

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-NYENEG. YUOH.....ASSOCIATE JUSTICE
BEFORE HIS HONOR..... JOSEPH N. NAGBEASSOCIATE JUSTICE
BEFORE HIS HONOR..... YUSSIF D. KABA..... ASSOCIATE JUSTICE

International Bank (Liberia) Limited, represented by its)
Chief Executive Officer (CEO), Mr. Henry F. Saamoi, and) MOTION TO DISMISS
all authorized officers of the City of Monrovia,) APPEAL
Montserrado County, Liberia.....Movant)

VERSUS)

Accident & Casualty Insurance Company (ACICO),)
represented by and thru its General Manager,)
Mr. Princeton A. Miller, and all authorized corporate)
officers acting under its authority and control of the City)
of Monrovia, County of Montserrado, Liberia...Respondent)

GROWING OUT OF THE CASE:)

International Bank (Liberia) Limited, represented by its)
Chief Executive Officer (CEO), Mr. Henry F. Saamoi, and)
all authorized officers of the City of Monrovia,)
Montserrado County, Liberia..... Movant)

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Accident & Casualty Insurance Company (ACICO),)
represented by and thru its General Manager,)
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officers acting under its authority and control of the City)
of Monrovia, County of Montserrado, Liberia .. Respondent)

ACTION OF DAMAGES
FOR BREACH OF
CONTRACT

AND)

USA West Africa Diamond Group, Inc., represented by)
and thru its President/CEO, Mr. Abdoul Aziz Kamara, of)
the City of Monrovia, County of Montserrado, Republic of)
Liberia.....2nd Defendant)

AND)

Mr. Abdoul Aziz Kamara of the City of Monrovia, County)
of Montserrado, Republic of Liberia.....3rd Defendant)

HEARD: October 21, 2020

DECIDED: March 3, 2021

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

This motion to dismiss appeal filed by the movant, International Bank (Liberia) Limited (IBLL), emanates from a ruling made by the Chief Judge of the Commercial Court of Liberia, Her Honor Eva Mappy-Morgan, in which she granted a motion for summary judgment prayed for by the movant against

the respondent, Accident & Casualty Insurance Company (ACICO), who stood as guarantor for a loan of Five Hundred and Seventy Thousand United States Dollars (US\$570,000.00) granted to USA West Africa Diamond Group, Inc., represented by and thru its President/CEO, Mr. Abdoul Aziz Kamara by the movant, IBLL. The Respondent ACICO announced an appeal from the Judge's ruling and the Movant Bank has called on this Court to dismiss the respondent's appeal.

As a basis and justification for its motion to dismiss the respondent's appeal, the movant alleges that the respondent, ACICO, failed to follow the mandatory statutory steps required for the perfection of an appeal from the Commercial Court of Liberia as outlined in subsections (2) and (3) of Article IV of the Act Establishing the Commercial Court of Liberia and section 51.4(d) of the Civil Procedure Law requiring the service and filing of the notice of completion of appeal within sixty days following the announcement of appeal.

The facts as gleaned from the records are that the USA West Africa Diamond Group, Inc., represented by and thru its President/CEO, Mr. Abdoul Aziz Kamara obtained a loan of Five Hundred and Seventy Thousand United States Dollars (US\$570,000.00) from the movant IBLL in May 2019, to be paid in one hundred and fifty days. The respondent, ACICO, executed an indemnity bond in which it guaranteed repayment of this principal loan amount in the event of default by the debtors. The movant not having succeeded in obtaining payment from the debtor, wrote the respondent ACICO informing it of the default and demanding it to make payment as per the bond executed by it.

The respondent failed to make the payment as demanded, and the movant therefore filed an action of damages for breach of contract before the Commercial Court against the respondent ACICO (1st defendant), USA West Africa (2nd defendant) and Mr. Abdoul Aziz Kamara (3rd defendant), praying the court to jointly and severally adjudge the parties liable in the amount of Six Hundred Fifty-five Thousand Five Hundred United States Dollars (US\$655,500.00), representing US\$570,000.00 as the principal amount guaranteed by the respondent, US\$85,500.00 as attorney collection fee and an amount not less than US\$100,000.00 as general damages for the inconvenience suffered by the movant as a consequence of the parties failure to honor their obligation.

On March 24, 2020, the court had a pretrial conference with the parties and subsequently on June 2, 2020, the movant filed a motion for summary judgment requesting the court to summarily adjudge the respondent and USA

West Africa jointly and severally liable to it because of their acknowledgment and admission of being indebted to the movant in the principal loan amount of US\$570,000.00 and their failure to make payment or honor their obligation upon receipt and acknowledgment of the required demand notice.

On June 10, 2020, after entertaining arguments on the movant's motion for summary judgment and the resistance thereto, Her Honor Eva Mappy-Morgan, Chief Judge of the Commercial Court, entered a ruling in which she granted the movant's motion for summary judgment and adjudged the respondent ACICO liable to the movant IBLL in the amount not to exceed US\$570,000.00 in keeping with the indemnity bond issued by the respondent restricting itself to pay the loan amount only in the event USA West Africa, and Mr. Abdoul Aziz Kamara failed to pay the loan amount upon notice to them.

The respondent ACICO excepted to the ruling and announced an appeal to the Supreme Court sitting in its October Term 2020.

On September 4, 2020, the movant filed this motion to dismiss the appeal announced by the respondent, contending that the respondent had filed a bill of exceptions after excepting and announcing an appeal to the judgment of the Commercial Court but that it failed to satisfy the condition precedent for the completion of appeal from the Commercial Court as per Article IV(2) and (3) of the Act, that is, to deposit the judgment amount in an interest bearing escrow account designated by the Commercial Court and serve on the movant the notice of completion of appeal in keeping with section 51.4 (d) of the Civil Procedure Law (1974).

Fulfillment of Subsections (2) and (3) of Article IV of the Commercial Act stays an enforcement of final judgments against an appealing party in the Commercial Court.

The respondent ACICO, in its returns to the motion to dismiss, contends that though it prepared and presented a bill of exceptions to Judge Mappy-Morgan for her signature after it had excepted to the ruling, the Judge refused to sign the said bill of exceptions, and therefore the movant's allegation that a bill of exceptions was filed by the respondent is false and misleading and that the clerk's certificate attached to the movant's motion to dismiss is false because after entry of the ruling on the motion for summary judgment by Judge Mappy-Morgan, respondent filed a petition for judicial review before the full panel of the Commercial Court seeking a review and reversal of said ruling. In essence, the respondent contends that it did not announce an appeal directly to the Supreme Court against the ruling made by the Judge as contended by the movant; rather, it appealed to the full panel of the Commercial Court of

Liberia to review and reverse the allegedly erroneous ruling made by Judge Mappy-Morgan.

The respondent asserts in its brief filed before this Court as well as during argument before the Court that as Article III (4) of the Act establishing the Commercial Court of Liberia provides that exceptions to interlocutory ruling made by a single judge of the Commercial Court is reviewable by a three judge panel on judicial review; in similar regard, a final judgment of a single judge on a motion for summary judgment should be reviewed by the other judges in order to represent the decision of the Court. The following are responses of the respondent's counsel to questions posed during the hearing before the Court:

Ques: Did you file a bill of exceptions?

Ans: No, Your Honors.

Ques: What about the clerk's certificate?

Ans: The clerk's certificate is not supported by the records of the case, Your Honors.

Ques: The movant's counsel contends that the final decision of a lone judge of the Commercial Court is not reviewable by the panel of judges. What is the legal basis for the petition for judicial review that you filed before the panel of judges?

Ans: The decision of a lone judge of the Commercial Court is an interlocutory decision and reviewable by the panel of judges.

Ques: Do you have a legal reliance or just reasoning?

Ans: Reason is the source of the law, Your Honors.

In substance, the respondent is contending that though the ruling made by Judge Mappy-Morgan granting the movant's motion for summary judgment was not an interlocutory ruling, rulings made by a single judge of the Commercial Court are all interlocutory, subject to review by the other judges of the Court and in which case their ruling may be appealed to the Supreme Court. In other words, the counsels appearing for the respondent reason that a final judgment from the Commercial Court can only be appealed to the Supreme Court when the other judges of the court concur with the judgment of a single judge sitting on a case.

In the mind of the Court, this analogy of the respondent's counsels is faulty as it is contrary to the Commercial Court Act, Article IV "Appeals from the Commercial Court". Article V.1 reads as follows:

"An appeal from the final judgment of the Commercial Court shall lie directly with the Supreme Court."

Article V. "Structure of the Commercial Court" allows for cases to be heard by the three-judge panel *en banc* or by a singular judge depending on the amount sued for. Article V.2 reads:

"A case filed before the Commercial Court may be heard by one of the judges of the Commercial Court, provided that where the amount of the claim is in excess of US\$1,000,000.00 (One Million United States Dollars) or its Liberian Dollars equivalent, the case shall be heard by the full three judge panel."

This Article of the Commercial Court Act contemplates a final ruling made by the three-judge panel of the court when they sit to hear and determine a case, or the final ruling of a lone judge who sits over a matter. In each of the mentioned instances, the final decision rendered is appealable only to the Supreme Court.

If we were to agree with the respondent that all final judgments made by a single judge of the Commercial Court were to be appealed to the three judge panel, then what would be the essence of having a single judge hear a case and determine a matter just to have his/her final ruling reviewed by the other judges? Would the three-judge panel be acting as an intermediary appeal court, and what effect would such an arrangement have on the speedy adjudication of commercial cases in our jurisdiction and as envisaged by the Commercial Court Act?

It must be noted that the Commercial Court was established to ensure the prompt determination of commercial disputes. Article III.2 states that "... the procedures of the Commercial Court shall be structured to promote the prompt determination of commercial disputes in keeping with law."

In line with this objective, the Act establishing the Commercial Court provided for hearing of a case by a single judge when the amount involved is below One Million United States Dollars or its equivalent in Liberian Dollar. The judgment amount in contention being US\$570,000.00, and the appellant having excepted to the final judgment rendered by the Judge, it should have proceeded to file its bill of exceptions and complete the appeal process in conformity with Article IV of the Commercial Court Act.

Accordingly, Judge Eva Mappy-Morgan's ruling which brought finality to the adjudication on the payment of the principal amount of the loan, that is, adjudging the respondent ACICO liable for the payment of US\$570,000.00, guaranteed by the respondent to be paid in the event of default by the USA West Africa and Mr. Abdul Aziz Kamara, could only be excepted to and

appealed from by the respondent to the Supreme Court in conformity with Article IV of the Commercial Code and Chapter 51. of the Civil Procedure Law.

That the ruling of the Chief Judge on the motion for summary judgment, which brought finality to the adjudication on the payment of the principal amount of the loan of US\$570,000.00 which ACCICO guaranteed to pay in the event of default by the USA West Africa and Mr. Abdul Aziz Kamara, the respondent could only appeal the Judge's decision to the Supreme Court, in conformity with Article IV of the Commercial Code and Chapter 51. of the Civil Procedure Law.

That the respondent having admitted that he did not file a bill of exceptions to remove the case from the jurisdiction of the single judge of the Commercial Court to the Supreme Court, the respondent's appeal is dismissible; however, by the single judge of the Commercial Court and not by the Supreme Court in conformity with Section 15.16 of the Civil Procedure Law.

WHEREFORE and in view of the foregoing, the Clerk of this Court is ordered to send a mandate to the single judge of the Commercial Court to resume jurisdiction over this case and dismiss this appeal and enforce its judgment. AND IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLOR ABRAHIM B. SILLAH, SR. OF THE HERITAGE PARTNERS AND ASSOCIATES, INC. APPEARED FOR THE MOVANT. COUNSELLOR ALHAJI SWALIHO A. SESAY OF THE SESAY, JOHNSON AND ASSOCIATES LEGAL CHAMBERS AND COUNSELLOR AMARA M. SHERIFF OF THE J. JOHNNY MOMOH & ASSOCIATES LEGAL CHAMBERS, INC. APPEARED FOR THE RESPONDENT.