

**RAMATRIELLE, S. A.** a non-resident Liberian Corporation, Movant/Intervenor v. **HIS HONOUR WILLIAM B. METZGER**, Assigned Circuit Judge, Civil Law Court, Sixth Judicial Circuit, Montserrado County, **MOMOLU TAMBA, VINCENT A. RIZZO** and **GEORGE J. RIZZO**, Respondents.

MOTIONS TO INTERVENE.

Heard: May 7 & 26, 1997. Decided: July 22, 1997.

1. Intervention as a matter of law and practice cannot not be obtained by a third party for the benefit of another party; the intervenor must have a legally protectible interest in the litigation in which it comes to defend.
2. A corporation is a fictional person, and can sue and be sued in its own name, and it has always been the practice for such suit to be brought by or against the corporation, thru its president, manager, or agent.
3. A faulty service of precepts upon a corporation, intended for its shareholders, although in violation of the statute, cannot be remedied in intervention in a case pending for reargument.
4. For the purpose of bringing a corporation into court, service of process upon a corporation must necessarily be upon its officers or agents through whom it is capable of acting or upon some person upon whom process may be served.
5. While the due process provision of Article 20 of the Constitution is applicable when a party's rights are being capriciously infringed upon, the mere fact that a person was not a party to a suit does not *ipso facto* constitute a violation of Article 20 where the party fails to show how his rights are being affected by a judgment of the court.
6. While a judgment cannot be enforced against one who is not a party to a proceeding, the principle is unavailing through the process by intervention during reargument of a case.
7. The failure to timely intervene in a matter renders the remedy unavailable to a party.
8. Reargument is restricted in scope and function to the salient points of law and fact raised at a prior hearing of the appellate court which was inadvertently overlooked by the Court in its decision, which points the Court is confined to disposing of.
9. A party will not be permitted to set up new grounds or raise new issues during rehearing or reargument; and intervention, whether meritorious or not, cannot be legally entertained during the pendency of a rehearing.
10. Intervention is the procedure by which a third person, not originally a party to the suit, but claiming an interest in the subject matter, comes into the case in order to protect his right or to interpose his claim.

11. The office of reargument would be invaded by a motion to intervene if the latter was allowed since, instead of calling the Court's attention to some palpable mistake of law or fact inadvertently overlooked by the Court in its previous decision, new issues would be raised, which would require the Court to depart from the accepted practice.

12. Reargument is discretionary with the Court; it is not a right given to a party under the law, and the right to intervene does not extend to rehearing due to its restrictive nature and function.

13. Any person shall be allowed to intervene in an action (a) when a statute of the republic confers an unconditional right to intervene, (b) when the representation of the applicant's interest by existing parties is inadequate and the applicant will be bound by the judgment in the action, or (c) where the applicant is so situated as to be adversely affected by a distribution of other property in the custody...of an officer of court.

14. When a party seeks to avail itself under a statute or law before a court, the party has an obligation to clearly establish its rights under that statute or law.

15. The payment of fees or taxes by domiciliary or non-domiciliary corporations does not vest in the Republic of Liberia the right to intervene under the claim that the corporation will be affected by the action or judgment.

16. The right to intervene should be interposed within a reasonable time after knowledge of the suit; hence, a motion to intervene will be considered as untimely if it is filed during the pendency of a petition for reargument before the appellate court.

Movants, Republic of Liberia and Ramatrielle, S. A., filed separate motions to intervene in a suit in which judgment had been rendered against a shareholder and a director/president of the co-movant corporation, Ramatrielle, A. S. The Republic of Liberia asserted that it ran a corporate and maritime program and was under a legal obligation to protect corporations incorporated in Liberia, to maintain Liberia as an attractive corporate jurisdiction; that the corporation pays taxes to the Republic; and that as the co-movant corporation was not a party to the action in the trial court, the Republic had the right to defend the said corporation by intervening in the proceedings as the said corporation would be affected by the judgment entered by the trial judge. The co-movant corporation, for its part, contended that it was not a party to the declaratory judgment entered by the trial court removing its director/ president from office and appointing a complete stranger to manage the affairs of the corporation; that it was separate and distinct from its shareholders and directors, and that the naming of the shareholders as parties on behalf of the corporation and service of precepts on the corporation's registered agent for delivery to its shareholders were invalid; that it had the right to intervene since its interest was not being adequately protected; and

that because it was not served and made a party to the proceedings it had been deprived of its due process constitutional right.

The Court disagreed with the movants and rejected their contentions, holding that with regards to the Republic of Liberia, the grounds stated by the Republic did not fall within the grounds stated by the statute to warrant the granting of the motion to intervene, and noting that the mere fact that a corporation paid taxes to the Republic did not constitute a basis for intervention by the Republic. If such ground was accepted, the Court opined, the Republic would find itself involved in a multiplicity of suits.

With regards to the co-movant corporation, the Court held that (a) while the constitution provided for due process, the mere fact that the corporation was not served with process, without a showing as to how its rights were being affected by the judgment of the trial court, was insufficient to vest in the corporation the right to intervene in an action brought against its shareholder and director, especially when the corporation had failed to timely intervene or to employ other legal remedies available to it; (b) the intervention was untimely since the corporation had knowledge of the suit from its very inception but had failed to intervene within a reason-able time, waiting instead for several years before seeking to intervene; (c) that intervention cannot be granted in a proceeding pending reargument as it would introduce new issues which would violate the prerogative of reargument since the latter is limited to a review only of issues raised in the previous hearing and which the court had inadvertently overlooked; (d) that the judgment of the trial court did not prejudice the interest of the co-movant corporation since the judgment was limited to the removal of the director/officer of the corporation and the appointment of outsider as director/officer for the sole purpose of calling a meeting of the shareholders of the corporation to determine the future said corporation and to address the actions taken by the respondents in the trial court which adversely affected the corporation.

The Court therefore *denied* the motions of the Republic of Liberia and Ramatrielle, S. A., and *sustained* the resistance.

*James E. Pierre* and *Oswald Tweb* of the Brumskine & Associates appeared for Movant Ramatrielle. *Theophilus Gould*, Deputy Minister of Justice, of the Ministry of Justice, appeared for Movant Republic of Liberia. *Frederick Cherue* and *Charles Williams* of the Dugbor Law Firm appeared for respondents.

MR. JUSTICE GAUSI delivered the opinion of the Court.

There are two movants/intervenors in this case: The Republic of Liberia and Ramatrielle S. A. Each movant filed a separate motion to intervene in the case involving a petition for rehearing pending before this Court.

The Republic of Liberia, by and thru the Minister of Justice, filed its motion to intervene on May 2, 1997. Subsequent to the hearing of this motion, on May 7, 1997, another motion to intervene was filed, this time by Ramatrielle, S. A., a nonresident Liberian corporation. This second motion to intervene was withdrawn and substituted by an amended motion by the same corporation on whose behalf the Republic of Liberia had filed its motion to intervene.

For the benefit of this opinion, we shall summarize the relevant points contained in each motion. In the nine-count motion to intervene, filed by the Republic of Liberia, it stated, among other things, that:

1. It has over the years run and continues to run a corporate program by which domestic and foreign corporations are formed and registered; that foreign corporations though not doing business in Liberia, pay fees regularly to the Government which form part of the Government's revenue, and that same helps the Government to implement various programs and projects.
2. It has an obligation to protect foreign corporations incorporated in Liberia so as to make Liberia an attractive corporate jurisdiction; that Ramatrielle S. A. is one of such foreign corporations which the Government of Liberia has an obligation to protect under the corporate program.
3. Ramatrielle was never a party to the action of declaratory judgment in the court below, yet, attempts are being made by the lower court to enforce the judgment arising from said declaratory judgment against the corporation, to the extent that the corporate personnel and assets are being removed and dismantled; that Ramatrielle relies on the government of Liberia for its defense, and thus, the Government has a right to intervene.

In traversing the above issues, George J. Rizzo and Vincent Rizzo, respondents herein, represented by Dugbor Law Firm, filed a fourteen-count resistance to the said motion to intervene. The respondents contended in their resistance that under the law, a party may be allowed to intervene in an action when the representation of their interest by existing parties is, or may be inadequate, and that the applicant may be bound by a judgment in such action, or where the applicant is so situated as to be adversely affected by distribution or other disposition of property in the custody of or subject to the control or disposition of the court, or an officer thereof; that these statutory grounds have not been alleged and established, and that as such the motion to intervene cannot be obtained. Also, the respondents contended that the judgment of the Civil Law Court is against Gordon Richard and Noel V. Rizzo, former president/director and interest holders/beneficiaries of Ramatrielle, for fraud and deception against said corporation, and does not in any way affect Ramatrielle S. A., in that, said judgment declared the acts of Gordon Richard and Noel V. Rizzo illegal, but the judgment does not authorize the distribution of property of Ramatrielle, or in any way seek to dispose of the property of Ramatrielle S. A. Respondents contend further that the

Republic of Liberia cannot intervene for Ramatrielle because the corporation is still legally and physically in existence and not prevented from intervening in its own behalf, noting that the Government of Liberia is neither an agent or principal, nor the legal counsel of Ramatrielle, S. A.

The respondents also contended that even assuming said motion was meritorious, the said motion to intervene, filed by the Republic of Liberia is belated because this case has been in litigation since July 1996, starting first with a petition for declaratory judgment in the Civil Law Court, then to a petition for a writ of prohibition, a petition for a writ of error, to a bill of information, a motion to dismiss the bill of information, and a motion for re-argument before this Court. As such, they said, intervention, at this time and stage, is too late. Further, they said, the Republic of Liberia has failed to show any injury or would-be injury to public interest which it seeks to protect by the intervention, and that intervention is not a process by which a party seeks to protect the interest of another as the Republic has now assumed for Ramatrielle, S. A.

Before going to the second motion filed by Ramatrielle, S. A., we wish to comment on some of the issues raised in the first motion and resistance. Firstly, intervention as a matter of law and practice, cannot be obtained by a third party for the benefit of another. In order words, the intervenor must have a legally protectible interest in the litigation in which it comes to defend. Given the reasons by the Republic to intervene in this case, the court is left to wonder if the Republic may act for the corporation.

Secondly, if the judgment in the court below is being enforced against the corporation, Ramatrielle, which was not a party to the suit, as alleged, said corporation had adequate remedy available that it could have pursued. A corporation is a fictional person, and can sue and be sued in its own name.

We shall now revert to the second motion to intervene filed by Ramatrielle, S. A and summarize the material points contained therein, as follows:

1. That the petition for declaratory judgment was instituted in the Civil Law Court by Vincent A. Rizzo and George Rizzo against Noel V. Rizzo and Gordon Richard without naming Ramatrielle S. A., the intervenor herein, as a party, in violation of section 2.5 of the Business Corporation Act. Notwithstanding, the intervenor contends that the respondent judge proceeded to render final judgment against said movant/intervenor as follows:

- a. He declared movant's annual general meeting held in London, England and the decisions taken thereat null and void *ab initio*;

- b. He removed movant's president and director, Gordon Richards, and appointed Mr. Momolu Tamba as informant's interim director/president;

c. He ordered Gordon Richards, movant's director/ president to turn over and deliver all of movant's properties to the court's appointed director/president, Mr. Momolu Tamba.

Movant/Intervenor Ramatrielle further contends that if the judgment is allowed to be enforced against it, the same would disrupt the smooth operations of its activities and void certain business transactions already concluded by it. Also, it contends that in keeping with several opinions of this Honourable Court, a judgment cannot be enforced against one who was not made a party to the proceedings as in this case.

2. That Ramatrielle, being a corporation, is a fictional person, a separate and distinct legal entity from its shareholders and directors; as such, the naming of its shareholders as parties on behalf of the corporation and the service of precepts on the corporation registered agent for delivery to its shareholders was invalid, and in violation of Section 2.5 of the Business Corporation Act. Hence, no jurisdiction over the corporation, Ramatrielle, was acquired.

3. That it has a right to intervene as a matter of law, because, its interests are not being adequately represented, and it will be bound by the final judgment rendered by the respondent judge; that said judgment adversely affects the distribution and disposition of its property which the respondent judge had put under the control of the court and of court appointed director/president, Mr. Momolu Tamba.

4. That under Article 20 of the Constitution of Liberia, no person shall be deprived of its property except after a hearing and judgment in accordance with due process of law; that this constitutional guarantee was denied it because it was not made a party to the proceedings in the court below to enable it to be heard. Further, that there is pending before this Court, a petition for re-argument of a bill of information, assigned for hearing, and if said re-argument is heard and decided before the motion to intervene, same will prejudice the interests of movant/ intervenor.

Vincent A. Rizzo and George J. Rizzo, respondents, again filed a twenty-count returns and traversed the twelve-count motion of movant/intervenor. In summary, the respondents contended that, the motion should be vacated and quashed because it failed to meet the legal requirements, in that the action is not instituted by and thru any agent, representative or officer of Ramatrielle. They maintained that under the law and practice. in Liberia, a corporation must sue and be sued in its corporate name, by and thru its president, manager, agent or officer. This not having been done, respondents contend, the filing and institution of the motion to intervene has not been authorized; therefore, the motion is defective and should be vacated by this Court.

Also, respondents contend that even if it is assumed, without admitting, that the institution of this motion was authorized, same is untimely because Ramatrielle knew and had reason to know of the proceedings against Gordon Richard and Noel V. Rizzo since July 1996.

Buttressing this contention, respondents referred to a petition for prohibition filed by the Henries Law Firm which was denied by the Chambers Justice following a conference with the parties.

Respondents, further traversing the amended motion maintained that the action for declaratory judgment in the court below was instituted against Gordon Richard and Noel V. Rizzo personally, and not in their representative capacities for Ramatrielle; therefore, the judgment does not in any way affect the interests and rights of Ramatrielle, S. A. Further, respondents contended that the appointment of Mr. Momolu Tamba does not prejudice the interest of Ramatreille, S. A. because the mandate of Momolu Tamba is "to call a meeting of all shareholders of Ramatrielle, including Gordon Richard and Noel V. Rizzo, the respondents, including any other interested party so that they can sit, discuss and correct what has been illegally done to decide the future of the company..."

The Court considers it necessary to make a few observations on certain points touched on in the second motion and returns. Section 2.5 of the Business Corporation Act, referred to in Movant Ramatrielle's motion, is inapplicable because that section refers to proceedings commenced in the name of a corporation or brought against a corporation whereby a shareholder, employee, member, or director is named as a party to a suit to represent the corporation. In other words, a suit commenced in the name of a corporation or brought against a corporation by which the individual member, director, or employee is held for the corporation without instituting the suit by and thru such director, employee or officer, is subject to a motion to dismiss if such director, employee or officer is the sole party.

The service of precepts on the registered agent of Ramatrielle, movant, intended for Messrs. Richard and Rizzo is conceived to be in violation of Section 3.2 of the Business Corporation Act. Granted that the contention of Movant Ramatrielle is sound, the defect or violation cannot be cured by intervention in a case which is pending reargument.

The respondents' contention that the motion to intervene was not authorized because it was not instituted by and thru its president, agent or officer has support from this Court's opinion in the case *Eitner v. Sanyer and Flomo*, 26 LLR 247 (1977), text at pages 252 - 253. The relevant part of that opinion states: ". . . For the purpose of bringing a corporation into court, service of process upon a corporation must necessarily be upon its officers or agent through whom it is capable of acting or upon some person whom process may be served. It has always been the practice in this jurisdiction for the corporation to sue and be sued in its own name, by and thru its president, manager, or agent."

Incidentally, the above opinion was delivered by the learned jurist, Mr. Justice George Henries, who is now one of counsel in these proceedings for Movant Ramatrielle. This Court hereby confirms this sound principle of law.

Another point which the Court would like to comment on is the contention of Movant Ramatrielle that its intervention is necessary because "the judgment adversely affects the distribution and disposition of its property which the respondent judge had put under the control of the court and of the court appointed director/president, Mr. Momolu Tamba." The movant does not state how its property is being distributed or disposed of by the court's appointed director/president, or which property is being disposed of in any way. However, the issue shall be considered later in this opinion.

The Court takes note of Article 20 of the Constitution, relied upon by Movant Ramatrielle in its motion, and says that this constitutional provision is applicable when a party's rights, as provided thereunder, are being capriciously infringed upon. However, the fact that movant was not a party to the proceedings in the court below alone, without showing how its rights are being affected by the judgment of the lower court, does not *ipso facto* constitute a violation of Article 20 of the Constitution.

The contention of movants' counsel that a judgment cannot be enforced against one who was not made a party to a proceeding is sound, and the Court hereby affirms this principle of law. However, the Court regrets that this principle of law is unavailing because the attempt to intervene during reargument of this case in order to raise this legal issue now is untenable. To permit this would be aiding the movant to gain from its own error when it failed to timely intervene, or employ the other legal remedy available to it.

Thus, we now consider the main issues in both motions, and being the same, the Court hereby consolidates them in this opinion. The Court considers the following as the material issues upon which a determination of the motions rest.

1. Whether a motion to intervene may be filed in the Supreme Court during the pendency of a petition for re-argument of a case?
2. Whether the Republic of Liberia may legally intervene in a suit against a corporation because such corporation pays taxes to the Republic?
3. Is Movant Ramatrielle's intervention in these proceedings timely?
4. Does the judgment of the trial judge prejudice movant Ramatrielle's interests, and does said judgment deprive movant of its property?

To determine whether a motion to intervene may be filed in this Court during the pendency of a petition for reargument, the office of reargument should be stated. Reargument is restricted to the salient points of law and fact raised at a prior hearing which were inadvertently overlooked by the court in its decision. *West African Trading Corporation v. Alraine (Liberia) Ltd*, 25 LLR 3 (1976). Thus, during a rehearing of a case, the court will confine itself to those salient points that were overlooked during a previous hearing. As such, a party will not be permitted to set up new grounds or raise new issues during a



rehearing before this Court Numerous opinions of this Court have consistently upheld that reargument of a case is limited to some palpable mistake made by the Court by inadvertently overlooking some fact or point of law in its previous decision. See *Lamco J. V. Operating Company v. Verdier*, 26 LLR 445, (1978); *Bryant and Bryant-Diggs v. Harmon and OAC*, 12 LLR 405 (1957); *Hill v. Hill*, 13 LLR 392 (1959). Other authorities have held similarly. They have stated the rule as follows: "The purpose of reargument is to demonstrate to the Court that there is some decision or principle of law which would have a controlling effect and which has been overlooked, or that there has been misapprehension of facts." BLACK'S LAW DICTIONARY 1137 (5<sup>th</sup>ed. 1979).

Let us now consider the second point, i.e., what is intervention? Intervention, according to Black's Law Dictionary, is "the procedure by which a third person, not originally a party to the suit, but claiming an interest in the subject matter, comes into the case, in order to protect his right or interpose his claim..."

Obviously, when a party comes to intervene in a matter, he may raise several defenses including new issues which may not have been raised at the trial or during a previous hearing to which he was not a party. It follows logically that a motion to intervene during the pendency of a rehearing of a case will bring in new matters to the attention of the court. In that case, the office of reargument would have been invaded by the motion to intervene because, instead of calling the Court's attention to some palpable mistake of law and fact inadvertently overlooked by the Court in its previous decision, new issues would be raised. A novelty will then be introduced in the practice before this Court.

Reargument, as already noted, is restricted in scope and function; it does not even review the entire record. It is restricted to only those issues of law and fact raised before the appellate court but which were inadvertently overlooked. With this restriction, the Court would be departing from the practice were it to allow a party to bring in new issues for consideration during reargument.

It is important to point out here that reargument is discretionary with the court; it is not a right given to a party under the law. In other words, the right to intervene in a case does not extend to rehearing due to its restrictive nature and function.

As regards the intervention by the Republic of Liberia in this case because the corporation, Ramatrielle, pays taxes, we shall revisit the law on intervention. Under the Civil Procedure Law, Rev. Code 1, sub-chapter E, entitled *Intervention*, there are intervention as a right (section 5.61) and permissive intervention (section 5.62). The Republic of Liberia has availed itself under section 5.61, i.e., *Intervention as a right*.

The statute is clear and unequivocal. It states, among other things, that upon timely application, any person shall be allowed to intervene in an action (a) when a statute of the

Republic confers an unconditional right to intervene, (b) when the representation of the applicant's interest by existing parties is inadequate, and the applicant will be bound by a judgment in the action, or (c) where the applicant is so situated to be adversely affected by a distribution or other distribution of property in the custody . . . or officer of court.

It can be seen that none of these statutory grounds is shown by the Republic of Liberia in its motion; instead, the Republic of Liberia contends that its intervention in this case and at this time, during reargument, is necessary to protect Ramatrielle, one of the foreign corporations under Liberia's Corporate and Maritime Program, because said corporation pays fees to the Government of Liberia.

Unfortunately and sadly, the reasons given above for intervention by the Republic do not support the statutory grounds. In the mind of the Court, when a party seeks to avail itself under a statute or law before a court, that party has an obligation to clearly establish its rights under that statute or law. The Republic has not done this; hence, this Court must decline to grant the relief prayed for under the circumstances.

The payment of fees to the Republic by Ramatrielle and other foreign corporations under the Corporate and Maritime Program is the same as payment of taxes by domiciliary corporations. Should the Republic then intervene in each case brought against corporations, domiciliary or non-domiciliary, because each corporation pays taxes? The Court is left to wonder whether the counsel for the Republic realize the multiplicity of interventions they would be subjecting the Republic to under such an undefined policy of intervention.

During argument before this Court, one of the counsels for the Republic referred the Court to section 5.61 (2) of the Civil Procedure Law, Rev. Code 1, which states: "2. *Right of government officer or agency.* When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a Liberian Government officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency shall, upon timely application, be permitted to intervene in the action." The learned counsel for Movant Republic of Liberia was asked to state which statute, executive order, or regulation, the Republic relied upon to apply for intervention. In answer, the counsel gave an illustrative response that "if the government issues an executive order that all taxis should be painted yellow and if a taxi driver is sued because his taxi is painted yellow, there and then the government would intervene." Regrettably, this illustration is not analogous to the case at bar because Ramatrielle is not being subjected to litigation for operating under the corporate program of Liberia.

We shall now address the question whether the motion to intervene filed by Ramatrielle is timely. Recounting the events preceding the movant's motion in this case, we note that a petition for declaratory judgment was filed in the Civil Law Court, Sixth Judicial Circuit, on

February 26, 1996, by the respondents herein and judgment was rendered by the court below on July 25, 1996.

The movant, Ramatrielle, filed a petition for a writ of prohibition before the Chambers Justice to stop the enforcement of the judgment of July 1996. This petition was denied by the Chambers Justice following a conference. Subsequently, a petition for a writ of error was instituted by the respondents in the court below, Noel V. Rizzo and Gordon Richard, but again as in the case of the prohibition, same was denied by the Chambers Justice at a conference level. A bill of information was then filed before the Full Bench by the said Noel V. Rizzo and Gordon Richard, growing out of the denial of the petition for a writ of error by the Chambers Justice.

Thereafter, a motion to dismiss the bill of information was filed by the respondents herein. This Court, in its opinion of February 7, 1997 on the information, consolidated said information and the motion to dismiss. The information was dismissed by this Court, following which Noel V. Rizzo and Gordon Richard, the informants in the bill of information, petitioned this Court for reargument. It is at this point that Ramatrielle has filed the present motion to intervene. It is to be noted here that the Movant Ramatrielle was represented by the Henries Law Firm in the petition for prohibition which the Chambers Justice denied. Before then, the movant had knowledge of the pendency of the action in the court below because, as the records show, service of the summons was on the movant's registered agent in Monrovia, Liberia, for delivery to the parties therein named, Messrs. Noel V. Rizzo and Gordon Richard. Another reason for the view that Movant Ramatrielle had knowledge of this case is that the Henries Law Firm represented Messrs. Noel V. Rizzo and Gordon Richard in both the petition for writ of error and bill of information, all filed by the same Henries Law Firm.

Given these circumstances, the Court holds that the motion to intervene at this stage of the proceeding, that is, during reargument, is untimely, and in violation of section 5.61 of the Civil Procedure Law, Rev. Code 1.

The right to intervene in a matter should be interposed within a reasonable time after knowledge of the suit. *Schilling & Company v. Dennis*, 16 LLR 164 (1965); *Gaddini v. Iskander et al.*, 19 LLR 490 (1970). We hold that the motions to intervene as filed under the attending circumstances are inconsistent with the phrase, "upon timely application" as used in section 5.61, *Intervention*, Civil Procedure Law, Rev. Code 1, and hence, not within a reasonable time. They are unduly belated.

The final issue in this case is whether the judgment of the court below prejudices the interest of Movant Ramatrielle. To address this issue, a quotation of the relevant parts of the judgment is required. However, the Court is mindful not to decide the merit of the motion to intervene because, as already stated, the motion is untimely.

At page 10 of the judgment, dated July 25, 1996, starting with the heading "FINAL JUDGMENT", the court said:

"WHEREFORE, having heard the oral argument and law citations of petitioners' counsel and in view of the foregoing facts and circumstances traversed by this court and the laws controlling, the petitioners' petition is hereby granted and this court decrees as follows:

(a) That the representation by Gordon Richard of Ramatrielle S.A., with respect to the issuance of the citations for the August 31, 1994 meeting held in London is hereby declared wrongful, deceptive and void as it is not in keeping with his mandate.

(b) That the meeting of August 31, 1994 held in London is hereby declared illegal and null and void to all intents and purposes.

(c) That all decisions and actions taken at said meeting and those thereafter, including the sale of the hotel, property of the corporation, are hereby declared improper and void *ab initio*.

(d) And because the act of Gordon Richard is not only deceptive but also fraudulent and a gross breach of his fiduciary duty owed to the petitioners, his continued service as director/president of Ramatrille S. A. will not serve well the interest of the beneficiaries and interested parties of the corporation. Accordingly, this court, sitting in equity, must take step to protect the interest of all concerned. He, Gordon Richard, is therefore removed from office as director/president with immediate effect.

The clerk of this court is hereby ordered to notify the parties of this decision and/or judgment and to inform the petitioners for the nomination of three names of persons with good reputation, without regards to nationality, within the period of five days as of the date of this final judgment, from among whom the court shall appoint a temporary administrator who will and/or shall administer the affairs of the company for the purpose of calling a shareholders meeting to determine the future of said corporation. Cost of these proceedings ruled against respondent. AND IT IS HEREBY SO ORDERED. MATTER SUSPENDED.

GIVEN UNDER MY HAND AND SEAL, OF  
THIS HONOURABLE COURT THIS 25TH  
DAY OF JULY, A. D. 1996.

William B. Metzger, Sr., Assigned Circuit  
Judge Presiding, Sixth Judicial Circuit,  
Mont. Co., Republic of Liberia."

Before commenting on the court's final judgment above, a further review of the records in this case has become necessary. According to the facts culled from the records, Messrs.

Vincent A. Rizzo and Noel V. Rizzo are brothers, beneficiaries and interest holders of Ramatrielle S. A., formed and incorporated by their brother, Philip Rizzo. Mr. Gordon Richard, one of the respondents in the court below was at all times, director/ president of Ramatrielle until his removal by the court below.

Noel V. Rizzo and Vincent Rizzo, the two brothers and interest holders in Ramatrielle, executed joint instructions to Mr. Gordon Richard and limited his authority from issuing any board resolution of the corporation, Ramatrielle, until he shall have received instructions signed by both Vincent and Noel Rizzo.

In the interim, Vincent, due to his age and health, transferred all his rights and interests in Ramatrielle to his son, George J. Rizzo, the petitioner in the court below, and now respondent in this motion to intervene. Vincent thereafter wrote the director/president of Ramatrielle, Mr. Gordon Richard, informing him that Mr. George J. Rizzo now succeeds him (Vincent) in the corporation. Vincent further informed Mr. Richard that only instructions jointly executed by George and Noel Rizzo be carried out in the interest of the corporation. In short, George took his father's position in the corporation with full powers and authority to execute joint instructions to Gordon Richard.

Contrary to this arrangement, it is noted, Mr. Gordon Richard, director/president of Ramatrielle, based upon a unilateral instruction from Mr. Noel V. Rizzo, issued citation for board meeting and thereupon called a board meeting in London without notice to Mr. George J. Rizzo. At that meeting, several major decisions were taken, including the sale of shares, the corporation's hotel, among others, as outlined in the court's final judgment. These actions taken constituted the basis of the petition for declaratory judgment in the court below, and formed the basis of the court's final judgment.

It is important to note that the issuance of 1000 (One Thousand) shares during that meeting in London was in violation of the Articles of Incorporation. Paragraph D (1) thereof states: "the aggregate number of shares of stock that the corporation is authorized to issue is Five Hundred (500) registered or bearer shares with par value of one hundred dollars (\$100.00) per value."

In the opinion of the Court, the action taken at that meeting adversely affected the corporation. This may subject the corporation to various claims by those subscribers. The decision to sell the corporation's property, the hotel, was a disposition of the corporation's property without authority from all the interest holders. It was, and is in the interest of the corporation for a natural person to act as director/president and bring the interested parties together to take such actions as are necessary to preserve the corporation.

Be that as it may, this Court hereby reiterates that the issues raised in the motion to intervene, whether meritorious or not, cannot be legally entertained during the pendency of a

rehearing. The motion being untimely, coupled with the attempt by movant to introduce new issues before this Court at this stage and time, compels us to declare the motion nugatory because it cannot accomplish the object being sought.

In view of the laws and facts stated above, it is the considered opinion of this Court that the motions to intervene filed by the Republic of Liberia and Ramatrielle are untimely and ineffectual. Hence, said motions are hereby *denied*, with costs against Movant Ramatrielle. And it is hereby so ordered.

*Motions denied.*