IN THE HONOURABLE SUPREME COURT OF 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, III.....ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH.....ASSOCIATE JUSTICE

T. Philip Massaquoi, Administrator of The Intestate Estate of the late Morris Massaquoi..... .....APPELLANT

VERSUS

His Honor Yussif M. Kaba, Resident Circuit Judge, Sixth Judicial Circuit Court, Montserrado County and Samukai Konneh of the City of Monrovia, Liberia.....APPELLEE

GROWING OUT OF THE CASE:

Samukai Konneh of the City of Monrovia, Monrovia, Liberia..... .....PETITIONER

VERSUS

T. Philip Massaquoi, Administrator of the Intestate Estate of the late Morris Massaquoi..... RESPONDENT

GROWING OUT OF THE CASE:

T. Philip Massaquoi, Administrator of the Intestate Estate of the late Morris Massaquoi.....PLAINTIFF

VERSUS

Samukai Konneh of the City of Monrovia, Liberia..... DEFENDANT

APPEAL

PETITION FOR DECLARATORY JUDGMENT

SUMMARY PROCEEDINGS TO RECOVER REAL PROPERTY

Heard: November 3, 2015. Decided: July 14, 2016

MR. JUSTICE BANKS delivered the Opinion of the Court.

This case has its roots in two lease agreements entered into and executed on January 1, 2004 and February 1, 2004, respectively, by and between

the Intestate Estate of the late Morris Massaquoi, represented by its administrator, T. Philip Massaquoi, the appellant/respondent herein, and Samukai Konneh, the appellee/petitioner, for the lease of two separate sets of structures located on a parcel of land owned by the Estate, located on water and Johnson Streets in the City of Monrovia, Republic of Liberia. Under the Lease Agreement of January 1, 2004, the structures leased by the lessee included two stores and a warehouse. Further, the said Agreement provided for a lease period of seven (7) calendar years certain, commencing January 1, 2004 and ending January 1, 2011. Additionally, under the said Lease Agreement, the lessee was to pay to the Lessor the annual rental of US$800.00, payable on a series of dates stipulated in the Agreement.

The contentions of the parties are centered on four clauses in the Lease Agreement referenced above, viz Clauses 8, 9, 10 and 11. Because they form the bedrock of the dispute, we hereunder quote the said clauses verbatim as follows, to wit:

> "(8) It is also mutually agreed and understood that the Agreement, in the case of *force majeure*, that is, civil disturbance, civil war, invasion, which may make impossible the performance of this lease, then said agreement shall be extended for an additional term to cover the period of the *force majeure*.
>
> "(9) It is also mutually agreed and understood that the lessee shall not sub-let or assign in whole or in part the herein demised premises to any person or persons whomsoever, without the knowledge and consent and/or approval of the lessor.
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> "(10) The parties hereto further agree that the lessee paying the rents and performing the covenants and conditions herein provided, shall quietly and peaceably have hold, possess and enjoy the said demised premises without molestation from any person or persons whomsoever, which quiet, peaceable possession and enjoyment lessor do hereby promise and undertake to warrant and defend said lessee during the period herein granted.
>
> "(11) It is further mutually agreed and understood that at the expiration of this Agreement, the lessee shall undertake to surrender and yield up the said demised premises unto the lessor in as good condition as

reasonable wear and tear thereof shall permit and acts of God or natural or unforeseen happenings excepted."

Having recited the provisions of the Lease Agreement which form the center of the dispute and upon which the parties have relied to support their various claims and contentions, we now proceed to put the claims advanced by the parties within the context of the facts as revealed from the records and as they relate to the quoted provisions.

The records certified to this Court reveal that following the Lease Agreement between the disputing parties coming into effect, the lessee, appellee herein, took possession of the leased premises covered by the Agreement and proceeded to sub-let the same at alleged enormous profits, regarded by the appellant as a violation of Clause 9 of the Agreement. Clause nine (9) of the Lease Agreement, recited above, stipulated that the lessee did not have the authority to sub-let or assign the leased premises without the prior permission and consent of the lessor. The appellant contends that while the action by the appellee was a violation that warranted cancellation of the Agreement, and that it had determined to proceed with cancellation of the agreement, it was persuaded, on the advice of some persons, not to pursue such a course since the agreement was nearing expiration by its own terms. Hence, appellant said, it decided not to proceed against the appellee but to instead await the expiration of the lease.

The appellant contended also that when the agreement expired and the appellee failed and refused to vacate and surrender the premises as the appellee was legally obligated to do under Clause Eleven (11) of the Lease Agreement, an act in defiance of the several demands made by the appellant upon the appellee, the appellant was constrained to file in the West Point Magisterial Court summary proceedings against the appellee to recover possession of real property, the subject of the instant proceedings. Because these initial proceedings in the magisterial court are important to the analysis we make later in this Opinion, we deem it befitting to quote the summons issued by the magisterial court against the appellee, which summons set out the nature of the appellant's complaint against the appellee. This is how the writ read:

> "Plaintiff in the above entitled cause of action complains of you, the within named defendants, and say that you are tenants-at-will and have been declared undesirable after [being] given notices, but you [have] refused, neglected to [honor] these notices. Therefore you have continued to occupy his premises (store with warehouse attached), lying and situated on Johnson and water Streets, Monrovia, Liberia. Plaintiff prays this honourable court to [hold] the defendants liable in these proceedings, and also make them pay his expenses and costs of court in these proceedings; that you are also to be made to pay rental arrears. All of which plaintiff stands ready to prove."

The records from the magisterial court reveal that trial was duly conducted by that court and that evidence was presented by the adverse parties to substantiate, on the one hand, and refute, on the other hand, the claims made by one party against the other party. We take note that the said records show that the only defense raised by the appellees in response to the suit was that they were not given appropriate notice by the appellant to vacate the premises prior to the institution of the suit. At no time, the records from the magisterial court disclose, did the appellees assert the defense that they were entitled to remain on the premises because the appellant had deprived them of the use and enjoyment of the demised premises, and hence, that they were entitled to continued occupation of the demised premises for the period in which they were deprived of the use of the said demised premises.

The magisterial court, after listening to the evidence adduced by the parties and the arguments advanced by counsels for the parties, and being satisfied that the appellant had presented a sufficient case for judgment in its favor, proceeded, on June 18, 2011, to enter judgment in favor of the appellant, adjudging that the lease executed between the appellant and Appellee Konneh had indeed expired on its own terms, and that in the circumstances Appellee Konneh was obligated to surrender the premises to the appellant as per the lease agreement; that given the lease period stipulated in the Lease Agreement had expired by the terms of lease and that the appellees were no longer entitled to continue to occupy the demised premises; and that such continued occupation, being illegal and unlawful, the appellees were therefore not entitled any further notice from the appellant to vacate and surrender the premises. Accordingly, the magistrate ordered that the appellees be ejected, ousted and dispossessed of the premises within thirty days of the

date of the judgment and that the appellant be placed in possession of the said premises.

Appellee Konneh, not being satisfied with the judgment of the magisterial court, excepted thereto and appealed the matter to the Circuit Court for the Sixth Judicial Circuit, Montserrado County, on summary proceedings. The appeal was granted and perfected. The records reveal that pursuant to the said appeal taken by the appellee, the entire records in the case were transmitted to the Circuit Court for the Sixth judicial Circuit, Montserrado County, on July 6, 2011, and that on July 19, 2011, an assignment was duly issued for hearing of the case *de novo* for August 13, 2011, before His Honour Peter W. Gbeneweleh, Assigned and Presiding Judge for the June term of the said Circuit Court.

The records also show that after a series of assignments, the hearing of the case was commenced before the Sixth Judicial Circuit Court on September 12, 2011, at the September Terms of the said court, with the Appellant's first witness, in person of T. Philip Massaquoi, Administrator of the Appellant's Intestate Estate, taking the stand and testifying. We note with particular concern that because of the seeming continued excuses by counsel for the appellee, the case could not be concluded by the trial judge during the September Term, A. D. 2011. In fact, rather than attending to the trial of the case on appeal so that same could be concluded, and knowing that the case was still awaiting disposition in the circuit court, the appellee, by a new counsel, in person of Counsellor Thompson Jargba, proceeded on January 5, 2012, when a new circuit judge had been assigned to preside over the Circuit Court for the Sixth Judicial Circuit, to file what the appellee denominated as a petition for declaratory judgment. What is rather interesting about this new suit, as revealed from the caption, is that it is said to be the outgrowth of the summary proceedings case pending on appeal, that it involved the same parties, the same subject property, and the same issues. The only difference between it and the summary proceedings appeal case that was awaiting disposition is that it sought to introduce new matters which were not introduced in the case awaiting disposition on appeal. This is how the petition reads:

AND now comes petitioner of the above entitled cause of action and most respectfully prays as follow, to wit:

1. That he is the defendant in the action of summary proceedings to recover possession of real property out of which is grown this petition.

2. That a valid lease agreement was duly executed between him and the respondent/plaintiff, dated January 1, 2004. Attached is copy of said agreement herein marked exhibit P/1, to form a cogent part of these proceedings.

3. That during the existence of said agreement, the respondent illegally removed petitioner by force and placed in the leased premises tenants from whom he collected rents from January 2004 to August 2005. Attached are copies of receipts herein marked exhibit P/2, to form a cogent part of these proceedings.

4. That petitioner instituted action against the tenants of respondent to obtain the leased premises. Attached is copy of court documents herein, marked exhibit P/3, to form a cogent part of these proceedings. That despite the disruption of petitioner's leased period, the respondent is by the use of force [holding] two stores of the leased premises and instituted action in the West Point Magisterial Court against petitioner for an action of summary proceedings to recover possession of real property, which is before Your Honour on appeal.

5. That prior to the institution of the action of summary proceedings to recover possession of real property now on appeal before Your Honour, the respondent complained [to] the justice of the peace from whom judgment was obtained by petitioner to evict tenants placed in the leased premises by respondent in 2005 in the 1st Judicial Circuit, Criminal Court "A", which pendency was acknowledged January 22, 2007 and decided March 10, 2011. Attached see document from Court "A", herein marked exhibit P/4, to form a cogent part of these proceedings.

6. That because petitioner's leased period was disrupted by the entire period of the lease and rent collected for two years per receipt attached as exhibit P/2 from said leased premises by respondent, petition for declaratory judgment will lie.

WHEREFORE, and in view of the foregoing, petitioner most respectfully prays that Your Honour will render and grant unto him declaratory judgment and the respondent to be made to allow petitioner to enjoy

the period he did not enjoy due to respondent's illegal attitude and unnecessary court's actions with cost against the respondent."

In regards to the above petition, our attention is drawn to the fact that the petitioner, appellee herein, acknowledged in the petition that he was a defendant in summary proceedings to recover real property; that judgment was entered against him in the magisterial court; that an appeal was taken from the said judgment to the very Circuit Court for the Sixth Judicial Circuit, before whom the petition was filed, involving the same property and parties; and that the appeal was still awaiting disposition by the court. We should add, as indicated before and as the records reveal, that hearing in the appeal case had already commenced but was not concluded, due primarily to the manifold excuses submitted by counsel for the appellee.

In response to the petition, counsel for the respondent, appellant herein filed what we deemed as one of the most ridiculous returns that seemed ever to have been filed in the history of our justice system. Indeed, we have determined to quote the returns herein not so much because it is relevant but because of our outright disgust with counsel for the respondent who not only totally failed to address any of the issues raised in the petition for declaratory judgment and advance other affirmative defenses to the allegations laid in the petition, but who, by the rather ridiculous nature of the response, demonstrated an utter lack of competence in the law or understanding of the facts and the issues, a situation that warrants exposure. Here is how the then counsel for the respondent responded to the petition:

"AND NOW COMES RESPONDENT who prays Your Honor and this Honorable Court to dismiss this unwarranted petition for the following legal and factual reasons, to wit:

1. That respondent says that this petition is a fit subject for dismissal, for reason that Counsellor Thompson Jargba who filed this petition is a total stranger to the summary proceedings to recover possession of real property pending on appeal before this Court; in that Counsellor Jargba is not a counsel of record in the said matter.

2. That respondent denies all and singular the allegations of law and facts contained in petitioner's petition which have not been specifically traversed herein.

WHEREFORE, and in view of the foregoing facts and circumstances, it is the prayer of respondent that this Honorable Court dismiss the petition for declaratory judgment and grant unto respondent any other and further relief which Your Honor and this Honourable Court deem just, equitable and legal."

Again, as we indicated before, but for the purpose of emphasis, we reiterate that the defense is utterly ridiculous not only because it failed to address any of the issues raised in the petition for declaratory judgment or introduce any affirmative defense for the respondent, but also because it failed to recognized that although the petition for declaratory judgment contained the same facts, subject matter, issues and parties as in the appeal taken from the magisterial court and pending before the circuit court, and the petition purports to be the outgrowth of the appeal case, by law the petition was a completely different action. Hence, there is no requirement under the law that the same counsel who represented the petitioner, respondent in the summary proceedings to recover real property, should be the counsel representing the petitioner in the petition for declaratory judgment. Instead, the entire concentration of the two-count resistance was that the counsel whose name appeared on the petition for declaratory judgment was not the counsel who appeared for the petitioner, defendant in the summary proceedings case adjudicated before the magisterial court.

We do not dispute that under the law, the injection or addition of a new counsel must be formally notified to the adversary party. It is true that nothing in the records show that this was done. However, this could not be the basis for denial of the petition since the petition was in law a separate and distinct legal action and therefore the petitioner did not have to be represented by the same lawyer as in the summary proceedings to recover real property pending before the court on appeal.

But a further fascination of the case is that the records disclose that following the filing of the petition for declaratory judgment, when the judge presiding at the December term, 2011 of the Circuit Court, proceeded, on February 12, 2012, to assign the appeal case for hearing on February 15, 2012, counsel for the appellee addressed a letter to the Judge, His Honor Emmanuel Kollie, asking for a further postponement of the case on the ground that "the entire file for [his] client in the above

entitled cause of action lost from [him] this afternoon." Hence, the case was not heard until the term of court expired and a new judge, His Honour Yussif Kaba, was assigned to the new term of the court, the March term, 2012.

At this new term of the Court, several assignments [1st March, 2012 and 4th April and 4th May, to mention only a few] were also issued for the hearing of the summary proceedings to recover possession of real property but no hearing was conducted. Instead, we find in the record a ruling made by Judge Kaba said to be on the petition for declaratory judgment where, ignoring the appeal pending before the court in the summary proceedings to recover real property, he stated that he would proceed into in investigation of the allegations made in the petition for declaratory judgment so as to ensure that justice was meted out to the parties. The Minutes of May 17, 2012 for ruling on the case indicates that while the case for hearing was the summary proceedings case, yet when the case was called it was the petition for declaratory judgment which the judge proceed to give a ruling on. The two cases have separate case numbers and thus should have been known to the judge. It seems rather strange then that even with all the information available to the court from the records, including the fact that hearing on the summary proceedings had commenced, the trial judge did not deemed it important to review or give attention to the records in the case referenced by the petitioner and alluded to in the petition before proceeding to entertain the petition for declaratory judgment. And even when the assignment was issued for the summary proceedings to recover possession of real property, the ruling given by the judge was purported to be in the petition for declaratory judgment.

Interestingly also, and as seemed to have been the deliberate designed of counsel for the petitioner, he was absent from the court on the date of the said ruling, even though the trial judge noted on the records that assignment was made in the matter and that the absent counsel for the petitioner was aware of the assignment. Of interest also is that in the face of the absent counsel another counsel was appointed to take the ruling on behalf of the absent counsel. We have made mention of

this fact to show how ridiculously the proceedings evolved, in that although the ruling was made in favor of the petitioner, it was the counsel appointed to take the ruling for the petitioner, rather than the counsel for the respondent, that took exceptions to the ruling made by the trial judge. No further action was shown to have been taken until the expiration of the March term, 2012, had expired and Judge Kaba had lost jurisdiction.

In the June Term, 2012, the court saw a new judge presiding, in person of His Honour J. Boima Kontoe. Again, at the call of the case, the new judge concentrated only on the petition for declaratory judgment, even misconstruing his predecessor ruling to mean that an investigative survey was to be conducted to resolve the matter referenced in the petition for declaratory judgment. How can an investigative survey be conducted in respect of a lease agreement which the petitioner claims he was not allowed to peaceably enjoy the rights to which he was entitled under the lease? What is important, even in the face of this error, is that counsel for the petitioner, appellee herein, again prevented the proceedings being conducted by advancing another excuse for postponement of the case. Hence, the case was again dragged on until Judge Kaba was again assigned to the Sixth Judicial Circuit Court, at its September term, 2012. This time, the case, the summary proceedings to recover possession of real property, was assigned for September 3, 2012, at which hearings was commenced. The caption of the minutes of the case for that day was *Morris Massaquoi Estate versus Samuka Konneh*, summary proceedings to recover possession of real property. Yet, no mention was made of the hearing in the summary proceedings already commenced by Judge Kollie almost one year earlier.

Similarly, the case assigned for hearing on September 4, 2012, September 24, 2012, October 5, 2012, and as called for hearing on those dates, was captioned Morris Massaquoi, plaintiff, versus Samuka Konneh, defendant, summary proceedings to recover possession of real property. However, and in spite of the caption mentioned herein, which leaves the impression that the hearing being conducted was actually in regard to the summary proceedings to recover possession of real property, and which it

should have been, the judge scheduled for "final ruling" what he termed or captioned as Sumakai Konneh versus Philip Massaquoi, petition for declaratory judgment, as he similarly captioned the minutes for final argument after he had heard evidence in the case.

We are at a loss as to how the summary proceedings to recover possession of real property was transformed or converted into the petition for declaratory judgment, especially given the fact that the two were treated separately by all of the judges, including Judge Kaba, who had handled parts of the former case, and the fact that the records are replete of any motion for consolidation of the two proceedings or of any ruling of the court consolidating the two proceedings regarding which a single judgment could be entered. In a similar vain, we wonder how the judge could all along have captioned the proceedings as summary proceedings to recover possession of real property and at the end of the hearings, give a ruling in the petition for declaratory judgment. This was clearly an error on the part of the judge. But of greater concern, as we indicated before, the judge should not have entertained the petition for declaratory judgment, firstly, because there was pending for disposition the identical matter in the summary proceedings to recover possession of real property where the same defenses were available to the appellee, which involved the same parties, which involved the same subject matter and the same subject property, which involved the same issues of fact and law, and which would have had the same outcome, assuming that the judge was correct in his analysis and conclusions; and secondly given the fact that hearing in the appeal proceedings had already commenced, both under him and under predecessor judges of the same court. What the trial court judge did in effect was rather than proceedings with the appeal case, he chose to subordinate same to the petition for declaratory judgment rather than dismissing the petition for declaratory judgment. This we hold was error.

Additionally, a petition for declaratory judgment is a main suit and cannot be the outgrowth of a pending suit, especially where the main suit had previously been dealt with by a court lower than the circuit court and an appeal had been taken to the circuit court which was still pending

disposition. In such situation, the proper remedy available to the appellee should have been a motion for summary judgment, which by law is would be an integral ancillary suit to the main suit. A petition for declaratory judgment is a main suit of itself and cannot be the outgrowth of another main suit, as the appellee had made it. But let us see what the judge said of the petition for declaratory judgment, including as it related to the appeal in the summary proceedings to recover possession of real property pending before the court. We quote herewith the ruling of the trial judge as follows:

> "COURT'S RULING
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> These proceedings grew out of an action of summary proceeding to recover possession of real property instituted before the magisterial court. A judgment having been entered against the defendant in that action, an appeal was announced to this court and perfected.
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> When this matter reached this court, and after some attempts to hear and determine the appeal in this court the defendant/appellant filed with this court, what is captioned a petition for declaratory judgment, in which the said defendant/appellant as petitioner applied to this court to declare his rights under a lease agreement. In the petition, the petitioner averred that he entered a lease agreement with the respondent, the plaintiff in the main suit, the appellant before this court, for three stores for the period commencing from the year 2004, up to and including 2011.
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> The petitioner further averred that these lease agreements were two in number, one for one store and the other for two stores. The petitioner claimed that during the pendency of these two lease agreements the respondent herein as lessor interfered with the quiet and peaceful enjoyment of the petitioner herein as lessee and by that exercised control either directly or indirectly over the leased stores; for example, that the respondent herein took over control of one of the stores and including the expiration of the lease agreement which was 2011, and that he exercised control over the other store from the year 2009 up to and including the expiration of that lease agreement. The petitioner therefore prayed this court to declare that the petitioner is entitled to an extension of the said lease agreement for the period over which the respondent herein exercised undue and unlawful authority over the subject of the lease.
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> At the trial of the petition, the petitioner produced two witnesses in person of the petitioner himself, Samukai Konneh, and Mr. Sulonteh. Substantially, the evidence produced by the petitioner tends to establish that after the petitioner entered the lease agreement with the respondent and in the period of two years, the petitioner paid or cause to be paid the total and full amount of all lease rent due for the

complete period granted in the lease agreement; that is to say, from the year 2004 up to and including 2011. The evidence tends to establish that somewhere in 2005 when the petitioner attempted to oust and evict one of his tenants, the respondent herein intervened on behalf of that tenant and when the petitioner obtained a judgment in the lower court, the respondent herein appealed that judgment to the higher up court which issue frustrated the petitioner's enjoyment of his lease benefit over the store and that since the institution of that action the petitioner has not been able to enter the said store and enjoy the benefit therefrom. The petitioner's evidence also tends to establish that somewhere in 2009 the respondent herein without color of right or law applied to the Monrovia City Magisterial Court for what was called an inventory over the other store and that based upon that application, the Magisterial Court ordered the said store opened and then turned over to the respondent. And that when the petitioner raised qualm, the matter was taken to Criminal Court "A" where the presiding judge there took over the key of the said store and that counsel or the respondent approached the judge and the key was turned over to the said counsel so as to find a way to amicably resolve the problem between the petitioner and the respondent. That at the meeting with the counsel for the respondent, petitioner was not given an opportunity to be heard and that the said counsel turned the said key over to the respondent, to the detriment of the petitioner; and that since then petitioner has not been able to enjoy the benefit of the said store. In support of the petitioner's case, the petitioner introduced a series of instruments which were marked, testified to, and admitted into evidence. The documents included payment receipts to the respondent herein, copy of the lease agreement of the subject of the declaratory judgment, copies of court documents which included mandate from Criminal Court "A", letter written to Criminal Court "A" by the justice of the peace that handled the matter at that time, court's order locking up the store and other instruments.

It is worth to mention herein that during all of the time this lease agreement was in full force, the petitioner's evidence tend to establish that the respondent herein challenged the authenticity of the lease agreement entered into by and between the petitioner and the respondent and that this challenge also resulted into further frustration of the petitioner in his quiet and peaceful enjoyment of the property during the pendency of the lease agreement. This was the case presented by the petitioner.

The respondent took the stand and produced two witnesses in persons of the respondent himself, Mr. Philip Massaquoi, and Atty. Joseph Kollie. According to the respondent's evidence, indeed the respondent and the petitioner entered into two separate lease agreements for three stores with one of the lease agreement covering one of the three stores and the other lease agreement covering the remaining two stores; that the term of the lease agreement was from

2004 up to and including 2011; that during the pendency of the lease agreement, the petitioner herein failed and neglected to pay the rents as stipulated in the lease agreement, in that the lease agreement did not only mandate the petitioner to pay the rent agreed to by the party but that in the event that there is a sub-lease of the premises, 50% of the amount of the sub-lease agreement over and above the rental charged must be paid to the respondent, this according to the respondent, the petitioner failed to comply with; that indeed there was a tenant in the premises that paid some money to the respondent for and on behalf of the petitioner. According to the respondent, said money was transmitted to the petitioner but that the petitioner in spite of receiving the said money, proceeded to institute action against that tenant, to have the tenant evicted and ousted from the property; that he, the respondent, intervened on behalf of the party and that when an appeal was announced, he also intervened at the appeal level.

The respondent's evidence tend to establish that the testimony of the petitioner that the respondent exercised control over the premises for the period alleged by the petitioner is untrue; in that after he attempted to have the petitioner ousted from the property due to failure to pay his rent, he decided to wait until the expiration of the term set in the lease agreement before claiming his property. His evidence tends to show that it was after the expiration of the lease agreement that he instituted action against the petitioner and that he managed to take control of two of the stores and that the petitioner is still in possession of one of the stores and is yet to have turned over to him and that it is for that one store that he instituted these proceedings of summary proceeding to recover possession of real property to have the petitioner ousted and evicted from the said property. When questioned as to whether or not he challenged the authenticity of the lease agreement entered into by and between himself and the petitioner herein, he claimed that he did not enter any such lease agreement although there is a Certificate from Criminal Court "A" exonerating the petitioner from any claim of forgery that was levied against him by the respondent herein.

Court now shall analyze these species of evidence produced by the parties in order to establish whether or not there is any equitable ground for which this petitioner should be permitted to enjoy further over and above the period set in, that are engraved in the lease agreement. The court says that the in order to proceed to make this analysis, it must be understood that an action for declaratory judgment, especially one growing out of circumstances as the one before this court is equitable.

The purpose and intent of such a suit is to ensure that none of the parties before the court unjustly benefit at the expense of the other. The question then is, has respondent in anyway acted so as to frustrate the interest and benefit that should accrue to the petitioner under any term and condition of the two lease agreements under review?

The court says that one cardinal condition of a lease agreement is that the lessor promise to defend and protect the quiet enjoyment of a lease property during the pendency of a lease agreement. It becomes a duty inherent in the lease agreement placed upon the lessor to ensure that the terms and condition of the lease agreement is respected to the fullest extent so as to ensure that the lessee's right of enjoyment of the property, the subject of the lease agreement, is preserved. In the instant case, the court says that there is a lot wanting considering the actions and behaviors of the lessor under the lease agreement, the subject of this petition. In the first place the court is at a lost to see why a tenant in a premise that the lessor has leased to the lessee will elect to pay or cause to be paid to the lessor rents that are due to the lessee without the lessee giving any authority to the lessor to collect such rent. In the face of the lessee denial of the transmission of any such funds to him and in the absence of any evidence to establish that indeed these funds were transmitted to the lessee, the court says that the logical conclusion that may be reached from such a scenario is that the lessor collected the rent for his own benefit and he did not transmit the same to the lessee. More besides, if a lessor rents a property to a lessee, the lessor has transferred his right in that property for the period of the lease. Therefore, any controversy between and among the lessee and his tenant, the court does not see how the lessor's right of intervention in that matter can be sustained, especially so if there is no clause in the lease agreement conferring upon the lessor a right of intervention into such a matter.

The court says that in its opinion such an intervention amounts to nothing more than depriving the lessee of the quiet and peaceful enjoyment of the property which is the subject of the lease agreement and which the lessor by his commitment agreed to ensure will be preserved to the lessee. The court says that more besides, why will the lessor proceed to court and question the authenticity of the lease agreement which he freely and willingly entered into with another party, although the lessor denied ever challenging the authenticity of his signature that appeared on the lease agreement? However, instruments from Criminal Court "A", to the mind of this court constitutes sufficient evidence to establish the veracity of the claim by the lessee.

More besides, none payment of rent under a lease agreement, except where stated expressly in the lease agreement, is not a ground for the cancellation of a lease agreement, and even if stated within the lease agreement, in order to give the lessor the right of entry into that property certainly, the aid of the law must be requested; there must be a judicial proceeding by means of which the lease agreement will be declared cancelled and the right of the re-entry conferred upon the lessor in order to enable the lessor to reenter the property and take possession thereof. But if the lessor, without the aid of the law, proceeds to dispossess the lessee of the property, then certainly the

action of the lessor constitutes a violation of the rights conferred upon the lessee by virtue of the lease agreement consummated by and between the parties to the lease agreement.

More besides, why will the lessor, through his counsel, take possession of the property that is a subject of a lease without the intervention of the court. To the mind of the court, if the counsel for the lessor failed to bring the parties together on a common ground, the duty was upon the said counsel to have returned the matter to the tribunal which assigned same to him so as to as have the tribunal proceed with the matter as provided for by law. But the unilateral turning over of those stores to the lessor without the aid of court certainly constitutes a deprivation of the right of the lessee, for which equity will look favorably upon the lessee.

The court therefore is of the opinion that a close review of the pleadings in this matter and the testimonies and exhibits of the parties show that the act of the lessor in these proceedings constitutes a gross deprivation of rights that ought to have been enjoyed by the lessee under the terms and conditions of the lease agreement and that to have the lessor take possession of this property will constitute an inequitable act on the part of this court.

The court observed that the lease agreement should have expired at 2011 under the two lease agreements; therefore, the petitioner herein has enjoyed one additional year of the period outside of the lease agreement. Therefore, since the two stores were taken, one from 2004 to 2011 and the other 2009 to 2011, that is to say, for two years and five years, this court will give an extension to the petitioner of seven years, same commencing from 2011, the date when the lease agreement expired. Since the respondent is in possession of two of the stores, the respondent will remain in possession of the two stores and the seven years will be added to the year setting of the one store that is in the possession of the petitioner, same to commence from 2011 upward and that since the evidence tends to establish that all rentals had been paid, the petitioner will remain in possession of the store without the benefit of the payment of rents for the seven years, same commencing from 2011. AND IT IS HEREBY SO ORDERED."

It was from this ruling that the appellant took exceptions and prayed for an appeal to this Honourable Court, which prayer was granted by the trial court. In furtherance of its desire that the Supreme Court review the alleged errors committed by the trial judge, and as required by law, the appellant, within the time allowed by the Civil Procedure Law, filed its bill of exceptions, which was duly approved by the judge. The nine-count bill of exceptions read as follows:

"That plaintiff/respondent/appellant in the above entitled cause of action, being dissatisfied with Your Honor Judge Yussif D. Kaba's final ruling, hereby files this bill of exceptions as follows, to wit:

1. Appellant says that Your Honor committed a reversible error when Your Honor erroneously and prejudicially ruled excluding and denying the admission into evidence of appellant's approximately 27 pieces of documentary evidence testified to in open court by appellant's 2 witnesses, Philip Massaquoi and Attorney Joseph Kollie, which documents would have disproved, nullified and destroyed the fabricated, contradictory, uncorroborated and unsubstantiated false and untruthful testimonies of defendant/petitioner Samuka Konneh and his witness Sulenteh. But for reason best known to Your Honor, you orchestrated and employed a microscopic legal technicality so as to justify your exclusion from admission into evidence, plaintiff/respondent/appellant's cogent documentary evidence. Your Honor ignored and disregarded that fact that the most important aspect of this kind of matter (summary proceeding to recover possession, on appeal from a court not of record) is to find and ascertain the fact as to which of the parties is being untruthful. Your Honor's neglect and failure in respect of finding the fact is fatal and therefore the final ruling should and must fall. Appellant so prays

2. Appellant says that Your Honor also committed a reversible error when Your Honor accepted as facts the false, contradictory, uncorroborated and unsubstantiated false and untruthful testimonies of defendant/petitioner/appellee's witnesses, without attempting to assess that testimony for its veracity and accuracy. More than that, Your Honor neglected and failed miserably as a judge to listen to or compare the testimonies of plaintiff/respondent/appellant and his witness Attorney Kollie which refuted and clearly disproved the testimony of Samukai Konneh that within the first two years of the lease, he, Samukai Konneh, paid to Lessor the complete 7 year lease rental, without showing an iota of documentary evidence to support that allegation. Defendant exhibited no payment receipts showing that Samukai Konneh paid the complete 7 year lease rental to Lessor. Yet, in Your Honor's Final Ruling, you concluded on page 7 as follows:

> "At the trial of the petition, the petitioner produced two witnesses in person of the petitioner himself, Samukai Konneh, and Mr. Sulenteh. Substantially, the evidence produced by the petitioner tends to establish that after the petitioner entered agreement with the respondent and in the period of two years, the petitioner paid or cause to be paid the total and full amount of all the lease rent due for the complete period granted in the lease agreement: That is to say from the year 2004 up to and including 2011."

3. Appellant says that Your Honor committed a reversible error when Your Honor concluded, without proof whatsoever,

> "...that the respondent herein took over one of the stores from year 2004 up to and including the expiration of the lease agreement which was 2011 and that he exercised control over the other store from the year 2009 up to and including the expiration of that lease agreement."

Appellant says that Your Honor's reliance on the above quoted testimony is unfounded, for reason that petitioner never produced any proof whatsoever. The petitioner's exhibits admitted into evidence is barren of any support for that assertion. Therefore, Your Honor committed a reversible error for which the Final Ruling should be reversed.

4. From page 8, last paragraph, to page 9 of Your Honor's Final Ruling, Your Honor concluded as follows:

> It is worth to mention herein that during all of the time this lease agreement was in full force, the petitioner's evidence tend to establish that the respondent herein challenged the authenticity of the lease agreement entered into by and between the petitioner and the respondent and that this challenge also resulted into further frustration of the petitioner in his quiet and peaceful enjoyment of the property during the pendency of the lease agreement."

Your Honor's conclusion alluded to hereinabove is unfounded and baseless. There was no evidence produced at the trial which substantiates such a conclusion. Therefore, Your Honor committed a reversible error, for which the Final Ruling should crumble. Appellant so prays.

5. Your Honor committed a reversible error when Your Honor deliberately neglected and failed to articulate the major and more cogent evidence testified to by appellant's two witnesses; such as witness Attorney Joseph Kollie's testimony that Samukai Konneh never paid the complete lease rentals for the 7 year lease agreement and he added that Samukai Konneh is still indebted to the Estate in rental arrears to the tone of US$1,000. Also witness Massaquoi's testimony that Konneh maintained control over all of the three stores until the lease expired on its own term, in 2011, January and that after the expiration of the lease Konneh refused to deliver possession of the property to the lessor; so the lessor instituted an action of summary proceeding to recover possession of real property in the Monrovia City Court in January 2011, after the expiration of the lease agreement. According to Mr. Massaquoi, it was the Monrovia City Court that found Konneh liable to lessor and evicted him from the two stores. Massaquoi testified that he has that court's ruling in his possession and would have admitted same into evidence had Your Honor excluded that evidence. But Judge Kaba, not wanting to find the facts in the case, excluded that evidence and all other documentary evidence testified to by appellant's witnesses.

6. Further to the above foregoing, one of appellant's witnesses, Mr. Massaquoi, testified at trial as follows:

> "As Mr. Konneh claims that he never enjoyed his lease agreement, that is far from the truth. I challenge Mr. Konneh to produce one evidence that I ever took possession of any of the three stores since 2004 and 2009 as he claims in his testimony, since 2005 and 2006 Mr. Konneh has refused to pay a dime. All of his receipts concerning payment you will find no payment of 2005 to 2011, at the end of the lease agreement, there was no payment during 2005 to 2011, and my share for the sublease at the rate of US$2,800.00 per annum, including rental and sublease whereas the tenants were paying, if you multiply it by 7 should have received the amount of US$19,600.00. The receipts that Mr. Konneh submitted into evidence, if you calculate them, are far away from what I should have received from Mr. Konneh." The amount is far away from the planet Pluto so my family and lawyer advise that we wait for 2011 the time still far it will come to pass and then came 2011, we filed summary proceeding to recover our property before His Honor Magistrate Nelson Chine against the Konneh, Florence Bar, Mai Fahnbulleh and Kaba Business Center and when we went into the hearing Mr. Konneh was represented by Pierre, Tweh and Associates Law Firm by Cllr. Scheaplor R. Dunbar, while I was represented by Taylor and Associates, Inc. by Attorney Joe M. Kollie and in that case Florence Bar and Meel Fanbulleh, Judge Chinah a record that it was a more of self-help by the occupants and he therefore I should take possession of my property, meaning the stores."

Witness Massaquoi also testified that Mr. Konneh and his wife Joana took me from court to court during the life of the lease agreement. He took me to the West Point Magisterial, he and his wife. 2005, he said I stole the amount of US$50,000.00 from them and I was sent to jail and I secure a bail bond property valuation bond to secure my release up to now they abandoned the case. Mr. Konneh took me to three other courts, Criminal Court B, A and Criminal "C" during the life his agreement. Court "A" assigned the case to Court "B" before His Honor Yussif D. Kaba, and the case was decided in my favor. Caption of the case was criminal mischief and Mr. Konneh abandoned the case in criminal "C". I just want the court to know that it was not me who went to court; the only time I went to court was three times. All the three times was during the life of the agreement in 2006. The reason I went to court at that time was because Mr. Konneh was owing me and the matter [concluded] within three weeks' time. Even though Mr. Konneh said it lasted for five years, but the case lasted from November 18, 2006 to December 2006. I was advised by the Judge Milton Taylor if Mr. Konneh was indebted to you, there was a remedy at law but I could not repossess the stores because Mr. Konneh was having a valid lease agreement at the time until 2011. All that I mentioned in my testimony I have documents to prove my case. Mr. Konneh said that I took him to Criminal "A" for forgery. It is not true; I have a hand written document by His Honor James W. Zotaa stating that no case that went before him."

7. Appellant's second witness also testified as follows:

> "Sometime in January, His Honor, James W. Zotaa, in his office asked that I conduct an investigation between the petitioner, and the respondent with reference to a lease agreement between both of them. I accepted to conduct an investigation as requested by his Honor, James W. Zotaa. Thereafter from his office I invited both the petitioner and the respondent at my office when both of them arrived, I first asked Mr. Samukai what was the problem and he explained that he leased three stores from Mr. Massaquoi and that for Massaquoi to come and say that lie, Samukai was still indebted to him and the lease has expired, he will not accept that because as far as he was concerned, he has made all his payments concerned the lease and he has document to show that he has made complete payment. Mr. Massaquoi on the other 'hand obtained that Mr. Samukai was indebted to him, at that point I requested both of them to bring whatever receipts and/or documents in support of their claim of each them. Three days later, both of them came with receipts and a copy of the lease agreement, after going through the receipts from Mr. Konneh, there was an outstanding amount of US$2,000.00. Looking at Mr. Massaquoi's receipt of US$2,500.00 at that point, I said to Mr. Massaquoi we will accept Mr. Konneh's receipt because you issued receipt to him, even though he tried to argue and maintain that Mr. Konneh was indebted to him in the amount of US$2,000.00. This we all accepted and Mr. Konneh agreed to pay but he needed time and he wanted an extension of the lease agreement and I said to him when you shall have made the payment, we will talk to Mr. Massaquoi. Two and/or three days later, Mr. Konneh brought the amount of US$1,000.00 as part payment of the amount of US$2,000.00 and it was received and turned over to Mr. Massaquoi. Thereafter, Mr. Konneh asked what about the extension I asked for and I said to him that is an appeal after you shall have completed the payment we will talk to Mr. Massaquoi. Thereafter, our report was submitted to His Honor James W. Zotaa."

From the foregoing testimonies of appellant's two witnesses, the weight of which Your Honor obviously did not consider, it is crystal clear that Your Honor's Final Ruling is neither supported by the facts in the case nor the law controlling.

8. Your Honor initially ruled the petition for declaratory judgment to an investigation, and my understanding is that it was going to be looked into informally and separately from the appeal filed by the appellant/petitioner. Subsequently, Judge J. Boima Konto was assigned to the Civil Law Court and he consolidated the petition with the appeal. Then Your Honor returned and resumed jurisdiction over the matter. Finally, Your Honor chose to dwell only on the petition for declaratory judgment to the exclusion of the main suit, the Appeal. Your Honor therefore committed a reversible error in so doing.

9. Your Honor's various conclusions culminating in the final judgment authorizing defendant/petitioner to occupy plaintiff/appellant's store for 7 years without payment of rent is a clear manifestation of Your Honor's lack of the "cool neutrality and impartiality" which all judges should possess and exercise at all times they sit in judgment of party litigants. Failure to exercise such material and indispensable tool for judges renders the Final Judgment erroneous, prejudicial, against the weight of the evidence, unsupported by the facts and circumstances and untenable. Your Honor committed a reversible error thereby."

The bill of exceptions, quoted above, formed the basis for the appeal taken to this Honourable Court for a review of the trial court judge's ruling. It is the issues stated in the bill of exceptions that we shall devote our primary attention. However, it is worth noting that while the appeal was awaiting disposition by this Court, the appellee, by the very counsel who, by his conduct, had sought not to have the case heard expeditiously in the trial court, now filed, on October 10, 2014, a three-count baseless, frivolous, and grossly unmeritorious motion to dismiss the appeal, setting forth as the basis therefor that the appellant had taken no further steps to perfect the appeal after announcement of the appeal from the judgment of the trial court. More precisely, the counsel for the appellee alleged in the motion to dismiss that the appeal bond and the notice of completion of the appeal were never served on the appellee as required by law, and hence the appeal was a proper subject for dismissal.

The appellant promptly responded to the motions to dismiss showing not only that the allegations contained in the motion were untrue and exhibiting the records of the lower court which authenticated that following the filing of its bill of exceptions, the appellant had filed, within the time allowed by law an approved appeal bond and a notice of completion of the appeal, all of which had been served upon, received and signed for by counsel

for the appellee. Counsel for the appellee did not disavow the signatures appearing on the documents as being his, and did not challenge the dates appearing on the said instruments as true, and as the said dates and other contents on the face of the documents show that the appellant did conform with the requirements of the statute and the decisions of this Honourable Court regarding appeals from judgments of the courts of record.

The appellant's counsel intimated that counsel for the appellee must be suffering from a lapse of memory in making the allegation of non-service of the appeal bond and the notice of completion of the appeal upon him. We believe that this was being very generous to counsel for the appellee, for in the opinion of this Court, the conduct was not a mere lapse of memory. Rather, from the overall conduct of the said counsel, we view the latest filing as a further deliberate display of unprofessional conduct on the part of counsel for the appellee, shown and pursued throughout the proceedings, from the very inception of the commencement of the summary proceedings to recover possession of real property to the partial hearing of the appeal taken from the judgment of the magisterial court to the filing and disposition of the petition for declaratory judgment, in preference of the conclusion of the appeal pending before the Circuit Court for the Sixth Judicial Circuit. We shall deal with this conduct later in this Opinion.

For now, it is sufficient to state that as the motion to dismiss is completely unmeritorious and utterly vexing, we see no utility in commenting further on the motion, except to hold that in the face of the clear and indisputable records of the court, which we have taken judicial notice of, the motion, as matter of law, is denied and dismissed.

Accordingly, the Court shall proceed directly into a review of the merits of the case and decide whether the trial judge acted properly and legally in, firstly, entertaining the petition for declaratory judgment when the very matter regarding which the petition was filed was pending disposition by the court on appeal from the magisterial court; and secondly, ruling in favor of the appellee. In respect of the both issues, we hold that the trial judge was in error, and that the errors provide an appropriate basis for the reversal of the judgment entered by the trial court.

On the first issue, that is, whether the trial judge acted properly and legally in entertaining the petition for declaratory judgment filed by the petitioner when the very subject matter of the petition was on appeal before the court from a judgment of the magisterial court, we hold that the trial court judge, His Honour Yussif Kaba, acted irregularly, improperly, erroneously in entertaining the petition, being fully aware that the every facet of the petition was pending before the court in the appeal from the summary proceedings to recover possession of real property taken by the very petitioner and regarding which hearings had already commenced but no conclusion reached of judgment entered due to the manifold delay tactics employed by counsel for the petitioner.

The relevant statute in this jurisdiction provides that the magisterial courts are seized with jurisdiction in regard to matters of summary proceedings to recover possession of real property, particularly where there are no issues of title involved. [Judiciary Law, Rev. Code 17:7.3(a)(2); CASES]. The West Point Magisterial Court therefore was legally clothed with the appropriate and requisite jurisdiction to hear and rule on the action filed before that court by the appellant herein, the Intestate Estate of the late Morris Massaquoi. We note from the records certified to this Court that at no time in the course of the proceedings in the magisterial court did appellee Samukai Konneh, who was a defendant in those proceedings, assert that he or any other person held title to the premises in question, whether by virtue of having been sold the property or on account of any leasehold to the property. Instead, his only defense was that the plaintiff in those proceedings had not given him the required notice to vacate before proceeding to the magisterial court to oust and evict him from the premises. The magistrate ruled in regard to the said defense, that the same was baseless since, given that the leasehold held by the defendant, petitioner/ appellee herein, had expired as per its own terms, and that as such no further notice is required under the law. We concur with the ruling of the magistrate, but that is beside the point we make herein.

However, what is important and which claims our attention is that an appeal was taken from the said ruling to the Circuit Court for the Sixth Judicial Circuit by way of summary proceedings, and that with the transmission of the records to that court by the magisterial court, the appellate was fully seized

with jurisdiction over the matter, to hear the same *de novo*, and to dispose of it, the same as appeals from justices of the peace courts. *Jackson v. Saturday*, 13 LLR 31 (1957). Indeed, not only were a number of assignments issued for the hearing of the appeal, but the hearing was actually commenced, with the plaintiff taking the witness stand and deposing. We note from the records that he was questioned on the direct and was cross-examined.

Yet, and in spite of the above, counsel for the appellee, in his attempt to delay the conclusion of the case, advanced a series of excuses while at the same time filing the petition for declaratory judgment involving the same matter pending before the court, involving the same subject matter property, the same parties, the same leasehold agreement, and the same issues.

But even assuming that appellee Konneh had not raised the issue of title in some form in the magisterial, because that court is a court not of records, and as provided for by the Civil Procedure Law, he still had the right to raise the issue in whatever form in the appeal and to produce evidence to the effect since the Circuit Court for the Sixth Judicial Circuit, Montserrado County, to which the appeal from the judgment of the magisterial court was taken, would have had try and hear the case *de novo*, both as to the facts and evidence and as to the law. Thus, the very issues raised by the petitioner in the petition for declaratory judgment would have been ad could have been raised at the appeal hearings. So what was the utility in filing a petition for declara-tory judgment, except to further delay the hearing of the case so that the petition would continue to retain possession of the demised premises to the exclusion of the landlord or owners of the premises?

The Supreme Court has held numerously, and consistent with the Civil Procedure Law, that when an appeal is taken from a judgment of a justice of the peace or magisterial court in summary proceedings to recover possession of real property, the cause is heard and tried *de novo*, which means that the trial is held all over and that the parties have the right to produce any and all species of evidence in support of their claims. *Nyornnie and Peter v. Onanuga et al.*, 16 LLR 102 (1964). Hence, the appellee had every opportunity to have all of the issues stated in the petition for declaratory judgment heard and passed upon, including the right to produce any evidence the appealing party deemed proper and appropriate to his defense. The introduction of this new action,

when there was pending an action that had the identical facts and involved the same parties and the same subject matter, was therefore inappropriate and the trial court should have dismissed the same and proceeded with the appeal case which was being heard *de novo*. To do otherwise was clearly erroneous.

But more than that, a petition for declaratory judgment is not an ancillary action that is the outgrowth of a main action, as the petitioner portrayed in its petition for declaratory judgment; it is a main action in and of itself. The trial judge should have clearly recognized this fact and acted appropriately. While it is true that our Civil Procedure Law, at section at section 43.1 provides, in relation to petitions for declaratory judgment that "Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment is prayed for...; and such declarations shall have the force and effect of a final judgment"; and at section 43.2 that "[a]ny person interested under a deed, will, written contract, or other writing constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder [Civil Procedure Law, Rev. Code 1:43.1, 43.2, and at section 43.6 that "[t]he existence of another adequate remedy does not preclude a judgment for declaratory relief", [*Id.* 43.6.]; that statute does not mean that a petition for declaratory judgment can be reduced to an ancillary action or can be used as a substitute in a pending action. It extends only to when another remedy is available, not to when another remedy is already being pursued, especially when the other action has not been withdrawn. The statute also does not contemplate that the two actions should operate or obtain simultaneously, as was done in the instant case. One action should have given way to the other action, meaning that the petition for declaratory should have ceded to the appeal action of summary proceedings or on the agreement of the parties or in the wisdom of the court and in accordance with the law, the two actions should have been consolidated since each, if handled separately,

would have yielded a rather different result, as shown in the analysis further on in this Opinion. See Civil Procedure Law, Rev. Code 1:43.1, 43.2, 43.6.

It is disconcerting that the trial court judge gave no attention to the caption of the petition for declaratory judgment which purported to be the outgrowth of the summary proceedings to recover possession of real property case determined by the magisterial court and from whence an appeal had been taken to the Civil Law Court and which was still awaiting disposition by the said court. The question which the lower court as expected to answer or at least make some enquiries of prior any hearing of the petition for declaratory judgment is whether the court could even entertain the petition filed in regard to a matter that was pending on appeal before the court, which the court had not disposed of, but which the court was by law required to hear *de novo*.

Instead, the trial judge, giving the petition for declaratory judgment a superior status to the appeal, proceeded to enter judgment in the declaratory judgment case, finding that in fact that appellant had violated the agreement between it and the appellee, which had the effect of disrupting the peaceful enjoyment of the premises by the appellee, and that therefore the time set in the agreement should be extended to compensate for the period that the appellee was not allowed to occupy and have possession of the premises.

In the alternative, and with the agreement of the parties and the court, the two proceedings, since they involved the same parties, the same subject matter, and the same issues, could have been consolidated and disposed of. But no such consolidation was done. Instead, the trial judge proceeded to a hearing of the declaratory judgment, as if it took precedence appealed case, and entered judgment thereon.

But what made the action of the judge even more erroneous is that after proceeding with the declaratory judgment proceedings, he entered a judgment as if he was dealing with the case on appeal. This Court has said repeatedly that a declaratory judgment is not an action that awards title and places a party in possession of property. Its purview is only to declare the rights of the parties under an instrument or contract; its bounds are limited to declaring the rights of the parties and no more. Thus, a party in whose favor a declaratory judgment has been entered must then go to court for the enforcement of the

rights which have been declared. *Gbartoe et al. v. Doe*, 41 LLR 117 (2002) In the instant case, the judge ordered that the petitioner/appellee be placed in possession of the premises and that he should remain on the premises for seven years.

Therefore, where a main suit is already pending before the court, especially where the main suit is one on appeal to the court in which the petition for declaratory judgment is filed growing out of a judgment from a lower court, a petitioner cannot file a petition for a declaratory judgment in a new action which he claims grows out of the appeal action. The court therefore should have dismissed the petition, rather than accord it preferential status, and ordered that the appeal case be proceeded with *de novo*, wherein it would then have entertained issues of law and thereafter have evidenced adduce by the parties, predicated upon which it would have then decided whether or not to affirm or reverse the lower court's judgment and make an award in favor of the appellee, the same as it did in the petition for declaratory judgment, if it felt that the appellee had a sufficient enough case to warrant an award in his favor. Instead, what the judge seemed to have done was to call for the appeal case and the give a ruling in the petition for declaratory judgment proceedings even though no consolidation had been made and as the records clearly reveal, it was the appeal case that was being assigned for hearing, up to and until the arguments on the issues and the ruling by the judge. This was clearly erroneous.

Moreover, the case presents a further intrigue. If the ruling was on the appeal taken by the appellee, then the sole issue for the court was whether in fact the summary proceedings to recover real property should have been granted in the face of the evidence adduced before the circuit court; for if the trial judge felt that the magisterial court had erred in the said ruling, then his ruling should have been and was limited to reversing the ruling of the magistrate and ordering the dismissal of the action, not to award the appellee a further seven years as to the store which he as illegally withholding from the appellant. *Gbartoe et al. v. Doe*, 41 LLR 117 (2002). The trial court was without the prerogative and the authority to go beyond determining that the case commenced by the appellant was without merit and therefore should be dismissed and the appellee continues to occupy the premises. *Gbartoe et al. v.*

Doe, 41 LLR 117 (2002). The trial judge was therefore in error in going beyond this and deciding that the lease agreement should be extended and that the appellee should have another seven years to occupy the appellant's property.

Additionally, if the ruling was in respect of the declaratory judgment, then the court was limited to solely declaring what the rights of the parties were. The court could not go beyond the declaration of the rights of the parties and order the enforcement of its ruling by ordering not only that the appellee be put in possession of the premises but that he should hold possession of the premises for another seven years. Such action was solely for ejectment and not for declaratory judgment. *Gbartoe et al. v. Doe*, 41 LLR 117 (2002). This Court has said in many cases that such action is beyond the purview of declaratory judgment proceedings. *Gbartoe et al. v. Doe*, 41 LLR 117 (2002).

The evidence presented by the appellant and not denied or refuted by the appellee was that the appellee had sub-let the demised premises without the approval, consent or even reference to the appellant, the said action being in clear violation of Clause 9 of the Lease Agreement which stated in no uncertain terms that: "It is also mutually agreed and understood that the Lessee shall not sub-let or assign in whole or in part the herein demised premises to any person or persons whomsoever, without the knowledge and consent and/or approval of the lessor." That violation and disregard for the sanctity of the lease agreement clearly warranted action by the appellant, not in violation of the law, but certainly in enforcement of the law such that it could bring action against the appellee for the said violation and seek redress. While this Court cannot and should not speculate as to the intent of the parties to the lease agreement for the inclusion of the provision of clause 9, it can be said without any uncertainty that part of that intent was to give the lessor an indication as to who the property was being sub-let to and how much the sub-lessee would be paying for the sub-lease, and whether if the sub-lease would be inequitable as to the proceeds being paid, to provide a leverage for sharing in the proceeds. However, regardless of what the intent for the provision may have been, the important element is that the lessee, the appellee herein, was without the authority to sub-let the demised premises without the prior written consent and approval of the lessee, the appellant herein, and that any such act committed by the appellee was a breach of the lease agreement.

Yet, according to the trial judge, ignoring the breach of the appellee, held that the appellant, by its conduct, had deprived the appellee of his peaceful and unmolested enjoyment of the demised premises as set out in Clause 10 of the Lease Agreement. Clause 10 of the Lease agreement states: "The parties hereto further agree that the Lessee paying the rents and performing the covenants and conditions herein provided, shall quietly and peaceably have hold, possess and enjoy the said demised premises without molestation from any person or persons whomsoever, which quiet, peaceable possession and enjoyment lessor do hereby promise and undertake to warrant and defend said lessee during the period herein granted." The trial judge reasoned that the act of the appellant was tantamount to molestation of the appellee in the peaceful and quiet enjoyment of the demised premises and was contrary to the quoted provision of the lease agreement, and hence a proper basis for extending the lease by seven additional years, as if the lease was only just beginning. Bur more than that, the judge held further that the appellant would receive no compensation for the extended period of the lease agreement by the court.

This Court has said repeatedly that the courts are without the authority to make contracts for the parties; our authority is only to interpret and enforce contracts made by the parties and which are not violative of the law. *Biswas v. Burnette-Baker and Burnette*, 31 LLR 135 (1983); *Nagbe et al v. Sherman et al.*, 34 LLR 126 (1986). Clearly, upon review of the contract and contrasting Clause 9 with Clause 10 of the lease agreement, we believe that if the appellee believed that the appellant was engaging in acts violative of clause 10, he should have sought the appropriate redress before the courts, including any damages suffered as a result of the appellant's conduct. He cannot wait until the term of his lease has expired and he has failed to vacate the premises and the lessor as a consequence thereof has sought the intervention of the law to have him ejected and evicted from the premises, that he sets up as a reason for not vacating the premises, contrary to the terms and conditions of the lease agreement, that he was not allowed the quiet and peaceful enjoyment of the premise during the lease. We do not question, and indeed this Court has said, that the landlord is without authority to disturb the lessee occupancy and enjoyment of premises during the term of the lease, and we continue to hold

that position. *Cooper-Daniels and Luke v. Societa lavari Porto Della Torre and Vianini Construction*, 34 LLR 60 (1986). However, the failure of the appellee to take action against the appellant at the time of the alleged violation, and his awaiting the expiration of the lease agreement and when he should have vacated the premises cannot form a basis for his remaining on the premises following the expirations of the agreement and his commitment under the agreement to vacate the premises at the expiration of said agreement. Therefore, the appellee's act in continuing to remain on the premises was clearly in violation of the obligations undertaken in Claus 10 of the lease agreement; and certainly a petition for declaratory was not the appropriate action to redress the alleged wrong committed by the appellant in the course of the lease as would justify the judge extending the lease agreement by another seven years.

It is also interesting that the provision of Clause 10 of the lease agreement, the peaceful enjoyment and defense of the lease and the leasehold is conditioned upon the "lessee paying the rents and performing the covenants and conditions herein provided" in the lease. Yet, while the violation of a clause of the lease does not thereby vests in the lessor the right to molest the lessee or engage in any acts of disorder or vandalism, and may thereby provide a defense for the lessor resorting to court to address the violations and having the court determine whether in the appropriate case the peaceful enjoyment defense can be upheld, the issue of our concentration in the instant case is that the lease agreement had by its own terms expired. We do not believe that the appellee, having himself violated the terms of the lease agreement, can set up as a defense that the lessor, in seeking redress before the courts in the face of the expiration of the lease agreement, had molested and deprived him, the lessee, of the peaceful enjoyment of the premises warranting of any extension of the expired lease agreement, especially when counsel for the lessee did not seek any appropriate redress at the time the lessees says he was molested and deprived of the peaceful enjoyment of the demised premises.

The question may also be asked, why did the appellee not take action against the appellant to ensure his peaceful and unmolested enjoyment of the property prior to the expiration of the lease agreement, but instead decided to remain on the premises and only raised the issue after the appellant had taken

him to court to have him vacate the premises following the expiration of the lease and his unlawful continued occupation of the demise property? *Nornneh v. Naklen,* 42 LLR 129 (2004). The act of the appellee in remaining on the demised premises after the expiration of the lease agreement was clearly in violation of Clause 11 of the lease agreement. *Nornneh v. Naklen*, 42 LLR 129 (2004). That Clause provided that: "It is further mutually agreed and understood that at the expiration of this agreement, the lessee shall undertake to surrender and yield up the said demised premises unto the lessor in as good condition as reasonable wear and tear thereof shall permit and acts of God or natural or unforeseen happenings excepted."

Yet, notwithstanding all of the foregoing, the trial judge overlooked and turned a blind eye to those very relevant points in deciding as he did, ignoring the decision of this Court that a possessory right terminates upon expiration of the terms and conditions of a lease agreement. *Id.* The trial judge's decision was therefore without the required legal and factual justification. Hence the said decision is hereby reversed, especially as the evidence show that there was no proper legal or factual basis for the appellee's continued occupation of the property of the appellant. He should have vacated the premises at the expiration of the lease and the trial court should have so held. It the appellee felt in any way that he had been damaged by any act of the appellant, he should have sought the proper legal redress. But for the current action, the trial judge should have denied the petition for declaratory judgment. His ruling is therefore reversed.

Moreover, since this Court is authorized to enter such judgment as the lower court should have entered, it is the decision of this Court that the evidence showing overwhelmingly that the appellee should have vacated the premises of the appellant at the expiration of the leasehold and the lease agreement he is ordered evicted and ejected from the said premises.

However, before closing this Opinion, we believe it is important that the Court comments on and addresses the conduct of counsel for the appellee, Counsellor Thompson Jargba. This Court has repeatedly stated that it looks with grave concern the conduct of lawyers in attending to a case. In the instant case we have seen a wanton and open display of callousness, initially by Counsellor Charles Abdullai, and later by Counsellor Jargba in attending to the

case which give the distinct impression of a deliberate designed to delay the hearing and disposition of the case. The records reveal that as the summary proceedings to recover possession of real property by instituted in the magisterial court, Counsellor Abdullai of Watch Law Chambers was consistently providing excuses or reason why he could not attend the trial until the magistrate final determine the case. An appeal was taken from the judgment of the magisterial court to the Circuit Court for the Sixth Judicial Circuit, Montserrado County. While the case was still awaiting disposition in the circuit court and the appellant still being represented by the Watch Law Chambers, Counsellor which was receiving assignments for the hearing of the appeal, Counsellor Thompson Jargba proceeded, seemingly to further delay the hearing of the appeal case, to file, on January 5, 2012, a petition for declaratory judgment relating to the same subject matter, involving the same parties, the same property, the same facts and the same issues for resolution. Indeed, even following the filing of the petition for declaratory judgment, the court continued to issues assignments for hearing of the appeal case and Counsellor Charles Abdullai continued to sign for the said assignment for the disposition of the appeal case.

Then followed a line of excuses, but this time by Counsellor Jargba, spanning a period of several years and several judges, and seemingly to avoid the hearing of the appeal case. In all, the case file reflect more than twenty (20) plus postponements and/or continuance of the proceedings due to one excuse or another by Counsellor Jargba. Further, even when the trial judge had ruled in favor of his client and an appeal was taken from the ruling by the appellant, the Counsellor proceeded to file a motion to dismiss even though he must have been or should have been aware that the basis for the motion was frivolous since he had in fact received and personally signed for the document which he had claimed in the motion was never served on him.

This Court is not prepared to condone or tolerate any further conduct such as was exhibited and displayed by Counsellor Jargba. Such conduct is an affront to the administration of justice which the Members of this Court are sworn to uphold. We have always said that this profession, the legal profession, is a noble one, different from perhaps almost any other profession. Most certainly the standard to which we hold ourselves and those who

become members of this black gown profession surpasses most other professions. When it is weakened by such conduct as was flaunted by Counsellor Jargba the entire society suffers, not just the legal profession. Thus, we will not subscribe to any conduct by any member of the profession that has the effect of diminishing the status of the profession or the public's perception of the profession and the justice system.

In the face of acts by Counsellor Jargba, this Court believes that the counsel is deserving of a penalty, for to condone such acts infringes not only on the dignity of the courts but casts aspersions on the entire legal profession. Rule 1 of the Code of Moral and Professional Ethics states: "It shall be unprofessional for any lawyer to advise, initiate or otherwise participate, directly or indirectly, any act that lends to undermine or impugn the authority, dignity, integrity of the courts or judges, thereby hindering the effective administration of justice." The conduct displayed in the instant case by counsel for the appellee clearly shows a violation of the stated Rule. Hence, and as any further deterrence of such conduct, this Court orders the suspension from the practice of law, directly or indirectly, by Counsellor Thompson Jargba for a period of three years, effective as of the date of this Opinion and the Judgment of this Court.

Accordingly, the Clerk of this Court is ordered to send and mandate down to the court below directing the judge presiding therein to resume jurisdiction over the case and to give effect to the decision herein. Costs are adjudged against the appellee. AND IT IS HEREBY SO ORDERED.

Counsellor William A. N. Gbaintor of Gbaintor Law Firm appeared for the respondent/appellant. Thompson Jargba of the Law Offices of Jargba, appeared for the movant/appellee.