LAC v. ADC [2012] LRSC 1 (4 January 2012)

Liberian Agricultural Company (LAC) by and thru its Comptroller, **George Q. Mensah** of the City of Monrovia, Liberia, DEFENDANT/APPELLANT
Versus **Associated Development Company (ADC),** by and thru its President**, Talal N. Eldine** of the City of Monrovia, Liberia, PLAINTIFF/APPELLEE

APPEAL

HEARD**:** October 16, 2012 DECIDED: January 4, 2012

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

The Associated Development Company(ADC), appellee herein, complained the Liberia Agriculture Company (LAC), the appellant, in the Debt Court of Montserrado County, sitting in its October Term, A.D. 1998, demanding judgment in the amount of One Hundred Thirty Four Thousand, Four Hundred Thirty-Two United States Dollars, Ninety-One Cent (US$134, 432.91) for two separate payments of Ninety Six Thousand United States Dollars (US$96,000.00) and Thirty Eight Thousand, Four Hundred and Thirty-Two United States Dollars, Ninety-One Cent (US38, 432.91) said to be due ADC.

In its complaint, ADC alleged that in 1991, LAC contracted the ADC to repair its warehouse for lease to the Catholic Relief Services (CRS); LAC was to benefit from the transaction by the use of its vessel, the SEA ROSE, which CRS would use to transport relief food and items to Buchanan City, Grand Bassa County. The total cost of the materials for the renovation of the warehouse, ADC said, amounted to ninety six thousand United States Dollars (US$96,000.00). Upon completion of the renovation works, ADC leased the warehouse to the CRS for payment in the amount of three thousand United States Dollars (US$3,000) monthly. Few months into the lease, LAC wrote to CRS that it was taking over possession of its warehouse, and that the CRS should pay the lease amount directly to LAC. This prompted a meeting between the General Manager of LAC and the Executive Officer of ADC, Mr. Talal Eldine. ADC alleged that at its meeting with the Management of LAC, it was agreed by the parties that LAC would

refund to ADC the full amount of the renovation cost of ninety six thousand United States Dollars (US$96,000.00) in addition to the United States forty five thousand dollars (US$45,000.00) retained by ADC from the rent received from CRS for a fifteen month period. This ninety six thousand United States Dollars (US$96,000.00) was agreed to be paid in two installments. ADC said LAC paid the first installment of Fifty Thousand United States Dollars (US$50,000.00) by check in September 1992, and when the second installment became due, ADC returned the fifty thousand United States Dollars (US$50,000.00) check to LAC requesting the company to transfer the entire amount of ninety six thousand United States Dollars (US$96, 000.00) into ADC's oversea account. This transfer, ADC said, was not effected until the Octopus war in Liberia broke out and both parties fled the country. ADC alleged that up to the filing of the complaint, LAC had not transferred this amount owed ADC.

ADC further complained that LAC was also indebted to it in the amount of thirty eight thousand, four hundred thirty-two United States Dollars, ninety-one cents (US$38,432.91) for cash credited and other services rendered LAC. That all demands made to LAC to have its indebtedness settled to ADC was unheeded and this also prompted the filing of the complaint by ADC who prayed the Debt Court, demanding judgment in the amount of one hundred thirty four thousand, four hundred thirty-two United States Dollars, ninety-one cents (US$134, 432.91).

In answer to the complaint of ADC, LAC denied the legal and factual sufficiency of counts 1 through 10 of ADC's complaint relating to the alleged transaction for ninety six thousand United State Dollars (US$96,000.00), and the prayer of ADC to warrant the relief sought. LAC responded that while it conceded the transaction between the parties, contrary to ADC's allegation that LAC initiated the transaction to renovate the warehouse, it was in fact ADC, who upon realizing the opportunity presented by the commencement of relief operations in Buchanan by the CRS, offered to repair LAC's warehouse and leased it to the CRS for some time. This offered of ADC was accepted by LAC. LAC admitted that after the renovation of the warehouse, ADC rented the warehouse to CRS as agreed, but fifteen months thereafter, LAC requested to take possession of its warehouse and have the CRS pay the lease amount directly to LAC.

LAC did not deny the renovation cost of ninety six thousand United States Dollars (US$96,000.00); however, LAC said after it decided to take possession of its warehouse, a meeting was held between both parties where it was agreed that LAC would take over the warehouse and collect all rental proceeds from the CRS, and since ADC had not been fully reimbursed the cost of the repairs work done on the warehouse by the rental payments received from the CRS, LAC would pay to ADC in two installments the balance sixty thousand United States Dollars (US$60,000). LAC alleged that commencing from October 1990 to December 31, 1991, ADC had received and retained from CRS the aggregate amount of forty-five thousand United States Dollars (US$45,000), as per the understanding between LAC and ADC that ADC would retain the rental proceeds of the lease from CRS until reimbursement of the cost of the renovation was realized.

LAC further said in its answer that it did pay ADC the sixty thousand United States Dollars (US$60,000.00), but ADC had the checks returned and requested that the sixty thousand United States Dollars (US$60.000.00) be transferred to Mr. Talal Eldine, ADC President's account in the United States of America. Consequently, on September 14, 1992, LAC said it sent a telefax to its Marketing Agent, Messrs Ennar Latex, Inc. of the United States of America, instructing Ennar Latex, Inc. to pay the sixty thousand United States Dollars to ADC to the account in California, USA, provided by LAC's President, Talal Eldine. Again, on September 16, 1992, a similar telex was sent to LAC's marketing agent instructing it to transfer the sixty thousand to the account number given to LAC for said deposit. LAC attached copies of both telexfaxes.

LAC said that its marketing agent, Ennar Latex, Inc. did receive and act upon it's instruction to pay ADC the amount of the sixty thousand United States Dollars (US$60,000.00) via bank transfer; however, ADC being indebted to Ennar Latex, Inc. in the amount of twenty-one thousand, three hundred and eighty United States Dollars (US$21, 380.00), Ennar Latex, Inc., upon receipt of LAC's instruction, decided to offset this amount owed it by ADC against the sixty thousand asked to be transferred, the balance amount of thirty-eight thousand, six hundred twenty United States Dollars (US$38,620.00) was therefore paid into Mr. TalaI Eldine's Account No.: 08948-01627 with the Main & Ellis Branch 0894

of the Bank of America. A copy of said memorandum, dated September 22, 1998, was presented during the hearing of the case. The said sixty thousand United States Dollars (US$60,000.00) having been paid to ADC's account, LAC said, it denied being indebted to ADC for repairs of its warehouse.

In answer to ADC's claim against LAC for thirty eight thousand, four hundred thirty- two United States Dollars and ninety-one cents (US$38,432.91) as an additional indebtedness by LAC to ADC for cash and services credited to LAC, LAC admitted to this indebtedness but said it was in the process of reactivating its operation which was being suspended for some time, and as part of its overall financial restructuring, it was now negotiating settlement of its legitimate debt of various creditors, ADC, not excepted; that LAC would endeavor to reach some understanding with ADC regarding the payment of the thirty eight thousand, four hundred, thirty-two United States Dollars and ninety-one cents (US$38, 432.91) justly owed ADC.

LAC prayed the court below to dismiss ADC's claim of its indebtedness relating to the ninety-six thousand United States Dollars (US$96,000.00) as it had already fulfilled its obligation for the warehouse as had been agreed which was contrary to the amount being claimed by ADC.

In reply to LAC's answer, ADC insisted that LAC initiated the arrangement and was even the one who provided the materials for the renovation which amount was refunded by ADC. ADC said that LAC's averment creates the impression that the mutual understanding reached by the parties to repair LAC's warehouse was that ADC would repair the warehouse at the cost of ninety-six thousand United Dollars (US$96,000.00); at the end of the contract ADC would be reimbursed without getting any return on its investment. ADC denied the allegation contained in LAC's answer and said the understanding reached between ADC and LAC was that ADC would repair LAC warehouse; at the completion of the repair work, ADC would lease the warehouse to CRS at a monthly rental of three thousand United States Dollars (US$3,000.00) for sixty months or five years and would retain the rent; at the end of the five years, ADC would turn over the warehouse to LAC. The averment by LAC stating that ADC would collect rent from CRS for some time is misleading in that the contract for the leasing by ADC to CRS of the warehouse was not indefinite as suggested by LAC in its

answer, but the agreement was for five years. ADC also denied in its reply that it ever agreed on a payment by LAC for sixty thousand United States Dollars (US$60,000.00) as alleged. ADC maintained that the agreement reached was that LAC would pay at least the material cost of US$96,000.00 for the renovation work, considering that the total cost for the renovation, if added, would run between US$125 - US$130,000.00.

Further, in its reply, ADC stated that its business transaction with LAC was different and distinct from whatever relationship which may or may not have existed between it and the Ennar Latex Inc., and that ADC was never indebted to Ennar Latex Inc. for the Corporation to use such indebtedness as a counterclaim against ADC in respect of offsetting LAC's obligation to ADC. Further, ADC said that under the Laws of Liberia, the best evidence which the case admits of must always be produced; that is, no evidence is sufficient which presupposes the existence of better evidence. ILCLR. Section25.6 BEST EVIDENCE. Page198. LAC's internal memorandum not being a bank transfer voucher or credit ticket, same is not competent to be used as evidence to substantiate a bank transfer.

ADC also denied the sincerity and good intentions of LAC to settle its other obligation of thirty eight thousand, four hundred, thirty-two United States Dollars, ninety-one cents (US$38,432.91) as LAC had always ignored ADC's pleas for liquidation of this amount and it was this uncooperative attitude of LAC that prompted ADC to file this suit.

Pleading having rested, His Honour, Judge John H. Mathis, former Judge of the Debt Court for Montserrado County, who presided over this matter, ordered the matter proceeded with, with the disposition of law issues. The court ruled that the issue of the indebtedness in the amount of thirty eight thousand, four hundred thirty-two United States Dollars and ninety-one cents (US$38,432.91) not being in dispute, the case be proceeded with for the taking of evidence to establish the actual amount agreed to be paid ADC and if indeed said amount was transferred and paid as alleged by LAC.

Taking the stand to prove its case, appellee ADC first witness, Mr. Talal Eldine, testified that he was the President of ADC when the transaction took place. He testified that LAC requested ADC to repair its warehouse for lease to CRS so LAC could benefit by the use of its ship by CRS who would use the ship to bring rice from Abidjan. ADC would then lease the

warehouse for five years as the total repairs work including materials and workmanship was estimated at approximately one hundred and twenty-five thousand United States Dollars (US$125,000.00) and it was expected that ADC would recover the cost of repair and make some profit from its investment. He testified that when LAC decided to take over the warehouse after fifteen months and have CRS pay the rent to LAC, ADC initiated a meeting with the management of LAC where an agreement was reached that LAC would pay back to ADC the US$96,000.00, which was cost for the materials used to renovate the warehouse. He denied that they agreed that LAC would pay ADC US$60,000.00 as LAC had alleged. The first check which LAC made out to ADC as per this agreement, Mr. Eldine said, was fifty thousand United States Dollars (US$50,000.00), but because the banks were closed due to the Liberian war, ADC could not encash the check. It was a month thereafter, when the second installment payment became due, that he and his Financial Consultant, Mr. David W. Adu-Koramteng, went to meet with Mr. George Mensah, who was the comptroller of LAC at the time, to take back the check and have the total amount ofninety six thousand United States Dollar (US$96,000.00) transferred to ADC account aboard. Their request was accepted and the fifty thousand United States Dollars (US$50,000.00) check was returned with the understanding that the total ninety six thousand United States Dollars (US$96,000.00)would be transferred to Talal Edine's foreign account.

Appellee's second witness, Mr. Lewis Browne, testified confirming the testimony of the previous witness. He said that the appellant and the appellee had been engaged in numerous business transactions, and he was the Chief Accountant of ADC, when the company undertook the renovation of the appellant's warehouse in early 1991. He confirmed that as a result of the premature takeover by LAC of the warehouse, an agreement was reached by both the appellant and appellee that LAC would pay ADC ninety six thousand United States Dollars (US$96,000.00) as a refund for the cost of the purchase of materials for the renovation. This cost for the materials, he said, was not in dispute because the materials used to renovate the warehouse were supplied by LAC itself on ADC account. The ninety six thousand United States Dollars (US$96,000.00) being only the costs for materials, if the cost for labor was to be added, the total renovation work would then run between US$125 - US$130,000.00. He confirmed that the first check made out to ADC against the US96,000.00 was in the amount of US$50,000.00 and this check was

returned to LAC with the understanding that the total amount agreed on would be transferred to ADC's account aboard. Witness Browne said to the best of his knowledge this amount was never paid into appellee's account aboard despite attempts by the appellee to transfer said payment.

In order to refute the testimonies of appellee's witnesses, the appellant brought as its first witness, Mr. George Q. Mensah, who was the comptroller of LAC when the transaction of the warehouse took place. Mr. Mensah testified that the original manager of ADC was one Mr. F.G. Christian who served as comptroller of LAC. Mr. Christian left LAC after he formed the ADC, which activities included the management of the Buchanan port. Using his rapport with LAC as its former comptroller, Mr. Christian appealed to LAC to renovate its warehouse at the port of Buchanan and LAC agreed to the request with the belief that the crisis in Liberia would be short lived. Unfortunately, the war kept dragging on, and at the end of 1991, Mr. Christian left Liberia and did not return. Mr. Talal Eldine then took over the management of ADC and it was at this point that LAC, not being compensated for its warehouse, decided to take it over. He further testified that Mr. Eldine had a meeting with Mr. Vincent Tan, the General Manager of LAC at the time, when he complained about ADC's expenditure of ninety six thousand United States Dollars (US$96,000.00) used to renovate the warehouse, and requested LAC to refund the amount. LAC responded that the ninety six thousand United State Dollars (US$96,000.00) was excessive, taking into account that ADC had received rent from CRS for fifteen months at the rate of US$3,000.00 monthly; the parties finally agreed that LAC would pay ADC the amount of sixty thousand United time, he was instructed to pay ADC this amount. He proceeded and issued two check of thirty thousand United States Dollars (US$30,000.00). Sometimes afterwards, Mr. Eldine came to LAC and presented the two checks stating that he was not able to encash the checks as the banks were closed due to the civil conflict. He requested LAC to take the two checks back and make a telegraphic transfer of the sixty thousand United States Dollars (US$60,000.00) to an account in California under the name of Mr. Talal Eldine. Mr. Mensah said he complied and instructed LAC's agent in the USA to transfer the sixty thousand United states Dollars (US$60,000.00) into Mr. Eldine's account.

Unknown to LAC, Mr. Mensah further testified, ADC had carried out some previous transaction with LAC's agent in the USA, and owed the corporation about twenty two thousand United States Dollars (US$22,000.00). When the agent received the instruction from LAC for payment to ADC's account, the agent deducted the twenty two thousand United States Dollars (US$22,000.00) (or about) from the sixty thousand United States Dollars (US$60,000.00) asked to be transferred to the appelle's account. The balance amount was transferred into the account given by Mr. Eldine in California.

When crossed examined on whether Lennar Latex, Inc. informed LAC of this debt said to be owed it by ADC and whether LAC ascertain from ADC the veracity of Ennar Latex claim, Mr. Mensah answered, Yes, LAC informed ADC of the deduction after which ADC in April 1993, instituted an action against Lennar Latex, Inc. in the USA to recover the amount deducted but ADC lost the matter. Appellant's witness said that he personally testified in the case in the USA in the City of Hartford, Connecticut.

Interestingly, neither of the parties followed up on this testimony of the suit in the U.S.A. and nowhere is this testimony of ADC's action against Ennar Latex, Inc. further mention or confirmed by LAC's other witness who was brought to testify.

Overall, Mr. Mensah conceded to LAC's indebtedness as it relates to ADC claim of the thirty-eight thousand, four hundred, thirty-two United States Dollars and ninety-one cents (US$38,432.91), but denied that it ever promised to pay ADC ninety-six thousand United States Dollars (US$96,000.00) on the warehouse transaction. Rather, it was agreed that LAC would pay ADC sixty thousand United States Dollars (US$60,000.00) and this amount was transferred to ADC's account as instructed.

Appellant's second witness, Mr. Alfred B. Sauser, testified that Mr. George Q. Mensah instructed him to write two checks, each in the amount of thirty thousand United States Dollars (US$30,000.00) to Mr. Talal Eldine/ADC for renovation work carried out on LAC's warehouse. When these checks were returned by Mr. Eldine, he said that, he Sauser, prepared the telegraphic instruction and then faxed it to Ennar Latex in the USA to effect the payment into Mr. Eldine's account. A month after the instruction was sent to

LAC's agent, the octopus operation of the war occurred and they fled the plantation.

Asked whether LAC's agent confirmed to him that it received his instruction, Mr. Sauser said he did not get a confirmation until he and others fled for their lives during the civil crisis in October 1992 (Octopus war). He therefore could not confirm whether or not his instruction was carried out.

Both parties having rested evidence, the trial court ruled, finding the appellant liable to the appellee for sixty thousand United States Dollars plus the undisputed amount of thirty-eighty thousand, four hundred thirty-two United States Dollars and ninety-one cents (US$38,432.91) along with six percent per annum on the judgment debt and court costs.

The appellant excepted to the trial court's ruling of liability to the appellee for the none payment of the US$60,000.00, along with costs of the proceedings. Appellant announced an appeal to the Supreme Court for its review of the matter. However, due to the law, INA Decree No. 12, which requires enforcement of judgment despite the announcement and taking of an appeal from the judgment of the debt court, coupled with line of this Court's opinions upholding the enforcement of the INA Decree No. 12, the judgment was ordered enforced by the Judge and which appellant did comply with.

The appellant's bill of exceptions consisting of fourteen (14) counts, has assigned various errors said to have been made by the judge and which it said should warrant overturn by the Supreme Court. It has requested the Supreme Court to reverse the erroneous ruling and final judgment of the Judge.

In finding for the appellant, the Judge ruled that the appellant admitted that it owed the appellee sixty thousand United States Dollars (US$60,000.00) on the warehouse transaction and this amount was transferred to the appellee's account as instructed, but the internal memorandum from appellant to its agent, Ennar Latex, Inc., ordering the transfer of sixty thousand United States Dollars (US$60,000.00) to the account of Mr. Eldine was the only evidence adduced at the trial by the appellant relating to payment of the sixty thousand United States Dollars (US$60,000). This document, the Judge said, could not of itself prove that appellee's account was indeed credited with the sixty thousand United States Dollars (US$60,000). The court said the best

evidence of proof of payment would be a copy voucher to prove that the sixty thousand United States Dollars (US$60,000.00) was transferred to appellee's account in the USA, and a copy of the credit ticket by appellee's bank indicating that the sixty thousand United States Dollars (US$60,000.00) was actually received and deposited into appellee's account. Regrettably, the Judge said no such documentary evidence was adduced at the trial. Besides, the court said, appellant's second witness, Mr. Sauser, testified that he did not received confirmation from Ennar Latex, Inc. as to whether it received the instruction of the transfer and or whether Ennar Latex, Inc. actually transferred the Sixty Thousand United States Dollars (US$60,000.00) into ADC's account.

A review of the file before us shows that the appellee claim of debt was made in two folds. Count 11 of the amended complaint alleged a debt of thirty-eight thousand, four hundred thirty-two United States Dollars and ninety-one cents (US$38, 432.91) for goods and services rendered the appellant. The appellee out-rightly conceded to this claim in Count 12 of its answer and in the testimony of its prime witness, LAC's comptroller, Mr. George Q. Mensah. The other claim which was in dispute and which the trial Judge said required the taking of evidence was the appellee's claim for ninety-six thousand United States Dollars (US$96,000.00) which it said the appellant committed itself to pay when it prematurely took over LAC's warehouse that appellee had renovated and leased out to CRS.

In its answer and testimonies before the trial court, the appellant denied ever agreeing to pay ninety-six thousand United States Dollars (US$96,000.00) to the appellee, but said the agreement reached was for US$60,000.00, which in fact it did pay as per the appellee's instruction to have said money transferred to its President, Talal Eldine's account aboard.

The appellant in counts 6 thru 9 of its bill of exceptions has assigned the ruling of the trial judge as erroneous, for the ruling of the trial judge failed to state or show that the appellee had proven its action of debt; rather, the Judge found the appellant liable to pay appellee sixty thousand United states Dollars (US$60,000.00) when the claim made in the appellee's complaint was for ninety-six thousand United States Dollars (US$96,000.00). Further the Judge stated in his ruling that the appellant admitted to owing the appellee ninety-six thousand United States Dollars (US$96,000.00) which the

appellant said it never did, and had denied throughout the case. The ruling for US$60,000.00, the appellant said, was evidence that the appellee did not prove its claim of ninety-six thousand United States Dollars (US$96,000.00) but rather the judge awarded the US$60,000.00 that the appellant said was the amount agreed on to be paid and which appellant had paid.

Relevant portion relating to the Court's Final Judgment on this issue of the admission of appellant's to the claim of US$96,000.00 but ruling the appellant liable for US$60,000.00 is written hereunder:

The defendant admitted its indebtedness to plaintiff of ninety six thousand United States Dollars(US$96,000.00) but set out affirmative defense that it has already paid plaintiff the ninety six thousand United States Dollar (US$96,000.00) which payment represents reimbursement of plaintiff for the costs of the renovation works done by plaintiff on defendant's warehouse at the Port of Buchanan. Defendant also gave notice that at the trial it would prove payment of (the) ninety six thousand United States Dollars (US$96,000.00) to plaintiff.

Plaintiff argued that by defendant's admission to its indebtedness to Plaintiff and by defendant's affirmative defense that it has already liquidated defendant's obligation of ninety six thousand United States Dollars (US$96,000.00) to plaintiff, (this) shifted the burden of proof to the defendant to prove the payment. The Liberian Civil Procedure Law, 1LCLR section 25.5 (1), page 198 provides: Party having burden. The burden of proof rest on the party who alleges the fact except that when the subject matter of a negative averment lies peculiarly within the knowledge of the party, the averment is taken as true unless it is proven by that party.

In an attempt to prove that the defendant who has paid plaintiff the ninety six thousand United States Dollar s (US$96,000.00), defendant's first witness, Mr. George Q. Mensah, took the witness stand and confirmed that plaintiff and defendant entered into an understanding in which plaintiff was to repair, and did repair defendant's warehouse for a total costs of ninety six thousand United States Dollars (US$96,000.00). Witness Mensah maintained that the understanding between the parties was that upon the conclusion of the repairs of the warehouse, plaintiff would rent same to CRS for some time; and that plaintiff did rent defendant's warehouse to CRS for a period of fifteen (15) months at United States three thousand Dollars (US$3,000.00) monthly. According to witness Mr. Mensah, because plaintiff maintained the aggregated rental of forty five thousand United

States Dollars (US$45,000.00), it was later agreed by the parties at the meeting held between them in early 1992, that the defendant would pay plaintiff the balance of sixty thousand United States Dollars (US$60,000.00) for the total cost of the renovation work. Testifying further, Mr. Mensah said that he as Comptroller of the Company, on behalf of the defendant instructed defendant's agent, Ennar Latex, Inc. in the United States of America to transfer to Mr. Talal N. Eldine/ADC's account sixty thousand United States Dollars (US$60,000.00).

The trial court's final ruling stating that the defendant admitted its indebtedness to plaintiff of ninety-six thousand United States Dollars (US$96,000.00) may not be the true construction of the facts of the case, since the main contention in this matter was not what the appellee spent on the renovation work which the appellant did not dispute, but what the parties agreed would be refunded the appellee for appellant taking over its warehouse from CRS. The appellant consistently denied that it ever settled with the appellee to pay it the sum of ninety six thousand United States Dollars (US$96,000.00) as refund for the renovation of appellant's warehouse. The appellant in counts 7 of its answer said the appellee having collected US$45,000.00 from CRS as rental payment for a fifteen month period, LAC did not feel obligated to refund the total amount of $96,000.00 use by ADC for the renovation, and it was finally agreed that LAC would paid, as part of appellee's expense, sixty thousand United States Dollars (US$60,000 00). The testimony of the appellant's first witness, Mr. George Q Mensah was cleared on this issue.

Mr. Mensah's testimony, the trial court said, was an admission by the appellant of its agreement to pay $60,000.00 to the appellee and its claim that it had liquidated this obligation to the appellee shifted the burden of proof on the appellant to establish that indeed the amount of US$60.000.00 was paid the apellee as alleged by the appellant. The issue being what was agreed to by the parties to be paid and transferred and not the cost of renovation of the warehouse, and the appellant having admitted that it was US$60,000.00 and not US$96,000.00, the construction of the facts in the ruling, though not accurate, did not affect the fact of the appellant's own admission. Our Civil Procedure Law, section 1.5 states that no error or defect in any ruling or order is ground for disturbing a judgment unless refusal to take such action is inconsistent with substantial justice.

In Count 6 and 9 of appellant's bill of exceptions, appellant assigned as error the failure of the Judge in his final ruling to state that the appellee proved its action of debt; instead the Judge ruled that the burden of proof shifted on the appellant/defendant to show that it had paid the US$60,000.00 to appellee; that an action of debt is for a sum certain therefore the judge erred by awarding the appellee UD$60,000.00 when in fact the complaint was for US$96,000.00 and the testimonies of the appellee's witness alleged the indebtedness was for US$96,000.00.

This contention brings up the issue whether the court could have found the appellant liable for US$60,000.00 on the warehouse transaction when the claim in the action of debt by the appellee alleges ninety-six thousand United States Dollars (US$96,000.00).

This issue raised by the appellant reemphasizes the relevance of the Supreme Court's Judicial Order No. 4, which requires all final rulings/judgments of judges of courts of records to be separate and not dictated on the court's records; that the trial courts final rulings be detailed, containing clear and concise summaries of the facts and evidence of the case, the relevant law citations relied upon, and the rational upon which the ruling is made. How the Judge could have made his final ruling holding the appellant liable for US$60,000.00 on the warehouse agreement without making mention of the claim of the appellee for US$96,000.00 and passing on whether in fact the appellee proved its claim, beats the imagination of this Court. Even if the burden of proof shifted to the appellant who admitted that the agreement was for US$60,000.00, which it alleged was paid, and not US$96,000.000 as the appellee insisted, the Judge in his final judgment should have been cleared in his ruling as to the findings of the appellee's claim. Did the appellee not establish by preponderance of the evidence that the agreed payment was for US$96,000.00 and therefore the court based its judgment on the admission made by the appellant?

As previously stated, the appellee's witnesses testified that it was agreed that the appellant would pay ninety-six thousand United States Dollars (US$96,000.00) in two installments of US$50,000.00 and US$46,000.00; that because of the civil war, the first check of fifty thousand United States dollar (US$50,000.00) could not be enchased. This check of US$50,000.00 was returned to the appellant who promised to have the entire amount of

US$96,000.00 transferred to the appellee's account. The appellee, however, produced no document to substantiate this agreement for payment of US$96,000.00, not even a copy of the first check of US$50,000.00. Appellee's second witness, Mr. Lewis Browne, was questioned during trial on the cross examination about a written agreement evidencing the agreement to pay US$96,000.00 as follows:

Q. Mr. Witness, was an agreement reduced into writing after the meeting by which you have indicated that LAC agreed to pay ADC US$96,000.00?

A. There was no written agreement that I recall, but as I have indicated in my statement in Chief, LAC and ADC were engaged in several business transactions, up to that point, the management of ADC and LAC fell mutually binding to each other and in their wisdom agreed that the transaction would be respected and that that agreement reached at the highest level of LAC and ADC would be respected.

We also gather from the testimony of appellee's second witness, Mr. Talal Eldine, that appellant and appellee transacted various aspects of business and there was certain confidence between them in their dealings and transactions. He stated that sometimes amounts owed them were transferred and other times debts were paid in checks.

Apparently relying on the integrity of each other, as appellee had said both parties had engaged in various transactions agreed on verbally, there is no written document of the understanding reached by the parties on the warehouse, particularly the payment in dispute. The appellee alleged that the parties agreed that appellee would renovate the warehouse and lease it for five years and it expended between US$125,000.00 - US$130,000.00 for the renovation, specifically spending US$96,000.00 on the materials used for said renovation. It does not deny that it received US$45,000.00 from CRS, but argues that it would be un-businesslike for ADC to renovate appellant's warehouse to lease with no intent to make any profit on its investment. The appellant however countered that the warehouse was given to the appellee to be renovated but for no agreed definite period. Realizing that the appellant had breached the understanding reached between the parties when it asked CRS to pay rent to LAC just after fifteen months into the agreement, was it not prudent that the appellee would require that this refund of US$96,000.00 be put into writing? Wasn't this

alleged breach of LAC in taking over the warehouse before the expiration of the five years sufficient to have put the appellee on notice that its transaction with LAC could no longer be considered on gentlemanly terms?

Our Jurisdiction has adopted the Statute of Frauds of England which requires business transaction, agreements relating to real estate, and special promises to answer for debt, be put into writing. Massaquoi vs. RL. Parker and Roberts, 8LLR, 112 (1943). An ordinary statute of frauds requires that a party sought to be charged sign a memorandum of the parties' agreement, with some evidence of the contract and the contract essential terms; and a memorandum is required by the statute of frauds, not for the purpose of obtaining a contract in writing, but merely to furnish written evidence, signed by the party to be charged or his duly authorized representative, of the obligation to be enforced against him. 72 AM JUR 2d, § 205.

In this case where there is a dispute as to what amount the appellant agreed to pay, and there being no written document setting out the amount that the appellee says the appellant agreed to pay, the question as to what the appellee says was the actual price agreed to be paid are all allegation of facts which should have been be proved by evidence.

The appellant put into evidence documents marked and confirmed D/1 thru D/4 as follows:

Appellant D/4: LIBERIA AGRICULTURAL COMPANY CONN/147/92 No.: TO : W.G. Becker FROM: G.Q. Mensah SUBJECT: TELEGRAPHIC TRANSFER DATE: September 14, 1992 Please Pay : Talal Eldine Amount : USD60,000.00 Representing: Replacement of check Nos. 2246 and 2387, being re-imbursement of repairs done to LAC Buchanan warehouse. Warehouse rental from CRS tobe paid to LAC, effective January 1, 1992, 3,000.00 USD/month.

Bank: Please call telephone No. 714-8314710 and Mr. Fadia Eldine will give details of Bank and account no

G.Q. Mensah COMPTROLLER V. Tan GENERAL MANAGER

Appellant D/3: (handwritten)
Sept -17-92

TO: MR. JIM BELCHER FROM: TALAL ELDINE

I called you couple of times and left a message; you were in some meeting. Please let me know if you got any INFO from Mr. Mensah regarding the transfer.

It is very important that the transfer is done before Sept 22-92.

I hope to hear from you soon.

Best regards
Talal

Tel: #714-8314710 FAX: #714-6432439 Sept-18-92

Appellant D/2: (handwritten)

TO: MR. JIM BELCHER FROM: TALAL ELDINE

Dear Jim,

Thank you for the efforts to the confirmation.

Please send the transfer to the following:

TALAL N. ELDINE
ACC# 08948-01627
BANK OF AMERICA
MAIN AND ELLIS BRANCH
18691 MAIN ST.
HUNTINGTON BEACH, CA 92648

Thanks in advance & best regards. Tala

Appellant D/1 MEMORANDUM (handwritten)

Date: 9/22/92 RE: FROM: 820 14464 TO: BANK OF AMERICA MAIN AND ELLIS BRANCH 18691 MAIN ST. HUNTINGTON BEACH,
CA 92648 AB 121 000 358
FC TALAL N. ELDINE ACC NO. 08948 – 01627
$38,620.00
PATRICIA 11:34
TAN 457?
Becker.

When these documents were submitted into evidence, the record of the trial court reflects the following:

Specifically, plaintiff's (appellee) counsel objects to the debit advice showing that US$38.620.00 was deposited on September 22, 1992, into the Bank of America account, transaction No. 920922-004574 Source PHM Control 21000358 on grounds that no notice was given to the plaintiff because this document was not pleaded. And Submit.

THE COURT: It is the practice in this jurisdiction hoary with age that every documentary evidence intended to be used during trial must be pleaded to give the opposing party legal notice of what he intends to prove at the trial. There is no showing from defendant's answer that the debit advice was pleaded to give the opposing party, the plaintiff, the required legal notice as required by law. The objection of counsel for plaintiff is SUSTAINED on the ground that no legal notice was given the plaintiff to enable the plaintiff traverse this document. All other documentary evidence submitted by Counsel for Defendant and pleaded in his answer not having been objected to by Counsel for Plaintiff are ordered admitted into evidence to form part of Defendant's evidence[emphasis ours]. The debit advice not having been pleaded is DENIED admission into evidence. And it is hereby so order.

Taking into account that the appellant's three other documents D/2-4 were not objected to by the appellee, and admitted by the court, clearly the appellee did not produce sufficient documentary evidence to establish proof of its allegation of appellant's indebtedness of ninety-six thousand United States Dollars(US$96,000.00). The fax communication, as written above, from Mr. Talal Eldine, the President of appellee ADC to Mr. Becker of Ennar Latex, Inc., refers to the communication of Mr. Mensah, comptroller of LAC who is requesting transfer of US$60,000.00 to appellee's account and not US$96,000.00 as appellee alleged. In his faxes, Mr. Eldine makes no mention of an amount that should have been transferred. It therefore appears from the records, that the Judge, taking into account that there was no written memorandum of the amount agreed to be paid, and that Mr. TalaI Eldine's email only referred to Mr. Mensah email as to what was to be transferred, the Judge was of the opinion that the appellee failed to establish its claim for US$96,000.00 by preponderance of evidence. It is a law extant in our

jurisdiction that the jury is the trier of facts and must determine the weight and credibility of evidence, Beslow vs. Coleman, 9LLR 156, 159, (1946), Forleh et al vs. Republic, 42LLR 23, 39,(2004). In this case, the Judge acting both as judge and jury determined from the evidence that the appellee was entitled to only the US$60,000.00 admitted by the appellant was agreed to by the parties to be paid.

The appellant itself having admitted that the agreement reached was for payment of US$60,000.00, we agree with the Judge that the admission was sufficient to establish a debt agreed to be paid by the appellant to the appellee. This court has consistently held, All admissions made by a party or its agent is conclusive evidence against such party", Dukuly vs. Jackson, 30LLR159 (1982); In re: Joseph K. Jallah 34LLR 392, 395 (1987). This court, in the case Ricks vs. ACDB, 30LLR 482,489 (1983), further stated that even where the appellee/plaintiff admits to the receipt of payment, though appellant/defendant had produced no evidence thereof, the court, for the sake of justice and fair play, will order the payment so admitted deducted from the judgment debt.

The appellant having admitted that it agreed to pay the appelle US$60,000.00, and not US$96,000.00, the question remained whether in fact the US$60,000.00 was transferred and paid as the appellant alleged.

Besides the testimonies of its two witnesses, Mr. George, Brown and Mr. Alfred B. Sauser, to establish that it liquidated the sixty thousand United States Dollars (US$60,000.00) that it said it agreed to pay appellee, the appellant made application to the court for admission into evidence of documentary evidence D/4, a memorandum dated September 14, 1992, instructing W.G. Becker of Ennar Latex, Inc. to transfer to Talal Eldine's Account US$60.000.00; and a memorandum dated September 22, 1992, from W. Becker of Ennar Latex stating that it had transferred to the appellee's account thirty eight thousand ,six hundred United States Dollars (US$38,600.00) after deduction of US$21,380.00 said to be owed Ennar Latex by the appellee.

The Judge upheld the appellee's argument that the appellant's D/4, a memorandum dated September 14, 1992, instructing W .G. Becker of Ennar Latex, Inc. to transfer to Talal Eldine's Account US$60.000.00 was an internal memorandum to its agent Ennar Latex and was not proof by itself that the amount was transferred, especially when the appellant's second witness Wilfred Sauser, testified that he sent the memorandum but the telex was never confirmed as the Octopus war occurred and all fled for their lives. The internal

memorandum conveyed only instruction to defendant's agent to pay and did not in itself prove actual payment; therefore, the burden of proof of payment still remained on the defendant.

This Court has said that evidence alone enables the court to pronounced with certainty the matter in dispute, Reynolds vs. Garfuah, 41LLR 362, 371, (2003); and that the best evidence which the case admits of must always be produced as no evidence is sufficient which supposes the existence of better evidence (1LCLR) Section 25.6 (1) page 198. The trial court said, and we agree, that the best evidence to prove the payment of the sixty thousand United States Dollars (US$60,000.00) in this case would be a copy of voucher indicating that the sixty thousand United States Dollars (US$60,000.00) was actually transferred by appellant to appellee's account in the United States of America and the copy of the credit ticket used by the appellee's bank indicating that it received from appellant's agent the sixty thousand United States Dollars (US$60,000.00) and did credit the appellee's account. Such document in the mind of this Honorable Court, prove payment; but regrettably, no such documentary evidence was adduced at the trial.

The Judge also ruled sustaining the appellee's objection to the appellant's D/1, an alleged memorandum dated September 22, 1992, from W. Becker of Ennar Latex stating that it had transferred to the appellee's account thirty eight thousand, six hundred United States Dollars (US$38,600.00) after deduction of US$21,380.00 said to be owed Ennar Latex by the appellee. The appellee said it had no notice as to this document since it was not pleaded and did not give the appellee the opportunity to traverse it.

Disallowing the admission into evidence of this memorandum of September 22, 1992, from W. Becker of Ennar Latex, Inc., the Judge said he agreed that this memorandum should have been pleaded and no notice was given to the appellee so as to give it the opportunity to traverse the document.

The appellant in its bill of exceptions stated that the judge erred for not admitting its document marked D/1 into evidence since this debit advice was testified to by two witnesses, marked by the court, confirmed and reconfirmed.

This issue was addressed in the case, JIDSANC, INC. His Honor J. Henric Pearceson .West TECH P.L.C, et al, 35LLR, 742, 748, (1988), where this Court

said that it agreed that documents identified, received, and marked by the court must go to the trial of the facts but its only when these documents have been pleaded and are relevant to the issue of fact raised in the pleading. As the judge rightly ruled, this document was not pleaded and did not give the appellee the required notice to traverse it. We observed from the records, however, though the Judge denied the appellant D/1 into evidence, the Judge did pass on this document in his final ruling. He ruled that the memorandum, of September 12, 1992, was not sufficient proof of payment as the appellee denied owing Ennar Latex and the appellant did not ascertain from the appellee whether indeed appellee did owed Ennar Latex. Besides the memorandum was not the best evidence that any money had been transferred. The court again re-emphasized the best evidence rule, that no evidence is sufficient which presupposes the existence of better evidence.

This Court notes this argument of the appellant that when it instructed its agent, Ennar Latex, Inc to transfer the US$60,000.00 to the appellee's account, Ennar Latex alleged that appellee owed it US$21,380.00 and therefore proceeded to offset the amount against the appellee, transferring the balance of US$38,620.00 to the appellee's account. The appellant's key witness, Mr. Mensah, testified that in April 1993, ADC instituted an action in the United States against Ennar Latex on this particular matter but lost against Ennar latex. He also said that he testified in the case in Hartford Connecticut, U.S.A.

This Court is surprised that no evidence of the proceedings in the USA was produced to substantiate this claim that the appellant did receive in its account US$38,620.00, and sued Ennar Latex, Inc. in Connecticut, U.S.A. for the amount deducted but lost the case. As the trial Judge ruled, this allegation was testified to by only one witness of the appellee, G. Q. Mensah, and was not confirmed by the plaintiff's other witness. Also, we find it interesting that this information of the suit brought against Ennar Latex in America did not form part of the appellant's pleading. The appellant countered that it was never indebted to Ennar Latex; besides, its business relationship with appellant was different and distinct from whatever relationship that may or may not have existed between appellee and Ennar Latex, Inc.

Generally, where the authority of an agent is created by a written instrument and the mode of exercising that authority is prescribed in the instrument, there must be strict compliance as to the instruction. In this case, Ennar Latex was subject to adhere strictly to LAC's instructions. However, where the agent's act is commanded by the principal, or where not commanded, said agent's conduct was subsequently assented to by the principal the principal may be accountable. As in this case, appellant has shown no evidence of repudiating of Ennar Latex alleged act of deducting US$21,380.00 from the amount asked to be transferred to appellee's account. Instead, it appears from the record that appellant defends the alleged act of Ennar Latex, insisting that appellee owed Ennar Latex, Inc. US$21,380.00 which amount was deducted from the amount instructed to be transferred. This Court observes further that appellant did not showed evidence that the balance US$38,620.00 alleged to be transferred to the appellant's account was credited to the appelle's account.

In a further attempt to establish that its obligation to the appellee on the warehouse was liquidated, the appellant made an application to the trial court for the issuance of a writ of subpoena duces tecum on the Bank of America, Main & Ellis Branch, 0894 18691 Main Street, Huttington Beach, CA 29648 to produce the statement of account in respect of account No. 08948-01622 held by plaintiff/appellee Talal N. Eldine, which would have shown that the plaintiff/appellee's account had been credited with the amount of thirty-eight thousand, six hundred twenty United States Dollars(US$38,620.00)and evidencing payment made by Ennar Latex Inc. on behalf of appellant (LAC), and upon the instruction of appellee to appellant.

Section 14.1 1LCLR states that:

A subpoena may require the attendance of a person to give testimony or to produce books, documents, or other things or both. A subpoena requiring the production of books, documents, or other things is referred to herein as a subpoena deces tecum. Every subpoena shall be issued under the signature of the judge or clerk and the seal of the court, shall state the name of the court and the title of the action, and shall command the person to whom it is directed to attend and give testimony or to produce the books, documents, or other things designated or to do both at a time and place therein specified.

The appellee ADC argued that the Bank of America is without the Republic of Liberia, and therefore the court had no jurisdiction and could not exercise jurisdiction over the Bank of America doing business in the United States; besides, the appellant LAC virtually admitted to all of the transaction complained of in the appellee's complaint and therefore it was the appellant who had the burden of proving that portion of payment disputed by appellee by producing the evidence of the money said to be transferred. If the appellant transferred was via bank remittance as alleged/ in that case1 it would be the appellant who would be required to present to court the transfer voucher1 and the credit ticket as a result of the alleged transfer. The best evidence of the appellant having made payment to appellee's account was not appellee bank account but the appellant's transfer voucher and ticket. The appellee cited Section 25.5. and 25.6. of the Civil Procedure Law, Volume I LCLR.

Agreeing with the argument of the appellee and denying the application for the subpoena duces tecum, which appellant has assigned as error on the part of the Judge, the Judge ruled that the establishment of the Debt Court for Montserrado County provides for a limited territorial jurisdiction in the Republic of Liberia; and even if the court had to serve a precept in another country, the Sheriff of that country has to endorse the writ to serve it and make their returns thereto. Our statute, the Judge said, gives the authority to summon a party outside Liberia by publication and no such authority is given for the service of a writ of supeona duces tecum.

We are in perfect agreement with the Judge. Our Civil Procedure Law, Volume 1 sections 3.1 through 3.3 provide for courts' jurisdiction over nondomiciliary as follows:

§3.1 Personal jurisdiction over nondomiciliary through acts within Liberia

A nondomiciliary who has been in Liberia shall be subject to the jurisdiction of Liberian courts in the same manner as if he were a domiciliary of Liberia

§3.2 Personal jurisdiction over nondomiciliary through acts within Liberia.

After proper service of summons, a court may exercise jurisdiction over a nondomiciliary, even though he has not been in Liberia, as to a claim arising

from any of the acts enumerated in this section in the same manner as if he were a domiciliary, if, in person or through an agent, he

(a) Transacts any business within Liberia or makes a contract with a person in Liberia which is to be performed there, or

(b) Commits a tortuous act within Liberia, or

(c) Owns, uses, or possesses any real property situated within Liberia.

§3.3 Personal jurisdiction over domiciliaries and nondomiciliaries in certain kinds of actions.

After proper service of summons, a court may exercise personal jurisdiction over a person in the following actions:

(a) To annul a marriage or for divorce, if the marital status is subject to adjudication in Liberia courts;

(b) Affecting the possession of, interest in, or title to, real or personal property within Liberia;

(c) In which a levy upon property of the defendant has been made within Liberia pursuant to an order of attachment or a chattel has been seized in an action to recover a chattel.

In respect of the applicable law cited above, this Court fails to assign as error the lower court's decision disallowing appellant's application for service of a subpoena duces tecum on the Bank of America, Main & Ellis Branch, 0894 18691 Main Street, Huttington Beach, CA 29648, and having the bank produce records of Mr. Eldine's account. We agree that the debt court in Liberia could not effect a service of precept on the said bank in the United States when it had no jurisdiction to compel such service. The Bank of America has never operated in Liberia as far as this court is aware and the Bank of America has not carried out any of the activities provided under §3.2 of our Civil Procedure Law that would confer the court personal jurisdiction over the bank. Besides, to exercise jurisdiction over a non-domiciliary bank under §3.2, the court would firstly have to summon the bank, bringing it under its jurisdiction. Moreover, it was not for the court to establish that the bank of America had done business in Liberia or was subject to the jurisdiction of the Liberian court. It was for the applicant,

by appropriate proof, to establish that the bank, by its activities had made itself subject to the jurisdiction of the Liberian court, and therefore that precept or summons could be served on it. The records do not reveal that the appellant met that burden of proof required of it.

This Court agrees with the trial Judge's rationale and findings that the appellant was liable to the appellee based on the appellant's own admission of what it said was agreed would be paid the appellee; and that there was not sufficient evidence produced by the appellant to establish that its instruction to Ennar Latex, Inc. to transfer said S$60,000.00 was complied with.

The appellant requested this Court to further rule and declare the INA Decree #12 unconstitutional since it attempts to circumscribe and/or otherwise usurp the unqualified constitutional right of a party litigants to appeal. This application to rule the INA Decree No. 12 unconstitutional has been brought up before this Court in the past in the cases: TRADEVCO vs. His Honor Judge Mathies and Brasilia Travel Agency. 39 LLR272 (1998); and Kyung and WARCO vs. His Honor John Mathies and Kamal Arnous, March Term 2006. In these cases, the Supreme Court held that INA decree No. 12, does not violate the right of appeal guaranteed by the Constitution as it does not prescribe that the one against whom a judgment is rendered cannot take an appeal; it only allows for settlement of a judgment in an action of debt while the appeal is being pursued at the Supreme Court.

The latest case with reference to this issue of the constitutionality of the fulfillment of a judgment where an appeal has been announced is the case Jerry Kollie vs. His Honor Yussif D. Kaba and Evelyn S. Barclay, handed down during the October 2009 Term of the Honorable Supreme Court. The issue of the constitutionality of such satisfaction of judgment despite the announcement of an appeal was not specifically related to the INA Decree 12, but the constitutionality of INA Decree No.12 was incorporated in that opinion.

In the Kollie case, the appellant took an appeal from the judgment of a hearing held against him in the 5th Judicial Circuit, Montserrado County, in an action for Summary Proceedings to Recover Possession of Real Property. Despite the announcement of the appeal, the trial court, relying on the Statute, ILCLR, §62.24, Stay, under Subchapter "B" SUMMARY PROCEEDINGS TO RECOVER REAL PROPERTY, sought to evict the

petitioner/appellant from the property occupied by him. The appellant fled to the Justice in Chambers alleging that this Statute upon which the trial court relied was unconstitutional. Section 62.24 of our CPLR reads:

If an appeal is taken from a judgment of a court not of record in favor of a plaintiff in a proceeding under this subchapter, the issuance and execution of a writ of possession shall be stayed pending rendition of of final judgment; but the taking of an appeal from the judgment of a Circuit Court in favor of a plaintiff shall in no case arising under this subchapter operate as a stay of enforcement proceedings. A plaintiff in whose favor judgment is rendered in a proceeding under this subchapter may secure the issuance and execution of a writ of possession immediately if no appeal is taken.

The Justice in Chambers held that this statute did not violate the constitutional right to an appeal as fulfillment of the judgment did not prohibit the right to appeal.

Excepting to the ruling of the Justice in Chambers, petitioner/appellant announced an appeal to the Bench en banc.

In his argument before the Supreme Court, appellant Jerry Kollie argued the need for the Supreme Court to address itself to this statute so as to have it comply with the organic law of our country which states, The right of appeal from a judgment, decree, decision, or ruling of any court or administrative board or agency, except the Supreme Court shall be inviolable Article 20 (b).

In its opinion on the issue of whether Section 62.24 violates Article 20(b) of our 1986 Constitution, the Supreme Court in upholding the ruling of the Justice in Chambers, made reference to the case, Farhat et al vs. Gemayal Reeves et al, 34 LLR24 (1998), where this Court held that the right of an appeal is not prohibited by fulfillment of a judgment. Constitution and the statutory laws are made to serve the needs of the people and the benefit of society; and as the need arises, and as a result of experience, laws are adjusted to answer to the needs of the people. The Supreme Court has often held that an appeal serves as a stay but exceptions have been made in certain cases by our statutes for the stay of judgment while an appeal is pending, as in the case of the amendment of the maintenance and support statute (1935), which allows a child to be supported while an appeal is pending in said case; Summary Proceedings to Recover Possession of Real

Property, allowing for one against whom judgment has been brought in a circuit court to be evicted in an action of possession of real property(1973), and the INA Decree No. 12 (1985) amending §4.2 of the New Judiciary Law, allowing for judgment on a debt to be paid the successful party pending an appeal. Clearly, the aim of these amendments, the Court said, was not to violate our Constitution but to enhance their effectiveness in promotion of the very rights for which certain Articles in the Constitution were promulgated.

In Kyung and WARCO vs. His Honor John Mathies and Kamal Arnous, supra, the Supreme Court said the intent of INA Decree No. 12 was to arrest the situation of incessant nonpayment of debt in our society which was and has even now become rampant since the civil crisis. Lending institutions and creditors were and are still hesitant and reluctant to provide lending facilities to Liberian businesses and individuals in the country as recovery for money owed are arduous, mainly due to the appeal process. No doubt, this Court said, this problem had serious economic impact on the general economy of the country. It was in even in furtherance of the need to create a credible and viable economic system, and in wake of the prevailing concern of banking institutions hesitance to grant loans because of borrowers' failure to honor debt payments, that recently prompted the establishment of the Commercial Court by an Act of Legislature in 2010, which also requires payment of judgment debt despite the announcement of an appeal.

As stated in the Jerry Kollie case, supra, this Bench upholds and recognizes that the right to appeal is not prohibited or violated by the enforcement of a debt judgment. The Supreme Court said, A stay does not mean setting aside or annulling the trial court's judgment, it merely suspends the judgment. Where social and economic justice will be impeded by the taken of an appeal, the Legislature can enact such statutes as are necessary to promote social and economic justice without resulting to affect an appeal which may affirm, modify or reverse a judgment. Stay of judgment in an appeal is often considered in the case where the appellant will suffer irreparable or serious injury if the stay is denied, or where the public interest lies, 5 Am Jur, §405.

The appellant has also raised the issue that it is unconscionable and financially onerous to require a judgment-debtor, appellant, against whom a

judgment is enforced, notwithstanding his announcing an appeal and same being granted by the trial court, to post an appeal bond, since the object of an appeal bond is to indemnify the judgment-creditor. Further, that the judgment creditor should, under such circumstances, be required to post a bond with the trial court in such an amount which he has received.

Section 51.8 of our 1LCLR requires an appeal bond as a prerequisite to an appeal. It states:

Every appellant shall give an appeal bond in an amount to be fixed by the court, with two or more legal qualified sureties, to the effect that he will indemnify the appellee from all costs or injury arising from the appeal, if unsuccessful, and that he will comply with the judgment of the appellate court to which the case is removed. The appellant shall secure the approval of the bond by the trial judge and shall file it with the clerk of the court within sixty days after rendition of judgment. Notice of the service shall be served on the opposing party. A failure to file a sufficient appeal bond within the specified time shall be ground for dismissal of the appeal, provided, however, that an insufficient bond may be made sufficient at anytime during the period before the trial court loses jurisdiction of the action.

This issue of an appeal bond is a requirement of the statute set to indemnify the appellee in whose favor a judgment was made and in which judgment has been suspended based on an appeal by the appellant. The issue raised by appellant is that it is unconscionable and financially onerous to require a judgment-debtor, appellant, against whom a judgment is enforced, despite his announcement of an appeal to post an appeal bond, especially when the object of an appeal bond is to indemnify the judgment-creditor.

The filing of an appeal bond by the appellant was established by law and our courts have no authority to make laws. The Supreme Court has however dealt with the issue of the appeal bond as it relates to the sufficiency of the bond. It has held that where the judgment appealed from does not state an amount, or the appellant is not under any financial obligation to the appellee, as in this case where the money judgment was already satisfied and there was no money judgment in favor of the appellee pending on appeal, the bond needed only to be sufficient for indemnification of costs of court: LAMCO and the Ministry of Labor vs. Garmoyou, 34LLR, 712 (1988); National

Bank of Liberia vs. Karloweah and the Board of General Appeals, 42LLR 389, (2005). The issue of an appeal bond being one-half times the amount of a judgment, this Court has said, is not supported by law. The indemnification requirement of one and half times applies only in an attachment proceedings.

The appellant further contents that if anyone needed to be indemnified, it is the appellant who has satisfied the judgment that could likely be overturned, requiring the appellee to refund all or part of the money prepaid, and in so doing, it is the judgment creditor who should, under such circumstances, be required to post a bond, with the trial court, in such an amount which he has received.

The argument of the appellant may seem logical and it seems that the lawmakers themselves have to an extent given some thought to this issue of indemnity of the appellant where it is required by statute that the judgment be satisfied where an appeal is announced and taken.

In the Act recently passed to amend the Judiciary Law, Title 17 of the Liberian Code of Laws Revised, and which provides for the establishment of a Commercial Court (September 30, 2010), Article II of the Act gives the Commercial Court jurisdiction over all civil actions arising out of or in relations to commercial transactions in which the claim is at least fifteen thousand dollars ($15,000.00), and all cases of admiralty including without limitations any of the following:

a) All disputes arising out of a sale or lease of any property whatsoever, except realty;

b) All disputes arising in connection with the creation, negotiation, and enforcement of any negotiable instrument, including the liabilities and rights associated therewith;

c) Any action to enforce a security agreement or foreclose a mortgage created in accordance with the provisions of the Commercial Code, which is Title 7 of the Liberian Codes of Laws Revised;

d) Any action arising out of the creation, performance, interpretation, assignment and or modification of an agreement creating an agency, partnership, corporation or similar business relationship;

Subject to this threshold stipulated in Article II of the Commercial Court Act, the Commercial Court has concurrent jurisdiction with the Debt Courts over actions to obtain payment of debt. However, the requirement of payment of liability of a judgment despite the taking of an appeal differs. Section 4.2 of the Judiciary Law relating to the debt matters reads:

Appeals from judgments of the Debt Court in an Action of Debt shall not operate as a stay in the enforcement of the judgment thereof, except where the party was denied his day in court; or where the amount of the indebtedness is in dispute. Nor shall the institution of remedial proceedings operate as a stay in the enforcement of such judgment, except where the party was denied his day in court; or where the amount of the indebtedness is in dispute (emphasis ours). JUDICIARY LAW, Chapter 4, § 4.2.

Title 17 of the Judiciary Law, Article IV: Appeals from the Commercial Court, reads:

An appeal from a judgment of the Commercial Court shall not serve as a stay on enforcement of the judgment, provided that the amount of the judgment paid shall be placed in an interest-bearing escrow account with a commercial bank to be designated by the Commercial Court pending disposition of the appeal (emphasis ours).

Payment of the full amount of judgment shall be a condition precedent for the completion of an appeal from a judgment of the Commercial Court, but the appeal bond, which may be required of the appellant, shall be exclusive of the amount of the judgment paid, (emphasis ours). JUDICIARY LAW TITLE 17, Article IV.

In the case of the Commercial Court, though the satisfaction of the judgment is a condition precedent for the completion of an appeal, money paid in satisfaction of the judgment is put in an interest-bearing account pending disposition of the appeal. In this case, the appellant is largely indemnified in case where the Supreme Court overturns or modifies the trial court's judgment. But in the case of the Debt Court, the amount is paid to the successful party though an appeal is announced and taken, and where the

Supreme Court overturns or modifies the trial court's judgment, the appellant would have to look to the appellee for refund.

However, as we have stated, the intent of the passage of the INA decree was in pursuit of enhancing the economic growth of the Country. A repeal of the INA Decree # 12 will depend on whether the situation in the Country has so evolved so as to lend itself to a repeal of this Decree.

Considering that the statute of the Commercial Court requires an appeal bond filed in consonance with section 51.8 of our CPL statute on appeal (1973), the appeal bond filed in a case on appeal from the Commercial Court would be similarly situated as the Debt Court, where the Supreme Court has held that that the amount of an appeal bond where a money judgment has been satisfied is to form an amount sufficient to cover only the costs of Court.

We must say that the issue also raised by the appellant that the judgment creditor in a debt action whose favor judgment was entered and who has fully collected the debt judgment from the judgment creditor should be required to post a bond with the debt court in such an amount which he has received, makes for an interesting debate. This brings us to the issue whether this Court can take upon itself the power to legislate?

Section 51.8 of our CPLR statute requires that an appeal bond be posed by the appellant and not the appellee. In the case Kyung WARCO vs. Judge Mathies and Kamal Arnous, supra, the Supreme Court, in refusing to declare INA Decree No. 12 unconstitutional stated that in the event the appealing party is successful and the appeal is granted, the appellant recovers against the appellee by the judgment of the Supreme Court which is final. We do agree that enforcement of the Supreme Court's judgment overturning or modifying the trial court's judgment for debt may pose some difficulty where the appellee cannot be found or has gone bankrupt. However, we must interject that it would be in rare cases that a debt matter regularly tried and decided would be overturned. Besides, the limitation of this Court is all the more mandatory where the statue in question specifies the only party required to pose an appeal bond.

This Court has often opined that as a result of the distribution of power among the three branches of government, courts have no legislative authority and should avoid judicial legislation. Where a statutory provision is plain on

its face but needs to be amended to reflect the changing times and realities it should be by the Legislature and not the Supreme Court. In this regard, the Supreme Court has often enunciating this principle that legislation considered pernicious, unwise, or oppressive may be remedied only by the people through their legislators, as making legislation is not the Constitutional function of courts: Harris vs. Williams, 9LLR 344, 349, (1947); Management of BAO vs. Mulbah and Ministry of Labor, 36LLR 404 (1989).

In view of all that has been said hereinabove, this Court upholds the ruling of the Debt Court Judge that the appellant LAC was liable to the appellee by its own admission that it promised to pay the appellee sixty thousand United States dollars (U$60,000.00) and that appellant failed to show sufficient proof that this amount was transferred and credited to the appellee's account as agreed. We therefore affirm and uphold the final judgment of the trial court finding the appellant liable to appellee. Costs ruled against the appellant. AND IT IS HEREBY SO ORDERED.

THE APPELLANT WAS REPRESENTED BY COUNSELLOR J. JOHNNY MOMO OF THE SHERMAN AND SHERMAN, INC., AND THE APPELLEE WAS REPRESENTED COUNSELLOR WILLIAM A. N. GBAINTOR OF THE GBAINTOR & ASSOCIATES LAW FIRM.