. That this lease agreement shall be binding on the parties hereto, their heirs, executors, administrators, assigns, successors-in-business in office, and their legal representatives, as if they were specifically named herein and signed this Lease Agreement.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE HEREUNTO SET THEIR HANDS AND AFFIXED THEIR SIGNATURES ON THIS INSTRUMENT IN THE CITY OF MONROVIA, MONTERRADO COUNTY, REPUBLIC OF LIBERIA, THIS 14TH DAY OF FEBRUARY A.D. 2009.

IN THE PRESENCE:

FOR THE LESSOR

Seleke Kelleh
K & K Trading Corporation

Represented by its General Manager
LESSOR

FOR THE LESSEE:

JACOB EMEHIGE

Jacob & Brother Auto Spare Parts
Represented by its General Manager/Proprietor
LESSEE

To address the first issue, whether or not the respondents/appellants were in breach of the lease agreements signed with the petitioners/appellees when they entered on and began to construct structures over the existing flat-top structures already leased to the petitioners/appellees let us be unequivocal from the onset that the lease agreements between the parties constitute valid contracts. A contract is an assent of two or more minds to do or not to do a certain act, which courts of justice will enforce, but not make for parties. *Nagbe et al v. Jacobs et al* 34 LLR 126 (1986). A contract is also defined as “an agreement upon a sufficient consideration to do, or refrain from doing, a particular lawful thing. Further, a contract is an agreement, obligation, or legal tie by which a party binds itself or becomes bound, expressly or impliedly, to pay a sum of money or to perform or omit to do some certain act or thing...” *17A AM JUR 2d, Section 1, Contract.*

The parties to a contract are bound by their intents as expressed in the contract document. It is a cardinal rule that what the parties do not provide for in the contract is withheld. And when a provision expressly made in a contract is contravened, it is said that the contract has been breached for which there is a remedy. A breach of contract is a violation of a contractual obligation by failing to perform one's own promise, by repudiating it or by interfering with another party's performance. (See *Black Law Dictionary, 9th Edition.*)

Let us now take recourse to the lease agreements between the parties to see whether some express provisions therein were breached. As to the lease agreement the respondents/appellants executed with co-petitioner/co-appellee Rebecca Jacob Obiora on June 1, 2010, the relevant portions are the preambles and clause 9 which read thus:

“WHEREAS, lessor is the owner of a gas station and a space measured 11 ft. x 40ft located in Clara Town, near the premises already leased by the lessee representing a portion of land measured 45 ft. – 6” covering the entrance of the gas station; and,

WHEREAS, the parties hereto have negotiated and concluded for lessee to lease said premises, with all appurtenances appertaining thereto belonging from lessor for the purpose of improving the gas station to an acceptable standard and operating same as stipulated herein, which takes effect on the 25th day of March 2011;

9. The lessor hereby covenants and agrees that the lessee paying all the rents herein agreed upon and performing the covenants and agreements herein provided, shall quietly and peaceably have, hold, possess and enjoy the said demised premises without hindrance, trouble or molestation from any person or persons whomsoever, in which quiet and peaceable enjoyment lessor hereby undertakes to warrant and defend this lease agreement during the full period herein granted or any extension thereof."

As to the lease agreement the respondents/appellants executed with co-petitioner/co-appellee Jacob Brothers Auto Spare Parts on February 14th, 2009, the relevant portions are clauses one, three, and nine which read:

Clause 1. That for and in consideration of the rents, covenants, agreements and stipulations herein contained to be paid and performed by the lessee herein, the lessor hereby grants, demises and leases unto the lessee the below described property lying and situated at Clara Town, Bushrod Island, Monrovia, Liberia.

Clause 3. That the parties hereto agree that the lessee has constructed the subject building and that the appraised/proved cost of construction shall be deducted from the rental over the rental period.

Clause 9. That the lessor hereby covenants and agrees that the lessee by paying rents aforesaid mentioned, and by performing the other covenants herein contained, shall at all times during the life of this agreement or any extension thereof, HAVE, HOLD, POSSESS AND ENJOY the leased premises without any trouble, hindrance or molestation from the LESSOR or anyone whosoever.

From the quoted provisions of the lease agreements, certain facts are established and made clear: a) certain properties as described, were leased to the petitioners/appellees by the respondents/appellants; b) the petitioners/appellees were given permission under the lease agreements to improve/ construct on the leased premises during the life of their respective lease agreements; and c) the respondents/appellants agreed and covenanted that the petitioners/appellees by paying rents in keeping with the lease agreements, and by performing the other covenants therein contained, shall at all times during the life of the lease agreements, or any extension thereof, "HAVE, HOLD, POSSESS AND ENJOY the leased premises without any trouble, hindrance or molestation from the LESSOR or anyone whosoever." [Emphasis supplied]. We must note that the covenant of quiet enjoyment of the leased premises as promised by the respondents/appellants was contained in the two separate lease agreements the respondents/appellants signed with petitioners/appellees.

In spite of the covenant of quiet enjoyment of the leased premises without any trouble, hindrance or molestation from the lessor or anyone whosoever, as provided for in the lease agreements, the respondents/appellants who are the lessors herein, admitted in count five (5) of their returns to the petition for specific performance, that they were constructing new structures over the petitioners/appellees' leased premises. This act, in our opinion, was a clear violation of the provisions of the lease agreements not to interrupt nor interfere with the peaceful and quiet enjoyment of the demised premises during the periods of the lease agreements.

The respondents/appellants have argued that their action did not violate any clause of the lease agreement because the buildings leased to the petitioners/appellees were being treated in the same manner as the respondents/appellants have treated similar leased structures, by constructing additional structures over existing structures; that all tenants renting on the premises of the respondents/appellants were aware that they are to build flat-top structures on the leased premises to allow opportunity for the respondents/appellants to build over such flat-top structures; and that co-petitioner/co-appellee Jacob Brothers Auto Parts was aware of this, that is why it deliberately built a flat-top in obvious recognition of the right of the respondent/appellants to build over the flat-top structure built by him. The petitioners/appellees have strenuously denied this argument.

We see no evidence that the petitioners/appellees were aware that the respondents/appellants were to build over the premises leased to the petitioners/appellees. A careful perusal of the lease agreements quoted hereinabove which carries the intents of the parties, will show that the matter of building over the premises leased to the petitioners/appellees is nowhere mentioned. In other words, this point of contention is not provided for in the lease agreements. In our view, had the parties intended or arrived at a consensus on an important matter such as the respondents/appellants' right to build structures over the structures which were leased to the petitioners/appellees, such intent would have been made known by a provision in the lease agreements between the parties. But such was not the case. As we have stated, the law assumes that what is not expressly stated by the parties in an agreement is deemed withheld. Hence, the respondents/appellants and petitioners/appellees having not mentioned in the lease agreements signed by them that the respondents/appellants have the right to build structures over and on the top of the structures leased to the petitioners/appellees, such matter was withheld. As such, any matter not expressly stated in the lease agreement cannot be said to be the manifest intent of the parties. If the respondents/appellants as they

claim, had such arrangements with other tenants occupying their properties, certainly such was not the case with the petitioners/appellees.

The second issue we address is whether or not specific performance, as prayed for by the petitioners/appellees would lie?

Specific performance is defined as an equitable suit which essence is to ensure that fair play is done or accomplished. It is the actual accomplishment of a contract by the party bound to fulfill it; for a decree for specific performance is nothing more or less than a means of compelling a party to do precisely what he ought to have done without being coerced by a court. A fundamental pre-requisite for enforcement of specific performance is that there must be a contract to be enforced and there must be no adequate remedy at law. In accord: *Collins v. Elias Brothers*, 1 LLR 258, 261; (1952); *Ellis v. Johnson*, 40 LLR 474, 478 (200); *Baz Brothers Corporation v. Gray*, 26 LLR (1977); 49 AM JUR 2d, Section 6, *Specific Performance*; *Keita v. Keita*, Supreme Court Opinion, March Term 2016.

As we stated earlier hereinabove, the lease agreements between the parties to this case constituted valid contracts the provisions of which were binding on them to fulfill. Under the terms of the contract, the parties agreed to carry out their wishes and intents as expressed in the contracts. Specifically, the respondents/appellants agreed that the petitioners/appellees "by paying rents in keeping with the lease agreements, and by performing the other covenants therein contained, shall at all times during the life of the lease agreements, or any extension thereof, have, hold, possess and enjoy the leased premises without any trouble, hindrance or molestation from the lessor or anyone whatsoever."

There is no question that the petitioners/appellees in this case have paid rents and performed other covenants as contained in the lease agreements. It was therefore correspondingly incumbent on the respondents/appellants to have allowed the unrestricted, uninterrupted and quiet use of the demised premises during the periods of the lease agreements "without trouble, hindrance or molestation" from the respondents/appellants or anyone whatsoever. It has been held that where one party to a contract breaches the contract and refuses to perform, "the injured party may resort to alternative remedies calculated at placing the injured party at status quo." 17 Am Jur 2d Section 708, *Contracts*. So, while the petitioners/appellees herein could have elected to bring an action on the contract to recover damages, the availability of such a remedy does not preclude

the election of specific performance as a cause of action. We therefore hold that for the breach of the covenant of quiet enjoyment, specific performance will lie to compel the respondents/appellants to abide by the terms of the contract.

The third and last issue we shall address is whether or not given the facts and circumstances in this case, the petitioners/appellees are entitled to summary judgment as a matter of law?

Section 11.3 (3), Vol. 1 Civil Procedure Law provides:

“The court shall grant summary judgment if it is satisfied that there is no genuine issue as to any material fact and that the party in whose favor judgment is granted is entitled to it as a matter of law. When a motion for summary judgment is made and supported as provided in this section, the adverse party may not rest on mere allegations or denials of his pleading, but his response by affidavits or as otherwise provided in this section must set forth specific facts showing that there is a genuine issue for trial; if he does not so respond, summary judgment, if appropriate, shall be entered against him.”

As seen in the above quoted statute on motion for summary judgment, the adverse party to a motion for summary judgment may not rest on mere allegations or denials in his pleading, but his response by affidavits or as otherwise provided must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if deemed appropriate by the court, shall be entered against him. We note that the respondents/appellants in this case who are the adverse parties to the motion for summary judgment did not set forth specific facts showing that there is or there are genuine issues of material facts to warrant trial. Rather, and as seen in their response to the motion for summary judgment, the respondents/appellants have merely denied the averments in the motion and have argued that there are genuine issues of material facts to warrant trial in the petition for specific performance and the returns thereto. In our view, this position of the respondents/appellants was not enough to overturn the contention of the petitioners/appellees that there is no genuine issue of law in the returns to the petition for specific performance to warrant trial of the cause. The respondents/appellants were required to do more as required by law.

Moreover, we see that in several counts of the returns to the petition, the respondents do not deny the crux of the petitioners/appellees' complaint which is that the petitioners/appellees and the respondents/appellants entered into lease agreements; that the petitioners/appellees fulfilled their side of the agreements by paying rentals as

stipulated; and that the respondents/ appellants reentered and started to construct new premises over the petitioners/appellees' leased premises. In traversing relevant counts of the petition for specific performance on this point, the respondents/appellants admit in count one (1) of their returns, the existence of the lease agreements. In count two (2) of the returns, they admit receipt of rental payments to them by the petitioners/appellees. And in count three (3) of the returns the respondents/appellants admit that they started to construct new structures over petitioners/appellees' leased premises. Having so admitted, the respondents/appellants tries to justify their action by asserting in counts 4 & 5 of their returns that what they were doing was "a standard agreement with all other lessees on the premises owned by the respondents/appellants.

But as we have already stated, the lease agreements between the parties are silent on this point. In other words, nowhere in the lease agreements do we see a statement that the respondents/appellants have the right to construct premises over the premises already leased to the petitioners/appellant. So, the respondents/appellants' contention that their action was a "standard agreement with all other lessees is not supported by any scintilla of evidence. Thus, the respondents/appellants' failure to have set forth specific facts showing that there is a genuine issue for trial, coupled with their admission that they entered lease agreements with the petitioners/appellees; that the petitioners/appellees paid rents to them; and that they commenced constructing new premises over premises already leased to the petitioners/appellees attests to the fact that there exist no genuine issue of fact to warrant the trial of the petition for specific performance. The Supreme Court has held that when no justifiable issue of material fact is presented to the court, summary judgment will be granted. *Dennis v. Phillips*, 21 LLR 506 (1973). The petitioners/appellees were therefore entitled to summary judgment as a matter of law. Therefore, we hold that the ruling of the trial judge on this issue being sound in law needs not be disturbed.

In further argument in his brief and before this Court, the counsel for the respondents/appellants also contended at length that the petitioners/appellees were not entitled to the airspace above the premises lease to them. We do not consider this case to present an issue of airspace. The undisputed fact is that the respondents/appellants began constructing structures which were firmly attached to the premises already leased to the petitioners/appellees. So, on this point we shall say no more.

Wherefore, and in view of the foregoing, the judgment of the trial court granting summary judgment is confirmed. The respondents/appellants are to desist from constructing

structures over the structures already leased to the petitioners/appellees. The Clerk of this Court is ordered to send a mandate to the trial court to resume jurisdiction over this case and enforce its judgment appealed from. AND IT IS SO ORDERED.

Judgment Affirmed.

Counsellor Tiawan S. Gongloe of Gongloe & Associates appeared for the respondents/appellants. Counsellor Theophilus C. Gould of Kemp & Associates Law Firm appeared for the petitioners/appellees.