IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
OCTOBER TERM 2023

HER HONOR : SIE-A-NYENE G. YUOH ....CHIEF JUSTICE
HER HONOR : JAMES..ETTA H. WOOKOLIE ....ASSOCIATE JUSTICE
HIS HONOR : JOSEPH N. NAGBE .... ASSOCIATE JUSTICE
HIS HONOR : YUSSIF D. KABA ....ASSOCIATE JUSTICE
HIS HONOR : YAMIE QUIQUI GBEISAY, SR.............................ASSOCIATE JUSTICE

The Intestate Estate of David Larvila, represented by its administrators, David G. Larvila and David K. Larvila and their agent, Pewee Johnson, of the City of Monrovia ....Appellant	)	APPEAL
Versus	)	
Tony Hage and Joseph Hage of the City of Monrovia, Liberia.................... Appellees	)	
GROWING OUT OF THE CASE:	)	
Tony Hage and Joseph Hage of the City of Monrovia, Liberia..................Petitioners	)	
Versus	)	PETITION FOR DECLARATORY JUDGEMENT
The Intestate Estate of David Larvila, represented by its administrators, David G. Larvila and David K. Larvila and their agent, Pewee Johnson, of the City of Monrovia ....Respondent	)	

Heard: November 17, 2023 Decided: February 7, 2024

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

The parties are not substantially averse to the factual occurrences of this present suit. They have a meeting of the minds as to the fact that there existed an instrument of lease duly executed between the appellees and the late David Larvila. Their disagreement stamps from the circumstances and handling of the lease instrument and rights conferred therein.

Appellant, the respondent below has asked us to set aside a ruling of the Civil Law Court, Sixth Judicial Circuit, Montserrado County granting a petition for declaratory judgment in favor of the appellees, petitioners below. Appellees disagree and contend that the court's ruling is consistent with the facts and the applicable laws.

We are therefore called upon to answer the question: whether given the factual circumstances, the court's ruling granting appellee's petition for declaratory judgment is reasonable and within the pale of the law.

The facts are that on March 1, 1990, Mr. David Larvila, the decedent of the Intestate Estate, appellant herein, entered into a lease agreement with Mr. Tony Hage and Mr. Joseph T. Hage, appellees herein in which the former transferred possessory rights of a piece of property lying and situated on Tubman Boulevard, Sinkor, Monrovia to the latter for a twenty (20) year certain period, commencing on March 1, 1990 and ending February 28/29, 2010. The lease agreement provided for an optional period of ten (10) years which ran up to February 2020. The lease agreement being pertinent to the decision reached herein, we reproduce its contents as follow:

> "This lease agreement made, entered into and concluded this first day of March, A. D. 1990 by and between Mr. David Larvila of the city of Monrovia, County of Montserrado and the Republic of Liberia aforesaid (hereafter known and referred to as the Lessor) and Messrs: Tony T. Hage and Joseph T. Hage, also of the city of Monrovia, County of Montserrado and the Republic of Liberia aforesaid (hereafter known and referred to as Lessee); which terms shall include their heirs, executors, administrators, assigns and successors in business respectively, do hereby:
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> WITNESSETH
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> Article I
> (Limited Leased Grant)
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> That, for and in consideration of the rents, covenants, agreement and stipulations herein reserved to paid, kept and performed by Lessees, their heirs, assignees, administrators, sub-lessees and under this lease agreement, the lessor has as of the date and day first above mentioned granted, demised and leased unto Lessees that portion Lot No. 2, of block A-18 (4), lying and being situated on Tubman Boulevard, Sinkor, City of Monrovia, County of Montserrado, Republic of Liberia aforesaid, bounded and described essentially as follows:
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>> "Commencing at the northwest corner of lot No. 2, of block A-18, which is 82.5 from the southeast intersection of Tubman Boulevard and the 18th street and running thence on magnetic bearings as follows: south 54 degrees east 82.5 feet parallel with Tubman Boulevard to a point; thence running south 30 degrees west 132.0 feet to the northern limit of 16 feet all; thence running north 54 degrees west 81.0 feet parallel with the said ally to a point; and thence running north 36 degrees east 132 feet to the point of commencement and containing ¾ (three fourth) lot and no more.

Article II
(Duration and Payment)

That Lessee shall have and to hold the above, described demised premises, together with every and all rights, emblements, easement, hereditaments, appurtenances thereto and therein belonging and appertaining for a period of TWENTY (20) consecutive calendar years certain, commencing on the first day of March, A.D. 1990, and ending at midnight of February 28, 2010, yielding and paying therefor unto the LESSOR the following annual rentals:

(a) For the first five (5) years, that is to say from March 1, 1990 to February 28, 1995, the lessees shall pay in advance an annual rent of three thousand dollars (3,000.00) per year.

(b) FOR THE SECOND FIVE (5), YEARS, that is to say from March 1, 1995 to February 28, 2000, the LESSEES shall pay in ADVANCE an annual rent of FOUR THOUSAND FIVE HUNDRED DOLLARS ($4,500.00) per year.

(c) FOR THE THIRD FIVE (5), YEARS, that is to say from March 1, 2000 to February 28, 2005, the LESSEES shall pay in ADVANCE an annual rent of FIVE THOUSAND FIVE HUNDRED DOLLARS ($5,500.00) per year.

(d) FOR THE SECOND FIVE (5), YEARS, that is to say from March 1, 2005 to February 28, 2010, the LESSEES shall pay in ADVANCE an annual rent of SIX THOUSAND TWO HUNDRED DOLLARS ($6,200.00) per year.

ARTICLE III
(DUTY TO CONSTRUCT)

That LESSEES hereby agree and faithfully pledge that within FIFTEEN (15) years of this LEASE AGREEMENT, they shall construct, erect and build a THREE (3) STOREY concrete building in promotion of their business purposes or objectives without any charge to the LESSOR or deduction from the rents herein above stipulated and mutually agreed upon. And furthermore, any and all improvements hereafter made on the aforesaid demised premises shall at the end of this LEASE AGREEMENT belong to the LESSOR absolutely forever.

ARTICLE IV
(RIGHT TO SUB-LEASE)

That it is hereby mutually agreed upon by the parties to this Lease Agreement that the LESSEES shall have the right to sub-lease the above describe premises, or any portion thereof without prior consent of the LESSOR during the life this Agreement.

ARTICLE V
(TAXES AND UTILITIES)

That during the period of this Lease Agreement, LESSEES hereby agree to pay all water, electricity, telephone and other utility bills which shall accrue or accumulate on the demised premises and shall pay into Revenue of the Republic of Liberia or any sub-division thereof all Coast Guard, Real Estate or other taxes levied against any and all buildings erected or improvements made by LESSEES on said premises and shall exhibit receipts of such payments at LESSOR'S request, without any deductions from rents under this AGREEMENT.

ARTICLE VI
(WARRANTY OF TITLE)

That LESSOR, on his part, and in consideration of rents to be paid, covenants to be kept and promises and agreement to be performed when due, shall hereby warrant that no part of the demised premises is the subject of any outstanding bonds, sureties, bills, promissory notes, security agreements, mortgages or any other encumbrances contrary to the LESSEES'S peace and quiet enjoyment of the demised premises for the entire period of this Agreement; but LESSOR reserves the right to sell all or any part of the premises mentioned, provided the buyer agrees to honor LESSOR'S obligation under this Lease.

ARTICLE VII

That at the end of this LEASE AGREEMENT herein provided, the LESSEES shall have TEN (10) YEARS of (OPTION) certain, commencing from March 1, A.D. 2010 to February 28, AD 2020, paying thereof rentals to LESSOR in <u>ADVANCE</u> as follows:

a) FOR THE FIRST FIVE (5) YEARS (March 1, A.D. 2010 to February 28, 2015) ($10,000.00) TEN THOUSAND DOLLARS per year.

b) FOR THE SECOND FIVE (5) YEARS (March 1, A.D.2015 to February 28, 2020) ($11,000.00) ELEVEN THOUSAND DOLLARS per year.

ARTICLE VIII
(NO WAIVER OF RIGHT)

The failure of either party to insist upon a strict performance of any of the terms, covenants, conditions and remedies of either party shall not be deemed a waiver of any subsequent breach of or default in any of the terms, conditions and covenants herein contained. This Instrument shall not be changed, modified or discharged orally.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and affixed their signatures in the City of Monrovia, County and Republic aforesaid on the day and date first above mentioned."

The appellees contend in their petition for declaratory judgment that upon execution of the aforementioned lease, they made initial payment of US$3,000.00 as annual payment for year 1, but the late Mr. David Larvila failed to put them in possession of the property until when they had to flee Liberia due to the entry of the civil war in Monrovia; that upon their return, Mr. Larvila had died, and when they went to the leased property, it was occupied by squatters.

Appellees further aver that although Mr. David Larvila had died and that they could not get access to the leased premises due to it being occupied by squatters, they continued to make payments of rental in an escrow account opened at the Ecobank Liberia; that in 2011, one year following the expiration of the lease certain period, appellees finally decided to pursue legal action against the squatters by filing a petition for summary proceedings, but interestingly, the administrators of the appellant's estate filed a motion to intervene; as a result of their intervention, the squatters refused to vacate the leased premises, remaining in possession and being shielded by the appellant's administrators.

The appellant filed its returns to the petition, admitting to the entry of a lease agreement with the appellees but denied that the appellees ever paid and the appellant received advanced rental payment from the appellees; that the truth is that after the signing of the agreement in March 1990, the appellees consciously abandoned the leased agreement without any justification or excuse and could not have taken possession of the property when they did not honor their financial obligation regarding the rental payment to the deceased lessor up to and beyond the demised of the said lessor; that this was evidenced by the fact that the appellees failed to attach any iota of evidence of rental payment prior to and after the demise of the lessor to their petition for declaratory judgment filed; that though the appellees had earlier attached some photocopies of purported rental payments receipts to their complaint of a previous summary proceeding action which they withdrew, these photocopies were not attached to their subsequent action for declaratory judgment because it clearly manifested fraud and deception as the said purported receipts were laden with huge discrepancies and falsification in signature which vitiated the entire lease transaction in keeping with law; that indeed its administratrix intervened in the action of summary proceeding to recover possession of real property filed by the appellants but same was done to protect its right to the subject property in keeping with law; since the summary proceedings action without any justification was filed by the petitioner after twenty years (expiry of the original lease) and because the appellants action amounted to abandonment as well as gross and material violation of the terms and condition of the lease and the squatters referred to where occupants under the authority of the appellant.

The appellant argues that under the facts and circumstances of the case, a petition for declaratory judgment is not the proper suit in equity to file and the appellee's prayer for the court to order a revisit of the agreement to restore the years lost that were not utilized as a result of the appellees being denied entry on the property would be grossly misleading in that the appellees consciously and without any justification or excuse abandon the property for more than twenty years in addition to violating the lease agreement in other material respects, such as the appellee failure to construct a three story building within fifteen years from 1990 without any justification or excuse; that further, where appellees were denied possession of the subject property after signing of the lease agreement without violation of any material terms especially the stipulated rental payment, the proper suit to have filed under equity is a petition for specific performance and not a petition for declaratory judgment as filed by the appellees. The appellant therefore prayed the court below to dismiss the appellee entire petition.

The records show that when the petition for declaratory judgment was called, counsel for the appellants brought to the attention of the court that the appellant had previously filed with the same Sixth Judicial Circuit Court, a petition for cancellation of the Lease Agreement, in May, 2012, long before the appellees filed their petition for declaratory judgment, which was on September 11, 2019. The counsel for the appellant during the disposition of law issues on September 26, 2019, prayed the court to stay the hearing of the declaratory judgment and to proceed with the petition for cancellation filed in 2012 involving the same parties and the same property. The court denied the application, ruling that even if the declaratory judgment is rendered and the lessee placed in possession of the property, such decision would not affect any decision that will be rendered in the cancellation proceedings. The appellants noted exceptions and on the following day, September 27, 2019, filed with the court a motion for consolidation of the petitions for cancellation and declaratory judgment, stating that both petitions involved common questions of law and /or facts.

During hearing of the petition for declaratory judgment, both appellees appeared as witnesses and recounted all the averments contained in their petition. Appellant produced one witness in person of Mr. Pewee Johnson who testified that he grew up (sic) with the late David Larvila and was present when the latter entered the lease with appellees; that at the signing of the lease he didn't see any money exchanged; that he cannot confirm neither deny payments allegedly made to the lawyer of the late David Larvila as he wasn't present at the time of such payment. He also testified that at sometimes in 2010, one of the appellees, Mr. Tony Hage served him notice to vacate the property and that he then contacted his lawyer concerning the notice.

On November 26, 2019, the court ruled and granted appellees' petition for declaratory judgment. The court reasoned that a valid lease agreement was entered by the late David Larvila and the appellees; that the appellant's own subpoena witness Joseph Sirlee, Jr, confirmed that all signatures are that of his father.

The relevant portion of the judge's ruling states as follows:

> The issues determinative of the case is whether or not the plaintiff is entitled to declaratory judgment as a matter of law? This court answers yes. In this declaratory judgment action, the fact that a valid lease agreement was entered into by the late David Larvila and the Hage brothers which is not disputed, the respondent own subpoena witness Mr. Joseph Sirlee, Jr. testified that all the signatures are of his father besides the signature of $500.00; meaning that consideration was received by the late David Larvila from the lessee; in addition, the agreement itself clearly states an amount of $3,000.00 for the first five years shall be paid upon signing of the agreement; more besides, when Mr. David Larvila died, it took the family twenty years to apply to the probate court for letters of administration; meaning that legally speaking there was no one with legal capacity to deal with the lessee/petitioner to implement the agreement. In this jurisdiction when the person dies interstate it is only by a letter of administration duly issued by the probate court that gives capacity to the family members including the wife to manage the property, he/she died seized of. In the absence of letter of administration how can the respondent argue that the petitioner abandoned the lease agreement for three years. In fact, it is the respondent who failed to follow the due process of law.
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> Wherefore, and in view of the foregoing, the petitioner's petition for declaratory judgment is overwhelmingly supported by the law extant in this jurisdiction and the facts and circumstances in this case; this court hereby declares the petitioners right to the lease property and hereby orders the parties to renegotiate the lease agreement so that time lost will be replaced in keeping with equity and justice. AND IT IS HEREBY SO ORDERED.

Appellant excepted to the above ruling and in keeping with procedure filed a six-count bill of exceptions essentially reciting similar position taken in its returns to the petition for declaratory judgment.

The relevant counts of the appellant's bill of exceptions are as follow:

1. "Because respondent/appellant says your honor, in the first place, committed a reversible error when you ruled denying its motion to consolidate the petition

for cancellation of lease agreement and the instant case of the petition for declaratory judgment, out of which this bill of exceptions grows, in spite of the fact that the averments as contained in both petitions, for the most and relevant part, substantially border on the same issues of facts/ or law, aside involving the same parties and the same thing (i.e land), which motion the respondent/appellant contends that had your honor considered would have brought the whole controversy between the parties to a complete end in respondent/appellant's favor in addition to avoiding unnecessary costs or delay. And to which otherwise ruling of your honor, respondent/appellant there and then excepted.

2. And also because further to count two herein above, respondent/appellant says that Your Honor committed a reversible and prejudicial error, in that, assuming without admitting that the petitioners/appellees made some genuine payments towards the rent of the leased property as alleged by them, given the glaring facts and circumstances as culled from the records of the case, including the witnesses' testimonies on both sides that the petitioners/appellees in deed and in fact abandoned the lease agreement for more than twenty (20) years (the original lease period), which fact the petitioners/appellees did not prove on the contrary, and taken into consideration the statute of limitation regarding real property, same is a sufficient ground for the denial of the petitioners/appellees' right under the lease agreement in their petition for Declaratory Judgment; yet Your Honor found in favor of the petitioners/appellees. And to which ruling and final judgment of Your Honor respondent/appellant excepted and announced its appeal.

3. And also because respondent/appellant says that Your Honor committed a reversible and prejudicial error when in your final ruling and judgment you granted the petitioners/appellees' right to the subject property under the lease agreement and ordered that the parties renegotiate the lease agreement so as to replace the lost time in keeping with equity and justice. Respondent/appellant contends that the court cannot compel parties to contract, whether at law or equity, as to parties should enter into contract freely and voluntarily as opposed to the order of Your Honor. In fact, technically, Your Honor's order in that respect defeats your ruling that the petitioners/appellees have rights to the subject property under the lease agreement. And to which ruling and final judgment, respondent/appellant excepted an announced it appeal.".

At call of the call of case at the Supreme Court, both counsels for appellant and appellees argued as per their briefs and pleadings contained in the records of this case. As previously indicated above, we are called to decide whether given the facts and circumstances in this case, a motion for declaratory judgment was the proper action for settlement of the matter.

We note that this matter presents numerous issues of facts that required the production of oral and documentary evidence for proper and equitable resolution of the matter. For example the appellees allege the following:

1. That after the signing of the agreement and the payment of the required rental amount in March of 1990, they were not put in possession of the property and the war came and they left.

2. That upon their return, they met squatters on the leased premises, and found out that the lessor had died during the war. That in 2011 they proceeded to evict the squatters off the leased premises in an action of Summary Proceedings to Recover Real Property; however, the appellants intervened on behalf of the squatters, and

3. That despite being denied possession of the property by the administrators of the appellant, the appellees have opened an escrow account for the Estate and made several rental payments which evidence they would produce at trial.

The appellant on the other hand counters the appellees allegations as follows:

1. That the appellant denies that it failed to put the appellees in possession of the leased property; that after a temporary cessation of the war in 1991, Mr. Pewee Johnson, an agent of the administrators of the appellant, along with the late Counsellor Joseph A. Sellee went to the co-appellee, Mr. Tony Hage, at his premises on 18th Street, in the vicinity where the property is located, to inquire about the status of the lease and the rental payments thereunder since there were no rental payments made prior to and after the signing of the lease; that Co-appellee Tony Hage in perpetration of fraud and deception told them that the lease agreement was destroyed during the civil war;

2. That the appellees after signing the lease agreement with the lessor for the estate in March 1990, they consciously abandoned the leased property during the entire certain period of the lease (March 1990 – February 2010) without any justification and did not honor their financial obligation under the lease to the lessor up to and after his demise;

3. That though the appellees alleged that the lease agreement had been destroyed during the civil war, they however brought a summary proceeding action to evict the squatters on the property after the twenty year certain period, attaching a copy of the agreement to their complaint; that this prompted the appellant to intervene considering that the appellees had abandoned the leased premises and grossly violated the terms of the agreement which required that the appellees build a three-story building on the property during the leased period; and

4. That assuming without admitting that the appellees were denied possession of the property without violation of any terms such as the payment of the stipulated rent, the proper suit to have been filed by the appellees was for specific performance and not petition for declaratory judgment; and

5. That the appellee had filed a petition for cancellation of the agreement in 2012, and the appellees had filed their petition for declaratory judgment regarding the same

5. That the appellee had filed a petition for cancellation of the agreement in 2012, and the appellees had filed their petition for declaratory judgment regarding the same premises in 2019. That it was erroneous for the judge to have proceeded to hear the declaratory judgment and ignore the cancellation proceeding previously filed.

The controversy as indicated above was not about declaring rights to the lease premises as provided by the agreement since the parties both admit that they had an agreement for lease of the disputed property. It was about allegations of abandonment of the premises by the appellees for over 20 years without entry, prevention of the appellees from entry into the premises by the appellant, non-payment of rent under the agreement.

These were the real factual issues that should have warranted the hearing of the petition for cancellation of the lease agreement so that the issues could have been resolved in whole unlike a declaratory judgment proceedings action which was limited to the appellees signing an agreement with the appellant which the appellant denied was accompanied by consideration of rental payment .

The appellees' right to possess the property and enjoy the rights conferred on them by the lease agreement is hinged on whether they fulfilled all the terms and conditions of the lease agreement, including the payment of the rental for the lease. These issues could not have been resolved in a declaration without the court consideration of all the issues raised in the cancellation proceedings filed by the appellant.

A declaratory Judgment is one which simply declares the rights of the parties or expresses the opinion of the court on a question of law without ordering anything to be done, and the action is distinguished from other actions in that it does not seek execution or performance from the defendant or opposing party. Its sole purpose is to make declaration of rights regarding legal instruments in accordance with law. *Gbartoe et al. v. Doe,* 41 LLR 117, 125 (2002); *MIA et al. v. Africa Insurance Corp.,* Supreme Court Opinion, March Term, 2009.

In this case, the fact of the existence of a lease agreement between the parties not being disputed by any of the parties, and the dispute being centered around whether the rights granted under the lease agreement can be enjoyed given that the appellants alleged that the appellees abandoned the demised premises and failed to pay rent therefor, a declaratory judgment cannot conclusively resolve the controversy. Hence, the trial judge erred when he declared the appellees right to the leased property but ordered that the parties renegotiate the lease agreement.

Additional, as the appellant correctly stated in its bill of exceptions, the ruling of the trial judge ordering the parties to renegotiate the lease agreement so that the appellees can be granted the twenty years period which has elapsed amounts to compelling the parties to contract and is beyond the province of declaratory judgment. We believe that had the trial judge given due consideration to the actual controversy between the parties, and taken cognizance of the fact that these issues required the taking of extensive evidence to establish their veracity, he would have realized that the proper action to have settled the issues was the petition for cancellation filed by the appellant, and not a petition for declaratory judgment. This is because the premise upon which a petition for cancellation is filed is that there exists an agreement between the parties thereto, but that the lessee/ lessor abandoned the agreement and failed to perform material obligations under the agreement.

Since this Court cannot take evidence to resolve the many allegations levied by the parties against each other, the proper course is to remand the case so that the court below can proceed to hear and decide the petition for cancellation filed by the appellant and to enable the parties present evidence in support of their respective allegations. Our laws provide that mere allegations do not constitute proof, and unless said allegations are supported by evidence, they shall remain mere allegations because it is evidence alone that enables the court [lower] to pronounce with certainty the matter in dispute. *Universal Printing Press v. Blue Cross Insurance Company,* Supreme Court Opinion, March Term, 2015; *Kamara et al., v. The Heirs of Essel,* Supreme Court Opinion, March Term, 2012; *Kpoto v. Williams,* Supreme Court Opinion, March Term, 2008; *Charles Johnson, Jr., et al. v. Jessie Payne,* Supreme Court Opinion, October Term, 2023.

WHEREFORE AND IN VIEW OF THE FOREGOING, the final ruling entered by the court below is reversed and the case remanded with instruction that the petition for cancellation of the lease previously filed by the appellants be heard. The Clerk of this Court is ordered to send a Mandate to the court below to resume jurisdiction and give effect to the Judgment emanating from this Opinion. AND IT IS HEREBY SO ORDERED. Costs are disallowed.

WHEN THIS CASE WAS CALLED FOR HEARING COUNSELLORS LUTHER N. YORFEE AND RODNEY B. KNOH APPEARED FOR THE APPELLANT. COUNSELLORS TOMMY N. DOUGBAH AND FRANK NIMELY APPEARED FOR THE APPELLEES.