IN THE HIGH COURT OF JUSTICE HOLDEN AT FREETOWN

BETWEEN: MOHAMED KAKAY – Plaintiff

AND: UNION TRUST BANK (S.L.) LTD. – Defendants

Tuesday the 17th January 2017
Before the Hon. Mr. Justice Abdulai Hamid Charm Esq.
Case called
Plaintiff present; E Kaybo Esq. for the Plaintiff present.
Defendants absent; O. Jalloh Esq. for the Defendants present.

JUDGEMENT

The action herein commenced by the issue of a specially indorsed Writ of Summons on the 15th March 2015, for and on behalf of MOHAMED KAKAY, the Plaintiff herein, whose claim as contained in the statement of claim accompanying the Writ of Summons aforesaid against UNION TRUST BANK (S.L.) LTD. the Defendants herein, is for the Recovery of the sum of Three Hundred and Forty One Thousand and Fifty Six United States Dollars and Forty Cents (US$ 341,056.40) or its equivalent in Sierra Leone Leones, being rents for Twelve (12) years; Damages for Breach of Contract; Interest at the rate of Thirty Five Percent (35%) per annum as from the 1st February 2014 and Costs.

The Particulars of the Plaintiff's claims aforesaid are that the Plaintiff is, at all material times to the action herein, a businessmen and the Lessor in respect of premises situate at No. 9 Freetown Road, Lumley Freetown; that the Defendants, at all material times to the action herein, are a registered company incorporated under the laws of Sierra Leone, providing Banking services in Sierra Leone and the Lessees in respect of property situate at No. 9 Freetown Road, aforesaid that by virtue of a Lease Agreement entered into and dated 12th February 2007 between the Plaintiff herein and the Defendants herein, it was agreed that the Plaintiff lease the ground floor of the premises at No. 9 Freetown Road aforesaid to the Defendants for a period of 20 years commencing from 1st February 2007 paying rents as stipulated in clauses 1(i) –

[illegible] the Lease Agreement that was duly executed and signed by the parties herein and upon which said terms the Plaintiff had relied upon and allowed the Defendants to demolish and partition the ground floor to the Defendants' convenience; that by virtue of a reply to the said letter dated 6th March, 2014 from the Solicitors of the Plaintiff dated 24th March, 2014, the same informing the Defendants that the position of the Lease Agreement cannot be changed until after the expiration of the lease term of Twenty (20) years, a letter from the Defendants' Solicitors dated 22nd December, 2014 stating that the remaining unexpired term of the lease be negotiated with the Plaintiff was sent to the Plaintiff; that by a letter from the Solicitors for the Plaintiff dated 31st December, 2014, it was clearly stated that the lease or unexpired term cannot be negotiated, stating also that the only period that is to be negotiated is the option of Five (5) years that is contained in the said Lease Agreement, the other terms and conditions of the Lease Agreement aforesaid, particularly clauses 10) – (v) of the same which are very clear; that by a letter dated 10th January, 2015, the Solicitors for the Plaintiff demanded payment of rents in accordance with the Lease Agreement aforesaid from the Defendants who unlawfully failed and or refused to honour the said obligation as contained in the Lease Agreement aforesaid, that by reason of the conduct of the Defendants aforesaid, the Plaintiff has suffered serious loss and damage.

[illegible] dated the [illegible] and filed on the [illegible] Defendants herein [illegible] for and on their behalf's on the 8th March, 2016. Further to an order of this Court dated the 1st July, 2015 setting aside a Judgement herein dated 30th April 2015, obtained in default of the Defendants herein delivering and filing a Defence to the action herein for irregularity, the said Defendants delivered and filed a Defence to the action herein on the 2nd July, 2015, particulars of which are that they admit that the Plaintiff is, at all material times to the action herein a businessman and the Lessor in respect of the premises situate at No. 9 Freetown Road, Lumley Freetown, admit that the said Defendants at all material times to the action herein are a registered company incorporated under the Laws of Sierra Leone providing Banking services in Sierra Leone and the Lessees in respect of property situate at No. 9 Freetown road aforesaid and admit that by virtue of a Lease Agreement entered into dated 12th February, 2007 between the Plaintiff and the Defendants herein, it was agreed that the Plaintiff lease the ground floor of the premises at No. 9 Freetown Road aforesaid to the Defendants for a period of Twenty(20) years commencing from 1st February,2007 paying rents as stipulated in clauses 1(i) – (v) of the said Lease Agreement; that the Defendants deny that pursuant to the said Lease Agreement the Defendants took possession of the said ground floor, demolished the Plaintiff's original structure thereby destroying his original house plan and reconstructed and partitioned the ground floor for its convenience to meet and provide banking operations and services to its customers and aver that the Plaintiff's original structure was neither demolished nor destroyed and avers further that the said premises were leased for Banking purposes as acknowledged in the Lease Agreement and that the Defendants had to fix up the said premises to meet Banking purposes; that the Defendants cannot admit or deny that for Eight (8) years after the making of the Lease Agreement, the Defendants have been in full occupation of the said premises operating Banking services and at the same time paying rents to the Plaintiff without any interruption by the Plaintiff or any person rightfully claiming the right, under or in trust for him, but avers that after occupying the said premises, both the premises and its environment became unfit for Banking purposes, the existing state of affairs at the said premises which the Defendants inherited the Plaintiff [illegible] and which [illegible] considered their continued tenancy a

[illegible] that in breach of the Lease Agreement aforesaid, the Defendant wrote to the Plaintiff a letter dated 6th March 2014 stating in part that of the said letter that they regret to inform the Plaintiff that due to circumstances beyond their control they shall be vacating the premises aforesaid on or before the end of January 2015 when the current period for which they had already paid rents expires, the Defendants aver that after complaining to the Plaintiff, as regards the deplorable condition of the leased premises which had affected its Banking operation, they wrote the letter aforesaid to the Plaintiff giving him notice about their intention to vacate the said premises at the expiration of the term which they had already paid for and avers further that the said notice to vacate the premises as contained in the letter dated 6th March, 2014 does not amount to a breach of the Lease Agreement aforesaid, but to a rescission of the said Lease Agreement due to the fact that the said premises were no longer fit for Banking purposes and that therefore the said Defendants could not continue to occupy it in such a condition; that the Defendants deny that the contents of the letter dated 6th March, 2014 makes it clear of the Defendants refusal to comply with the terms of the Lease Agreement that was duly executed and signed by the parties herein and upon which said terms the Plaintiffs had relied upon and allowed the Defendants to demolish and partition the ground floor to the Defendants convenience and aver that they have always complied with the provisions of the Lease Agreement, they having opted out of the said Lease Agreement because of the deplorable state of affairs of the premises which seriously affected their Banking activities; that in response to the Plaintiff's averment that by a letter from the Solicitors for the Plaintiff dated 31st December, 2014, it was clearly stated that the Lease or unexpired term cannot be negotiated, stating also that the only period that is to be negotiated is the option of Five (5) years that is contained the said Lease Agreement, the other terms and conditions of the Lease Agreement aforesaid particularly clauses 10(i) – (x) of the said lease which are very clear and that by a letter dated 10th January, 2015, the Solicitors for the Plaintiff demanded payment of rents in accordance with the terms of the Lease Agreement aforesaid from the Defendants who unlawfully failed and/or refused to honour the said obligations as contained in the the Lease Agreement aforesaid and that by reason of the [illegible] of the Defendants aforesaid the Plaintiff has suffered serious loss and

[illegible] aforesaid that the Defendants aver that in breach of clause 5.1 of the said Lease Agreement the Plaintiff and persons claiming through him or acting as agents for him caused the Defendants not to peaceably hold and enjoy the Demised Premises during the said term; that the Defendants aver that the conduct of the Plaintiff has therefore caused the frustration of the Lease Agreement aforesaid; that the Defendants aver that save as is herein before admitted, they deny each and every allegation of fact contained in the Plaintiff's statement and particulars of claim aforesaid as if the same were set out seriatim and specifically traversed.

Pleadings were deemed closed at this stage and by an order of the Court dated 19th October, 2015, Directions as to the preparation of the trial of the action herein were given, the said Directions which were eventually complied with by the parties herein, who had lodged, a Court bundle containing in particular, signed statements of witnesses of fact who testified at the trial of the action herein and several documents which were central to either party's case and which they relied on, tendered in evidence and used at the trial of the action herein, principal of which is a Lease Agreement made the 12th February, 2007 and made between MOHAMED KAKAY, the Plaintiff herein referred to as the Lessor of the one part and UNION TRUST BANK (S.L) LTD, the Defendants herein referred to as the Lessees of the other part, the same registered as No. 29/2007 at page 2 of Volume 100 of the Book of Leases kept in the office of the Registrar General in Freetown relied on and tendered in evidence by the parties herein as Exhibits 14-22. Trial of the action herein commenced on Thursday the 28th January, 2016 at which said trial PW1, MOHAMED KAKAY, the Plaintiff herein testified for and on his behalf and DW1, IRA NYAKE AMARA and DW2, ELIZABETH GRACE LEIGH testified for and on behalf of the Defendants herein.

Having carefully read and considered the pleadings delivered and filed herein, the evidence adduced at the trial of the action herein and the submissions made by the party's respective Counsel as contained in their written submissions filed herein, this Court finds that the parties herein have not disputed the fact that on the 12th [illegible] 2007, they entered into a lease Agreement, whereby the

[illegible] the Lessees therein yielding and paying therefore unto the Lessors therein, the premises situate and being at No. [illegible] Freetown Road, Lumley, Freetown in the Western area of Sierra Leone for a term of Twenty (20) years certain, commencing from the 1st day of February 2007 the said Defendants, the Lessees therein yielding and paying therefore during the said term, yearly as rents to the said Plaintiff, the Lessor therein, subject to a deduction of Ten percent (10%) for income tax, the Sierra Leone Leones equivalent at the commercial bank rate on the date payment is due, Twenty Thousand Eight Hundred United States Dollars (US$ 20,800/00) for years one (1) and two (2), the Sierra Leone Leones equivalent at the commercial bank rate on the date payment is due, Twenty Two Thousand, Eight Hundred and Eighty United States Dollars (US$ 22,880/00) for years Three (3) to Five (5), the Sierra Leone Leones equivalent at the commercial bank rate on the date payment is due, Twenty Five Thousand One Hundred and Sixty Eight United States Dollars (US$ 25,168/00) for years Six (6) to Ten (10), the Sierra Leone Leones equivalent at the commercial bank rate on the date payment is due, Twenty Seven Thousand, Six Hundred and Eighty Four United States Dollars and Eighty Cents (US$ 27,684/80) for years Eleven (11) to Fifteen(15), the Sierra Leone Leones equivalent at the commercial bank rate on the date payment is due, Thirty Thousand Four Hundred and Fifty Three United states Dollars and Twenty Eight Cents (US$ 30,453/28) for years Sixteen (16) to Twenty (20), the above in accordance with Exhibits 14 to 22 aforesaid.

It is not disputed that as contained in the pleadings, the evidence adduced and the submissions made, the Defendants occupied and paid rents in accordance with Exhibits 14 to 22 aforesaid for Eight (8) years prior to which and by a letter dated 6th March 2014, addressed to the Plaintiff herein, the same being Exhibit 24, the Defendants notified the said Plaintiff that due to circumstances beyond their control they will be vacating the Demised Premises on, or before the end of January, 2015 which is the current period for which they had already paid rent for,expires, justifying their decision to vacate the Demised Premises aforesaid by [illegible] out to the Plaintiff that they the Defendants now are expected to conduct business in a very conducive environment as spelt out by their regulators, but to ensure the security at the Demised Premises no longer met those requirement of their regulators, they, the Defendants have [illegible]

behalf of the Defendants herein. They left the premises and gave up possession of it to the Plaintiff herein before end of January, 2015. The Plaintiff contends that the action of the Defendants aforesaid amounted to a breach of the Lease Agreement herein as contained in Exhibits 14 to 22. This Court finds that, as contained in Exhibit 25, which is a letter dated 24th March, 2014 addressed to the Defendants herein, the Plaintiff responding to Exhibits 24, the breach which he complained of is that Exhibits 14 to 22 aforesaid was for a period of Twenty (20) years certain, the Defendant who cannot before the expiration of the said period stop paying rents in respect of the Demised Premises aforesaid as stipulated in Exhibits 14 to 22.

The contention of the Defendants herein is that the Plaintiffs herein was at all materials times to this action aware that he let the Demised Premises herein to the Defendants for them to operate a Bank and that the said premises became unfit for Banking purposes during the course of the Defendants' term, the said Defendants who were subsequently, unable to run and operate a Bank due to certain conduct on the part of the Plaintiff, the said conduct which caused the denial of the Defendants' quiet enjoyment of the Demised Premises and frustrating the Lease Agreement herein as contained in Exhibits 14 to 22 aforesaid. The Defendants herein contend that in the circumstance, they were justified in terminating the Lease Agreement aforesaid since by his conduct, the said Plaintiff had derogated from the grant of the lease, the said derogation amounting to the Plaintiff's reputation of the Lease Agreement aforesaid which the said Defendants subsequently accepted, entitling them to terminate the same which they did. This Court holds the view that at the very onset it needs to outline the evidence adduced herein showing what comprised the conduct of the Plaintiff which the Defendants complain of.

DW1, IRA NYAKE AMARA testified that a couple of years after the Demised Premises were let to the Defendants herein by the Plaintiff herein, very serious problems regarding the Demised Premises began to develop. He testified that the environment surrounding the Demised Premises aforesaid was constantly filled with litter and very unsightly. He testified that upon receipt of information and complaints, he discovered when he visited the Demised Premises, that market women and petty traders were packing their goods and

[illegible] Plaintiff [illegible] with a view to resolving the issue amicably in order to maintain a cordial relationship, but that when things did not improve he wrote a letter dated 24th May, 2012 to the Plaintiff, tendered in evidence as Exhibit 55, the same complaining of the problems the officials of the Defendants' Bank and its customers were facing and more particularly as regards the obstructions faced by the Defendants' specie vehicle, which said obstruction was caused by many vehicles parked within the vicinity of the Defendants' Bank, thereby preventing their specie vehicle from accessing the Defendants' Bank branch entrance and that by reasons that one of the Defendants core business is to receive deposits and make payments to customers, which from time to time entails the Defendants' Bank branch to be replenished with monies in cash, the obstruction aforesaid seriously and or negatively impacted the Defendants' business. DW1, IRA NYAKE AMARA identified Exhibits 85,89,90,96, 97 98, 101,103 and 104 the same being photographs, which he claims depicts the obstruction to the entrance of the Defendants' Bank of their specie vehicle and their customers from time to time. He identified Exhibits 85,89 and 90 and claimed that the same specifically depicts market women and petty traders displaying their wares in front of the Demised Premises. He testified that the Plaintiff failed to respond to Exhibit 55 aforesaid and or remedy the situation aforesaid, the Defendants herein who he claimed were forced to continue to put up with the blockade of its Bank entrance and the hindrance of its business operations, in a bid to maintain the cordial relationship between them and the Plaintiff.

DW1, IRA NYAKE AMARA testified that on or about between December 2012 and January 2013, without their consent, the Plaintiff closed the passage to the toilet at the back of the Demised Premises which the Defendants had constructed for use by its customers. He testified that the Plaintiff constructed a shop on the pathway and had it rented together with the pathway. He identified Exhibits 96 and 97, the same which are photographs which he claims depict the shop aforesaid, constructed right underneath the sign of the Defendants Bank on its side. He testified that the construction of the shop aforesaid not only created a security concern but that the closure of the pathway aforesaid also affected the Defendants' Bank Western Union customers who had to move to other Banks

[illegible] that the [illegible] Defendants Bank [illegible] customers [illegible] operations of those customers who wanted to use toilet facilities had to pass through [illegible] operations etc. to reach the inside toilet. DW1 IRA NYAKE AMARA testified that by a letter dated 29th January, 2015, the same which was tendered in evidence as Exhibit 56, he informed the Plaintiff about the obstruction of the passage aforesaid, pointing out this development as a serious breach to the Lease Agreement herein and requesting the Plaintiff to take immediate action to allow free access to the toilets, which is a requirement for the Defendants' Bank Western Union Franchise and also noting that the erection of the shop aforesaid on that side of the Demised Premises will pose a security risk to the Defendants Bank, the Defendants herein requesting the said shop to be demolished forthwith. He testified that notwithstanding Exhibit 56, the Plaintiff failed to take any action regarding the above. He testified that the shop continues to be there, blocking the passage to the toilet and at some point, a situation arose whereby someone used the roof of the shop and attempted to break into the Demised Premises. He testified that the Defendants repaired the damage done by the attempted break in and as he claims were forced to continue to suffer the inconveniences created by the Plaintiff aforesaid.

DW1, IRA NYAKE AMARA testified that in addition to the matters aforesaid the Defendants discovered sippage into the walls of the Demised Premises which was caused by leakages from the septic pipes installed above the Demised Premises. He testified that the sippage aforesaid caused water from the septic pipes to enter into the Demised Premises and at some point even the cesspit was over flowing within the confines of the compound where the Demised Premises were. He testified that this sippage disrupted the operations of the Defendants' Bank at the Demised Premises and caused a lot of discomfort and inconvenience to the staff of the Defendants' Bank and their customers in terms of the offensive odour together with the fact that it was not pleasant to look at the light where the sippage occurred, the effect being [illegible] decoration of the walls and painting of the Demised Premises herein. DW1 IRA NYAKE AMARA identified [illegible] 76, 79, 81, [illegible] 105, 106 [illegible] 108, the same being photographs which he claims [illegible] the state of the walls of the P[illegible] Hall

[illegible] the sippage came from the top of the Plaintiff's building housing the Demised Premises herein. DW1, IRA NYAKE AMARA testified that the Plaintiff herein was informed of the above situation by the Defendants and informally called upon to address the sippage problems aforesaid, which the said Plaintiff failed to do any thing about until after he had cause to write a letter to him dated 27th February, 2014 which was tendered in evidence as Exhibit 25, the same which formally notified the Plaintiff of sippage of water into the walls of the banking hall of the Demised Premises which was creating a lot of discomfort to the staff of the Defendants' Bank and their customers and impacting negatively on the Defendants' Bank image, the said Exhibit 25 which also appealed to the Plaintiff to ensure that the said repairs are done against the weekend following the 27th February 2014, in order to end the suffering of the staff of the Defendants' Bank and their customers aforesaid. He testified that the repair works aforesaid were done by the Plaintiff, the situation which improved a bit, but the Defendants still continued to experience some amount sippage in the Demised Premises.

DW2, ELIZABETH GRACE LEIGH testified that she was Assistant Manager at Defendants' Bank at the Demised Premises between September, 2009 and October, 2015 and that during this period the Defendants herein utilized the Demised Premises herein as a Banking facility. She testified that as Assistant Manager she was entitled to a space in the Demised Premises to park her vehicle but that by reason that market women and petty traders displayed their wares at the frontage of the Demised Premises, she did not have access to park her vehicle at that space in the Demised Premises and in the circumstance she was forced to leave her vehicle in the streets. She testified that she informed the Plaintiff and the Defendants of this problem severally but nothing was done to remedy it. She testified that the Defendants' space vehicle constantly faced challenges when it became necessary to access the Demised Premises by reason of the problem aforesaid and on other occasions, by reason of the fact that vehicles were blocking off the passage to the door entrance of the Defendants' Bank. She testified that on several occasions when this occurred, her staff and or the Manager had to solicit the assistance of State Security Personnel (OSSP) and the

[illegible] informed him to take steps to get rid of the same which was also reported to the Defendants. She testified that the presence of market women and petty traders at the frontage of the Demised Premises, not only caused the environment to be filled with litter making it very unsightly, the challenges faced by the Defendants when the specie vehicle could not access the passage to the Defendants' Bank Door entrance by reason of the above, posed a constant security threat to the Defendants' operations and also to herself and the Manager. She testified that she does not know who placed the market women and the petty traders in front of the Demised Premises but knows that it was not the Defendants' responsibility to get these people off the said premises because when they were driven off, they would normally say that they pay money to the Plaintiff to use the frontage of the premises. DW2 ELIZABETH GRACE LEIGH identified Exhibits 90, 105 and 104 the same being photographs which she claims depicts the frontage of the Demised Premises. DW2, ELIZABETH GRACE LEIGH identified Exhibit 78, the same being a photograph which she claims depicts a vehicle parked at the Isle of the Demised Premises were the specie vehicle is supposed to park when it becomes necessary for it to access the Demised Premises herein.

DW2, ELIZABETH GRACE LEIGH, testified that in addition to the matters aforesaid, the Plaintiff built a shop and abutted the same to the Demised Premises herein. She testified that when construction work commenced, herself and the Manager of Defendants' Bank located at the Demised Premises, informed the plaintiff that the said construction would be a security risk to the Defendants' Bank aforesaid informing him also that the Regulators of the Defendants would take issue with the shop being abutted to the Demised Premises. She testified that the Plaintiff ignored them and continued with the construction of the shop aforesaid. She testified that upon completion of the construction of the shop, the same was occupied by someone, the effect of which was that the toilet [illegible] the Defendants at the back of the Demised Premises for use by the Defendants Western Union Customers was sealed off, the Defendants herein who [illegible] then found it below its Western Union Customers to use the sanitary facilities in its main banking hall at the demised

[illegible] the [illegible] the Premises [illegible] the Premises [illegible] the said shop, the same having broken the glass at the top window of the Demised Premises. DW2, ELIZABETH GRACE LEIGH identified Exhibit 107, the same being a photograph which she claims show the shop aforesaid which was constructed aborting the Demised Premises. She testified that she knows that the shop is still there.

DW2, ELIZABETH GRACE LEIGH, testified that further to the matters aforesaid, she discovered sippage into the walls and the banking hall of the Demised Premises caused by leakages from the Septic pipes installed above the Demised Premises. She testified that upon entering the Demised Premises one morning she observed that the entire Premises reeked with an unpleasant odour. She testified that upon inspections made, she observed that the cause of the problem was sippage from the Septic pipes installed on the floor above the Demised Premises. She testified that the sippage of septic water oozed from different points of the Demised Premises, they being from the electrical switches of the banking hall around the electrical mains, the lavatory area etc. She testified that the sippage caused septic water from the septic pipes to enter the Demised Premises especially the banking hall and the customer service section. She testified that this affected and disrupted the operations of the Defendants' Bank as well as cause a lot of inconveniences. She testified that herself and the Manager of the Defendants' Bank located at the Demised Premises invited the Plaintiff to call at the Demised Premises and inspect the problem and who was also requested to address the same. She testified that after a while the Plaintiff got his workmen to attend to the problem aforesaid but that this did not permanently abate the sippage aforesaid. She testified that herself, the staff of the Defendants' Bank located at the Demised Premises and its customers had to contend with the problem aforesaid and this significantly affected the customer turn out at the Defendants' Bank located at the Demised Premises. DW2, ELIZABETH GRACE LEIGH, identified Exhibits 76, 77, 65, 25, 98, 103, 106, 107 and 108, the same being photographs which she claims depicts the dampness caused by the sippage, several areas where the sippage occurred, the inside the banking hall, the customer service area and the [illegible]

[illegible] which provides thus:

'the Lessor and in this case the Plaintiff herein, for himself, his successors and assigns and to the intent that the obligations may continue throughout the term hereby created covenants with the Lessee and in this case the Defendants herein that they paying the said rent and observing and performing the several covenants and stipulations herein contained, shall peaceably hold and enjoy the Demised Premises during the said term without any interruption by the Lessor and in this case the Plaintiff herein or any person rightfully claiming through, under or in trust for him'

Regarding the Defendants' claim that they discovered sippage of water and sewage into the walls of the Demised Premises, the Plaintiff has given a completely contradictory account from the one given by the Defendants above. PW1, MOHAMED KANAY, the Plaintiff herein testified that he received Exhibit 23 aforesaid, the same which notified him of sippage of water into the walls of the banking hall of the Demised Premises. He testified that, notwithstanding that the problem aforesaid was one created by the Defendants because it was they who had tampered with the water pipes to create a toilet within the banking hall, when they were reconstructing the Demised Premises, the problems contained in Exhibit 23 aforesaid were identified and rectified within five (5) days from the date of Exhibit 23 aforesaid, which said date was the 27th February, 2014. He testified that since in accordance with clause 2.3 of the Lease Agreement herein, the Defendants herein had covenanted to keep the interior of the Demised Premises and all additions thereto in good and tenantable repair and condition, fair wear and tear expected, it was the Defendants who should have had the problem aforesaid fixed but had it fixed in order to maintain the good relationship between himself and the Defendants. PW1, MOHAMED KANAY [illegible] Exhibit 27 [illegible] February [illegible] and different from the date on exhibit 23 which is the 27th February, 2014 and addressed to him from the Defendants on the same subject as in Exhibit 23 which is [illegible] of water into the banking hall, but with different [illegible] from

[illegible] Defendants' Bank [illegible] already drawn the attention [illegible] leakage in the said pipe which [illegible] to the walls of the ground floor of the Demised Premises. Exhibit 57 also points out that the Plaintiff was aware of this development which was creating a lot of discomfort to the customers and staff of the Defendants' Bank and has untold effect on the image of the Bank. Exhibit 57 aforesaid also makes known, the information that the problem is a structural problem which is originating from the upper floors of the Plaintiff's building and that the Defendants would appreciate it if the Plaintiff as Landlord, can take immediate measures to correct this problem and bring relief to the customers and staff of the Defendants' Bank. PW1 MOHAMED KAKAY, the Plaintiff herein identified Exhibit 82, the same being a photograph which he claim depicts how a vault was created inside the Demised Premises and depicts also a slab which was created inside the Demised Premises and joined to a pillar which contained pipes which were damaged.

This Court finds no contradiction regarding sippage of water into the Demised Premises. What needs to be determined is whether there was sippage of sewage into the Demised Premises as claimed by the Defendants herein. PW1 MOHAMED KAKAY the Plaintiff herein under cross examination of him by O. JALLOH ESQ of Counsel for the Defendants, identified Exhibit 79, the same being a photograph which DW1, IRA NYAKE AMARA had claimed depicts exposed septic and sewage pipes and which he claimed depicts that sippage comes from the top of the Plaintiff's building housing the Demised Premises herein. He testified that he is not familiar with Exhibit 79 but agreed that the PVC pipe shown on Exhibit 79 was the one he replaced. He testified that it is not true that he had to replace the PVC pipe aforesaid because sewage was sipping from the top floor of the Plaintiff building housing the Demised Premises into the Demised Premises. He identified Exhibits 103, 106, 107 and [illegible] the same being photographs which PW1, IRA NYAKE AMARA had claimed depicts the state of the walls and the ceiling of the Demised Premises and the damages caused by the sippage of water and sewage aforesaid and testified that he knows nothing [illegible] the said Exhibits. He testified that it is not true that prior to 2014 the Defendants reported [illegible] of sewage [illegible] on the [illegible] of the Demised Premises.

Defendants used the Demised Premises shown in Exhibit 30 depicting the same. This Court was also shown evidence of what is claimed to be depicted in Exhibits 105, 106, 107 and 108. This Court found that on the left wall right along the whole length of the said wall when facing the front of the building housing the Demised Premises, there were markings indicating dampness on the top parts of the said wall but which were now dry. PW1 IRA NYAKE AMARA who was present at the locus in quo, explained that the dampness started occurring about a year or two before the Defendants vacated the Demised Premises. He stated that their plumber had told the Defendants that the dampness was sippage arising from sewage pipes embedded into the walls of the building housing the Demised Premises. He was however unable to identify the source of sippage aforesaid. He testified that the Defendants did not do anything about this but informed the Plaintiff about it, though he cannot tell whether the Plaintiff did anything. The Plaintiff explained that the dampness aforesaid came about as a result of a combination of factors. He stated that the Defendants used a product called 'Mastic' on the walls when painting. He explained further that as result of rain splashing on the outside walls and the use of air conditioners inside the Demised Premises, the wall gets damp when it was confronted with cold weather and the paint lift up. Indeed, this Court observed at the locus in quo, that there were marking and holes all along that left wall were the dampness was, the same indicating the installation of air conditioners but found nothing indicating that septic pipes were embedded into the walls. It was observed though that on the opposite wall, there were no markings and holes indicating the installation of air conditioners and there were no indications on the wall on that side that there had been any dampness on the walls. It was further observed by the outside of the building housing the Demised Premises that on the left side of the wall when facing the front of the building housing the Demised Premises at the shops in the building that there were no air conditioners installed therein. The walls on that side had no indications that there had been dampness on them in the same way as the opposite wall to the West and it showed that the paint and holes indicating the

[illegible] Exhibit 105,106, 107 and 108 aforesaid. [illegible] stated that the [illegible] not read' whether 'Mastic' was used on the walls put up by the Defendants prior the Demised Premises every year. This Court holds the view that from its findings above when it visited the locus in quo, the testimony of the Plaintiff that the dampness as depicted in Exhibits 105,106, 107 and 108 aforesaid was caused by the use of 'mastic' on the walls when painting together with the combination of rain splashing on the outside walls of the building housing the Demised Premises and use of air conditioners inside the Demised Premises is probably true than not.

This Court finds no evidence suggesting sippage of sewage into the banking hall of the Demised Premises as claimed by the Defendants herein. However, notwithstanding the denial of PW1, MOHAMED KAKAY, the Plaintiff herein having received Exhibit 57 aforesaid, this Court finds that as contained in Exhibit 57, the Manager of the Defendants' Bank at the Demised Premises had drawn the Plaintiff's attention to the leakage in the septic pipe. This Court holds the view that if it were otherwise, PW1 MOHAMED KAKAY, the Plaintiff herein, during cross examination of him by O. JALLOH ESQ. of Counsel for the Defendants when he identified Exhibit 79, could not have admitted that the PVC pipe shown an Exhibit 79 was the one he replaced and which he could not have replaced if it had no leakage. Notwithstanding the fact that Exhibit 79 aforesaid depicts exposed septic and sewage pipes, this Court finds nothing in Exhibit 79 depicting that sippage of sewage comes from the top of the Plaintiffs building housing the Demised Premises into the banking hall and ceiling of the Demised premises which DW1, IRA NYAKE AMARA, claimed is depicted in Exhibit 105,106, 107 and 108.

This Court holds the view that what is paramount herein is whether or not there is any conduct of the Plaintiff herein regarding the issue of the sippage of water and sewage which said conduct is tantamount to a denial of the Defendants quiet enjoyment of the Demised Premises, in breach of the Lease Agreement hereto contained in Exhibits 14 to 22 aforesaid. As regards the sippage of water into the Demised Premises, the Plaintiffs claim that the problem aforesaid was [illegible] by the Defendants because it was they who had tampered with water pipes around the vault area to create a [illegible] within the banking hall of

[illegible] was [illegible] that the Demised Premises on the 25th October, 2002 and that the sewer pipes which were [illegible] were diverted and installed outside the walls and that immediately thereafter the sippage stopped. The Plaintiff's workman agreed that he did not make the vault but was present when it was constructed. He said that it was true that he could not have known where the sippage started and could not have known when actually the sippage started from the time the construction of the vault was done. This Court finds nothing in the statement of the Plaintiff's workman that corroborated the Plaintiff's claim that the problem of the sippage of water was one created by the Defendants as stated aforesaid. This Court holds the view that by virtue of the fact that this problem only made itself known seven (7) years after the Defendants came into occupation of the Demised Premises and long after the construction of the vault aforesaid, is suggestive that its occurrence cannot be blamed on the said Defendants. Likewise this Court finds nothing in the evidence adduced that suggests that its occurrence was caused by the conduct of the Plaintiff.

It has already been established that this Court finds no evidence suggesting sippage of sewage into the banking Hall of the Demised Premises. This Court finds however that from the evidence adduced herein, there was sippage of sewage occurring from a leaking septic pipe outside the building housing the Demised Premises. It cannot be disputed that in this regard, there is bound to be some discomfort created not only for the customers and staff of the Defendants Bank but also for every other occupant of the building were the Demised Premises were from the offensive odour occurring as a result of sippage of sewage occurring from a leaking septic pipe outside the building housing the Demised Premises. The pertinent question then is, could it be said that such sippage of sewage was caused by some conduct on the part of the Plaintiff that could be regarded as tantamount to a denial of the Defendants quiet enjoyment of the Demised Premises in breach of the Lease Agreement herein contained in Exhibit 14 to 22 aforesaid. PW1 IRA NYAKE AMARA testified that the sippage of sewage was caused by leakages from the septic pipes installed above the Demised Premises. This Court was unable to find any evidence that any septic pipes were encouraged into the walls of the building housing the

outside of a building and in the open thereby exposed septic and sewage pipes even was that one [illegible] aforesaid TINUBA NYAKI [illegible] testified that at some point, even the cesspit was over flowing within the confines of the compound where the Demised Premises were. It is not disputed that there was a leakage of the septic pipe shown in Exhibit 79. It cannot however be determined at what point in time the leakage occurred. This Court holds the view however that the possibility exist for a leakage in septic pipes to go unnoticed for as long as there is a free flow of sewage water into a septic tank, which has sufficient space for more sewage deposits. In this regard it cannot be disputed that if a septic tank becomes full to capacity, sewage and water would find its way to anywhere for its escape, including overflowing or back up the septic pipes or out of any leakage that might be on the septic pipe or that such filling up of the septic tank putting pressure on the septic pipes and eventually creating a leak on it. This Court finds that in this regard, it is the filling up of the cesspit with sewage which caused the overflow and the possible leakage in the septic pipe aforesaid. It cannot be disputed that the filling up of the cesspit with sewage cannot be as a result of the sole conduct of the Plaintiff. In view of the fact that there is not in evidence anything suggesting that septic tanks were installed for separate occupants and no evidence suggesting that the Plaintiff resided in the building housing the Demised Premises, this Court finds that the filling up of the cesspit with sewage that caused its overflow and possibly the leakage in the septic pipe aforesaid was the responsibility of every occupant in the building housing the Demised Premises, including the Defendants herein and the Plaintiff herein, if it is the case that the said Plaintiff resided in the said building.

It is absolutely clear that from the above it can safely be concluded that the issue of both the sipping of water and the seepage of sewage were issues which arose not because of any deliberate conduct on the part of the Plaintiff herein but issues which proved the need for same to be done to the Demised Premises, when the said issues occurred. In the case between ANDERSON and OPPENHEIMER, LR 5 QBD 602, it was held that the covenant for quiet enjoyment was not [illegible] by the [illegible] water to [illegible] water [illegible] system belonging to the Landlord [illegible] house let in separate floors. In the

[illegible] BY DEFAULT [illegible] AND TENANCY [illegible] BY [illegible] ORDINARY PARCEL [illegible] Express Covenant for Quiet Enjoyment [illegible] stipulated [illegible]

'but it seems that from the decision of the case cited above, if there had been negligence on the part of the Landlord in keeping and maintaining the pipe, or any act willfully done or omitted to be done by the Landlord in connection with it after the demise, the decision would have been the other way. But for a breach of this kind to hold, there must be a physical interference with the Demised Premises. A mere nuisance is not enough'.

In the case between JENKINS and JACKSON 88 LJ. Ch. 124, where the Landlord of two rooms let a room above them for music and dancing, whereby the tenant of the two rooms who occupied them as offices in his business as an Accountant, was much annoyed, it was held that there had been no breach of the covenant for quiet enjoyment. In this case and in addition to the fact that it was not shown that it was the Plaintiff herein who was responsible in keeping and maintaining the pipe which gave way and caused the sippage of water which occurred at the electrical outlets and the toilets created by the Defendants inside the Demised Premises or keeping and maintaining the septic pipe which was replaced as shown in Exhibit 79 outside the building housing the Demised Premises because it had a leak, the evidence herein shows nothing that minutely suggests that the Plaintiff was negligent in keeping and maintaining the water and septic pipe aforesaid and nothing that minutely suggests any act willfully done or omitted to be done by him in connection with those pipes after he demised the premises herein to the Defendants. Rather, this Court finds overwhelming evidence that when the issues aforesaid were made known to him, the Plaintiff took steps to have the necessary repairs done. This Court holds the view that the conduct of the Plaintiff herein regarding the issue of the sippage of water and the sippage of sewage aforesaid is not in any way tantamount to a denial of the Defendants' quiet enjoyment of the Demised Premises in breach of the Lease Agreement herein as contained in Exhibits 14 to [illegible].

The Defendants herein have claimed that during their occupancy of the Demised Premises they [illegible] Rooms and [illegible] toilet rooms [illegible] minutely tending their waste in front of the Demised Premises which caused

[illegible] Plaintiff's witness [illegible] MOHAMED KAKAY, [illegible] 105 and 104 which are photographs of the frontage of the Demised Premises which depicts a lot of People, probably market women and petty traders and wares displayed together with parked vehicles. What is in dispute is whether or not these market women and petty traders were at the frontage of the Demised Premises displaying their wares as a result of some conduct of the Plaintiff, either by turning a blind eye to their occupation of the frontage of the Demised premises or expressly allowing them such occupancy. Under cross examination of him by O. JALLOH ESQ of Counsel for the Defendants PW1, MOHAMED KAKAY, the Plaintiff herein denied having given permission to market women and petty traders displaying their wares at the frontage of the building housing the Demised premises. He denied that the Defendants ever reported to him that these market women and petty traders were obstructing their access to the building housing the Demised Premises. He denied that his testimony was that he was fine with these market women and petty traders displaying their wares at the frontage of the building housing the Demised Premises. He testified that it was not himself who was duty bound to ward of these market women and petty traders, but the responsibility of the Defendants who had in their employ State Security Personnel (OSD's) and Mount Everest Security to do so. He testified that initially when the Defendants took possession of the Demised Premises, they had a cage at the frontage of the Demised Premises manned by their employed Security aforesaid, who warded off these market women and petty traders from the frontage of Demised Premises but which said cage was later removed by the Defendants herein. The Defendants herein have not denied that they had a cage at the frontage of the Demised Premises when they took possession of it, which said cage was later removed by them. Under cross examination of him by I. KARGBO ESQ of Counsel for the Plaintiff, DW1, ISA [illegible] AMARA stated that to some extent the Defendants' Bank was in full [illegible] of the Demised Premises for the past 3 years they occupied it. He testified that during this period and in order to secure it, the Defendants' Bank had [illegible] at the entrance of the Demised Premises two kinds of security personnel who were the Defendants' employ and not the Plaintiff's. He

[illegible] hereby [illegible] the Plaintiff, PW2, ELIZABETH GRACE LEIGH [illegible] she stated that at the time of the Demised Premises in 2011, there were two sets of security personnel at the Demised Premises employed by the Defendants, they being the State Security Personnel (OSP's) and the Mount Everest Security. She admitted that they were there to protect the Defendants' Bank and were so deployed outside of the Demised Premises to ensure that only customers of the Defendants' Bank enter the Demised Premises. She admitted that the security personnel were able to so protect the Defendants' Bank and its customers.

By virtue of the fact that the Defendants had in their employ two sets of security personnel whose duty were to protect the outside environment as has been established by the evidence adduced herein, it is clear that it is them who should take steps to ward off market women and petty traders displaying their wares and vehicles parked at the entrance of the Demised Premises as depicted in Exhibits 96, 97, 99, 100, 101, 102, 103 and 104, by reason of the fact that the said Defendants have not in any way denied that a cage which was erected by them at the frontage of the Demised Premises and manned by the security personnel employed by the Defendants to ward off market women and petty traders displaying their wares and vehicles parked at the entrance of the Demised Premises and vehicles from parking thereon, was removed by them and no reasonable explanations given as to its removal by them. In the circumstance PW1, ASA NYAKE AMARA cannot as he did under cross-examination of him aforesaid, deny that it was the Defendants' Bank that failed to ward off market women and petty traders displaying their wares and vehicles being parked at the frontage of the Demised Premises. In addition, the testimony of PW2, ELIZABETH GRACE LEIGH that, she does not know who placed the market women and petty traders in front of the Demised Premises and knows that it was not the Defendants responsibility to get these people off the Premises but they would say that they pay money to the Plaintiff to use the forecourt of the Demised Premises when the Defendants took steps to ward them off would be considered unfair to the Plaintiff, in view of the fact that under cross-examination of the aforesaid PW1, ALHAMED KARIM the Plaintiff admitted having given permission to market women and petty traders displaying their

[illegible] and petty traders displaying their wares together with the parked vehicles were at the frontage of the Demised Premises as a result of some conduct of the Plaintiff either by turning a blind eye to their occupation of the frontage of the Demised Premises or expressly allowing them such occupancy. In this regard, this Court holds the view that in so far as the occupancy of the frontage of the Demised Premises by market women and petty traders displaying their wares and the parking of vehicles is concerned, the Plaintiff herein has not conducted himself in any way which would be considered as tantamount to a denial of the Defendants quiet enjoyment of the Demised Premises in breach of the Lease Agreement herein as contained in Exhibits 14 to 22 aforesaid.

Clearly, it cannot be disputed that the occupation by 'market women' and 'petty traders' at the frontage of the building housing the Demised Premises and within the confines of the Demised Premises as outlined above were acts done by third persons other than the parties herein including the Plaintiff. It cannot be disputed further that the acts of parking vehicles at the Defendants' Bank entrance where the specie vehicle is supposed to park and the acts of market women and or petty traders displaying wares at the passage where the said specie vehicle is supposed to use to reach the Defendants' Bank entrance, the said acts which caused the Defendants specie vehicle facing challenges when it needed to access the Defendants' Bank entrance and so obstructed the Defendants' specie vehicle's access the Defendants' Bank entrance as outlined above, were acts done by third persons other than the parties herein including the Plaintiff. It cannot be disputed also that the acts of an unknown person who attempted to break into the Demised Premises herein or the shop constructed on a pathway fronting the Demised Premises by the Plaintiff herein, as outlined above were [illegible] by a third person, other than the parties herein including the Plaintiff. Clearly, it cannot be disputed that the acts of these third persons aforesaid were unlawful acts in that it revealed in the evidence adduced herein, but also the evidence does not reveal that these third persons had lawful right [illegible]

WOLMER'S LAW OF LANDLORD AND TENANT by J.M. HEY ESQ. on ORDINARY PARTICULAR COVENANTS' at page [illegible] under 'Express Covenant for Quiet Enjoyment' at page [illegible] of the Volume

'that express covenant for quiet enjoyment without any interruptions or disturbances by the Lessor, his heirs or assigns, even though followed by the words 'or by any other person whomsoever does not extend to unlawful acts of strangers except his covenant is express to that purpose, for the law does not defend every man against wrong and therefore, though one warrants land to another expressly or covenants for quiet enjoyment generally, yet he does not defend against tortious entries since by a covenant in law for quiet enjoyment the Lessee and in this case the Defendants herein are to enjoy their Lease against the lawful entry, eviction or interruption of any man, but not against tortious entries, evictions or interruption and the reason of the law is solid and clear, because against tortious acts the Lessee has proper remedy against the wrongdoers. It is however different where an individual is named, for there, the covenantor is presumed to know the person against whose acts he is content to covenant, and may therefore be reasonably expected to stipulate against any disturbance from him, whether lawful title or otherwise. Therefore a Covenant for quiet enjoyment, or for indemnity against all actions, suits claim and demands whatsoever both in law and equity, of certain named persons, extends to their unlawful acts, claims and demands, without any lawful right or title as well as their lawful acts'.

This Court holds the view that by reason of the above, the specifically named conduct of the Plaintiffs as outlined above, be it an act or an omission, cannot be such a conduct which is tantamount to a denial of the Defendants' quiet enjoyment of the Demised Premises in breach of Lease Agreement herein as contained in Exhibits 14 to 22 aforesaid. In addition as having found no other evidence of the Plaintiffs conduct which can be considered as tantamount to a breach of the said Lease Agreement this Court [illegible] the view that the submission of [illegible] WILLIAMS ESQ. learned Counsel for the Defendants that, as a result of the [illegible] of the Defendants' quiet enjoyment of the Demised premises, the Lease Agreement herein was [illegible], the said conduct of the Plaintiffs [illegible] breach of the said Lease Agreement entitling to the Plaintiffs

[illegible] The [illegible] event is alleged [illegible] and has [illegible] of the Plaintiff aforesaid [illegible] amounted to a denial of the Defendants' quiet enjoyment of the Demised Premises, the pertinent question that this Court would be required to answer, would be whether as a result, the denial of the Defendants quiet enjoyment of Demised Premises frustrated the Lease Agreement as contained in Exhibits 14 to 22 aforesaid, the said conduct which was a derogation from the grant of the said Lease Agreement, amounting to the Plaintiffs repudiation of the same, which the said Defendants herein subsequently accepted entitling them to terminate the same and which they did.

In the 4th Edition of THE LAW OF REAL PROPERTY by the HONOURABLE SIR ROBERT MEGARRY AND H.W.R. WADE on 'DETERMINATION OF TENANCIES' under the rubric 'Frustration' at page 675 it is stipulated as follows:

'the doctrine of Frustration is part of the law of contact and may sometimes be invoked to discharge a party from contractual liability when some unforeseen event has made performance impossible. In general the doctrine does not apply to executed leases, for a lease creates an estate which vests in the lessee, and cannot be divested except in one or other of the ways enumerated above. In other words the lessor's principal obligation is executed when he grants the lease and puts the tenant into possession. The doctrine of frustration can apply only to obligations which are executory and which can therefore be rendered impossible of performance by later events'.

In the case of the Lease Agreement herein, the executory obligation complained of is the covenant as contained in clause 5.1 of the same which provides for the Lessor and in this case the Plaintiff herein, for himself, his successors and assigns covenanting with the Lessee and in this case the Defendants herein, for them to peaceably hold and enjoy the Demised Premises during the term created herein without any interruption by the lessor and in this case the Plaintiff herein, or any person rightfully claiming through, under or in trust for him. The question then is, even if it were assumed that the Plaintiff herein were in breach [illegible] above, can it be said that such a breach

[illegible] out of the twenty (20) years which was the term created by the said Lease Agreement? In the case between NATIONAL CARRIERS LTD and PANALPINA LTD (1981) 2 WLR 45, the House of Lords after much uncertainty held as follows:

'that the Doctrine of Frustration can apply in a rare case to a lease of land, so as to bring the lease to an end if a frustrating event (i.e an event such that no substantial use permitted by the lease and in contemplation of the parties remained available to the tenant) occurs during the currency of the term'.

Even if the conduct of the Plaintiff herein as outlined above were considered to be tantamount to denying the Defendants' quiet enjoyment of the Demised Premises aforesaid, it is clear that there is nothing in the evidence adduced herein suggesting that the Defendants had no substantial use of the Demised Premises which can, in the circumstance, be regarded as a frustrating event. Under cross examination of him by E. KARGBO ESQ of Counsel for the Plaintiff, DW1, IRA NYAKE AMARA testified that the Defendants occupied the Demised Premises since the execution of the Lease Agreement as contained in Exhibit 14 to 27th of the 12th February 2007 and continued to occupy the same notwithstanding the sippage of water and or sewage complained of up to the 8th December, 2014 and after the said sippage of water and or sewage complained of had been fixed by the Plaintiff. He that agreed that notwithstanding the challenges which the Defendants faced as regards the access of the specie vehicle to the Demised Premises the Defendants' Bank continued to use the specie vehicle for the period the Defendants occupied the Demised Premises. This Court finds that notwithstanding the construction of the shop by the Plaintiff as the evidence reveals which the said Defendants claim prevented the use of the [illegible] constructed by them for their Western Union Customers and which said construction of the said shop created a security risk for the Banking operations when the said Defendants had to use their Western Union Customers to use their sanitary facilities in the Demised Premises, there is no evidence adduced whatsoever that the same made the Defendants' occupation of the Premises impossible during the period aforesaid which [illegible]

PANALPINA LTD [illegible] for 20 months of a 5 year term, has been held not to be a terminating event. In the 6th Edition of 'M. GARRY'S MANUAL OF THE LAW OF REAL PROPERY' by DAVID J. HAYTON on 'DETERMINATION OF TENANCIES' under the rubric 'By Frustration' at page 359 it is stipulated that presumably, a three month lease of a holiday villa would be frustrated if on the first day the villa was burnt down otherwise than through the fault of the tenant.

In the same vain and applying the same principles as above, even if the Plaintiff's conduct as outlined above were held to be tantamount to a denial of the Defendants quiet enjoyment of the Demised Premises, this Court holds the view that it cannot be said that the Plaintiff's conduct aforesaid amounted to a derogation from the grant of the Lease Agreement herein as contained in Exhibits 14 to 22 aforesaid. In the 4th Edition of THE LAW OF REAL PROPERTY by the HONOURABLE SIR ROBERT MEGARRY AND H.W.R. WADE on 'RIGHTS AND DUTIES OF THE PARTIES UNDER A LEASE OR TENANCY' under the rubric 'Obligation not to derogate from his grant' at pages 678 to 679 it is stipulated as follows:

'It is a principle of general application that a grantor must not derogate from his grant, he must not seek to take away with one hand what he has given with the other, but to constitute a derogation from the grant, there must be some act rendering the Demised Premises substantially less fit for the purposes for which they were let'.

The extent of the obligation not to derogate from the grant as stated above was laid bare in the case between MOULTON BUILDINGS LTD and CITY OF WESTMININSTER (1975) 30 P. & C.R. 182 referred to by Y.H. WILLIAMS ESQ. of Counsel for the Defendant where at page 186, DENNING M.R. stated the broad principle thus:

'If one man agrees to confer perhaps benefits on another, he must not do anything which substantially deprives the other of the enjoyment of that benefit, because that would be to take away with one hand what is given with the other'

out of the Demised Premises. It is required of him not to conduct himself in a manner which would substantially deprive the Defendants of the enjoyment of that benefit. In other words substantially deprive the Defendants of the use and enjoyment of the Demised Premises. This Court holds the view that, it is that conduct of the Plaintiff which would substantially deprive the Defendant of the use of the Demised premises that is important and not the conduct of the Plaintiff which is substantial enough to deprive the Defendants of the use and enjoyment of the Demised premises. This Court holds the view that the submission of Y.H. WILLIAMS ESQ of Counsel for the Defendants that the Plaintiffs actions and inactions were substantial enough to deprive the Defendants of the peaceful enjoyment of the premises he had conferred on them is clearly misplaced. As is stated above there is nothing contained in the evidence suggesting that the Plaintiffs conduct rendered the Demised Premises not fit for commercial purposes including Banking purposes which the same was let out for. In fact this Court finds that the over whelming evidence is that throughout the period which the Defendants occupied the Demised premises, they continued to utilize the Demised Premises for Banking purposes from the 20th February, 2007 when they took up occupation up till the 8th December, 2014 when they vacated the same

From the above, this Court holds the view that even if the Plaintiff's conduct as outlined above were held to be tantamount to a denial of the Defendants quiet enjoyment of the Demised Premises in breach of clause 5.1 of the Lease Agreement herein it cannot be said that the Plaintiff has derogated from his grant of the lease herein. In this regard this Court holds the view that it cannot be said that the Plaintiff has by its conduct repudiated the Lease Agreement aforesaid which said repudiation the Defendants have subsequently accepted, entitling them to terminate the same. It would seem then that the true intention of the Defendants herein is that they were entitled to terminate the said Lease Agreement herein by reason of the Plaintiffs conduct aforesaid which said conduct caused the Defendants inability to run and operate its Bank, the Plaintiff who at all material times to this action herein was aware that

[illegible] Premises herein to the Defendants herein for them to operate a Bank. It should be pointed out though, that being aware of the reasons why the Premises were let out, is quite distinct from what the Premises were supposed to be used for. This Court finds that the Lease Agreement herein between the Plaintiff on the one hand and the Defendants on the other hand as contained in Exhibits 14 to 22 does not specifically mention the fact that the Demised Premises were to be used for Banking purposes only. In accordance with clause 2.4 of Exhibits 14 to 22, the Defendants covenanted to use the Demised Premises for commercial purposes. This Court holds the view that notwithstanding the fact that the term 'Commercial purposes' includes 'Banking purposes', the term 'Commercial purposes' is too wide for the Defendants to have it restricted to 'Banking purposes' only.

This Court finds that the details of the facts contained in the entire evidence adduced herein that led this Court to uphold the submission aforesaid of Y.H. WILLIAMS ESQ that at all material times to the action herein the Plaintiff herein was fully aware that he let the demised Premises herein to the Defendants herein for them to operate a Bank were not terms of the Lease Agreement aforesaid. In other words, this Court would not have upheld the submission the Y.H. WILLIAMS ESQ. above, if it had considered only the Lease Agreement as contained in Exhibits 14 to 22. It only upheld the submission aforesaid when it considered the evidence herein in its entirety. This Court finds that notwithstanding the fact that the Demised Premises were substantially altered and additions made to it, in order for the Demised Premises to be suited for Banking purposes as the evidence reveals, there is no evidence adduced herein referencing such alterations and additions aforesaid to the Lease Agreement and no evidence adduced to the fact that such alterations and or additions were done with the Plaintiff's consent in writing in accordance with Clause [illegible] of the Lease Agreement herein. Likewise, this Court finds notwithstanding the fact that the Demised Premises were substantially altered and additions made to it, in order for the Demised Premises to suit its Banking purposes, the evidence herein which said alterations and additions was not referenced in the

Agreement as contained in Exhibits 14 to 22 aforesaid. Suffice it to say that this Court holds the view that the substantial alterations and additions made to the Demised Premises in order for it to be suited for Banking purposes as the evidence reveals was done pursuant to a verbal agreement if at all, made outside of the Lease Agreement herein. This Court finds absolutely nothing in the Lease Agreement as contained in the Exhibits 14 to 22, that entitles the Defendants to prematurely determine the Lease Agreement herein, even if it were held that the Plaintiff's conduct as outlined above were held to be tantamount to a denial of the Defendants' quiet enjoyment of the Demised Premises in breach of clause 3.1 of the same, which said conduct caused the Defendants' inability to run and operate a Bank in the Demised premises. To find otherwise would be contrary to the hypothesis which the Courts have long insisted on, that the parties are to the confined within the four corners of the document in which they have chosen to enshrine their agreement and in this case Exhibits 14 to 22. The general rule is that neither of them may adduce evidence to show that his intention has been misstated in the document. In the case between JACOBS and BATAVIA & GENERAL PLATATIONS TRUST (1924) 1 Ch 287, P.O. LAWRENCE J. at page 295 stated as follows:

'It is firmly established as a rule of law that parol evidence will not be admitted to add to, vary or contradict a deed or other written instrument. Accordingly it has been held that... parol evidence will not be admitted to prove that some particular term, which has been verbally agreed upon, had been omitted by design or otherwise from a written instrument constituting a valid and operative contract between the parties'.

The law is that the exclusion of oral evidence to add to vary or contradict a written document has often been pronounced in peremptory language, but in practice its operation is subject to a number of exceptions, one of which is that, the exclusion of oral evidence is only inapplicable where the document is designed to contain only part of the terms in their words which the parties have made their contract partly in writing and partly by word of mouth, which said kind of exception is not applicable in this case to deprive the Defendants

WEDDERBURN CJ in the SUPREME COURT OF KILLOWEN C.J. in the case of GILLESPIE BROS and CHENEY EGGAR & CO (1896) 2 CLR (SC) especially at pages 59 to 64 who stated as follows:

'that it will be presumed that a document which looks like a contract is to be treated as the whole contract'.

It was gathered in the case between MCGRATH and SHAW (1987) 57 P & CR 452, the case between LEYLAND MOTOR CORP OF AUSTRALIA and WAUER (1981) 104 LSJS 460 and the case between THOMAS WITTER LTD and TBP INDUSTRIES LTD (1996) 2 All ER 573 at 595 – 597 that written contracts quite often contain clauses stating that the written contact is the whole of the agreement between parties. Such a clause clearly strengthens the presumption aforesaid but it is unclear whether it makes it irrebutable. However it can safely be concluded from the above that the presumption that a document which looks like a contract is to be treated as the whole contract through strong is not irrebutable. In each case, the Courts must decide whether the parties have or have not reduced their agreement to the precise terms of an all embracing written formula. If they have, oral evidence will not be admitted to vary or to contradict it. If they have not, the writing is but part of the contract and must be set side by side with the complementary oral terms. The question is at bottom one of intention and like all such questions, elusive and conjectual.

This Court holds the view that the parties herein have reduced their agreement herein to the precise terms of an all embracing written formula as contained in the Lease agreement herein being Exhibits 14 to 22. This Court finds nothing in Exhibits 14 to 22 which suggests that the parties herein intended that the details of the facts contained in the entire evidence adduced herein that led this Court to uphold the submission of Y.H. WILLIAMS ESQ. aforesaid that at all material times to the action herein the Plaintiff herein was fully aware that he let the Demised Premises herein to the Defendants herein for them to operate a Bank, should be part and parcel of the Lease Agreement contained in Exhibits 14 to 22. In this regard the submission of Y.H. WILLIAMS ESQ. of Counsel for the Defendants that the use of words 'sooner determination of the term of the lease hereby provided' by the parties herein contained in Clause 2.12 of Exhibit 22 contemplates that either party has the right to determine the

[illegible] Agreement earlier than the period contracted for when certain events arise. This Court finds that the only term contained in Exhibits 14 to 22 aforesaid which gives to one of the parties and in this case, only the Plaintiff, the right to determine the Lease Agreement earlier than the period contracted for when certain events arise is clause 4.1 of the same which provides thus:

'That if the rent hereby reserved or any part thereof shall at any time be in arrears for twenty one (21) days after the same shall become due whether demanded or not or in the event of any breach of the covenants conditions and stipulation on the part of the Lessee herein contained ,then and in any such case, the Lessor may at any time thereafter re-enter upon the Demised Premises or any part thereof in the name of the whole and thereupon this demise shall absolutely cease and determine but without prejudice to any right of action of the Lessor in respect of any breach of the Lessees covenants herein before contained'.

Clearly clause 4.1 aforesaid does not give the same right to the Defendants to determine the Lease herein prematurely as it gives to the Plaintiffs and as found above, there is nothing contained in Exhibits 14 to 22 which gives the Defendants that right. This Court holds the view that if it were otherwise, it would have been perfectly legal for the Defendants herein to give notice to the Plaintiff herein to determine the Lease Agreement as contained in Exhibits 14 to 22 by letter dated 6th March, 2014 as seen in Exhibit 24 aforesaid which is apparently not the case herein. In the 6th edition of 'MEGARRY'S MANUAL OF THE LAW OF REAL PROPERTY' by DAVID J. HAYTON on 'Determination of Tenancies' under the rubric 'By Notice' at Page 549, it is stipulated as follows:

'a lease or tenancy for a fixed period cannot be determined by notice unless this is expressly agreed upon. Thus a lease for a substantial term such as 21 years often contain provisions enabling the tenant to determine it at the end of the seventh or fourteenth year, in which case the length of the notice required, the time when it is to be given and other matters of this kind, depend on the terms

of the Lease in the absence of a subsequent option for the Lessee to renew the Lease for a further full period.

Clearly therefore, the provision in the Lease Agreement herein for the Defendants herein to determine the Lease Agreement herein before the expiry of the Twenty (20) years term agreed upon as contained in the Lease Agreement herein.

It has been held above that the substantial alterations and additions made to the Demised Premises herein in order for it to be suited for Banking purposes as the evidence adduced herein reveals, was done pursuant to some verbal agreement, if at all, made outside of the Lease Agreement herein. This Court had further upheld the submission of Y.H. WILLIAMS ESQ. of Counsel for the Defendants herein, that the Plaintiff herein at all material times to the action herein was fully aware that he let the Demised Premises herein to the Defendants to operate a Bank, this Court having upheld such not by reason that it considered only the Lease Agreement as contained in Exhibits 14 to 22, but by reason that it considered the evidence its entirety. It follows that the details of the facts contained in the evidence adduced herein that led this Court to hold that at all material times to the action herein the Plaintiff herein was fully aware that he let the Demised Premises to the Defendants herein for them to operate a Bank can be considered as statements made during the preliminary bargaining prior to the execution of the Lease Agreement as contained in Exhibit 14 to 22 were not intended by neither party to be terms of the said Lease Agreement but which nevertheless as this Court holds, seriously affected the inducement of one of the parties to the said Lease Agreements to enter into it. In Law these statements are known as 'representations' or 'mere representations'. In the 15th Edition of CHERSHIRE, FIFOOT & FURMSTON'S LAW OF CONTRACT on 'MISREPRESENTATION, DURESS AND UNDUE INFLUENCE' under the subtitle 'the nature of misrepresentation' at Page 275 it is stipulated thus:

'a representation is a statement of fact made by one party to the contract to the other which, while not forming a term of the contract is yet one of the reasons that induces the representee to enter into the contract'.

As stated above, since these statements were not intended by neither party to be terms of the Lease Agreement aforesaid and subject of course to the said

Agreement [illegible] was [illegible] by the [illegible] entitling the Defendants to [illegible]. This Court holds however that the Defendants herein can never thereafter claim that those statements which were made by the Plaintiff herein and which comprise the details of the facts which are contained in the evidence adduced herein that led this Court to hold that at all material times to the action herein the Plaintiff herein was fully aware that he let the Premises herein to the Defendants herein for them to operate a Bank were untrue and if the said Defendants prove such statements to be untrue, the said Defendants will be entitled to claim the relief accorded by the law in the case of Misrepresentation.

In the 25th Edition of 'ANSON'S LAW OF CONTRACT' edited by A.G. GUEST on 'MISREPRESENTATION' at page 256, it is stipulated thus:

'the effect of a misrepresentation made during the negotiations preceding the making of a contract is to render the agreement voidable at the suit of the Party misled. A person who has been induced to enter into a contract by reason of a misrepresentation can refuse to carry out his undertaking, resist any claim for specific performance and if necessary, have the contract set aside by means of the equitable remedy of rescission'.

But before the remedies aforesaid are examined in relation to the case herein, it is necessary to consider the conditions which a misrepresentation must fulfill in order to make a contract voidable in this way. In the 25th Edition of ANSON'S LAW OF CONTRACT edited by A.G. GUEST on 'MISREPRESENTATION' under the rubric 'Conditions to be fulfilled before Representation effective' at Page 257, it is stipulated thus:

'an operative misrepresentation consists in a false statement of existing or past fact, made by one party, before or at the time of making the contract, which is addressed to the other party and which induces the other party to enter into the contract'.

As [illegible] repeatedly [illegible], it is not disputed that at all material times to the action herein, the Plaintiff herein was fully aware that he let the Premises herein to the Defendants herein for them to operate a Bank. This Court holds

[illegible] [illegible] to operate [illegible] statement [illegible] would have been made by either party to the Lease Agreement herein and inspection of the premises intended to be demised to the Defendants done

This Court finds that one set of conversation which the parties herein could not have avoided making throughout the preliminary negotiations and inspections aforesaid is that one which the Defendants would have made known the fact or get the Plaintiff to acknowledge the fact that they need some premises suitable for Banking purposes and the Plaintiff stating whether by words or inferred from his conduct that the Demised Premises herein were suitable for Banking purposes. The uncontroverted and compelling testimony of DW1, IRA NYAKE AMARA in this regard, is that the Defendants as a Banking Institution, leased the Plaintiff's premises from him to carry on its business of Banking on the Plaintiff's understanding that the premises were suitable to carry out Banking operations. Under cross examination of him by O. JALLOH ESQ. of Counsel for the Defendants, PW1, MOHAMED KAKAY, the Plaintiff herein testified that it is true that at the time the premises herein were leased to the Defendants herein he was aware that the Defendants were going to operate a Bank therein. He testified that he agreed for the Defendants to fix the Demised Premises such that it suits the operations of a Banking Institution. He testified that it is true that it was the Defendants who tiled the interior of the Demised Premises, installed the toilet facilities in the Demised Premises, installed electrical fittings and installed air conditioners. It is immaterial that the evidence outlined above suggests that the statement that the Demised Premises were suitable to carry out Banking operations was inferred from the conduct of the Plaintiff. This Court holds the view that the evidence above which reveals the Plaintiff agreeing to the substantial alterations and additions to the Demised Premises by the Defendants herein to suit their Banking operations confirm the making of the statement aforesaid by reason that there could have been no other factor why the Plaintiff would have agreed to the substantial alterations and additions to the Demised Premises by the Defendants aforesaid than the fact that he was [illegible] his statement that the Demised Premises were suitable to carry out Banking operations. [illegible] it is only with such confirmation of the making of the statement aforesaid be it by words or inferred from the conduct of the

[illegible] the Plaintiff [illegible] how it was [illegible] expressed by word [illegible] from the Plaintiff's conduct, the statement that the Demised Premises herein are suitable for Banking purposes, made by the said Plaintiff and which assumes an active form, is a statement of fact made to the Defendants and which is not part of the Lease Agreement herein as contained in Exhibits 14 to 22.

As has been repeatedly said above, the same which cannot be disputed, the Defendants herein are in the business of Banking, which said business is a specialized commercial activity, its main activity being the deposits and withdrawals of monies in cash by its customers. It cannot be further disputed that the activities of a Banking Institution are regulated by the Bank of Sierra Leone. It cannot also be disputed that one of the regulations which a Banking Institutions is bound to abide with is that which stipulates what quantum of monies in cash that it should hold at any given time. It follows that if as a result of its main activity aforesaid, cash limits held by a Banking Institution rises above its required limits or falls below its required limits, there becomes a need for the use of a specie vehicle which said vehicle is used to replenish and collect cash deposits in this regard. In this regard, if it is said that the Demised Premises herein are suited for Banking purposes, then it must be such that unhindered access to the Demised Premises is available for not only the specie vehicle but vehicles of staff of the Defendants' Bank who see to its day to day running. The [illegible] testimony of DWI IDA NYAKE AMARA is that the Defendants' Bank is one of the largest franchise for Western Union transfer and that one of the requirements for an Institution to become part of the franchise is for that Institution to provide sanitary facilities for its Western Union customers. In this regard, if it is said that the Demised Premises herein are suitable for Banking purposes, sanitary facilities must be available for not only members of the Defendants' Bank but also its Western Union customers. All in all and considering the undisputed fact that the main activity of the Defendants' Bank is [illegible] deposits and withdrawals of monies in cash by its customers, if it is to be said that the Demised Premises herein is suitable for Banking purposes, the Demised Premises must be free from [illegible] by thereby, a

It cannot be disputed that relying the Plaintiff's statement that the Demised Premises be suitable for Banking purposes, induced the Defendants to enter into the Lease Agreement as contained in Exhibits 14 to 22 aforesaid. PW1, MOHAMED KAKAY the Plaintiff herein testified that before the Defendants occupied the Demised Premises, he agreed that the Defendants alter the original layout of the said premises, which as he testified was partitioned into five (5) shops, by pulling down the partitioning and reconstructing the same to suit the Defendants Banking operations. This Court holds the view that even the Plaintiff's agreement for the Defendants to alter and reconstruct the Demised Premises as such was an inducement to them which they took advantage of and had substantial sums of money expended. As PW1, MOHAMED KAKAY the Plaintiffs herein, himself testified under cross examination of him by O. JALLOH ESQ of Counsel for the Defendants he agreed for the Defendants to go ahead with the said alterations and reconstructions of the Demised Premises to suit the operations of a Bank, agreed with the Defendants to construct a toilet outside the Demised Premises for their customers, the said Defendants who had this done and also had installed, toilet facilities inside the Demised Premises, tiled the interior of the Demised Premises and had installed, electrical fittings and air conditioners. This Court holds the view that the twenty (20) years duration of the Lease Agreement herein which the Defendants herein were prepared to let the Demised Premises for, is a pointer to the fact that indeed they were induced to enter into the Lease Agreement herein by reason of the Plaintiff's statement that the Demised Premises were suitable for Banking Purposes. This Court holds the view that if it were otherwise than the fact that the Defendants were induced to enter into the Lease Agreement herein by reason of the Plaintiff's statement that the Demised Premises were suitable for Banking purposes, they would have been cautious and do not been posed above and make provisions in the Lease Agreement herein, enabling them to determine the Twenty (20) year lease and granted at the end of the fifteenth year or the tenth (10th) year as the case may be, as stipulated in the 6th Edition of 'MEGARRY'S MANUAL OF THE LAW OF REAL PROPERTY' 'Determination of Tenancies' by DAVID J HAYTON at the rubric 'Notice' at Page [illegible] Indeed, PW1 MOHAMED KAKAY the Plaintiff herein

[illegible] and from the Defendants' [illegible] was based on the fact that the Twenty (20) years duration of the lease [illegible] by the Defendants herein was a long enough period for him to recoup by way of rents the 'damage' done to his property, if at all, one were inclined call such a 'damage'. This Court holds the view that the above simply show how important the Plaintiff's statement that the Demised Premises were suitable for Banking purposes was in the mind of the Defendants, so much so that they agreed for a Twenty (20) years duration of the Lease of the Demised Premises without even hesitating for a bit to consider that events might occur that would change things at the end of the fifth(5th) year or the tenth(10th) year as the case may be, of the Twenty (20) years duration of the lease aforesaid.

Having held that the representation that the Demised Premises were suitable for Banking purposes, made by the Plaintiff herein to the Defendants herein and having further held that indeed, the said representation is one which induced the Defendants to enter into the Lease Agreement herein as contained in Exhibits 14 to 22, this Court now turns on the answer to the all important question as to whether the said representation turned out to be an untrue one either at the time it was made and or thereafter. In this regard an issue which needs to be initially addressed is the undisputed fact that the building housing the Demised Premises is a four (4) storey building with several shops and several tenants conducting various commercial activities on it. This fact was confirmed when this Court visited the locus in quo on Saturday the 29th October, 2016. One observation made at the locus was that there were several shops with tenants both downstairs where the Demised premises were and also upstairs of the said building conducting various commercial activities ranging from beauty saloon shops to motor vehicle spares and building materials shops. It cannot be disputed that with such a scenario, tenants involved with activities like motor vehicle spares and building material together with their customers could cause a lot of inconvenience and disruption to other tenants in the building including the Defendants. To mention but a few instances one could imagine the inconvenience and disruption which could be caused by a large quantity of building material being loaded from the road to the upstairs premises or a car parked awaiting it to be found with a spare part which is faulty [illegible]

[illegible] with [illegible] Defendants' Bank specie vehicle and vehicles of their staff obstructed access to the Demised premises which the said Defendants complained of. Indeed, in explaining the obstructions faced by the Defendants' Bank specie vehicle when this Court visited the locus in quo DW1, IRA NYAKE AMARA who represented the Defendants at locus in quo complained that there were too many tenants in the building housing the Demised Premises including those tenants upstairs who park vehicles in the building housing the Demised Premises and also too many customers of these tenants who also park vehicles in the parking area at the said building.

This Court finds that the Plaintiff has not in any way controverted the evidence aforesaid that there were too many tenants of his at the building housing the Demised Premises herein and too many of their customers using the said building in various ways. This Court finds further that the Plaintiff has not in any way controverted that it was precisely this scenario and the possible ones outlined above which caused the Defendants' Bank specie vehicle and vehicles of their staff, obstructed access to the Demised premises. Indeed, this Court finds from the evidence adduced herein, that the issue of too many tenants being in the building housing the Demised Premises herein was one issue which seems not to have been mentioned between the Plaintiff herein and the Defendants herein, all throughout the negotiations leading to the execution of the Lease Agreement herein as contained in Exhibit 14 to 22. In fact and as the evidence itself reveal, this Court finds that, apart from the mentioning of the said issue by DW1 IRA NYAKE AMARA at the locus in quo, the Plaintiff has failed, refused and or neglected to mention any thing about the issue of him, having too many tenants in the building housing the Demised Premises. It cannot be disputed that the Plaintiff's failure, refusal and or neglect to mention any thing about the issue of him having too many tenants in the building housing the Demised Premises all throughout the negotiations leading to the execution of the Lease Agreement herein and all throughout the proceedings was deliberate. It is obvious that several pieces of evidence adduced herein ought to have provoked the Plaintiff's response, to this end but was [illegible] to remain silent on it. Be that as it may, what this Court finds to have been revealed by the

[illegible] Agbaje [illegible] examination of [illegible] by Mr. JACOB ESQ of Counsel to the Defendants PAUL MOTAYO BAKARY, the [illegible] herein testified that it is true that the Demised Premises were not yet painted and the walls partitioning the said Demised premises into five (5) shops which were pulled down by the Defendants were yet to be smothered with mortar. It can reasonably be said that from this bit of evidence and lack of any evidence to the contrary in that regard, the building housing the Demised Premises herein was not yet occupied by too many tenants of the Plaintiff at the time negotiations between the Plaintiff herein and the Defendants herein regarding the lease of the Demised Premises was ongoing. Accordingly, this Court holds the view that even if there had been an inspection of the building housing the Demised Premises by the Defendants, such inspection would not have revealed that the said building would have too many tenants. It is immaterial to this Court's holding above that the evidence adduced herein does not reveal that the Defendants conducted any inspections of the said building.

It stands to reason that from the above, it can safely be said that the Plaintiff was silent on the issue that there would be too many tenants in the building housing the Demised Premises. In this regard, the pertinent question is whether or not the Plaintiff's silence on this issue would make his statement that the Demised Premises were suitable for Banking purposes an untrue one. In the 13th Edition of CHERSHIRE, FIFOOT & FURMSTON'S LAW OF CONTRACT on MISREPRESENTATION, DURESS AND UNDUE INFLUENCE under the rubric 'Can silence constitute misrepresentation?', it is stipulated thus:

'a representation whether expressed as a positive assertion of fact or inferred from conduct, normally assumes an active form, but an important question is whether it can ever be implied from silence'.

To put the inquiry in another form, when, if ever, is it the duty of a contracting party to disclose facts that are within his own knowledge? In the 25th Edition of ANSON'S LAW OF CONTRACT' edited by A.G. GUEST on 'MISREPRESENTATION' under Conditions to be fulfilled before Representation is 'Live' and thus [illegible] 'there must be a false representation' at page 257, it is [illegible] as follows:

'[which] is to the effect that the law does not generally require one party to a contract to apprise the other of facts unknown to him and which might affect his estimation to enter into the contract'

As per LORD ATKINS in the case between BELL and LEVER BROS LTD (1932) AC 161 at page 227, the failure to disclose a material fact which might influence the mind of a prudent contractor does not give the right to avoid the contract even though, as was held in the case between SMITH and HUGHES (1871)LRQB 597, it is obvious that the contractor has a wrong impression that would be removed by disclosure. As per LORD ATKINS in the case between BELL and LEVER BROS LTD cited above, at page 227, the principle of 'caveat emptor' applies outside contracts of sale. Each party must look out for himself and ensure that he acquires the information necessary to avoid a bad bargain. There must therefore be some positive statement or conduct and in this regard as per LORD CAMPBELL in the case between WALTERS and MORGAN (1861) 3 De G, F & J 718 at page 724, a nod or a wink or a shake of the head or a smile may suffice, in order to amount to an operative misrepresentation.

The general rule above that mere silence is not representation is subject to a number of exceptions. In the 15th Edition of CHERSHIRE, FIFOOT & FURMSTON'S LAW OF CONTRACT on 'MISREPRESENTATION, DURESS AND UNDUE INFLUENCE' under the rubric 'silence constitute misrepresentation in three cases' at page 279, it is stipulated thus:

'one of the circumstances in which silence or non disclosure affords a ground for relief is where silence distorts positive representation, silence upon some of the relevant factors may obviously distort a positive assertion. A party to a contract may be legally justified in remaining silent about some material fact, but if he ventures to make a representation upon the matter it must be a full and frank statement, and not such a partial and fragmentary account that what is withheld makes that which is said absolutely false. A half truth may be in fact false because of what it leaves unsaid and although what a man actually says may be true in every detail, he is guilty of misrepresentation'

It cannot be disputed that for one to conduct the business of Banking the surrounding circumstances such Banking activities are conducted should be serene. It cannot be over emphasized further that the commonality which must exist in

[illegible] This Court holds the view that as [illegible] held above the Plaintiff was silent on the issue that there would be too many tenant in the building housing the Demised Premises, such silence on that issue would most definitely distort the Plaintiffs representation that the Demised Premises are suitable for Banking purposes. It cannot be disputed that keeping silent on the issue that there would be too many tenants in the building housing the Demised Premises makes the representation that the Demised premises are suitable for Banking Purposes so untrue at the time such a representation was made. In other words one would hardly hold true the representation that the Demised Premises are suitable for Banking Purposes if the one who says it say that there would be too many tenants in the building housing the Demised Premises. Clearly then, the Plaintiff herein who ventured to state that the Demised Premises were suitable for Banking Purposes should not have kept silent on the issue that there would be too many tenants in the building housing the Demised premises by reason that it is only when a full and frank statement known to the Plaintiff alone is made that it could be said that the Defendants herein were aware of all the circumstances that would or would not have induced them to enter into the Lease Agreement herein as contained in Exhibits 14 to 22. This Court holds the view that quite apart from the fact that there is no evidence suggesting that the Defendants were aware that there would be too many tenants in the building housing the Demised Premises, it cannot be convinced that they knew or ought to have known that there would be too many tenants in the building housing the Demised Premises before it entered into the Lease Agreement herein, unless the Plaintiff would have told them so. Accordingly the Plaintiff by keeping silent on the issue that there would be too many tenants in the building housing the Demised Premises would make his representation that the Demised Premises were suitable for Banking purposes even if it be to be absolutely true and amounting to a misrepresentation unless he had told the whole truth. It is Court holds the view that the [illegible] truth in this regard would have been the Plaintiff's statement that, the Demised Premises would be suitable for Banking Purposes if the Defendants would contend with too many tenants in the building housing the Demises.

[illegible] for Nuisance [illegible] the Plaintiff [illegible] the Plaintiff kept [illegible] in the building housing the Demised Premises. Clearly [illegible] because it turned out that there were in fact too many tenants in the building housing the Demised Premises, the Plaintiff himself having kept silent on this issue which makes his representation aforesaid false. Obviously had it been that there were not too many tenants in the building housing the Demised Premises, the Plaintiff's silence on this issue would have been immaterial to his representation aforesaid, the same which in the circumstances could not have amounted to a misrepresentation. It stands to reason then that if in the circumstance the Plaintiff's silence on the issue aforesaid did not make his representation aforesaid amount to a misrepresentation in law, the fact that it turned out that there were too many tenants in the building housing the Demised Premises would be the same as saying that the Plaintiff made the said representation in the belief that it was true at the time he made it or that if the representation aforesaid was indeed true at the time he made it, it is found to be untrue in the course of subsequent dealing with the Defendants. In the 15th Edition of CHERSHIRE, FIFOOT & FURMSTON'S LAW OF CONTRACT on 'MISREPRESENTATION, DURESS AND UNDUE INFLUENCE' under the rubric 'silence constitute misrepresentation in three cases' at page 270, the obligations of the Plaintiff herein in this regard is stipulated thus:

'that a party who makes a false statement in the belief that it is true comes under an obligation to disclose the truth should he subsequently discover that he was mistaken. Similarly if he makes a statement which is true at the time, but which is found to be untrue in the course of the subsequent negotiations, he is equally under an obligation to disclose the change of circumstances'.

The latter case was raised in the case between DAVIES and LONDON & PROVINCIAL MARINE INSURANCE CO. (1878) 8 Ch D 469, where:

'A Company ordered the arrest of their agent in the belief that he had committed a felony under the Larceny Act 1861. Certain friends of the agent, in order to prevent his arrest, offered to deposit a sum of money as security for any deficiency for which he might be liable. While this offer was under consideration the company had been advised by Counsel that no felony

[illegible] by the offer was accepted and it was accepted by the company without disclosing that there could no longer be any question of arrest

I am held that the contract must be rescinded. It follows that if it were the case that the Plaintiff herein falsely stated that the Demised Premises were suitable for Banking purposes, believing the same to be true and keeping silent on the issue of the building housing the Demised Premises having or not having too many tenants, the Plaintiff would have been bound to disclose to the Defendants that he would now be having too many tenants in the building housing the Demised Premises. This Court holds the view however, that this cannot be the likely scenario that happened in this case, by reason that the building itself housing the Demised Premises was built by the Plaintiff himself and designed to have too many tenants. The Plaintiff in the circumstance cannot be heard to say that the decision to having too many tenants in the said building was subsequent to the execution of the Lease Agreement herein. This Court finds that he knew from the onset that the building housing the Demised Premises would be having too many tenants and he kept silent on this at the time he represented that the Demised Premises were suitable for Banking Purposes. This Could holds the view that even if he did not know from the onset that the building housing the Demised Premise would have too many tenants, his silence on this, which would have made his representation, that the Demised Premises were suitable for Banking Purposes true, the said Plaintiff would still be obliged to disclose the change of circumstances as he should have done when he decided to and before he constructed a shop on a pathway which he rented together with pathway itself, if it were the case that his actions aforesaid were the first time when he decided he have too many tenants in the building housing the Demised Premises.

The complaint of the Defendants that the Plaintiff constructed a shop on the pathway in front to the outside of the which the said Defendants had rented for use by their customers, the said shop which [illegible] the Demised Premises and which said shop was made [illegible] tenants together with the pathway is one which compounds the fact that there were too many tenants in the building housing the Demised Premises is inconceivable for the Plaintiff knew would even [illegible] the construction of the said shop. This [illegible] that

customers and former abuted them, to use of the pathway where the shop was constructed to enable the said customers use the said toilet. Notwithstanding the fact that the said shop was constructed on space which is not part of the Demised Premises, the said construction effectively amounts to the Plaintiff reneging on his agreement to allow for the customers use of the pathway to reach the outside toilets which the Defendants constructed for their use and effectively causing a failure on the part of the Defendants to provide sanitary facilities for not only their Western Union Customers but also customers of the Defendant's Bank. It follows that if the construction of the said shop has the effect of causing a failure on the part of the Defendants to provide sanitary facilities for not only their Western Union customers but also customers of the Defendants Bank, the failure on the part of the Defendants to provide such on the Demised Premises which would make the Demised Premises unsuitable for Banking purposes, then the representation of the Plaintiff that the Premises are suitable for Banking Purposes turned out to be untrue when the said Plaintiff constructed the shop aforesaid.

The Plaintiff has denied that the construction of shop aforesaid prevented customers of the Defendants' Bank to use the outside toilet constructed by the Defendants for their use. At the visit to the Locus in quo on Saturday the 29th October, 2016 the Plaintiffs showed this Court the alternate route which was used or should have been used by the customers of the Defendant's Bank to access the outside toilets. This route showed to the Court was that same passage where all the tenants of the building housing the Demised Premises use to access their various shops, the same passage where these same tenants pass with their vehicles to access the parking lot where they park their vehicles, the same passage where customers of these tenants pass either by foot or with vehicles to access the shops of the respective tenants, the same passage where these customers or these tenant's park their vehicle as depicted in Exhibit 78, the same passage where, as depicted in the same Exhibit 78, these [illegible] tenants, or market women or petty traders put there by their tenants or unknown person or these persons as the case may be, display their wares, the same passage which could be used by a vehicle for a large quantity of building

specie vehicle and vehicles of their staff, obstructed access to the Demised Premises, which the said Defendants contend was a security concern on their part since as the uncontroverted evidence of PW2 ELIZABETH GRACE LEIGH reveals, on several occasions when one or more of the activities above caused a challenge for their specie vehicle to access the Demised premises, the Defendants had to solicit the help of State Security Personnel (OSD's) and the Defendants security to clear the way for the specie vehicle to access the Demised Premises.

It cannot be disputed that indeed, security concerns would be imminent if the Defendants had to solicit the help of State Security Personnel (OSD's) and their security to clear the passage above for the specie vehicle to access the Demised Premises, whenever it faced challenges as above by reason that if at a particular given time, an uncompromising State Security Personnel (OSD's) who would be apparently armed, confronts a crowd who are equally uncompromising, the task of clearing the way for the specie vehicle to access the Demised Premises could turn ugly. Considering the fact that all what the specie vehicle does is to bring to or collect monies in cash from the Defendants' Banks, an ugly incident as envisaged above is most definitely a security concern. It is for this reason that this Court would find that the already crowded passage way shown to it by the Plaintiff as the alternate route which was used or should have been used by the customers of the Defendants' Bank to access the outside toilets constructed for them by the Defendants cannot be an option deserving of applause to the pathway where the shop aforesaid was constructed by the Plaintiff. In this regard, the uncontroverted testimony of DW1, IRA NYAKE AMARA that the Defendants had to allow their customers to use the main banking hall for toilet facilities when the Plaintiff blocked the pathway leading to the outside toilets which was constructed for them by the Defendants herein is probably true than not. See also his testimony that allowing their customers to use the main banking hall as a toilet facility exposed the Defendants' Bank to security risks to their banking operations as those customers who wanted to use toilet facilities had to go through the bank's operational floors to reach the outside toilets. This Court holds the view that it cannot be disputed that the possibility exists for a customer to be a

[illegible] involved in this regard are [illegible].

Apart from the fact that the construction of the shop by the Plaintiff blocked the pathway which the customers of the Defendants' Bank used to access the outside toilets constructed for their use by the Defendants, the said Defendants also complain that the construction of the said shop created a security concern. In this regard the Defendants claim that at some point a situation arose whereby someone used the roof of the shop and attempted to break into the Demised Premises. It still puzzles this Court as to the reasons(s) which provoked the construction of the shop aforesaid. This Court finds that the only thing which was achieved was the Plaintiff's success in having additional tenants to the already too many tenants in the building housing the Demised Premises. The reason given by the Plaintiff himself that the shop was constructed to ward off trespassers is clearly misplaced, by reason that the construction of the shop brought in trespassers rather than ward them off, the attempted breaking into the Demised Premises by someone using the roof of the said shop being substantial evidence, not only of the fact that the construction of the said shop brought in trespassers rather than ward them of, but also the fact that it created a security concern. At the visit to the locus-in-quo on Saturday the 29th October 2016, DW1, IRA NYAKE AMARA, the Defendants' representative at the locus explained to the Court how someone attempted to break into the Demised Premises by climbing on top of the shop aforesaid from the outside of the Demised Premises, breaking a glass and attempting to gain entrance into the Defendants' Bank. This Court finds no evidence contradicting the attempted break in aforesaid. E. KARGBO ESQ of Counsel for the Plaintiff submitted that it is impossible for any theft or attempted [illegible] from the ceiling of any part of the Demised Premises to have occurred, that it was impossible for the same to have occurred by reason that the security grills of the Demised Premises are always present at the Demised Premises and that the Demised Premises were well secured, the said submission which this Court finds to be unacceptable in the first place there is no evidence before this Court that the security grills of the Defendants were always present at the Demised Premises and that the Demised Premises were well

[illegible] examined [illegible] ESQ. counsel for the Plaintiff who was not able to make reference to [illegible] when addressed this Court without giving the Defendants the opportunity to confirm or refute the same. This Court finds that even if it were the case that the security guards of the Defendants were always present at the Demised Premises and that the Demised Premises were well secured, the possibility exists that the security duties of the security guards aforesaid could well have been averted by the fact that the shop constructed by the Plaintiff which aborted the Demised Premises made it impossible for them to properly secure that area aforesaid of the Demised Premises. Secondly, at the locus-in-quo, the Plaintiff directed this Court inside the Demised Premises in order to show it the justification for the submission of E. KARGBO ESQ., that it was impossible for a theft or attempted break in from the ceiling or any part of the Demised Premises, to have occurred. Inside the Demised Premises, this Court found that there were tinted glasses fixed on the left side up to the front of it and from the bottom up to the top of the Demised Premises. These tinted glasses were protected by iron bars fixed covering the whole area of the glass and fixed inside of the Demised Premises. This Court further observed that on the top of the tinted glass that adjacent to the area where the glass was alleged to have been broken there is a ceiling fixed in side of the Demised Premises aborting right underneath the part were the tinted glass was alleged to have been broken. This Court further observed that at the bottom part of the tinted glass area on the outside, is the wall of shop constructed by the Plaintiff aborting the Demised Premises. This Court finds that the only reason why the attempted break in stopped short of being a break in, is the fact that the person who broke the tinted glass from the outside and who could not have seen the inside of the Demised Premises before he broke the tinted glass, was faced with iron bars and a ceiling, which he would have to go through before the break in was successful. This Court holds the view that these obstacle which prevented the break in would not in any way [illegible] the security concern that was created by the Plaintiff constructing the shop aforesaid as such. It cannot be disputed that if that person who attempted the break into the Demised Premises were an [illegible] he would have come at another more convenient time with more sophisticated

Premises therein.

Clearly and from the above it is evident that the Defendants herein, by reason of the matters aforesaid and in particular, the obstructions faced by the Defendants specie vehicle when it needed to access the Demised Premises and the construction of the shop in the pathway which was used by the customers of the Defendants' Bank to access the outside toilets constructed for their use by the Defendants herein, which said construction blocked the pathway, created substantial security concerns to the Defendants' Banking operations done in the Demised Premises. If as stated above, it is said that the Demised Premises are suitable for Banking purposes it must be free from security threats and concerns, the representation that the Demised Premises were suitable for Banking purposes, made by the Plaintiff to Defendants would be untrue, considering the findings of this Court above that the Defendants' Banking operations done in the Demised Premises were indeed plagued with security threats and concerns.

Having held as above that the Plaintiff's representation made to the Defendants that the Demised premises, were suitable for Banking purposes turned out to be untrue, amounting to a misrepresentation, the question now turns on what remedies, if at all, is available to the Defendants herein. For this Court to answer this it must first inquire into the state of mind of the Plaintiff and determine whether the said misrepresentation was made fraudulently, negligently or innocently. In the 25th Edition of ANSON'S LAW OF CONTRACT edited by A. G. GUEST, on 'MISREPRESENTATION' under the rubric 'right to rescind', at page 252, it is stipulated thus:

'the remedy of rescission is common to all classes of operative misrepresentation. Where a person has been induced to enter into a contract by a misrepresentation of any description, the effect on the contract is not to make it void, but gives the party misled an option either to avoid it or alternatively to affirm it.'

From the entirety of the evidence adduced herein, this Court holds the view that the misrepresentation complained of here, was made by

CHERSHIRE, FOOT & FURMSTON'S LAW OF CONTRACT on MISREPRESENTATION, DURESS AND UNDUE INFLUENCE under the heading 'Types of Misrepresentation' at page 216, it is stipulated as follows:

'Fraud, in common parlance is a somewhat comprehensive word that embraces a multitude of delinquencies differing widely in turpitude, but the types of conduct that give rise to an action of deceit at common law have been narrowed down to rigid limits'.

In the case between LE LIEVRE and GOULD (1895) 1 QB 491, LORD ESHER stated at page 498 as follow:

'a charge of fraud is such a terrible thing to bring against a man that it cannot be maintained in any Court unless it is shown that he had a wicked mind'.

This Court finds nothing contained in the entire evidence adduced herein that suggests that the Plaintiff had a wicked mind at the time he misrepresented to the Defendants that the Demised Premises are suitable for Banking purposes. Influenced by the consideration of LORD ESHER in the case between LE LIEVRE and GOULD cited above, the House of Lords has established in the leading case between DERRY and PEEK (1889) 14 App. Cases 337, that an absence of honest belief is essential to constitute fraud. If a representor honestly believes his statement to be true, he cannot be liable in deceit no matter how ill advised, stupid, credulous or even negligent he may have been. The law as stated by LORD HERSCHELL in the same case cited above at page 374 is that:

'First, in order to sustain an action of deceit, there must be proof of fraud and nothing short of that will suffice. Secondly, fraud is proved when it is shown that a false representation has been made (1) Knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false. Although I have treated the second and third as distinct cases, I think the third is but an instance of the second, for one who makes a statement under such circumstance can have no real belief in the truth of what he states'.

In the 15th Edition of CHERSHIRE, FOOT & FURMSTON'S LAW OF CONTRACT on MISREPRESENTATION, DURESS AND UNDUE INFLUENCE under the heading 'Fraudulent Misrepresentation' at page 216, it is stipulated that

'the rule succinctly and comprehensively contained in the short formula that a fraudulent misrepresentation is a false statement which the representor did not honestly believe to be true when it was made'.

It should be pointed out that notwithstanding this Court's findings above that the Plaintiff knew from the onset that the building housing the Demised Premises would have too many tenants by virtue of the fact that the building itself housing the Demised Premises was built by the Plaintiff himself and designed to have too many tenants, his misrepresentation that the Demised Premises are suitable for Banking Purposes would not amount to a fraudulent one unless it is shown that at the time of the making of the misrepresentation aforesaid, the Plaintiff was fully aware that there should be unhindered access to the Demised Premises for the Defendants' Bank specie vehicle and vehicles of the staff of the Defendants Bank, that the Demised Premises must have sanitary facilities for not only customers of the Defendants' Bank but also its Western Union customers and that above all, the Demised Premises should be free from security concerns and threats. It cannot be disputed that it is only when it is shown that the Plaintiff was fully aware of these factors, coupled with his knowledge that the building housing the Demised Premises would have too many tenants, that one can say that at the time the Plaintiff misrepresented that the Demised Premises were suitable for Banking purposes he knew it to be false or did not honestly believe it to be true. Coupled with the fact that the evidence adduced herein lacks anything suggesting that the Plaintiff had a wicked mind and considering the fact that there is nothing in the entire evidence adduced herein that suggests that the Plaintiff was aware of the factors aforesaid, at the time the misrepresentation aforesaid was made, it can safely be concluded that the Plaintiff honestly believed that the Demised Premises were suitable for Banking purposes at the time such misrepresentation was made by him, by reason that the Plaintiff would reasonably not have been expected to know at the time that his building housing the Demised Premises would [illegible] to a situation, where access to the Demised Premises by the Defendants' Bank specie vehicle and vehicles of the staff of the Defendants Bank would be [illegible] by [illegible] the Plaintiff would

[illegible] but [illegible] there by the Defendants and that the Plaintiff would not reasonably have known that at the time, the considerable obstructions created for the Defendants' Bank specie vehicle and vehicles of the staff of the Defendants' Bank to access the Demised Premises and the construction of the shop aforesaid would create security concerns and threats.

As seen from the above, the misrepresentation of the Plaintiff herein that the Demised Premises were suitable for Banking purposes was not fraudulently made. Before 1963 and the advent of a remedy in damages for negligent misrepresentation as was the situation in the case between HEDLEY BYRNE & CO. LTD. and HELLER & PARTNERS LTD. (1964) AC 469, all contractual misrepresentation, which merely induced the formation of a contract could be divided into two categories. First misrepresentations which were fraudulent and secondly, misrepresentations in which the element of fraud was lacking, known as innocent misrepresentations. In the case between HEDLEY BYRNE & CO LTD. and HELLER & PARTNERS LTD. cited above, the House of Lords extended liability in damages in tort to negligent misstatements and held that a duty of care could exist where there was a special relationship between the person making the statement and the person to whom it was made. But as stated by LORD PEARCE in the same case cited above at page 559, the effect of the decision above on the law relating to misrepresentation was not directly considered nor as stated in the same case cited above at pages 486, 503, 514, 528 and 529 were the tests advanced by their Lordships for determining the existence of this special relationship uniform in their terminology. Nevertheless and in the case between ESSO PETROLEUM CO. LTD and MARDON (1976) Q.B. 801, it has subsequently been held that a negligent misrepresentation made by one party to the other preparatory to entering a contract may give rise to an action for damages in tort for negligent misstatement, if the person making it was or professed to have special knowledge or skill in respect of the facts stated or as was held in the case between HOWARD MARINE & DREDGING CO. LTD and LAPID DEVELOPMENTS,LTD. (1977) 1 WLR 444, that representation in a context in which [illegible] is to be expected has neither [illegible] uncommercial [illegible] to be relied [illegible] undisputedly [illegible] courts finds that [illegible] misrepresentation

[illegible] the Plaintiff [illegible] the Defendants herein, that the premises [illegible] the Plaintiff herein, that the premises leased did [illegible] evidence to warrant suggesting that the said Plaintiff had or professed [illegible] knowledge or skill in the [illegible] of Banking or that notwithstanding the fact as held above, that the representation aforesaid induced the making of the Lease Agreement herein, this Court finds nothing in the evidence adduced herein suggesting that the misrepresentation was made in a context which could be regarded as neither casual nor unconsidered but to be relied on. In other words and from the evidence adduced herein this Court finds that, the representation that the Demised Premises were suitable for Banking purposes made by the Plaintiff herein was not casually made by the Plaintiff or made by him in a context in which the Defendants would not have considered same but made so that the said Defendants rely on it and indeed placed reliance on it as the evidence adduced herein reveals.

This Court holds the view that from the above, the Plaintiffs misrepresentation that the Demised Premises were suitable for Banking purposes was innocently made. In the 25th Edition of ANSON'S LAW OF CONTRACT edited by A. G. GUEST, on 'MISREPRESENTATION' under the rubric 'Innocent Misrepresentation' at page 249 it is stipulated as follows:

'where there has been an innocent misrepresentation, the party misled may plead the misrepresentation as a defence or resist an action against him for specific performance of the contract or for damages. Specific performance is a discretionary remedy and it will be refused where it would be inequitable for one party to insist on performance of the contract by the other. Thus it would be refused where the party against whom it is sought would not have entered into the contract but for the misrepresentation'.

It cannot be disputed that the Plaintiffs claim against the Defendants herein, which is for the sum of US$ 341,056/00 being rents for Twelve (12) years could be likened to a claim for specific performance of the Lease Agreement herein contained in Exhibits 21 to 22. Consequently the Plaintiff herein seems to be asking this Court for, is not only, as he calls it, Damages for the Defendants breach of the Lease Agreement after all when they stopped paying rent in the eight (8) years of the said Lease Agreement but also for rents for the remaining

[illegible] view [illegible] that [illegible] they would [illegible] rested on the grounds that [illegible] multi-billion suits for payment of rents for the remaining [illegible] years and/or the same time claim for Damages for breach of the Lease Agreement aforesaid, by reason that Damages could only have been assessed in the circumstance, by considering the quantum of rents the Plaintiff could have received for the remaining Twelve (12) years, had the Defendants not stopped paying rents after eight (8) years. It would have been immaterial, even if the Plaintiff had claimed the above in the alternative which is what he should have done, by reason that the Defendants herein have resisted the Plaintiff's claim aforesaid by putting up as a Defence, the issue that they could not continue to pay rents after Eight (8) years, by reason that they would not continue to occupy the Demised Premises which turned out to be unsuitable for Banking purposes. The said Defence can be liked to a plea of misrepresentation as was the case herein. It follows that the claims of the Plaintiff aforesaid will be refused by reason that the Defendants against whom it is sought would not have entered into the Lease Agreement aforesaid but for the Plaintiff's misrepresentation aforesaid. So also is the fact that the claims aforesaid will be refused by reason that it would be inequitable for the Plaintiff to insist that the Defendants pay rents for the remaining twelve (12) years or the Defendants pay Damages for breach of the said Lease Agreement when they stopped paying rents after Eight (8) years, when it is obvious that the said Defendants cannot and would not continue to occupy the Demised Preemies.

As has been stated above when a person has been induced to enter into a contract by a misrepresentation of any description the effect on the contract is not to make it void but to give the party misled an option either to avoid it or alternatively to affirm it. It follows that if the party misled elects to avoid the contract he may take steps to have it set aside by the Courts. Clearly the Defendants herein were induced to enter into the Lease Agreement herein as contained in Exhibit 'A' 14 to 22 by an innocent misrepresentation made by the Plaintiff to them. The steps taken by the said Defendants as enumerated above in particular by them exercising their rights to rescind the Lease Agreement aforesaid after being misled aforesaid. It should be pointed out that rescission is not [illegible] only a judicial remedy and even though it is stated above that Defendants could have rescinded the Lease Agreement herein as contained in

[illegible] Defendants [illegible] Lease Agreement herein [illegible] which they [illegible] after [illegible] 6th March 2012 [illegible] Plaintiff herein, the same being Exhibit 24. By reason that the said Lease Agreement had already been avoided or rescinded by the Defendants, the Plaintiff would be unable to succeed in his claims for the sum of US$ 841,056/00 being rents for the Twelve (12) years and Damages for breach of Contract. Accordingly the claims of the Plaintiff aforesaid fails.

What remains to be considered is whether any of the limitations placed by law on the Defendants' right to rescind would affect them in anyway, the said rights which have already been exercised by them. One limitation which is not applicable herein is that which protects the rights of third parties. This Court holds the view that no bona fide third party for value has acquired rights in the Demised Premises herein, subject matter of the lease Agreement herein which said right could have been valid against the Defendants herein. Quite apart from the fact that there is no evidence adduced herein in that regard, the question which this Court should answer is framed thus:

'Can it be said though that the failure of the Defendants to rescind the Lease Agreement herein after they discovered that the Plaintiff's representation that the Demised Premises were suitable for Banking purposes was untrue, to the time they actually exercised their right to rescind, be such a considerably time, lapse of which will show an intention to affirm the said Lease Agreement or be interpreted as they affirming it, the same which would have barred the said Defendants right to rescind'?

DW1, IRA NYAKE AMARA testified that serious problems regarding the Demised Premises began to develop a couple of years after the Demised Premises were let to them. He testified that he [illegible] letters to the Plaintiff herein, complaining of the problems aforesaid, those letters being Exhibit 55 dated 24th May, 2012, Exhibit 56 dated [illegible] January 2013, Exhibit 57 dated 28th February, 2014 and Exhibit 25 dated [illegible] February 2014. He testified that throughout the period aforesaid which this Court finds [illegible] period of five years between 2009 and 2014 the Defendants [illegible] engage the Plaintiff to see how these problems which [illegible] complained [illegible]

[illegible] operate on such. He testified that at a wrap-up meeting following one of the visits aforesaid the said Regulators noted the state of the Demised Premises as outlined above stating that the said premises were unfit for the continuous operations of a Bank and advised that if corrective measures are not taken, fines will be levied and or at worse the licenses of the Defendants' Bank to operate a Bank will be revoked. He testified that the said Defendants were able to convince the said Regulators that corrective measures were being taken. He testified that by reason of the failure of the Plaintiff to address the several issues aforesaid, regarding the state of the Demised Premises herein, the Defendants concluded that the Demised Premises were unfit for them to carry out its business, the said Defendants who were in the circumstance constrained to give notice to the Plaintiff herein that they will terminate the Lease Agreement herein as contained in Exhibits 14 to 22, the said notice which is a letter dated 6th March, 2014 and tendered in evidence as Exhibit 24.

The Plaintiff herein might want to use the overwhelming evidence adduced herein and as stated above that all throughout the period which the Defendants occupied the Demised Premises, they continued to utilize it for Banking purposes from 12th February, 2007 when they took up occupation up till the 8th December, 2014 whey they vacated same, as evidence being an act to show an intention to affirm the Lease Agreement herein or interpreted as the said Defendants affirming the same. In this regard, it should be pointed out that this Court does acknowledge the fact that the Defendants could not just have rescinded the Lease Agreement in 2009 when the problems aforesaid regarding the Demised Premises started occurring, because the same would have entailed them vacating the Demised Premises immediately without any alternative accommodation. In fact, this Court finds that this was precisely the reasoning why the said Defendants engaged the Plaintiff in its efforts at the same which the Plaintiff failed to do not in any way however, to avert these problems from be averted. This Court finds further that it is only when the situation failed to improve that the Defendants [illegible] to vacate the Demised Premises and consequently rescind the Lease Agreement. It is obvious from that

[illegible] this Court [illegible] the Defendants [illegible] the Plaintiff [illegible] the Defendants [illegible] with their regulators [illegible] steps would be taken to ensure that the situation regarding the Demised Premises would improve and it was only after the situation failed to improve, when their regulators threatened to levy fines and or at worse revoke their licenses to operate a Bank that the said Defendants came to a decision to vacate the Demised Premises and effectively rescind the Lease Agreement aforesaid. It is undisputed that it was on the 8th December, 2014 that the Defendants eventually vacated the Demised Premises after the Plaintiff was notified of the same by letter dated 6th March, 2014 the same being Exhibit 24 aforesaid.

This Court holds the view that by reason of the above it cannot be said that the continued occupation of the Demised Premises by the Defendants who continued to utilize same for Banking purposes between 2009 and 2014 was an act which shows an intention to affirm the Lease Agreement herein or an act interpreted as the Defendants affirming the same.

This Court finds that in his bid to upset the Defendants contention that they rescinded the Lease Agreement herein by reason of the misrepresentation aforesaid, E. KARGBO ESQ of Counsel for the Plaintiff submitted that the Defendants opting out of the Lease Agreement herein because the Demised Premises were not suitable for Banking purposes were mere excuses and submitted also that the said Defendants breached the same and vacated the Demised Premises because the Defendants Bank had completed their own structure that was close to the Demised Premises. Notwithstanding the fact that the above submissions cannot be unconnected with the testimonies of DW1, IBA NYAKE AMARA under cross examination of him by E. KARGBO ESQ of Counsel for the Plaintiff who affirmed that the Defendants have another structure close to the Demised Premises and transferred into these new premises on the 8th December, 2014 after the 6th March, 2014 when Exhibit 24 which is the same as Exhibit 24 aforesaid was issued. It bears repeating that there is absolutely no evidence that the Defendants' alternative premises were already in existence before the misrepresentation that the Demised Premises were suitable for Banking purposes, because if there would have been no need for the

[illegible] a banking institution [illegible] they were not to be expected to stop running the business because the Demised Premises were unsuitable for Banking purposes. What is expected of them in the circumstances would have been to search and move to alternate premises which was precisely what they did. This Court holds the view that an appropriate submission which could have been made rather than the ones aforesaid would be that one pointing to evidence that the alternate premises which the Defendants moved into was no better than the Demised Premises in terms of its suitability for Banking purposes. This Court finds absolutely no such evidence adduced in that regard.

E. KARGBO ESQ. of Counsel for the Plaintiff submitted further that the excuse given by the Defendants that their regulators had advised in an informal meeting that they should relocate is completely untenable, together with his submissions also that Banking activities especially dealings with the BANK OF SIERRA LEONE, the Regulators of Defendants' Bank, are very formal, so that it cannot be true and that there is no evidence of any meeting with the Regulators aforesaid as the Defendants failed to establish or provide dates of meeting, minutes and or any written communication from the Regulator's aforesaid and his submission that because DWI, IRA NYAKE AMARA had testified, that he was never deployed at the Demised Premises and only goes there on visits he cannot be a useful witness. Again, the above submissions cannot be unconnected with the testimony of DWI IRA NYAKE AMARA under cross examination of him by E. KARGBO ESQ. of Counsel for the Plaintiffs who testified that he cannot recall the exact date of the sit up meeting with the BANK OF SIERRA LEONE the Regulators of the Defendants' Bank, and that there were no minutes of these meetings as they were informal ones. This Court holds the view that the submission aforesaid is quite rather unfortunate by reason that an advice from the Regulators of the Defendants Bank could be termed as [illegible] use. This Court is of the view rather that to come and the fact that the submissions aforesaid is unfortunate for submission that the said advice which Counsel for the Plaintiff claims was given by the regulators of the Defendant Bank that the said Defendants [illegible] informal meeting, the said advice was termed as an excuse is completely untrue as this

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] the [illegible] [illegible] premises as outlined [illegible] [illegible] [illegible] [illegible] [illegible] operation of [illegible] [illegible] [illegible] corrective measures are not taken, fines will be levied and or at worse the licenses of the Defendants' Bank to operate a Bank will be revoked. Clearly, the decision to relocate was not as a result of the Regulators of the Defendants' Bank advising it. It was purely the Defendants decision to relocate to other premises in a bid to avoid being fined or their licenses revoked. Moreover this Court holds the view that Counsel for the Plaintiff is in no place to submit that meetings with the BANK OF SIERRA LEONE the Regulators of the Defendants' Bank are very formal and it cannot be true to say that there was never any meeting as the Defendants failed to establish or provide dates of meetings minutes or any written communication from the Regulators aforesaid, as the Plaintiff himself knows absolutely nothing about the Banking World and he has not professed by way of evidence adduced herein that he has any such knowledge. DW1, IRA NYAKE AMARA who professes in his testimony that he has knowledge about Banking testified that there were informal meetings. This Court finds no evidence adduced herein contradicting the fact that such informal meetings occurred. This Court holds the view that the fact that DW1, IRA NYAKE AMARA was never deployed to work at the Demised Premises and only goes there on visits cannot be a plausible reason to say that there was no evidence of any meeting with the BANK OF SIERRA LEONE the Regulators of the Defendants' Bank. DW1, IRA NYAKE AMARA testified that he is Head of Administration and General Services of the Defendants' Bank. This Court holds the view that with such a position, he need not be deployed at the Demised Premises for him to represent the Defendants' bank at meetings with its Regulators concerning issues of the Demised Premises. The fact that he visits the Demised Premises is sufficient.

One final limitations placed by law on the Defendants' right to rescind is that one which [illegible] that the right to rescind will be lost if 'Restitutio in Integrum' is impossible. In the case between CLARKE and DICKSON [illegible] E.B &E. 148. It has been said that:

A party ever [illegible] entitled to rescind the contract he must be able to restore to the other, that is he must be in such a situation to be able to put the parties to the original state before the contract

In the case between, HULTON and HULTON (1917) 1 KB 315, SWINFEN EADY L.J. said at page 821 that the Courts have refrained from defining the scope of this equitable remedy by any rigid rules. The general rule is that as a condition of rescission, there must be 'restitutio in integrum' but at the same time the Court has full power to make all just allowances. It was said by LORD BLACKBURN in the case between ERLANGER and NEW SOMBRERO PHOSPHATE CO. (1878) 3 App, cases 1218 at page 1278 that:

'The practice had always been for the Court of Equity to give relief by way of rescission whenever by the exercise of its powers it can do what is practically just, though it cannot restore the parties precisely to the state they were in before the contract'.

It follows from the above that the rule therefore is that the Defendants herein, cannot enforce rescission, rights of which they have already exercised, if factors do exist that would make it impossible to restore the parties substantially to their original position. In other words the said Defendants must be not only willing but also able to make 'restitutio in integrum'. Accordingly this Court holds the view that the Defendants cannot rely on Clause 2.12 of the Lease Agreement between them to say that they are not obligated to restore the Demised Premises to its original state as was submitted by Y.H. WILLIAMS ESQ of Counsel for the Defendants. Clause 2.12 of Exhibit 14 to 22 being the Lease Agreement herein provides as follows:

'At the expiration or sooner determination of the said term peaceably to surrender and yield up to the Lessor the Demised Premises with all additions and improvement made thereto (except lessee's fixtures) in such a state of conditions and repair as shall be in accordance with the covenants herein before contained'.

As has been stated above, clause 2.12 aforesaid does not give the Defendants the right to determine the Lease Agreement earlier than the period contracted for on the occurrence of certain events. Indeed the Lease Agreement was not terminated by the Defendants herein as a result of the Plaintiff having

[illegible] Agreement by a notice of intention to terminate the Plaintiff [illegible] exercising their right to rescind the Lease Agreement as a result, the 1st Defendants in law must not only be willing but also be able to make 'restitutio in integrum'. This Court finds from the evidence that the Defendants have already expressed their willingness to make 'restitutio in integrum' though same cannot be considered a literal one. Exhibit 26 is a letter dated 31st December, 2014 written by ELVIS KARGBO as Solicitor for the Plaintiff herein and addressed to BASMA & MACAULEY as Solicitors for the Defendants herein the said Exhibit 26 mentioning a letter dated 22nd December, 2014 addressed to the Plaintiff in response to which it is stated in Exhibit 26 that there is no provision in the said Lease Agreement relating to the negotiation of the remaining unexpired term of the Lease Agreement herein. This presupposes that after the Defendants herein exercised their right to rescind the Lease Agreement herein and vacated the Demised Premises on the 8th December, 2014, they wrote a letter to the Plaintiff dated 22nd December 2014 proposing to him a negotiated settlement of the remaining unexpired term of the Lease Agreement. This Court holds the view that notwithstanding the fact that the Plaintiff turned down the proposed negotiation, the proposal itself demonstrated the Defendants willingness to make 'restitutio in integrum'.

This Court arrived at its findings above that the proposal aforesaid itself demonstrated the Defendants willingness to make 'restitutio in integrum' because the fact remains that had the Plaintiff accepted the proposal aforesaid, his concerns about the rescission of the Lease Agreement which said concerns were all geared towards restoration of the Demised Premises to the state it was before the Lease Agreement, might well have been negotiated and settled making the action herein completely unnecessary. The evidence adduced herein confirms that the Plaintiff's concern about the rescission of the Lease Agreement herein were all geared towards restoration of the Demised Premises. PW1, MOHAMED KAKAY the Plaintiff herein testified that the Demised Premises was substantially altered by the Defendants herein and is in such a state which he cannot put to its original state without substantially expending [illegible] cross examination of him by [illegible] ESQ of Counsel for the Defendants PW1, MOHAMED KAKAY, the Plaintiff herein testified that he is

[illegible] Parties [illegible] for [illegible]
[illegible] December, 2004 [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
Demised premises have been altered in such a way to suit Banking operations, this Court holds the view that it is only a Banking Institution that would readily lease the Demised Premises as it is. In this regard it is probably true that not when the Plaintiff testified that he would only be able to let the Demised Premises out if the same were restored to its original state. It should be pointed out that not only is it for this reason that the Defendants herein should restore the Demised Premises to its original state, they are bond to do so by virtue of the fact that rescission of the Lease Agreement herein requires them to do so irrespective of whether or not there is readily a Banking Institution prepared to take up a lease of the Demised Premises.

It cannot be disputed that if the Defendants had not rescinded the Lease Agreement herein the Defendants would have continued receiving rents in respect of the Demised premises up to date. This Court holds the view that in this regard 'Restitutio in integrum' would require not only restoring the Demised Premises to the state it was before the Lease Agreement but would also entail paying to the Plaintiff the rents which would have been received by him had the recession aforesaid not occurred. The period aforesaid for which rents are to be paid would be limited to the period commencing the date when rents were last paid, up to the date when the Demised Premises are put to its original state or up to the date when the Demised Premises are rented out to some other tenant, if at all, whichever is earlier. This Court holds the view that the quantum of rents that should be payable need not be further debated on. It should be that which is provided for by the Lease Agreement as contained in Exhibits 14 to 22 aforesaid and in particular clause 1(i) to (iv) of the same. It is not disputed that the Defendants last paid rent amounting to the equivalent in Sierra Leonean Leones at the commercial bank's rate, the date rent was made of the sum of (US$25,760.00) for the 8th year of the lease. In this same formula used as contained in clause 1(i) to (iv) aforesaid that will be used for the 9th year, the 10th year, the 11th year, the 12th year and so on until the Demised Premises are put to its original [illegible] to the date when the same rents are if at all, whichever is earlier.

[illegible] and in accordance with the case law [illegible] EXPLORATION CO. (LIBYA) LTD and HUNT (NO.2) [1979] 1 WLR 783 at page 845 is thus:

'Interest is not awarded as a punishment but simply because the Plaintiff has been deprived of the use of the money which was due to him'.

Having held that as above that the Plaintiff herein is entitled to rents payable for the 9th year, the 10th year, the 11th year, the 12th year and so in the same formula used as continued in Clause (i) to (iv) until he Demised Premises are put in its original state or up to the date when the same are let out, if at all, which ever is earlier, this Court finds that the sum of the equivalent in Sierra Leone Leones at the commercial bank rate on the date payment is made of the sum of US$ 25,168/00 for the 9th years was due to the Plaintiff on or about the 7th February, 2015; the sum of the equivalent in Sierra Leone Leones at the commercial bank rate on the date payment is made of the sum of US$25,168/00 for the 10th year was due to the Plaintiff on or about the 7th February, 2016; the sum of the equivalent in Sierra Leone Leones at the commercial bank rate on the date payment is made of the sum of US$27,684.80 for the 11th year was due to the Plaintiff on or about the 7th February, 2017; the sum of the equivalent in Sierra Leone Leones at the commercial bank rate on the date payment is made of the sum of US$27,684.80 for the 12th year was due to the Plaintiff on or about the 7th February, 2018 and so on until the Demised premises are put in its original state or up to the date when the same are let out, if at all, whichever is earlier.

By reason of the above and on a balance of probabilities this Court gives Judgement as follows:

1. That it is hereby DECLARED that the UNION TRUST BANK (S.L.)LTD. the Defendants herein are entitled to RESCIND the Lease Agreement herein made the 1st February, 2007 and made between MOHAMED KAKAY, the Plaintiff herein referred to as the Lessor of the one part and UNION TRUST BANK (S.L) LTD, the Defendants herein, referred to as the Lessees of the other part, the same registered as No. 1537/007 at page 2

Ground Floor.

2. That the said Defendants are hereby ORDERED to either restore to the part of the right section, covering an area of 250.9 square metres of the Ground Floor of the premises known and being at No. 9 Freetown Road, Lumley, Freetown in the Western area of Sierra Leone, the same which was demised by virtue of the Lease Agreement aforesaid, to its original state prior to the execution of the said Lease Agreement or pay the costs of restoring the same to MOHAMED KAKAY, the Plaintiff herein, costs of which are to be assessed, if not agreed upon.

3. That the said Defendants are hereby ORDERED to pay to the said Plaintiff one or more, as the case may be, of the following:

   (i) the sum of the equivalent in Sierra Leone Leones at the commercial bank rate on the date payment is made of the sum of US$ 25,168.00, subject to a deduction of Ten percent (10%) for income tax,

   (ii) the sum of the equivalent in Sierra Leone Leones at the commercial bank rate on the date payment is made of the sum of US$ 25,168.00, subject to a deduction of Ten percent (10%) for income tax,

   (iii) the sum of the equivalent in Sierra Leone Leones at the commercial bank rate on the date payment is made of the sum of US$ 27,684.80, subject to a deduction of Ten percent (10%) for income tax,

   (iv) the sum of the equivalent in Sierra Leone Leones at the commercial bank rate on the date payment is made of the sum of US$ 27,684.80, subject to a deduction of Ten percent (10%) for income tax,

and so on until the premises demised herein are put in the original state or the costs of putting it to its original state, said by the said Defendants hereby ORDERED above to pay to the date which the same are put out, if at all, whichever is earlier.