

IN THE HONORABLE SUPREME COURT OF LIBERIA
SITTING IN ITS OCTOBER TERM, A.D. 2020

BEFORE HIS HONOR.....FRANCIS S. KORKPOR, SR CHIEF JUSTICE
BEFORE HER HONOR.....JAMESETTA HOWARD 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

Golden Veroleum (Liberia), Inc. by and thru its CEO,)
Mr. Sandy Claria & all authorized officers acting)
under his authority, of the City of Monrovia.....Appellant)

Versus)

APPEAL)

His Hon. Joseph Nagbe, Associate Justice in Chambers of)
the Honorable Supreme Court of Liberia, & Tropical)
Logistics represented by its General Manager, Francis)
Juwle, also of the City of Monrovia, Liberia.....Appellees)

GROWING OUT OF THE CASE)

Golden Veroleum (Liberia), Inc. by & thru its CEO,)
Mr. Sandy Claria & all authorized officers acting)
Under his authority, of the City of Monrovia.....Petitioner)

Versus)

PETITION FOR A WRIT)
OF CERTIORARI)

Her Honor, Chief Judge, Eva Mappy Morgan, Associate)
Judge, Richard Klah of the Commercial Court of Liberia,)
Yussif D. Kaba of the Sixth Judicial Circuit, Civil Law, Ad)
hoc Judge & Tropical Logistics represented by its General)
Manager, Francis Juwle, also of the City of Monrovia,)
Liberia..... Respondents)

GROWING OUT OF THE CASE)

Golden Veroleum (Liberia), Inc. by & thru its CEO,)
Mr. Sandy Claria & all authorized officers acting under)
His authority, of the City of Momrovia.....Petitioner)

Versus)

PETITION FOR)
JUDICIAL REVIEW)

His Honor Chan-Chan A. Paegar, Associate Judge of the)
Commercial Court of Liberia & Tropical Logistics)
represented by its General Manager, Francis Juwle, also)
of the City of Monrovia, Liberia.....Respondents)

GROWING OUT OF THE CASE)

Tropical Logistics, by & thru its General Manager,)
Francis Juwle & all authorized officers acting under his)
authority of the City of Monrovia, Liberia.....Plaintiff)

Versus)

ACTION OF DEBT)

Golden Veroleum (Liberia), Inc. by & thru its CEO,)
Mr. Sandy Claria & all authorized officers acting under)
His authority, of the City of Monrovia.....Defendant)

Heard: November 11, 2020

Decided: February 8, 2021

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

This appeal grows out of the ruling made by our Colleague, His Honor Justice Joseph N. Nagbe, in which he denied the petition for a writ of certiorari filed by the appellant, Golden Veroleum (Liberia) Inc. The petition for certiorari was filed against the ruling rendered by the three judge panel of the Commercial Court, on judicial review. The panel confirmed Judge Chan-Chan Paegar's denial of three interlocutory motions filed by the appellant in an action of debt heard before the Commercial Court.

The records establish that the appellee, Tropical Logistics, Inc., filed an action of debt before the Commercial Court of Liberia, alleging that the appellant, Golden Veroleum (Liberia) Inc., is indebted to it in the amount of US\$643,005.54 (Six Hundred Forty-three Thousand, Five Dollars and Fifty Four Cents). The appellee stated in its complaint that it entered into a transport services agreement with the appellant in January 2017, under which agreement it was required to transport the appellant's equipment and other materials from the Freeport of Monrovia to the port of Greenville, Sinoe County, and to other parts of Southeastern Liberia where the appellant owns and operates a palm oil plantation. The appellee further stated that upon performance of the services required under the transport services agreement, it tendered invoices to the appellant for the costs of these services, but the appellant refused to make full payment despite numerous efforts exerted by it. The appellee prayed the court to adjudge the appellant liable to it in the amount of US\$643,005.54 (Six Hundred Forty-three Thousand Five Dollars and Fifty-four Cents) and to also order the appellant to pay statutory interest of 6% on said amount as well as successful attorney fees of 2%.

The appellant filed answer to the appellee's complaint, asserting that it is only indebted to the appellee in the amount of US\$5,998.46 (Five Thousand, Nine Hundred Ninety-eight Dollars and Forty Six Cents); that though the appellee had rendered services to it, there exists no transport services agreement between it and the appellee; that it has paid to the appellee all legitimate amounts owed for the services rendered to it except an outstanding amount of US\$5,998.46 (Five Thousand, Nine Hundred Ninety-eight Dollars and Forty

Six Cents), and that a proper accounting be conducted by an independent auditor to reconcile the actual amount owed the appellee.

When pleadings rested, the case was assigned to Judge Chan-Chan Paegar for hearing in keeping with Article V (2) of the Act Establishing the Commercial Court which allows a single judge to hear a case when the amount involved is less than One Million United States Dollars or its Liberian Dollars equivalent.

When trial of the case commenced, the appellee, Tropical Logistics, Inc., made an application for the issuance of a *subpoena duces tecum* to be served on the management of the appellant company to produce the original copies of invoices, emails, the pricing list agreed upon by the parties, the acceptance letter from the appellant to the appellee, and the delivery orders for services performed by the appellee. The appellee also prayed for the issuance of a *subpoena ad testificadum* to be served on one Mr. Augustus Woods, former Domestic Procurement Manager of the appellant company, to testify to the existence of the transport services agreement between the appellee and the appellant. The appellee's applications were granted.

The appellant filed a motion to quash the *subpoena duces tecum*, and the *subpoena ad testificadum*. The appellant contended that the *subpoena duces tecum* was oppressive and amounted to compelling the appellant to produce evidence against itself, and that Mr. Augustus Woods, the appellant's former employee, on whom the *subpoena ad testificadum* was issued was prohibited by his contract of employment with the appellant from disclosing any information obtained by him as a result of his employment with the appellant. The motion was resisted by the appellee, and denied by the presiding Judge. The appellant noted exception and gave notice that it would take advantage of the law controlling.

Upon commencement of the trial following the denial of the appellant's motion to quash, the appellee's witnesses, that included the subpoenaed witness who previously worked with the appellant's Company, testified in support of the appellee's claim. After the appellee rested with the production of evidence, the appellant filed a motion for judgment during trial asserting that the appellee's witnesses failed to substantiate by the preponderance of evidence the certainty of the amount the appellant owed it. The motion for judgment during trial was denied by the judge who held that the testimonies and arguments of the parties established that there are factual issues in dispute, the determination of which can only be made based on the conclusion of all the evidence in the case. Again, the appellant excepted to the denial of its motion for judgment during trial.

Subsequently, upon the commencement of the case, the appellant filed a motion for newly discovered evidence stating that during the search for the original documents relating to the appellee's debt claim, it discovered additional documentary evidence which have the tendency to establish the actual agreement between the parties regarding the performance and prices of the transport services rendered by the appellee. The appellant further stated in its motion that the evidence to be introduced were not within its knowledge and that it could not with reasonable diligence have discovered it during the filing of its pleading.

The motion was resisted by the appellee and was again denied by the judge who held that the appellant's failure to have located the documents which were in its possession does not amount to a lack of knowledge of the existence of the documents. The appellant again excepted to the ruling.

Thereafter, the appellant filed a petition for judicial review before the full panel of the Commercial Court challenging the rulings made by Judge Chan-Chan Paegar on the three motions – motion to quash *subpoena ad testificandum* and the *subpoena duces tecum*, motion for judgment during trial and motion for newly discovered evidence filed by the appellant. The petition alleged that Judge Paegar's denial of the appellant's motions was an abuse of judicial discretion and hence the judge's decisions on the motions should be reversed by the panel of judges.

The panel of judges of the Commercial Court, after entertaining arguments on the petition and the resistance filed thereto, denied the petition, holding that the argument that the appellant could not readily locate the documentary evidence that was within its possession and control cannot be imputed to lack of knowledge of the existence of the documents; that the testimony of Augustus Woods concerning the existence of a transport service agreement and an agreed-upon price between the parties did not concern any proprietary information for which the prohibition against disclosure of confidential information should be upheld and that the pleadings, testimonies and arguments of the parties established the existence of factual issues in dispute which can only be resolved base on the conclusion of all the evidence in the case.

The appellant excepted to the ruling of the panel of judges of the Commercial Court and filed a petition for the writ of certiorari before our colleague, Her Honor Justice Sie-A-Nyene G. Yuoh, praying her to issue the peremptory writ of certiorari reversing the ruling made by the panel of judges. The petition challenged the legal correctness of the ruling made by the panel of judges

affirming the denial by Judge Paegar of the appellant's three motions. Justice Yuoh ordered the issuance of the alternative writ of certiorari commanding the appellee to file its returns to the petition. Justice Joseph N. Nage who succeeded Justice Yuoh in Chambers, had arguments on the petition and the returns filed thereto by the appellee, and entered ruling in which he denied the peremptory writ prayed for by the appellant and quashed the alternative writ issued.

Justice Nagbe determined that even though the appellee did not attach the contract which it alleged was signed between it and the appellant, the affirmative contentions contained in the pleadings indicated that an agreement existed between the parties for the appellee to transport the appellant's equipment and materials from the Freeport of Monrovia to Sinoe and Grand Kru counties, and that the only issue of contention between the parties was the certainty or correctness of the amount that should have been paid to the appellee for the services rendered to the appellant. The Justice therefore concluded that the only means through which the exact and correct amount due the appellee could be established is through the production of evidence during trial by the parties.

Appellant excepted to the denial of its petition for the writ of certiorari and now prays this Court to reverse that decision. The appellant contends that the Chambers Justice erred in denying its petition because the appellee did not produce any evidence in support of its claim of debt and also that the appellee failed to state with particularity the actual amount of indebtedness it sued for. These defects in the appellee's evidence, the appellant avers, should have provided the legal basis for the granting of its petition for certiorari by Justice Nagbe.

We note that the appellant in its petition for judicial review challenged the correctness of Judge Paegar's rulings on the three motions filed by it, namely, the motion to quash, the motion for newly discovered evidence and the motion for judgment during trial. The panel of judges of the Commercial Court affirmed all the rulings entered by the Judge and ordered that the trial of the case be proceeded with. The appellant excepted to the panel's ruling and announced that it would take advantage of the law controlling. However, upon filing its petition for certiorari against the ruling made by the panel of judges, the appellant, apparently conceding the correctness of the denial of its motion to quash and motion for newly discovered evidence, considering that it had proceeded into the hearing in the trial after the two issues to quash the subpoenas and newly discovered evidence were denied, limited itself to the

issue of the motion for judgment during trial in the petition for certiorari filed before the Justice in Chambers and during argument before the Full Bench.

During the hearing of the appeal from the Chambers Justice's ruling, the appellant's counsel responded to a question from the Bench on the issue of the aspect of the case brought before the Chambers Justice in the following manner:

Ques: What aspect of the case brought you before the Chambers Justice?

Ans: The uncertainty of the amount sued for Your Honors.

The appellant argued before the Chambers Justice that it is entitled to judgment as a matter of law due to the alleged uncertainty of the evidence presented by the appellee in support of the amount sued for.

Justice Nagbe ruling on the issue of the appellant's petition challenging the evidence presented by the appellee during trial, held that only through the production of evidence by all the parties in the court below can a proper determination be made on the exact amount of debt owed the appellee. In essence, Justice Nagbe agreed with the panel of judges of the Commercial Court and Judge Paegar that the case presented factual issues which could only be determined when the parties conclude the presentation of their respective evidence.

The appellant argues that the conclusion reached by Justice Nagbe supports its position that it is entitled to judgment as a matter of law since the appellee failed to establish with certainty the amount the appellant owes it.

We do not see how Justice Nagbe's position supports the appellant's contention since Justice Nagbe's ruling confirms the lower court's ruling that evidence be taken from both parties to establish the actual debt owed the appellee, as in the absence of the taking and conclusion of evidence by both parties, the actual amount of the indebtedness owed the appellee by the appellant cannot be ascertained.

As the records show, the appellant has not denied that the appellee rendered services to it in transporting its equipment and materials from the Freeport of Monrovia to the Port of Greenville, Sinoe County and onward to other parts of Southeastern Liberia; the appellant also does not contest that it is indebted to the appellee. The crux of the disagreement between the appellant and appellee is the amount of the debt owed the appellee by the appellant. The appellee alleged that a transport services agreement exists between it and the

appellant and that in keeping with that agreement it rendered services to the appellant and for which the appellant owes it the total amount of US\$643,005.54 (Six Hundred Forty-three Thousand Five Dollars and Fifty-four Cents). The appellant, on the other hand, contends that it is indebted to the appellee only in the amount of US\$5,998.46 (Five Thousand, Nine Hundred Ninety-eight Dollars and Forty Six Cents), but that it entered into no transport services agreement with the appellee which outlined the terms of the services to be performed by the appellee and the prices therefor.

Even where the appellee produced no signed service agreement between the parties, as far as this Court is concerned, it is not disputed that an understanding was reached by the parties for the appellee to transport the appellant's goods and equipment, and for which the appellant admits to its indebtedness to the appellee even though in an amount far less than that claimed by the appellee. Therefore, the crux of the determination of the debt owed the appellee by the appellant is by the presentation of evidence by each party to support its allegation of the actual amount owed.

At the trial of the case in the court below, the appellee presented several witnesses who testified on its behalf. Prominent amongst the appellee's witnesses were Mr. Frances Juwle, the Managing Director of the appellee and Mr. Augustus Woods, the former Domestic Procurement Manager of the appellant who was subpoenaed to testify by the court. Mr. Francis Juwle testified that the appellee and the appellant entered into a transport services agreement and that in keeping with that agreement, the appellee performed various services for the appellant including the transportation of twenty six containers from Monrovia to Greenville, Sinoe County, and onward to Grand Kru County, and the discharging of ten thousand metric tons of fertilizers from the Amaritee Spirit vessel at the Port of Greenville, Sinoe County; that after the performance of these services, the appellee submitted its invoices for the cost of the services to the appellant management, but that the appellant failed to make full payment for the amount reflected in the invoices. The appellant's former employee subpoenaed by the court, Mr. Augustus Woods, testified that the appellee discharged container vessels at the Greenville Port and also successfully discharged ten thousand metric tons of fertilizers at the Greenville Port for the appellant in keeping with the transportation services agreement between the parties. Mr. Woods further testified that the appellee carried out additional services for the appellant and that the invoices for all these services were submitted to the procurement department of the appellant company for verification of the rates used in deriving at the charges and were transmitted to the finance department for payments. The invoices which were testified to

by Mr. Juwle and Woods were admitted into evidence at the conclusion of the appellee's presentation of evidence. The appellee had the court issue a *subpoena duces tecum* on the appellant management to produce the original copies of invoices, emails, the pricing list agreed upon by the parties, the acceptance letter from the appellant to the appellee, and the delivery orders for services performed by the appellee in order to aid the court in determining the actual amount owed the appellee.

In the face of the admission into evidence of these critical instruments and the order for the presentation of the *subpoenaed* documents, all of which have the tendency to establish the exact amount of indebtedness of the appellant to the appellee, we wonder how, in the absence of the appellant producing evidence to rebut the appellee's claim and substantiate its claim to the contrary, can it claim that it is entitled to judgment as a matter of law?

Section 26.2 of the Civil Procedure Law Revised (1974), ***Motion for Judgment During Trial***, states:

"After the close of the evidence presented by an opposing party with respect to a claim or issue, or at any time on the basis of admissions, any party may move for judgment with respect to such claim or issue upon the ground that the moving party is entitled to judgment as a matter of law... *if the court grants such a motion in an action without jury, the court as trier of the facts may then determine them and render judgment or may decline to render any judgment until the close of all the evidence.*" (emphasis ours).

The language of the statute above clearly confers on a judge sitting without a jury on a case the discretion to grant or deny any application for judgment during trial and this Court has held that decisions upon matters clearly within the discretion of a lower court are not ordinarily reviewable by a court of appeal; that the exercise of judicial discretion is reviewable only for an abuse thereof. *Intercon-Security Systems v. Miah et al.* 28 LLR 633, 645 (1998); *Sherman v. Reeves* 23 LLR 227, 236 (1974); *Brewer, Jr. v. Mathies et al.* 41 LLR 229, 235 (2002); *Universal Printing Press v. Blue Cross Insurance Company*, Supreme Court Opinion, March Term, 2015.

In this case, Judge Paegar, exercising the discretion conferred on him by statute, concluded that the case contained factual issues which can only be resolved upon the conclusion of all the evidence by the parties. This conclusion was affirmed by the panel of judges of the Commercial Court and again affirmed by our Colleague, His Honor Justice Joseph Nagbe, who held that it is imperative that evidence be concluded in the case in order to establish the actual amount of debt owed the appellee and to which we fully concur.

We find no reason to disagree with the ruling made by Justice Nagbe in this case as it is trite law that where the parties dispute the actual outstanding amount to be paid for services rendered, evidence must be produced to substantiate the claim, and the production of evidence by both parties in this case is the only available course for the lower court to ascertain the actual outstanding debt where the amount is in dispute.

We therefore uphold the Chambers Justice denial to grant the peremptory writ of certiorari prayed for by the appellant. The Clerk is ordered to send a mandate to the court below to resume jurisdiction and proceed with the hearing of the debt action out of which the petition for certiorari grew. Costs is ruled against the appellant. AND IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING COUNSELLOR DENISE S. SOKAN OF THE JONES AND JONES LAW FIRM APPEARED FOR THE APPELLANT. COUNSELLORS AUGUSTINE C. FAYIAH AND MORRIS M. DAVIES APPEARED FOR THE APPELLEE.