CIV.APP. NO. 30/2009

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:
GLORIA TESHE WILLIAMS - APPELLANT
(formerly called GLORIA TESHE BROWN)

AND

GLADYS E.O. STRASSER-KING - RESPONDENT

HON. JST. MIATTA MARIA SAMBA, JSC - PRESIDING
HON JST. JOHN BOSCO ALIEU, JA
HON. JST. A. I. SESAY, JA

DATED THE 3RD DAY OF AUGUST 2021

Counsel:
Berthan Macaulay Jnr. Esq for the Appellant
Kweku M. Lisk Esq for the Respondent

Judgment
This matter commenced by way of Writ if Summons dated the 27th day of February 2007 for and on behalf of the Plaintiff, now Appellant, at the Court of first Instance, for the following relief:

i. Possession of the premises situate and being at No. 18 Campbell Street, Freetown, in the Western Area of the Republic of Sierra Leone (hereinafter referred to as the "Premises");
ii. *Mesne* profit as from the date of service of the Writ of Summons herein until possession is delivered up;
iii. Damages for breach of contract;
iv. Any other order that this Honourable Court may deem fit and just;
v. Costs.

The Appellant claims that by lease dated the 26th day of July 1996, the Appellant leased property situate at No. 18 Campbell Street Freetown to the Respondent for a term of thirty (30) years for the rent and terms of payment therein stipulated. The Appellant claims that the Respondent is in breach of Clause 2(f) of the said Lease by the Respondent subletting part of the said property to one Mr. Prem, on or before the 1st day of March 2006, without the consent of the Appellant, the owner of the said property. The Court notes that the Lease Agreement hereinbefore referred to dated, the 26th day of July 1996 and registered as Volume 90 at page 139 of the Record Books of Conveyances kept in the Office of the Administrator and Registrar General, Roxy Building, Walpole Street, Freetown, is exhibited at pages 30 to 36 of the Records.

On file is a Defence and Counter-Claim dated the 26th day of March 2007 filed for and on behalf of the Respondent as at pages 7 and 9 of the Records praying for:

i. Relief from forfeiture of Lease dated the 26th day of July 1996 ...;
ii. Damages for breach of Clause 3(a) of the said Lease;
iii. Enforcement of the terms of the Memorandum made on or about the 16th day of April 1996 between the Plaintiff and the Defendant;
iv. Further or other relief;
v. Costs.

The Records at page 10 shows the Appellant's Reply and Defence to the Respondent's Counter-Claim hereinbefore referred to. A Judgment by the Learned Trial Judge was delivered on the 28th day of May 2009 which said judgment as contained at pages 104 through 128 of the Records, ordered as follows:

i. That the action by the Plaintiff against the Defendant for possession of the premises situate at No. 18 Campbell Street, Freetown in the Western Area of the Republic of Sierra Leone (hereinafter referred to as the "Premises"); mesne profit from the date of service of the Writ of Summons herein until possession is delivered up and damages for breach of contract fails.
ii. The Defendant is granted relief against forfeiture.
iii. That the action by the Defendant in her Counter-Claim for damages for breach of Covenant for quiet enjoyment must fail.
iv. That each party must bear its own costs.

The Appellant being dissatisfied with the above judgment of the Honourable Mr. Justice Desmond B. Edwards, J as he then was, delivered on the 28th day of May, 2009, appeals on the following grounds:

Ground 1

A. That the Learned Trial Judge, having found that the Defendant was in breach of Clause 2(f) of the Lease dated the 26th July 1996 made between the Plaintiff and the Defendant, which was in the following terms:

2. *"The Lessee for herself and her assigns and to the intent that he obligations may continue throughout the term hereby created covenants with the Lessor as follows: (f) Not to assign or underlet or otherwise part with possession of the said premises or any part thereof without the prior consent in writing of the Lessor (such consent not to be unreasonably withheld)".*

erred in law in granting the Defendant relief from forfeiture.

PARTICULARS

(a) Subsection (6) of Section 14 of the Conveyancing and Law of Property Act, 1881, expressly ousted the Court's jurisdiction to grant relief from forfeiture in cases, inter alia, where there was a covenant or condition against assigning, under letting or parting with possession of the land leased;

(b) That the Learned Trial Judge failed to take into consideration that neither Lord Justice Lopes nor Lord Justice Kay (who together constituted the majority of the Court

of Appeal) in the case of *Barrow vs. Isaacs & Son* (1881) 1 Q.B 417, held that the courts had jurisdiction to grant relief from forfeiture in cases relating to breaches of the covenant against assigning, subletting or parting with possession.

It is not in dispute that there was a Lease Agreement between the parties. It is also not in dispute that the Respondent was in breach of Clause 2(f) above referred of the Lease Agreement to which there has been no appeal. This position is confirmed by the Respondent's testimony on oath at page 84 of the records where she said at lines 11 and 12 that "I did not have the written consent to sublet". This position is also supported at page 114 paragraphs 9-15 of the judgment delivered on the 28th day of May 2009 by the Learned Trial Judge's, which reads in part:

The effect here is that the defendant did not seek consent as was required by clause 2(f) of Exhibit A .... The consent to subject not having been sought prior to the subletting of 18 Campbell Street to Messrs PREM in March 2006, this was clearly a breach of the Lease Agreement and this court could not begrudge the plaintiff ....

I shall deal with the issue of the Respondent's breach of Section 2(f) of the Lease Agreement in line with the claim for damages prayed for by the Plaintiff in paragraph 3 of the Plaintiff's Statement of Claim in the Writ of Summons which commenced this action.

At page 8 of the records, the Respondent counter-claims against the Appellant for relief from forfeiture of the Lease Agreement hereinbefore referred to on the basis stipulated in paragraph 4(i-v) of the Respondent's Defence as at page 7 of the Records including her having paid full rent for 15 years commencing 15th July 1996 having ~~being~~ been compelled to make those payments; having spent money to renovate the property and her having taken steps to remedy the breach complained of. The question then is whether or not the Respondent was entitled to relief from forfeiture upon breach of Section 2(f) of the said Lease Agreement.

Section 3(i) of the Lease Agreement provides that:

If ... there shall be any breach of any of the foregoing covenants on the part of the Lessee ... then or in any such case the Lessor may (without prejudice to any right in respect of any antecedent breach of covenant by the Lessee) re-enter upon the said premises and determine the lease.

Section 14(1) of the Conveyancing and Law of Property Act, 1881 provides:

A right of re-entry or forfeiture under any proviso or stipulation in a lease, for a breach of any of the covenant or condition in a lease, shall not be enforceable, by action, or otherwise, unless and until the Lessor serves on the Lessee a notice specifying the particular breach complained of, and if the breach is capable of remedy, requiring the Lessee to remedy the breach , and, in any case, requiring the lessee to make compensation in money for the breach, and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy and to make reasonable compensation in money to the satisfaction of the lessor for the breach.

The above provision states the conditions for bringing an action for forfeiture. Section 14(2) confers a right upon the Defendant/tenant to apply for relief from forfeiture either in the action brought by the plaintiff or in a separate action which the Respondent herein did under paragraph 4 of her Defence on grounds stipulated thereunder.

Counsel for the Appellant refers to page 98 of the records and submits that the Respondent has no right to relief against forfeiture under law because of the provisions of Section 14(6). He argues that Section 14(2) of the Conveyancing and Law of Property Act, 1881 is inapplicable in the present case.

Counsel for the Appellant refers to the case of *Barrow v Isaacs* 1881 1 QB 417 which he told the Court was cited in support of the contention that relief for forfeiture could be granted under equity where there is a mistake. He submits that there is nothing set out in paragraph 4(i-v) of the Respondent's Defence hereinbefore referred to, which could be described as a mistake under equity.

Section 14(6)(i) of the Conveyancing and Law of Property Act 1881 provides:

This section does not extend-
To a covenant or condition against the assigning, under-letting, parting with the possession or disposing with the land leased; ....

Counsel for the Respondent argues and submits that Section 14(6)(ii) (I believe Counsel meant Section 14(6)(i) of the Conveyancing and Law of Property Act, 1881 does not oust the jurisdiction of the Court in granting relief against forfeiture. Counsel argues that the Section rather removes the requirements placed on the Lessor in Section 14(1) of the Act, so, according to Counsel, the privilege granted to a Lessee under Section 14(1) does not apply if the Lessee is in breach of one of the covenants stipulated in Section 14(6)(i) including sub-letting as in the instant case.

My understanding of Section 14(1) is that it goes to the issue of eligibility or qualification to bring an action pursuant to which the right of re-entry or forfeiture can be enforced. It creates pre-conditions that must first be fulfilled before the Lessor is eligible to or qualified to bring an action in court for the enforcement of the right of re-entry or forfeiture. This simply means that no such action can be entertained by a Court of law if the Lessor has not already satisfied the pre-conditions contained in Section 14(1) of the Conveyancing and Law of Property Act, 1881.

In my view, Section 14(6)(i) merely makes the Lessor eligible to directly bring an action in Court for the right to re-entry or forfeiture without first having to satisfy the pre-conditions contained in Section 14(1). Section 14(6)(1) does not automatically guarantee that the Lessor's action will be successful which is what the trial at the High Court was meant to determine. Section 14(6)(i) merely avails a Lessor of a direct opportunity to bring his case against a Lessee. It merely puts a Lessee in the position of a normal litigant or Plaintiff who can file a claim in Court without having to satisfy any pre-condition. It does not oust the jurisdiction of the Court, expressly or otherwise, to grant relief from forfeiture in cases where there was a covenant against assigning or underletting, as the matter, once filed in Court is

like any other matter, subject to all statutory provisions and the law of equity, both of which are at the disposal of the Court in coming to a final conclusion.

I refer to paragraph 'b' of Ground 1 of the Appellant's Notice of Appeal, referring to Lord Justices Lopes and Kay in the *Barrows v Isaacs* case which said case I must note had to do with forgetfulness as opposed to 'mistake' where their Lordships said at page 1891 of the judgment:

Then if as I think there was a clear breach of covenant, and a consequent right in the Plaintiff to re-enter, is this a case in which equity will relieve against forfeiture? The Plaintiff has been called and has not been able to shew that any actual damage has been done, or that he has any valid reason for objecting if his consent had been duly asked.... It has been argued (1) that this was a mistake which enables equity to relieve against forfeiture.... (2) that it would be a proper exercise of that discretionary jurisdiction to do so in this case, as no damage has been done to the plaintiff by the under-lease. I do not desire to cast the least doubt upon the jurisdiction of the Court to relieve in cases of what it calls mistake....

Counsel has not referred the Court to any part of the judgment in *Barrows v Isaacs* where the Learned Justices Lopes and Kay held that the Courts had no jurisdiction to grant relief from forfeiture in cases relating to breaches of the covenant against assigning, subletting or parting with possession. I note that the Learned Trial Judge's orders as at paragraph 2 at page 128 of his judgment where he granted the Defendant/Respondent relief from forfeiture relying on the doctrines of equity and therefore referring to Section 170(2) of the 1991 Constitution of Sierra Leone, Act No. 6 of 1991. The Appellant's Counsel has argued against the applicability of the relief in equity based on submissions referred to at pages 116 and 117 of the records.

It would appear that the Learned Trial Judge shares my opinion or interpretation of Section 14(1) and Section 14(6)(i) of the Conveyancing and Law of Property Act, 1881 in so far as he realised that the parties before him and their dispute were subject to statutory law and the law of equity which he proceeded to apply.

Section 170(2) of the 1991 Constitution hereinbefore referred to reads:

The common law of Sierra Leone shall comprise the Rules of Law generally known as the Common Law, the rules of law generally known as the doctrines of equity and the rules of customary law including those determined by the Superior Court of Judicature.

My understanding of the Learned Trial Judge's granting the relief against forfeiture to the Respondent herein is that the Respondent was mistaken as to the mode of communication provided under the Proviso of the Lease Agreement as in Clause 3(b)(iii) of the Lease Agreement herein which reads:

Any notice to the lessor shall be sufficiently served if sent to her by registered post or delivered personally to her address as stated above ....

Equity grants relief to one not entitled to relief in law where there is fraud, accident or mistake. I refer to the case of *Barrow v Isaacs* where Lord Esher said *".... Equity it is said will*

relieve against fraud, accident or mistake and I think you must add that equity will only relieve where there can be only complete compensation or where there is no injury which requires any compensation".

As their Lordships said at page 426 of the *Barrow v Isaacs* case, *'vigilantibus, non dormientibus, leges subveniunt. Equity is bound to consider all the circumstances of each case'*. For me therefore, forfeiture for breach of covenant is left to be dealt with according to the ordinary law and practice of Courts of Equity.

I have read the testimony of the Respondent under cross examination at pages 83 and 84 of the Records. She said:

I am au fait with the contents of the lease agreement.... The post office was functioning but in my opinion, not satisfactorily.... I met a lady and she said she was not in. On the 2nd occasion, I visited this 61 Cape Road, the house was shut.

I agree with you that SALPOST was properly functioning as I had letters sent to me through them which did not reach me. It is possible that SALPOST was functioning properly but unlikely.

I am aware since inception that I should not sublet the demised premises without previous written consent.... I made all effort to contact Miss Brown. I went to her house at Cape Road with the letter but was told by a lady that she is not in .... Since I knew she wanted the premises in March, I took the letter sometime in February.....

Correspondence were to be delivered personally or sent by Registered Post. The Post Office was not in operation in 2006. It was not shut to the public but mails were not regularly delivered....

In re-examination, the Respondent told the Court that she went to Cape Road on two occasions and to the other address (opposite mercy ship) twice.

The Respondent's had this to say in her statement which forms part of her evidence in chief at page 48 of the records:

.... After he approached me, I wrote a letter to Ms. Browne requesting permission to sub-let the shop. I then went to her house at Old Cape Town Road to deliver the letter to her personally but there was no sign of her. I enquired from someone I met there but I was told that she was not around. I made another try a second time and had a similar experience only this time there was no one there. I was unable to deliver the letter personally or leave it with anyone as it was my intention to hand it over to her by hand and to secure a reply from her as soon as possible.

Lord Esher in the *Barrows* case at page 420 said:

... I can find no definition of what mistake is but if you treat mistake in the ordinary English language, is mere forgetfulness mistake? Can you in English say, 'I forgot and is that the same thing as saying I was mistaken'? I think not. Both those questions depend on something happening in the mind of the person and you have to see what it is that happens in his/her

mind. If he merely forgets, he does not assume that one state of things exists whereas some other state of things exists; it is a mere passive state of mind; he has forgotten-he has not thought that one thing was in existence, whereas something else was in existence.... Mere forgetfulness is not mistake at all in ordinary language.

The Respondent's testimony before the Learned Trial Judge was not to the effect that she forgot to seek the consent of the Appellant for her to sublet part of the property at No. 18 Campbell Street as referred in the Lease Agreement. Her mistake, my understanding, was to the mode of service of her application for the Appellant's consent. She knew very well that she ought to have sought the Appellant's consent before parting with any part of the property; she knew there was provision in the Lease Agreement for service, whether by registered post or by 'personal' service at the Appellant's address.

Any notice to the Lessor shall be sufficiently served if sent to her by registered post or delivered personally to her address as stated above ....

The Agreement provides for two (2) modes of service: registered post and personal service at her address. Referring to the second mode of service, '... delivered personally to her address as stated above ...', it seems to me that any reasonable person wanting to ensure that service is made to the right addressee will believe, by that provision, that such service must be made on the addressee, in the instant case, on the Appellant herself. The Respondent could easily have averred that the said letter of request for consent was dropped off at the Appellant's address for service.

In respect of the requirement for service by way of registered post, the Respondent testifies as to her fears and misgivings based on her own experience with postal service. She does not dispute the fact that there was a postal service in operation but, adopting the above reasoning in respect of personal service, the Respondent wanted to ensure that the Respondent herself was served with the letter of request. Again, she could have agreed as she did that she did not use the postal service because she had already dropped off a letter of request at the Appellant's known address. It appears to me therefore that though the Respondent was in breach of Clause 2(f) of the Lease Agreement, her mistake as to service as provided by Clause 3(iii) of the said Lease Agreement was a genuine mistake.

I agree with the Learned Trial Judge when he said at page 122 of the records that in Sierra Leone, there is authority under the law to the effect that the Court has a wide and unfettered discretion to grant relief and that the conduct of the tenant must be considered. I note that Counsel for the Appellant has argued that the cases of *Hyman v Rose* (1912) AC 623 and *Basma v Noureldine (1950-56) A.L.R SL 234* referred to and relied upon by the Learned Trial Judge which said cases considered the wide discretion given to the Courts to exercise its discretion under Section 14(2) of the Conveyancing and Law of Property Act 1881 to grant relief from forfeiture, are not applicable in the present circumstance. It is Counsel's contention that even if the relief sought could be granted, same could not be granted under Section 14(2) of the Act. The Learned Trial Judge notes and I believe correctly at page 123 of the records that the right accorded under Section 14(2) of the Conveyancing and Law of Property Act, 1881 are not, by virtue of Section 14(6)(i) applicable with reference to a breach

of covenant not to sublet and therefore applied the principles of equity realising that the common law position will be harsh.

The Learned Trial Judge in his judgment notes that the application of the principles of equity in providing relief is not limited to just fraud, accident or mistake; it may include exceptional circumstances as held in the case of *Hill v Backlay* (1811) 18 VES 56. I refer again to paragraph 4(i-v) of the Respondent's Defence seeking relief against forfeiture at pages 7 and 8 of the records:

i. *She has paid rent to the Plaintiff for the full period of 15 years commencing 15th July, 1996 and that she will be unjustly deprived of the benefit if that payment and the Plaintiff will be unjustly enriched thereby, if the Defendant were allowed to retain the same;*
iii. *Defendant has spent a considerable amount of money on developing the property, and will be unjustly deprived of the benefit of that investment, if forfeiture were to be granted the Plaintiff....*
iv. *The Defendant has complied in full with the Lessee's covenants contained in the said Lease, save that contained in clause 1(f) (sic) ....*
v. *The Defendant has taken steps to remedy the breach complained of as was required in the Plaintiff's letter dated 31st May 2006.*

The Appellant did not dispute the fact that the Respondent had paid rent for the full period of 15 years by the time this action was instituted. In fact, the Appellant confirms receipt of 15 years rent for the said property. I refer to the Appellant's testimony at page 81 of the records where she said in answer to questions put to her in cross examination that:

I did not erect the structure at 18 Campbell Street but the land id mine.... I have received 15 years rent from the Defendant .... PREM has moved out of the premises after 1 year ....

I refer to the Respondent's testimony at page 49, 2nd paragraph where she said:

Even though pursuant to our agreement we were both meant to pay city rates, I have always been the one paying them as she always had a way of explaining her dire financial situation. I have the receipts and statements from City Council for rates paid since 1997 ....

The Learned Trial Judge also considered that the Respondent tried to remedy the breach upon receipt of letter dated 31st May 2006 from the Appellant's Solicitors. I refer to page 48 of the records, the Respondent's statement which forms part of her evidence in chief, the 6th paragraph thereunder where she said:

I then kept the letter with me at the demised premises and then tried to get the tenant out of the building immediately but because of accommodation problems there was some delay but succeeded in having him vacate the occupancy by the end of the year.

These facts were not contested by the Appellant. It is clear to me that the Learned Trial Judge considered the conduct of the Respondent including the fact that it was an empty plot of land that was leased to the Respondent on which she constructed a building using her own money;

of course the Court is aware that this was part of the agreement as in Clause 2(b) of the Lease Agreement. It is a circumstance nonetheless that was considered by the Learned Trial Judge.

In the case of *Jaber v Rader* (1950-56) ALR SL page 97, it was held that relief from forfeiture will be granted where the landlord's title has not been impugned and the tenant discontinues his breach. The Learned Trial Judge held that the Respondent's breach of Clause 2(f) of the Lease Agreement was discontinued on the Respondent's own accord within a reasonable time and she got Mr. PREM, her sub-lessee out as quickly as she could have before the action herein commenced. This piece of evidence was never contradicted.

For the reasons above, Ground 1 is dismissed.

Ground 2
Assuming without conceding that the Courts had jurisdiction to grant relief from forfeiture on the ground of mistake, the Learned Trial Judge wrongly exercised his jurisdiction in granting the Defendant relief from forfeiture on the ground of mistake.

PARTICULARS
(a). The Learned Trial Judge relied on matters to justify the granting of relief which had not been pleaded by the Defendant, i.e. the apparent ambiguity of proviso (iii) dealing with the service of notices on the Lessor (Plaintiff);
(b). The Learned Trial Judge failed to take into consideration that the Lease expressly provided an alternative as to the service of notices, to wit: that notices could be sent by registered mail to the Lessor/Plaintiff's address and failure to exercise such an alternative could not be a mistake in respect of which relief from forfeiture ought to have been granted;
(c). The Learned Trial Judge took into consideration the cases of *Hyman vs. Rose* (1912) A.C. 623 & *Basma v Noureldine* (1950-56) A.L.R.S.L 234 which considered the wide discretion given to the Courts to exercise its discretion under section 14(2) of the Conveyancing and Law of Property Act, 1881, to grant relief from forfeiture, which were inapplicable to the instant case where relief, if it could be granted (which is not admitted) could not be granted under the said section 14(2).

I have dealt with the proviso under the Lease Agreement which deals with service of notices on the Lessor which said service could be by registered post or service personally at the address of the Lessor. I have also held that service of the Respondent's request for the Appellant's consent was not done in the instant case for reasons which unfolded during trial to wit: that the Respondent was under the mistaken belief that service must be personal; that she had no confidence in the postal system based on her own experience and believing that service must be personal, she did not believe it was prudent to put her request for consent through the mail system.

I note that the above did not explicitly form part of the Respondent's Defence but she did in paragraphs 2 and 3 of her Defence refer to and accept the reasons stated in paragraphs 4 and 6 of the Appellant's Statement of Claim, which is to say that the Respondent did prepare an application in writing for the Appellant's consent to sublet but that the Appellant was outside the jurisdiction during the period concerned. What the Respondent did thereafter came out in evidence during the trial; that she could not have posted her letter for reasons and

concerns hereinbefore stated and that she believed service must be personal. There was no objection in the Court of 1st instance to admitting this piece of evidence on the basis that it did not form part of the Respondent's pleadings. The rules are such that parties must stick to their pleadings but the Respondent's testimony was accepted into evidence and could not have been ignored by the Judge. The Learned Trial Judge was correct therefore to accept the Respondent's testimony during trial and other forms of evidence as part of the Respondent's case.

I refer to page 120 lines 5-10 of the records where the Learned Trial Judge highlights the provisions of the PROVISO under the Lease Agreement to wit:

Any notice to the lessors shall be sufficiently served if sent to her by registered post or personally to her address as stated above ....

The Learned Trial Judge referenced Exhibit D, a letter from the Appellant's Solicitors dated 20th November 2006 where the said Solicitor said, *'It is clear from the above clause that your client could have either served the notice personally to my client or sent same to our client by registered post in the event that she could not deliver same to our client personally'.*

It seems clear to me therefore, that in his analysis and in his effort to distinguish the legal position of the words 'mistake' and 'forget', the Learned Trial Judge did take into consideration that the lease expressly provided an alternative as to the service of the notice to wit: that notices could be sent by registered mail to Lessor/Plaintiff's address. I have already elaborated why in my view the Respondent's failure to use the alternative means of service could have been a mistake; it is closely linked to the mistake of service being personal.

I have already commented on the applicability of cases of *Hyman v Rose* and *Basma v Noureldine* as referred to and relied upon by the Learned Trial Judge. I adopt that said reasoning. For the above reasons, Ground 2 is also dismissed.

Ground 3

The Learned Trial Judge failed to consider or adequately consider the Plaintiff's claim for damages notwithstanding that he found that the Defendant was in breach of Clause 2(f) of the Lease agreement made between the Plaintiff and Defendant.

PARTICULARS

The Learned Trial Judge in summarising the issues which were involved in the case listed the following:

i. Whether there was a breach of Clause 2(f);
ii. If there was a breach whether the Plaintiff was entitled to re-enter and take possession of the Demised Premises or whether the Defendant was to be granted relief from forfeiture;
iii. Whether the Plaintiff breached the covenant for quiet enjoyment contained in Clause 3(a) of the Lease but omitted the issue of damages for breach of contract which had been specifically prayed for.

It is not in dispute that there was a Lease Agreement between the parties. It is also not in dispute that the Respondent was in breach of Clause 2(f) above referred of the Lease Agreement to which there has been no appeal. This position is confirmed by the Respondent's testimony on oath at page 84 of the records where she said at lines 11 and 12 that "I did not have the written consent to sublet". This position is also supported at page 114 paragraphs 9-15 of the judgment delivered on the 28th day of May 2009 by the Learned Trial Judge's, which reads in part:

The effect here is that the defendant did not seek consent as was required by clause 2(f) of Exhibit A .... The consent to subject not having been sought prior to the subletting of 18 Campbell Street to Messrs PREM in March 2006, this was clearly a breach of the Lease Agreement and this court could not begrudge the plaintiff ....

I have referred to Section 3(1) of the Lease Agreement and to the Respondent's entitlement to the relief against forfeiture. I shall now deal with the issue of the Respondent's breach of Section 2(f) of the Lease Agreement in relation to the claim for damages prayed for by the Plaintiff in paragraph 3 of the Plaintiff's Statement of Claim in the Writ of Summons which commenced this action.

I take note of the effort made by the Respondent to remedy the breach under the Agreement by especially getting the sub-lessee, Mr. PREM out of occupation within a year of his tenancy. There is no evidence contrary to this fact before the Court. There is no evidence of any loss suffered by the Appellant because of the Respondent's breach of the Tenancy Agreement. I take note of the fact that there is no complaint of any breach of any other provisions of the Lease Agreement by the Respondent save for breach of Section 2(f). The Appellant has shown no specific harm or loss suffered as a result of the breach let alone any attempt to quantify or particularise any loss of harm suffered apart from the fact of the breach itself *simpliciter*. In such circumstances, it is normally nominal damages that will be awarded.

As per Lord Halsbury L.C. in the *Mediana* 1900 AC p 113 especially page 116 and as repeated in *Mcgregor on Damages*, 18th Edition paragraph 10-002:

" 'Nominal damages' is a technical phrase which means that you have negative anything like real damage but that you are affirming by your nominal damages that there is an infraction of a legal right which, though it gives you no right to any real damages as all, yet gives you a right to the verdict or judgment because your legal right has been infringed."

I therefore hold that the Lessee pays the sum of Le. 25,000,000.00 (Twenty-Five Million Leones) to the lessor as nominal damages for the breach.

I refer to Clause 1(a) and (b) of the Lease Agreement herein referred to as at page 30 of the Records in respect of the remainder of rent due and owing and the manner for payment of same by the Respondent to the Appellant. The Respondent must comply with the provisions as stipulated therein.

In light of the above, I hold as follows:

1. That Ground 1 of the Appellant's grounds of appeal is dismissed.
2. That Ground 2 of the Appellants grounds of appeal is dismissed.
3. That the Respondent pays the sum of Le. 25,000,000.00 (Twenty-Five Million Leones) as nominal damages to the Appellant.
4. Each party must bear its costs.

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Hon. Jst. Miatta Maria Samba, J.S.C. PRESIDING

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Hon. Jst. John Bosco Alieu, J.A I Agree

.....

hon. Jst. Ansumana Ivan Sesay, J.A I Agree