

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2021

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR..... CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE..... ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH..... ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE..... ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA..... ASSOCIATE JUSTICE

United Commodities Inc., represented by and thru its Managing)
Director/CEO, Anwar Ezedine, Bushrod Island, Liberia)
.....Petitioner)
)
Versus) **BILL OF**
) **INFORMATION**

The ECOWAS Bank for Investment and Development [EBID])
128 Boulevard Due, 13 Javier, Republic of Togo, represented)
by its Agent, the Liberian Bank for Development and)
Investment.....Respondent)

GROWING OUT OF THE CASE:)
)

The ECOWAS Bank for Investment and Development [EBID])
128 Boulevard Due, 13 Javier, Republic of Togo, represented)
by its Agent, the Liberian Bank for Development and)
Investment.....Appellant)

Versus) APPEAL

United Commodities Inc., represented by and thru its Managing)
Director/CEO, Anwar Ezedine, Bushrod Island, Liberia)
.....Appellee)
)
)

GROWING OUT OF THE CASE:)
)

United Commodities Inc., represented by and thru its Managing)
Director/CEO, Anwar Ezedine, Bushrod Island, Liberia)
.....Petitioner)
)
)

Versus) **PETITION FOR**
) **DECLARATORY**

The ECOWAS Bank for Investment and Development [EBID]) **JUDGMENT**
128 Boulevard Due, 13 Javier, Republic of Togo, represented)
by its Agent, the Liberian Bank for Development and)
Investment.....Respondent)

Heard: February 18, 2021

Decided: August 20, 2021

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

This bill of information is an outgrowth of the case, *ECOWAS Bank for Investment & Development v. United Commodities Inc.*, Supreme Court Opinion March Term, A.D. 2020, which was decided on June 25, 2020.

The records from the above mentioned case reveal that on November 7, 2013, the informant, United Commodities Inc., by and through its Managing Director and Chief Executive Officer, Anwar Ezzedine consummated a loan agreement with the respondent, the ECOWAS Bank for Investment and Development (EBID) in the amount of US \$12,000,000.00 (Twelve Million United States Dollars) to finance the importation and sale of rice within the Republic of Liberia and the sub-region as a whole.

According to Article 3 of the loan agreement the informant was required to repay the loan after 180 (one hundred and eighty) days from the opening of a letter of credit by the respondent, that is, on June 9, 2014; and that the informant be unconditionally liable to the respondent for the principle amount of the loan, US \$12,000,000.00 (Twelve Million United States Dollars), plus interest and fees and all other amounts arising under the said loan agreement.

Pursuant to the provision of the loan agreement regarding the purpose of the (loan) facility, the informant imported 21,000 metric tons of rice valued at US \$12,526,500.00 (Twelve Million Five Hundred Twenty-Six Thousand Five Hundred United States Dollars). The records reveal that upon the commencement of the sale of the rice, the only amount paid by the informant was a partial payment in the amount of US \$4,028,750.00 (Four Million Twenty Eight Thousand Seven Hundred Fifty United States Dollars) deposited into an escrow account at the LBDI Bank as agreed upon in section 8.01.5 of the loan agreement.

The informant defaulted in the repayment of the loan and other interests on June 9, 2014, which necessitated and commenced a series of meetings between the informant and the respondent to amicably settle the matter of the informant's indebtedness, culminating to the preparation and signing of an Aide Memoire between the two parties stipulating the informant's debt in the amount of US

\$8,580,702.64 (Eight Million Five Hundred Eighty Thousand Seven Two United States Dollars), exclusive of interest and other collaterals

Subsequently, the informant filed a petition for declaratory judgment against the respondent in the Sixth Judicial Circuit, Civil Law Court, Montserrado County, sitting in its September Term A.D. 2015, requesting the declaration of its debt to the respondent only to the amount of US\$2,386,800.00 (Two Million Three Hundred Eighty-Six Thousand Eight Hundred United States Dollars). The respondent filed returns asserting the informant's indebtedness to the outstanding amount on the loan.

On November 13, 2015, the trial court ruled in favor of the informant stating *inter alia* declaring that the informant's liability under the loan agreement was only in the amount stated by the informant, that is, the amount of US\$2,386,800.00 (Two Million Three Hundred Eighty Six Thousand Eight Hundred United States Dollars).

The respondent noted exceptions thereto and announced an appeal to the Supreme Court which heard oral arguments on July 11, 2019, and rendered final judgment on June 25, 2020, reversing the decision of the trial court.

Given said June 25, 2020 Opinion and Mandate of the Supreme Court one would have thought that all of the contentions and issues surrounding the informant's obligation to the respondent were concluded. To the contrary, when the trial court resumed jurisdiction over the matter in order to enforce the Supreme Court's Mandate, the informant objected to the enforcement proceedings by filing this bill of information on December 23, 2020, alleging *inter alia* that the Supreme Court's Opinion and Mandate rendered on June 25, 2020, only declared the rights of the parties in relation to the loan agreement but did not state any monetary award in favor of the respondent. Hence, the act of the trial court to prepare a bill of cost in the amount of US\$10,047,976.12 (Ten Million Forty-Seven Thousand Nine Hundred Seventy-Six United States Dollars Twelve Cents) was tantamount to a debt collection thus an improper enforcement of the Supreme Court's Mandate for which a bill of information will lie to correct. We quote herein Counts 1 thru 5 of the bill of information which incorporate this assertion by the informant, to wit:

“INFORMANT’S BILL OF INFORMATION

AND NOW COMES INFORMANT, and most respectfully prays your Honors and this Honorable Court to grant this Informant Bill of Information and showeth the following to wit:

1. That Your Honors on the 25th day of June 2020, entered final judgment in the above entitled cause of action. In your said judgment, your Honors reversed the ruling of the court below which limited the obligation of the Informant to the rise that were sold before the rice got damage and the value of the rice that was declared consumable after the assessment by the auditor and government in the amount of US\$2,386,800.00 (Two Million Three Hundred Eighty Six Thousand Eight Hundred United States Dollars).
2. Informant further informs your Honors and says that your referenced judgment did not award any sum certain which suggests that the Supreme Court mandate only reversed the ruling of the Civil Law Court that limited Informant’s liability to the US\$2,386,800.00 (Two Million Three Hundred Eighty Six Thousand Eight Hundred United States Dollars) Informant already paid, and received by Respondent, and therefore set the stage for the Respondent herein to filed a complaint to collect what the debt obligation would be based upon evidence to be taken by the Court below. Copy of your Honor Judgment is hereto attached and marked as Informant **Exhibit “I/1”**.
3. Further to counts one (1) and two (2) above, Informant avers and says that contrary to counts one (1) and two (2) above, the Co-Respondent Judge of the Civil Law Court, His Honor Peter Gbenewelleh, has prepared a Bill of Cost in excess of the cost which should have been limited to the cost of filing of papers and the cost for the preparation of files for the Supreme Court in the total US\$10,047,976.12 (Ten Million Forty Seven Thousand Nine Hundred Seventy Six Dollars Twelve Cents) as though the said amount was awarded by the Supreme Court.
4. Further to count three (3) above, Informant says that consistent with **chapter 45 of 1LCLR at section 45.5** regarding the taxing of Bill of Cost by parties’ litigant, the Informant herein brought did not sign the Bill of Cost but brought to the attention of the Court that the Bill of Cost was not consistent with the Supreme Court Mandate. At the close a conference before the said judge, he maintained that he was justified in the preparation of the subject Bill of Cost which runs contrary to the Supreme Court Mandate. Copy of the Bill of Cost with the reservation is hereto attached and marked as Informant **Exhibit”1/2”** to form an integral part of this Informant Bill of Information.

5. Informant further and avers and says that there are several line of opinions by the Supreme Court that ruling from Declaratory Judgment are not executionary but mainly to declare the rights of parties which was done as in this case and that the attempt by the Court below to enforce an amount that was not awarded by the Supreme Court, is a wrong enforcement of the mandate of the Supreme Court for which Bill of Information will lie...”

On January 29, 2021, the respondent filed its returns counter asserting *inter alia*, that the Supreme Court did grant a monetary award when it held that the informant’s obligations surpasses the US \$2,386,800.00 (Two Million Three Eighty Six Thousand Eight Hundred United States Dollars) and that informant is liable to the respondent for all its obligations under the November 7, 2013 Loan Agreement and the Aide Memoire of February 4, 2015, which placed the informant’s total liability in the amount of US \$9,303,433.64 (Nine Million Three Hundred Three Thousand Four Hundred Thirty Three United States Dollars Sixty-Four Cents) representing, the balance principle amount owed, the interest on the principle, and the insurance coverage. On these points, we quote counts 4, 7, 8, 9, 10, 11 and 12 of the respondent’s returns, to wit:

“RESPONDENTS’ RETURN

AND NOW COME, Respondents in the above entitled cause of action and most respectfully pray Your Honors and this Honorable Court to deny and dismiss Informant’s Bill of Information and showeth the following legal and factual reasons therefore to wit:

4. Respondents say that the Supreme Court, in its Opinion, having clearly stated that the trial court had committed a reversible error in holding that the Appellee was indebted to the Appellant, EBID only to the amount of US\$2,386,800.00 when the Appellee had acknowledged that it was indebted to the appellant to the value of US\$8,095,698.00, and for which reversible error the judgment of the lower court was reversed and the appellee was adjudged by the Supreme Court to be liable to the appellant **“for all of its obligations under the November 7, 2013 Loan Agreement and the Aide Memoire of February 2, 2015**, rather than the US\$2,386,800.00 adjudged by the lower court. Co-Respondent EBID says that when the Supreme Court states that the appellee is liable to the appellant for the obligations under the November 7, 2013 Loan Agreement and the Aide Memoire of February 4, 2015, which value the Court placed at

US\$8,095,698.00, the Court has clearly made an award of the amount which it stated the appellee is liable to the appellant. Finally, the Court ordered the Clerk to send a mandate to the lower court “ordering the judge presiding therein to resume jurisdiction over this case and give effect to the Judgment of this Opinion. **It is therefore not the province of a bill of information to challenge the award so made by the Supreme Court.** Rather, if the informant felt that the award made by the Supreme Court was based on an omission of law or fact, the remedy was a petition or motion for re-argument. Respondents pray that the Bill of Information be denied and dismissed.

7. Respondents say further that as to count 2 of the Bill of Information, it is untrue that the Supreme Court, in its Opinion and out of which the judgment grew, did not award a sum certain, and it is an affront to the Supreme Court for the Informant to suggest that the Supreme Court’s Opinion or mandate only reversed the ruling of the lower court that limited the Informant’s liability to the appellant/co-respondent Bank to US\$2,386,800.00. Co-Respondent again refers to page 24 of the Opinion of the Supreme Court wherein the Court clearly said that the appellee not only acknowledged in the aide Memoire that it was indebted to the Appellant to the value of US\$8,095,698.00, but that it accepted that it was indebted in the said amount, and that predicated on the said acknowledgment and acceptance by the appellee of the indebtedness of the said amount, the Court said, at page 26 of the Opinion, that “the declaratory judgment of the Sixth Judicial Circuit, Civil Law Court awarded in favor of the appellee is reversed and the appellee declared liable to the appellant for all of its obligations (which the Court had earlier stated to be US\$8,095,698.00) under the November 7, 2013 Loan Agreement and the Aid Memoire of February 4, 2015.”
8. Co-Respondent EBID says that in addition to Appellee’s liability in the amount of US\$8,095,698.00), Your Honors on page 24 of the Opinion also held Appellee liable in the amount of US\$722,391.00 (Seven Hundred Twenty Two Thousand Three Hundred and Ninety One United States Dollars) representing insurance award due Co-Respondent/Appellant EBID consistent with the loan agreement and finally, Your Honors held Informant/Appellee liable in the amount of US\$485,600.64 representing outstanding interest due Co-Respondent/Appellant EBID thereby making Informant/Appellee’s total liabilities to Co-Respondent/Appellant EBID in the sum of US\$9,303,433.64. Co-Respondent EBID says that on page 25 of Your Honors’ Opinion, this Court said that “to the contrary, the petition shows that the Appellee in its concluding prayer acknowledged the insurance coverage mentioned herein and due the Appellant as beneficiary of the insurance policy”. Clearly, this was an award, and

which the Court ordered the lower Court to give effect to. Nowhere in the Court's Opinion did it order that a new trial be held or that any further trial be held in another court to determine the amount in which the appellee/Informant was indebted to the Appellant/Co-Respondent EBID. Respondents accordingly pray that this Honorable Court will deny and dismiss the so-called Bill of Information. Respondents say further as to the counts above that if Your Honors' Opinion were intended to set the stage for Co-Respondent/Appellant EBID, to file a subsequent complaint to collect the debt obligations based upon evidence to be taken by the court as alleged by Appellee, Your Honors would have made this crystal clear in Your Opinion but this was not the case.

9. Further as to the count above, Respondents say that Informant is deliberately trying to interpret this Honorable Court's Opinion and final ruling/Judgment by alleging that Your Honors reversed the ruling of the lower court with respect to only the US\$2,386,800.00 (Two Million Three Hundred Eighty-Six Thousand Eight Hundred United States Dollars), which limited his liability only to the above amount awarded by the lower Court. Co-Respondent EBID says that this is untrue for in Your Honors' final Judgment, Informant/Appellee was declared liable for all its obligations under the November 7, 2013 Loan Agreement and the Aid Memoire of February 4, 2015. Co-Respondent EBID says that in Your Honors' June 25, 2020 Judgment, Your Honors held as follows: **"WHEREFORE and in view of the foregoing, the Declaratory Judgment of the Sixth Judicial Circuit Civil Court awarded in favor of the Appellee is reversed and the Appellee declared liable to the Appellant for all its obligations under the November 7, 2013 Loan Agreement and the Aid Memoire of February 4, 2015. The obligations encompass, but not limited to the US\$2,386,800.00 (Two Million Three Hundred Eighty-Six Thousand Eight Hundred United States Dollars).** Co-Respondent EBID respectfully requests Your Honors to take judicial notice of the June 25, 2020 Opinion. Respondents say further that Your Honors in your June 25, 2020 opinion on page 24 held that **"This Court holds that the February 4, 2015 Aid Memoire is a valid integral component of the November 7, 2013 agreement that is also binding on the parties affixing their signatures thereto."**

10. Further as to the counts above, Your Honors went on to say that **"although we take note of Section 11.4 of the loan agreement which places the risk of non-procurement of an insurance policy on the Appellant, by the dictates of the February 4, 2015 Aid Memoire subsequently entered between the parties, the Appellee did not only acknowledged and accepted its indebtedness to the Appellant at US\$8,095,698.00 but assumed sole responsibility for**

procuring an insurance policy on the entire commodity.” It is apparent that Informant/Appellee is deliberately interpreting Your Honors’ opinion as if Your Honors do not understand your own opinion and needed help in interpreting said opinion. Respondents say further that there is nothing in Your Honors’ Opinion or Judgment that suggests or implies a partial reversal of the lower court’s ruling with respect to the award in favor of the Informant/Appellee as Informant is implying in his Bill of Information. Instead, Your Honors in your referenced Opinion and Judgment revised the entire ruling of the lower court holding the Appellee/Informant liable to Co-Respondent/Appellant EBID thereby putting a finality to the matter and not to be re-litigated in a lower as suggested by Informant in count 2 of his Bill of Information. Respondents say that Appellee and his counsel should be sanctioned by Your Honors for such disrespect and Respondents so pray.

11. That as to counts three (3) and four (4) of Informant’s Bill of Information, Respondents say that it is the procedure hoary with age in this jurisdiction that when a ruling is handed down by the Honorable Supreme Court, the Clerk of the Supreme Court is ordered to send a mandate to the court below, ordering the Judge presiding therein to resume jurisdiction over the case and give effect to the Judgment of the Supreme Court. Respondents say that was exactly what the Presiding Judge did – read the mandate based on a regular notice of assignment and ordered the Clerk of said court to prepare a Bill of costs to be taxed and served on the parties. The Co-Respondent Judge did not do anything out of his scope of duties but as mandated by the Honorable Supreme Court. Respondents say that Informant was declared **liable** to the Respondent/Appellant for its obligations under the November 7, 2013 Loan Agreement and the Aid Memoire of February 4, 2015 and that such liability was not limited to the US\$2,386,800.00 (Two Million Three Hundred Eighty Six Thousand Eight Hundred United States Dollars).

Co-Respondent EBID says that the liability under the Aid Memoire of **February 4, 2015 is US\$8,095,698.00** and which award in addition to the insurance and interest were acknowledged and accepted by Informant as its liabilities to Co-Respondent, ECOWAS Bank for Investment and Development (EBID). Co-Respondent, EBID says Informant has not denied that he does not owe the amount under the Aid Memoire or the insurance policy and interest accrued on the November 3, 2013 loan. Instead, Informant refused to pay said amounts in violation of the Aid Memoire and loan agreement. Co-

Respondent EBID says further that the lower court judge, to whom the mandate was sent with instructions to give effect to the Opinion and Judgment of the Supreme Court, acted properly, correctly and legally in ordering the preparation of a bill of costs in accordance with the Supreme Court's Judgment and consistent with the mandate of this Honorable Court. Copy of the Aid Memoire is attached and marked **Exhibit R/1.**"

Having reviewed the bill of information, returns thereto and the briefs of the parties contained in the records, as well as this Court's June 25, 2020 Opinion which the informants have contended that the Supreme Court committed palpable error, we have determined that the issue for the disposition of this bill of information, is whether or not trial court improperly executed the Mandate of this Court when it prepared a bill of cost for enforcement in the amount of US \$10,047,976.12 (Ten Million Forty-Seven Thousand Nine Hundred Seventy-Six United States Dollars Twelve Cents)?

The informant, in its bill of information and oral argument before the Court has argued that an action of declaratory judgment is restricted to declaring rights only, since the sole object of a declaratory judgment is to declare the rights, status and other legal relations of the parties regardless of whether further relief could be obtained. The respondent on the other hand has countered argued that in granting the petition for declaratory judgment in its favor the Supreme did award a monetary judgment.

Recourse to our referenced Opinion and Judgment in the *ECOWAS Bank for Investment & Development case* shows that the Supreme Court only reversed the trial court's final ruling in the petition for declaratory judgment and held that the informant's liability to the respondent included all the informant's obligations under the November 7, 2013, Loan Agreement and the Aide Memoire of February 4, 2015, the joint and several guarantees by the informant's shareholders, the executed mortgage on the informant's multi-purpose business complex (warehouses), and was not limited to the US\$2,386,800.00 (Two Million Three Eighty Six Thousand Eight Hundred United States Dollars); that due to the fact that the informant is the party who raised the declaration of an amount of it indebtedness, this Court passed on the amount of US\$8,095,698.00 as the

informant's debt exclusive of interest and fees contained in the February 4, 2015 Aide Memoire, the amount of US\$722,391.00 (Seven Hundred Twenty Two Thousand Three Hundred and Ninety One United States Dollars) representing insurance premium due the respondent and the amount of US\$485,600.64, representing the agreed interest on the principal loan; that the Court went further to declare that the informant's liability to the respondent also included other instruments. The Court's Judgment stated thus:

“WHEREFORE AND IN VIEW OF THE FOREGOING, the declaratory judgment of the Sixth Judicial Circuit, Civil Law Court awarded in favor of the appellee [informant] is reversed and the appellee declared liable to the appellant [respondent] for all its obligations under the November 7, 2013, Loan Agreement and the Aide Memoire of February 4, 2015. The obligations encompass but not limited to the US \$2,386,800.00 (Two Million Three Eighty Six Thousand Eight Hundred United States Dollars) the joint and several guarantees by the appellee's shareholders and the executed mortgage on the appellee's multi-purpose business complex (warehouses).

The Clerk of this Court is ordered to send a mandate to the court below, ordering the judge presiding therein to resume jurisdiction over this case and give effect to the Judgment of this Opinion. Costs are ruled against the appellee. AND IT IS HEREBY SO ORDERED.”

The above quoted excerpt of the Supreme Court's Judgment shows that while the Court acknowledged the informant's obligations there was no monetary award. The Supreme Court reversed the trial court's final ruling in the petition for declaratory judgment and held that the informant's liability to the respondent included all the informant's obligations under the November 7, 2013, Loan Agreement and the Aide Memoire of February 4, 2015, the joint and several guarantees by the informant's shareholders, the executed mortgage on the informant's multi-purpose business complex (warehouses), and was not limited to the US\$2,386,800.00 (Two Million Three Eighty Six Thousand Eight Hundred United States Dollars).

It is the law that the sole object of a declaratory judgment is to declare rights, statuses and other legal relations without ordering anything to be done. *Gbartoe et al v Washington*, 41 LLR 117, (2002). As a matter of fact, the Supreme Court has held that a declaratory judgment is one which simply declares the rights of the parties or exercises the opinion of the court on a question of law without ordering anything to be done and the action is distinguished from other actions in that it

does not seek execution or performance from the defendant or opposing party.” *Hussan v. Butler*, Supreme Court Opinion, October Term, A.D. 2014; *World Bank v. Manhattan Trading Corporation*, Supreme Court Opinion, March Term, A.D. 2018.

In view of the above principle of law, the trial court was obligated to only read the Supreme Court’s Judgment and Mandate “as is” and the duty of the respondent to pursue the available legal remedy to recover under the instruments stated in said Judgment and Mandate.

Hence, the trial court was in error to have prepared a bill of costs in the amount of US\$10,047,976.12 (Ten Million Forty-Seven Thousand Nine Hundred Seventy-Six United States Dollars Twelve Cents), thus improperly executing the Supreme Court’s Judgment and Mandate of June 25, 2020, for which this bill of information will lie.

WHEREFORE AND IN VIEW OF THE FOREGOING, the informant’s bill of information is granted. The respondent is at liberty to pursue the available legal action to recover under the instruments stated in the June 25, 2020 Judgment and Mandate of the Supreme Court. The Clerk of this Court is ordered to send a mandate to the trial court commanding the judge presiding therein to resume jurisdiction over this case and give effect to this Judgment. IT IS SO ORDERED.

Bill of information granted.

When this case was called for hearing, Counsellor Jonathan T. Massaquoi of the International Law Group appeared for the informant. Counsellor Emmanuel B. James of the International Group of Legal Advocates appeared for the respondent.