

Bridgeway Corporation of the City of Monrovia, Liberia PLAINTIFF/APPELLANT
Versus **Liberia Agricultural Corporation (LAC)** of the City of Monrovia, Liberia
DEFENDANT/APPELLEE

LRSC 51

APPEAL

HEARD: DECIDED: August 2, 2013.

MR. CHIEF JUSTICE KORKPOR DELIVERED THE OPINION OF THE
COURT.

On March 27, 2009, Bridgeway Corporation, plaintiff/appellant, filed an 11-count complaint in the Debt Court of Montserrado County against the Liberia Agricultural Company (LAC), defendant/appellee. The plaintiff/ appellant prayed the Debt Court to adjudge the defendant/appellee liable to it for debt in the amount of Ninety Three Thousand, Two Hundred Forty United States Dollars (US\$93,240.00) plus 6% interest. We quote counts 3, 4, 5, 6, 7, 8, 9, 10, and 11 of the complaint which we believe are relevant to the disposition of this case:

3. Plaintiff further complains and says that on several occasions, she supplied the defendant in these proceedings through Mr. Tony Hage, consignments of rice for the defendant management and her work force which are normally paid for after delivery.

4. Plaintiff further complains and says that under similar arrangement, the defendant management, through its payroll supervisor and the president of the workers' union (LAWU), authorized the plaintiff to supply rice to its work force which payment was guaranteed by the defendant management. Copy of the communication requesting the plaintiff corporation to deliver rice to the workers' union is hereto attached and marked as plaintiffs exhibit 'P/2', to form a cogent part of this complaint.

5. Plaintiff further complains and says that on the 3rd day of January, 2005 and the 18th day of December 2004, and the 21st day of December 2004, the total of One thousand Six Hundred (1,600) bags of rice was delivered to the defendant management in these proceedings on waybills numbers 0020843, 0020830, 0020804, and 0018298 by trucks numbers TT-688, BT-0447, and TT-0234, copies of these waybills are hereto attached and marked in bulk as plaintiffs exhibit 'P/3' to form a cogent part of this complaint.

6. Plaintiff further complains and says that the three thousand eight (3,008) bags of rice which payment is the subject of these proceedings was in fact delivered to the defendant

management by Mr. Tony Hage, a Lebanese businessman who was serving as a middleman/coordinator at the time. Plaintiff gives notice that during the trial, a subpoena ad testificandum shall be prayed for to have Mr. Tony Hage to testify to this allegation.

7. Plaintiff further complains and says that the sales value for the One Thousand Six Hundred (1, 600) bags of rice is Sixty Seven Thousand, Six Hundred and Eighty Dollars (US\$67,680.00).

“8. Plaintiff further complains and says that acting upon the guarantee of the defendant management, she also delivered rice to (LAWU), the Workers' Union of the defendant management which outstanding statement of account stands at Twenty Five thousand, five Hundred and Sixty United States Dollars (US\$25,560.00). Copy of the statement of account is hereto attached and marked as plaintiffs exhibit 'P/4' to form a cogent part of this complaint.

9. Plaintiff further complains and says that from these accounts, the defendant is indebted to the plaintiff in the total amount of Ninety Three Thousand Two Hundred and Forty Dollars (US\$93,240.00).

10. Plaintiff further complains and says that the defendant management should be made and ordered to pay to the plaintiff in these proceedings the total amount of Ninety Three Thousand Two Hundred and Forty Dollars (US\$93,240.00) plus 6% interest per annum.

11. Plaintiff further complains and says that she has, through its legal counsel, demanded payment of the defendant management's indebtedness, but the defendant has flatly refused and neglected to pay, to the extent that the defendant management has refused plaintiffs legal counsel's letter, [neither] has the defendant management shown the simple courtesy of acknowledging the plaintiffs legal counsel's letter.

The defendant/appellee filed a 35-count answer and simultaneously filed a motion to dismiss the complaint on grounds that the precept in the action was served on Theresa Grigsby, Executive Secretary at the defendant/appellee's sub-office in Sinkor, Monrovia, Liberia; that Theresa Grigsby is not an officer of the corporation and was never authorized to receive process in defendant/appellee's behalf. The trial court heard and denied the motion to dismiss. The records show that even though the defendant/appellee noted exception to the ruling of the trial judge denying the motion to dismiss the complaint, nothing was done to ensure appellate review. So, we shall not belabor the point on the issue of the alleged service on a person not authorized to receive precepts on behalf of the defendant/appellee.

We quote counts 8 –33 of defendant/appellee's answer which we also believe are relevant to the disposition of this case:

8. Because defendant management says whenever it needed a consignment of rice, the request for said consignment was made through Tony Hage who would subsequently inform plaintiff and request that said consignment be made available for shipment to defendant management.

9. That further to the above, defendant says that all consignments of rice from plaintiffs warehouse were routinely accompanied by waybills evidencing that the said consignments in its totality were indeed on board the truck.

10. That when the consignments of rice were delivered to defendant management, in acknowledgement of said delivery, defendant management retained the waybills from the drivers and issued to them clearances indicating that it had received the consignments contained on said waybills or any portion thereof. A copy of such clearance referred to herein is hereto attached and marked exhibit A/1.

“11. Defendant avers and says that this normal procedure was grossly breached by plaintiff and there is no evidence to show that defendant management received said consignment and is indebted to the plaintiff for the amount sued for. Defendant says further to establish that it is indebted to plaintiff it was incumbent on the plaintiff to proffer clearances from defendant management to substantiate the averment as contained in the complaint. Plaintiffs failure to do so makes the entire complaint a fit subject for denial and dismissal for which defendant so prays.

“12. That as to count 4 of the complaint, defendant management denies ever authorizing plaintiff to supply any consignment of rice to its workers' union as alleged by plaintiff.

“13. That further to count 7 above, and also in traversal to count 4 of plaintiffs complaint, defendant says exhibit 'P/2' does not in any form or manner authorize plaintiff to supply rice to the workers' union, neither is it a guarantee instrument. Your Honour is requested to take judicial cognizance of plaintiffs exhibit 12.

“14. Still traversing count 4 of the complaint, defendant says and avers that it has never had and does not now have in its employ a Mr. George Momolu as Payroll supervisor and Hon. Johnson Gardea as President of LAWU as of the date of the filing of this answer. Defendant also says that to the best of its recollection, it has never interacted with the two individuals and does not know them in any manner.

“15. Defendant maintains and says that at all material times, it dealt directly with Mr. Tony Hage in every business transaction with the plaintiff and that there is no privity of contract between the plaintiff and defendant management.

“16. Further to count 10 above, defendant management says that if it had have to interact with the plaintiff with respect to the placement of orders and payment there for it was at the request of Mr. Tony Hage, who served as middleman between plaintiff and the defendant management and that in such case, defendant management would send a local purchase order (LPO) signed by the general manager or his designate to plaintiff by and through Mr. Tony Hage who in turn would place said LPO with plaintiff to have the rice delivered to the defendant management.

“17. That upon the delivery by the designated truck the waybill was retained by the defendant management evidencing receipt thereof by the issuance of a CLEARANCE of the actual quantity of rice delivered to defendant management. It is this CLEARANCE which obligates defendant management to make payment.

“18. Defendant management says, in the instant case, the procedure was woefully lacking in this transaction from which plaintiff is now demanding payment as plaintiff failed to annex any CLEARANCE issued by defendant management to its complaint. Defendant management therefore prays for the denial and dismissal of count 4 as well as the entire complaint.

“19. That as to count 5 of the complaint, defendant management vehemently denies ever receiving on the dates mentioned One thousand Six Hundred (1,600) bags of rice or any portion thereof. Additionally, the waybills alluded to were never delivered to defendant management by any of the trucks mentioned in the complaint. Defendant management says that had it received any rice from any of the trucks mentioned a clearance evidencing receipt would have been issued to the drivers; failure by plaintiff to have followed the mode of their business transaction makes count 5 a fit subject for denial and dismissal. This defendant management so prays.

“20. Further to count 14 above, and in traversal of count 5 of the complaint, defendant management also says plaintiffs exhibit P/3 in bulk annexed to the complaint by plaintiff was never sent to nor received by defendant management because there is no direct business dealing between plaintiff and defendant management.

“21. That as to count 6 of the complaint, defendant says it is taken aback and totally flabbergasted and confused as to the truthfulness of the averment contained in the

said count 6 and count 5 of the complaint, in that in count 5 plaintiff alleges that it supplied on divers days one thousand six hundred (1,600) bags of rice and attached thereto waybills totaling Two Thousand Two Hundred and Eight (2,208) bags of rice as indicated in exhibit P/3, while in count 6 plaintiff averred that three thousand and eight (3,008) bags of rice is the subject of this action. Regrettably, plaintiff woefully failed, refused, and neglected to attach any waybill to substantiate the allegation that it delivered to the defendant management through Mr. Tony Hage three thousand and eight (3,008) bags of rice which have not been paid for. Defendant management says that had said quantity of rice been delivered to it, there would be evidence (Clearance) from defendant management to substantiate said allegation. There being no evidence to show that said quantity of rice was ever delivered to defendant management makes count 6 as well as the entire complaint a fit subject for denial and dismissal. This defendant management so prays.

“22. That as to count 7 of the complaint, defendant says mathematically, One Thousand Six Hundred (1,600) bags of rice at Twenty-Two United States dollars and Fifty cents (US\$22.50) will not amount to Sixty Seven Thousand Six Hundred and Eighty United States Dollars (US\$67,608) claimed by plaintiff. Rather, One thousand Six Hundred (1,600) bags of rice at Twenty- two United States Dollars and Fifty cents (US\$22.50) will amount to Thirty Six Thousand United States Dollars (US\$36,000.00). This is a clear indication that plaintiff is on a fishing expedition and that its facts are distorted thereby rendering the said count 7 along with the entire complaint a fit subject for denial and dismissal. Defendant management so prays.

“23. That as to count 8 of the complaint, defendant says that at no time did it instruct or give guarantee to plaintiff to deliver to LAWU any consignment of rice predicated upon which plaintiff is demanding or requesting defendant management to liquidate an outstanding balance of twenty five thousand five hundred and sixty United States Dollars (US\$25,560.00) on behalf of LAWU.

“24. That further to the above, defendant management contends and says that it could not have given such an instruction or guarantee to plaintiff that it would indemnify LAWU for delivering to LAWU any consignment of rice because in keeping with the standing employer/employee relationship, LAWU as a recognized union is clothed with the authority to negotiate with any business entity such as the plaintiff in these proceedings without the involvement of the defendant management.

“25. Defendant says that a perusal of the various exhibits attached to plaintiffs complaint [shows that] there is no evidence that P/4 was ever attached and therefore defendant management finds it difficult to traverse said exhibit. Failure to have attached said exhibit P/4 mentioned in count 8 is a violation of the principle of notice extant in our jurisdiction. Hence, defendant prays for the denial and dismissal of the said count together with the entire complaint.

“26. That as to count 9 of the complaint, defendant says plaintiff has woefully failed to establish any scintilla of evidence in the averment contained in count 9 alleging among other things that defendant management is indebted to it in the amount of Ninety three thousand, Two Hundred and Forty United States Dollars(US\$93,240.00).

“27. Further to the above, defendant contends and says plaintiff has woefully failed, refused and neglected to prove with peculiarity and sufficiency the amount sued for in that the documentary evidence adduced and annexed to plaintiffs complaint as exhibits can in no way amount to Ninety Three Thousand, Two Hundred and Forty United States Dollars (US\$93,240.00). Plaintiff's failure to have established with documentary evidence the amount sued for as indicated above, makes count 9 and indeed the entire complaint a fit subject for denial and dismissal. This defendant management so prays.

“28. That as to count 10 of the complaint, defendant says said count is based on speculation and not supported by any documentary evidence to make it enforceable. Under the law, debt is defined as a sum certain, and an undertaken and obligation to pay. Clearly, this definition of debt does not support the allegations contained in plaintiffs complaint because plaintiff has failed to establish a sum certain and also failed to show that defendant management has obligated itself or undertaken to make payment of the amount claimed or any portion thereof. Such material defect makes count 10 and the entire complaint a fit subject for denial and dismissal. This defendant management so prays.

“29. That as to count 11 of the complaint, defendant management admits that it received from plaintiffs legal counsel, the Henries Law Firm, a demand letter dated November 13, 2008, addressed to defendant management's general manager, Pascal Desmedt, demanding the payment of Sixty Eight Thousand, Five Hundred and Ninety United States Dollars and Ninety One Cents (US\$68,590.91) as outstanding balance of One Hundred and Fifty Thousand United States Dollars (US\$150,000.00).

“30. Further to the above, defendant says that [it] refused to honour the demand letter and to liquidate the amount of Sixty Eight Thousand, Five Hundred and Ninety United States

Dollars and Ninety One Cents (US\$68,590.91) as outstanding balance against the amount of One Hundred and Fifty Thousand United States Dollars (US\$150,000.00) because plaintiff failed to establish by any documentary evidence that defendant management was obligated to it.

“31. Further to count 25 above, and still traversing count 11 of the complaint, defendant submits that it did agree to pay and did pay to plaintiff the amount of Eighty Two Thousand Nine Hundred Seventy Nine United States Dollars and twenty-five cents (US\$82,979.25) in full settlement of its indebtedness for Four Thousand (4,000) bags of rice delivered to and received by defendant management. The payment was occasioned by an external audit commissioned by defendant management and conducted by VOSCON, which established and confirmed that indeed the defendant management was indebted to plaintiff for four thousand (4,000) bags of rice supplied by and through Mr. Tony Hage, the middleman between the plaintiff and defendant management.

“32. Defendant further says that the audit conducted by VOSCON did not establish and/or produce any evidence of defendant management's obligation to plaintiff beyond the Four Thousand (4,000) bags of rice that were received by defendant management for which payment was made as averred in count 26 above.

“33. Defendant management says that the audit conducted by VOSCON was commissioned as a result of persistent demand by Mr. Tony Hage, the middleman in the transactions involving the parties herein, to the effect that defendant management was obligated for Four Thousand (4,000.00) bags of rice and no more.

On April 17, 2009, the plaintiff/appellant filed a nineteen-count reply basically confirming and affirming its complaint. We quote counts 6, 9, 11 and 12 which sum up the plaintiff/appellant's reply:

“6. That as to count 7, 8, 9, 10, and 11 of defendant's answer, plaintiff says that while it is true that at all times Mr. Tony Hage served as middleman in supervising the submission of purchase orders to the plaintiff and delivery of rice to the defendant, the issuance of purchase orders by the defendant to the plaintiff in these proceedings created relationship between the plaintiff and the defendant which by operation of law created a privity of contract between the plaintiff and the defendant. Each purchase order raised by the defendant in these proceedings was addressed directly to the plaintiff with no reference to Mr. Tony Hage. Each delivery to the defendant was made on board the defendant's own trucks that were loaded directly from the plaintiff's warehouse and all of

the attending documents of each purchase order were signed for by the defendant's driver who conveyed the consignment to the defendant. By these procedures, each purchase order that was attended to created a privity of contract between the plaintiff and the defendant. Further, plaintiff says that all payments by defendant of delivery made to it were made directly to the plaintiff in these proceedings. Photocopies of the delivery orders and copy of check for rice delivered are hereto attached and marked as plaintiffs exhibit 'PR/1' and 'PR/2' to form part of plaintiffs reply.

“9. As to count 12, 13, and 14 of the defendant's answer, plaintiff says that the said counts are false and misleading, in that by communications dated March 11, 2006 and March 18, 2006, both the Assistant Administrative Manager and the Payroll Supervisor of Liberia Agricultural Company (LAC), confirmed and acknowledged LAWU's indebtedness and obligated the management to honour and settle all such outstanding bills for deliveries made to the Liberia Agricultural Workers Union (LAWU). As a matter of fact, the management had made other payments for and on behalf of the Workers' Union and plaintiff hereby gives notice that during the trial, it shall produce both oral and documentary evidence to further establish this allegation. Copies of the referenced communications are hereto attached and marked as plaintiffs exhibit 'PR/3' and PR/4 to form cogent part of this reply.

“11. That as to counts 17 and 18 of defendant's answer, plaintiff says that the clearance that the defendant made reference to are defendant's internal documentation which was not part of the requirement for the delivery of rice by plaintiff to the defendant. Once the defendant submits a purchase order and the purchase order was acted upon through a waybill signed by the driver of the defendant that took delivery of the rice from the plaintiffs warehouse to the defendant, the condition for the payment by the defendant to the plaintiff was satisfied as is in the instant case. Count 17 and 18 of the defendant's answer should therefore be disregarded and dismissed.

“12. As to count 19, 20, and 21 of defendant's answer, plaintiff avers and says that the determination of the amount sued for is supported from three sources:

1. Debit invoice number 0008750 dated December 18, 2004 for Eight Hundred (800) bags of rice.

2. Debit invoice number 0008911 dated December 21, 2004 for Two Thousand Two Hundred and Eight (2208) bags of rice delivered to the defendant management on TT-0234, BT-0699, TT-0823, BT-0447, TT- 03448, TT-688, TT-688, and BT-0447. These debit

invoices total Three Thousand Eight (3,008) bags of rice which valued Sixty Seven Thousand Six Hundred and Eighty United States Dollars (US\$67,680.00) plus Twenty Five Thousand Five Hundred and sixty United States Dollars (US\$25,560.00) which represented value for rice delivered to the Workers' Union of LAC upon the directive of the defendant management. Clearly, the total number of bags of rice represented by these calculations is Three Thousand and Eight (3,008) bags of rice which value is indicated herein plus the outstanding indebtedness of LAWU which makes the grand total of Ninety Three Thousand, Two Hundred and Forty Dollars (US\$93,240.00). These breakdowns establish sum certain and the purchase order created an obligation on the defendant management to pay the sum certain by the definition of debt, a debt was clearly established by these instruments and the refusal of the defendant management to pay, satisfied the requirement that an action of debt will lie under the circumstances. Photocopies of these debit invoices and waybills are again hereto attached and marked as plaintiffs exhibit 'PR/5' and 'PR/6' respectively to form cogent part of this reply. Therefore, count 19, 20, and 21 of the defendant's answer should be disregarded and dismissed.

With the filing of the reply, pleadings rested. On June 24, 2010, the counsel for plaintiff/appellant requested the court to rule the case to trial because the pleadings filed by both parties contained mixed issues of laws and facts. The counsel for defendant/appellee interposed no objection. The court granted the application and ruled the case to trial.

Trial commenced on July 22, 2009 with David Jonah taking the stand as the first of two witnesses who testified for the plaintiff/appellant. He informed the court that he was the financial comptroller for the plaintiff/appellant, Bridgeway Corporation. He also informed the court that all transactions for the supply of rice between the plaintiff/appellant and the defendant/appellee were done through a third party, Tony Hage; that the transactions started with the defendant/appellee raising purchase orders for rice and sending them to the plaintiff/appellant who acknowledged the purchase orders and raised debit invoices; that after preparing the debit invoices, the consignments of rice were supplied by the defendant /appellee. He said in cases of emergency, Tony Hage would call on the telephone and plaintiff/appellant would supply the rice and the necessary documents would be issued at a later date. He told the court that sometime in 2004 and 2005, there were a couple of supplies made to LAC that were not paid for; that when he realized this, he informed his bosses who asked him to send a statement of account to the management of LAC requesting payment, which he did. He further told the court that he received some auditors

from the certified public accounting firm, VOSCON, led by Eric Mulbah who informed him that LAC had commissioned an audit to be conducted on all of LAC's financial accounts with Bridgeway Corporation; that they needed his cooperation because they wanted to know all the facts; that he worked with the auditors and provided them copies of invoices and waybills etc., and the audit was conducted. The witness said that after a while he called Eric Mulbah to know the outcome of the audit and Eric Mulbah told him the audit report had been sent to the management of LAC; that as a result of the audit, LAC made payment of US\$82,000.00 against the balance of their account, leaving the unpaid balance of US\$67,000.00. The witness also told the court Bridgeway Corporation received communication from LAC to supply its workers union with rice and the account balance on rice supplied to the workers union was US\$25,000.000. (*See Minutes of Court, Wednesday, July 22, 2009*).

Plaintiff/appellant's second witness, Tony Hage, testified that in 2003, he received a telephone call from George Mensah, General Manager of LAC; that he went to LAC's office, 14th Street, Monrovia, in response to the telephone call and Mr. Mensah asked him to do LAC a favor by contacting Bridgeway Corporation to supply rice to LAC and he agreed. He said the initial amount of rice requested was 2,000 bags; that at the time LAC was under the control of rebels so the rice was taken to LAC under military escort by ECOMOG; that from that time Mr. Mensah decided to purchase all of LAC's rice supply from Bridgeway Corporation and he served as the mediator or expeditor between LAC and Bridgeway Corporation for the procurement of rice and subsequent payments therefor. He told the court that during transactions between the parties, LAC prepared purchase orders and submitted them to him through the LAC Monrovia Office and he, in turn, submitted the purchase orders to Bridgeway Corporation for the supply of rice; that thereafter, trucks were loaded with consignments of rice and carried to LAC, Grand Bassa County along with waybills; that upon the return of the truck drivers to Monrovia, they brought rubber belonging to LAC for export; and that they also brought receipts signed by LAC indicating that LAC had received the consignments of rice. He further told the court that LAC's payments for consignments of rice supplied by Bridgeway Corporation were regular up to 2008 when Bridgeway Corporation ceased importing rice into the country; that sometime in 2008, Bridgeway Corporation called him and complained that LAC was in arrears for rice supplied and that he should intervene; that he went to LAC Grand Bassa County himself and showed the outstanding balance; that LAC then decided to conduct an investigative audit; that the audit was conducted by VOSCON which revealed that indeed LAC was in arrears with Bridgeway Corporation

for 4,000 bags of rice supplied; and that payment was made to Bridgeway Corporation. The witness testified that Bridgeway called him again and said that only one invoice was paid by LAC, leaving an outstanding debit note and waybill # 0008750 dated December 18, 2004 for 800 bags of rice and invoice # 0008911 dated December 21, 2004 for 2,208 bags of rice which totaled 3008 bags of rice in the amount of Sixty Seven Thousand, Six Hundred and Eighty United States Dollars (US\$67,680.00); that he contacted the new General Manager of LAC and advised him to pay Bridgeway Corporation for the supply of rice which was outstanding so the good relationship between the two companies would remain. He was asked on the cross-examination: Mr. Witness, were you informed at anytime from the time you advised LAC to pay, that they ever paid the outstanding debit notes? He answered: Not the last one that I mentioned. The General Manger [of LAC] told me verbally that he does not want to pay. Although, the rice was received in the warehouse as I mentioned in my statement. (See Minutes of Court, Monday, April 5, 2010).

At the conclusion of Tony Hage's testimony, the plaintiff/appellant rested evidence. The defendant/appellee then took the witness stand and also produced two witnesses.

The defendant/appellee's first witness, Winston Dorbor, testified that rice transactions were conducted between LAC and Bridgeway Corporation through Tony Hage in the following manner: a) the Purchasing Department of LAC prepared a local purchase order stating the quantity of rice, description, unit price, and total cost; b) the local purchase order was signed by the General Manager of LAC or his designee and delivered to Tony Hage, the middleman between LAC and Bridgeway Corporation; c) upon the receipt of the local purchase order by Bridgeway Corporation, the requested quantity of rice was carried by truck directly to LAC's ware house; d) both the ware house clerk and the truck driver checked the rice and the ware house clerk took delivery of the way bill from the truck driver and the ware house clerk, in turn, issued clearance/receipt to the truck driver stating the amount of rice received, the name and vehicle plate number; e) the clearance/receipt was signed by the ware house clerk and approved by his supervisor; f) the truck driver took the clearance/receipt to Tony Hage and Tony Hage thereupon, paid the transportation cost for the consignment of rice. He said that for payment to be made to Bridgeway Corporation for any consignment of rice supplied, Tony Hage presented an invoice to LAC from Bridgeway Corporation; the Account Department of LAC attached a copy of the invoice, the local purchase order, particulars of the truck that transported the consignment of rice, copy of the clearance/receipt issued to the truck driver indicating the quantity of rice supplied, and the payment request was signed by the Account

Superintendent or the Comptroller. Thereafter, according to the witness, a check was prepared for the signature of the Comptroller and the General Manager.

The witness also told the court that all consignments of rice delivered to LAC had been paid for in checks drawn on Ecobank or International Bank and that the returned checks were in the possession of LAC. He said he was not aware of any outstanding balance payment due Bridgeway Corporation for rice supplied made to LAC. While answering a question on the cross-examination, he said that Johnson Gardea and George Momolu, the persons who wrote Bridgeway Corporation to supply rice to the Workers at LAC, were never employees of LAC and LAC never authorized them to order for rice from the plaintiff/appellant. And while answering a question posed to him by the court, he said that when the plaintiff/appellant made demand for payment of US\$82,975.00 for 4,000 bags of rice which led to an investigative audit conducted by VOSCON, Tony Hage had in his possession and produced clearance/receipts for the 4,000 bags of rice supplied by the Bridgeway Corporation so the amount was paid. He maintained that Tony Hage did not produce clearance/receipts for the present demand of the plaintiff/appellant for payment of US\$67,680.00 for 3,008 bags of rice allegedly supplied. (See Minutes of Court, Tuesday, April 27, 2010).

Defendant/appellee's second witness was Eric Mulbah. He informed the court that he was employed with LAC as an internal auditor; that he previously worked with the accounting firm VOSCON; and that he was a part of the team of auditors from VOSCON that conducted an investigative audit which revealed that indeed LAC was in arrears with Bridgeway Corporation for 4000 bags of rice supplied. He testified that during the investigative audit Tony Hage produced relevant documents including clearance/receipts from LAC which established that LAC was, at the time, indebted to Bridgeway Corporation for 4000 bags of rice supplied. (See Minutes of Court, Monday).

On the date set for argument in the case, the counsel for defendant/appellee was absent and the counsel for plaintiff/appellant, though present in court, waived argument. The Debt Court Judge, His Honor James E. Jones, handed down ruling on June 4, 2010 dismissing the action of debt. He gave the following reasons for his ruling:

1. The audit by VOSCON and the subsequent payment of US\$82,979.25 by defendant LAC to plaintiff Bridgeway [Corporation] appears to have ended the rice business between them.
2. The money being claimed now is for rice allegedly supplied to defendant during the same period for which the audit by VOSCON was carried out resulting to the payment of

US\$82,979.25 by defendant to plaintiff. This action of debt against defendant therefore seems to be a protest by plaintiff against the audit findings and report of VOSCON.

3. There is evidence that a clearance receipt was given to the trucker in exchange for the waybill when the rice was delivered to the defendant. This clearance receipt indicates the truck license plate, the date received; the quantity of rice received by the defendant, and is signed by the receiving clerk and a supervisor of LAC.

4. Regarding the amount of US\$25,560.00 being claimed for rice allegedly supplied to the Workers Union, this Court says that plaintiff produced no evidence that the Management of LAC requested plaintiff to supply rice to the value of US\$25,560.00 to appellee's workers' union. Plaintiff attached a lot of documents in this regard to its reply, but the documents attached by plaintiff in support of this aspect of its claim been the signatures of persons (payroll supervisor, workers union president) who are not normally and legally authorized to commit a corporate management. Secondly, there is no evidence that [the] rice was actually delivered to appellee LAC.

The plaintiff/appellant announced an appeal from the ruling of the Debt Court of Montserrado County and has come to the Supreme Court for appellate review of the said ruling on a twelve count-bill of exceptions.

In its bill of exceptions and the brief filed with this Court, the plaintiff/appellant has contended that the trial court committed reversible error when it failed to take into account plaintiff/appellant's reply which clearly spelt out how the defendant/appellee's indebtedness was derived. The plaintiff/appellant maintained that the trial court did not properly consider debit invoice no.0008950 dated December 18, 2004 for 800 bags of rice and debit invoice no. 00088911 dated December 21, 2004 for 2,208 bags of rice delivered to the defendant/appellee. According to the plaintiff/appellant, these debit invoices which total 3,008 bags of rice, when multiplied by the unit price of US\$22.50 per bag amount to US\$67,680.00; that this amount plus US\$25,560.00 representing the cost of rice delivered to the workers union of LAC upon the request of defendant/appellant sum up to US\$93,240.00 which makes a clear case of debt against the defendant/appellee.

The plaintiff/appellant also argued that the trial court erred when it failed to take into account that the investigative audit conducted by VOSCON was a one sided audit commissioned by the defendant/appellee and was not an arbitration process with the participation of the plaintiff/appellant to bind the plaintiff/appellant or stop it from making additional claims for rice delivered to the defendant/appellee which were not paid for and not taken into

account by the auditors hired by the defendant/appellee alone to conduct the audit. The plaintiff/appellant further argued that the trial court also erred when it opined that the VOSCON audit ended the rice business between the parties, when the appellant did not participate in the audit through any auditor from the plaintiff/appellant's company.

For its part, the defendant/ appellee contended that the plaintiff/appellant did not supply LAC the quantity of rice in contention, especially on the waybills and debit invoices plaintiff/appellant alluded to. The defendant/appellee also contended that the mode of transaction used by the parties was never followed, making the claim dubious. It maintained that local purchase orders should have been raised by LAC and submitted to Tony Hage for onward transmission to the plaintiff/appellant; the trucks conveying consignments of rice should have been sent to LAC accompanied by waybills; upon the receipt of the consignments of rice by the defendant/appellee, clearance/receipt should have been issued to the drivers to return same to Mr., Tony Hage who would then pay the drivers. The defendant/appellee argued that none of these documents were in their possession or the possession of Mr. Tony Hage, who served as the middleman. Therefore, according to the defendant/appellee, the 3008 bags of rice the plaintiff/appellant referred to in their complaint were never sent or received by the defendant/appellee and therefore the defendant/appellee has no obligation to pay. The defendant/appellant further argued that at no time did it have George Momolu and Johnson Gardea working for LAC and serving as Payroll Supervisor and President of the LAC workers Union respectively. Thus, these individuals were never authorized to commit LAC to the plaintiff/appellant.

Having perused the pleadings filed by the parties and the exhibits attached thereto, and having read their contentions contained in their respective briefs and listened to the oral arguments presented by their counsels before this Court, the crucial question we must answer is whether during the course of the transactions between the plaintiff/appellant and defendant/appellee the former supplied certain quantities of rice to the latter for which payments were not made and which constitute an action of debt? In short, does the defendant/appellee owe the plaintiff/appellant for rice supplied for which payment has not been made?

To aid us in answering this question, we recap what transpired between the parties.

Bridgeway Corporation, the plaintiff/appellant and LAC, the defendant/appellee are two domestic corporations organized to do business in the Republic of Liberia. In 2003, during the time the civil war in Liberia was still going on, the defendant/appellee contacted a

Lebanese Businessman, Tony Hage, to arrange with the plaintiff/appellant to have regular supplies of rice delivered to the defendant/appellee's workforce at the defendant/appellee's work place at LAC, Grand Bassa County. The arrangement was made. Both parties acknowledged that Tony Hage acted as the middleman for the business transactions between them.

The transactions started with the defendant/appellee raising purchase orders and debit invoices for rice stating the quantity of rice, description, unit price, and total cost; the purchase order was signed by the General Manager of LAC or his designee and delivered to Tony Hage, the middleman between LAC and Bridgeway Corporation. Upon receipt of the local purchase order by Bridgeway Corporation, the requested quantity of rice was processed and carried by trucks to LAC's ware house, Grand Bassa County. At LAC's ware house, both the ware house clerk and the truck driver checked the rice and the ware house clerk took delivery of the way bill from the truck driver and issued receipts for the consignments of rice. The parties agreed that in cases of emergency, Tony Hage called on the telephone and plaintiff/appellant supplied the quantity of rice requested and the necessary documents were issued at a later date.

During the period of the business relationship of the parties, a dispute arose concerning some supplies of rice said to have been made that were not paid for. The plaintiff /appellant claimed that it supplied rice to the defendant/appellee for which payment was not made. The defendant appellant denied the claim. However, after a period of time, the defendant/appellee, by itself, commissioned VOSCON, a local auditing firm to audit the account involving the transactions of the parties. The audit report showed that the defendant/appellee owed the plaintiff/appellant US\$82,979.25; the amount was paid to the plaintiff/appellant. But the plaintiff/appellant claimed that only one invoice was paid for leaving an outstanding of US\$93, 240. The plaintiff/appellant made demands on the defendant/appellee to pay this amount but the defendant/appellee refused to pay. This prompted this debt action.

The trial court, in deciding this case, held that the payment of US\$82,979.25 by defendant/appellee to plaintiff/appellant appears to have ended the rice business between the parties; that the money being claimed now is for rice allegedly supplied to defendant/appellee during the same period for which the audit by VOSCON was carried out resulting to the payment of US\$82,979.25 by defendant/appellee to plaintiff/appellant. The trial court further held that this action of debt against the defendant/appellee seems

to be a protest by the plaintiff/appellant against the audit findings and report of VOSCON. We do not agree.

There is no disagreement that the audit conducted by VOSCON was commissioned solely by the defendant/appellee. This was not an arrangement wherein the parties to the dispute jointly agreed on an auditing firm and gave guidelines for the conduct of the audit so as to lay to rest the dispute between the parties. And as the plaintiff/appellant has argued this was not an arbitration proceeding. The records before us show that the defendant/appellee personally and unilaterally hired VOSCON, paid the agreed fees and provided the terms of reference for the conduct of the audit without the involvement of the plaintiff/appellant, and the audit report was submitted to the defendant/appellee. In such case, if there were any questions, reconciliations, etc., regarding the audit report, these were done exclusively between the defendant/appellee and the auditors before the audit report was released to anyone, including the plaintiff/appellant.

We hold that under the circumstance, it is not reasonable to conclude that the VOSCON audit was binding on the plaintiff/appellant and that it ended or appeared to have ended the claim of the plaintiff/appellant. It is settled law that no one can be concluded by acts in which he/she did not participate. Even if the current claim of the plaintiff/appellant is for consignments of rice supplied during the same period covered by the VOSCON audit, we see nothing wrong that, since the plaintiff/appellant's contention, which was not denied, is that the VOSCON audit was one sided and did not consider plaintiff/appellant's claim now under review.

We further hold that it is also not reasonable to conclude, as the trial court did, that this action of debt filed by the plaintiff/appellant seems to be a protest against the findings of the audit conducted by VOSCON. Given the fact that the audit was commissioned solely by the defendant/appellee without the involvement of the plaintiff/appellant, nothing precluded the plaintiff/appellant from filing an action of debt against the defendant/appellee if indeed the defendant/appellee still owed the plaintiff/appellant money that was not taken into account and recovered under the VOSCON audit.

The defendant/appellee has vehemently argued that the plaintiff/appellant did not state a sum certain in its complaint. The law extant is that plaintiff in an action of debt is required to make a declaration in the complaint and allege all the facts necessary to show an obligation on the part of the defendant to pay plaintiff a sum certain or a sum which can readily be made certain. *GOLL v. SERVO*, 32 LLR 140, (1984).

To our mind, the plaintiff/appellant in this case stated a sum certain in its complaint that which, it says, the defendant/appellee owes. The claim of the plaintiff/appellant is even better said in count 12 of its reply. That count averred that debit invoice number 0008750 dated December 18, 2004 for 800 bags of rice and debit invoice number 0008911 dated December 21, 2004 for 2208 bags of rice delivered to the defendant/appellee were not paid for. These debit invoices totaled 3,008 bags of rice. When multiplied by US\$25.50 which is the agreed unit price per bag of rice you will have US\$67,680.00. This amount, plus US\$25,560.00 which, according to the plaintiff/appellant, represents the value of rice delivered to the Workers' Union of LAC upon the directive of the defendant/appellee, adds up to US\$93,240.00. This is the amount the plaintiff/appellant has sued for. We therefore do not agree with the position of the defendant/appellee contained in its brief and argued before us by its counsel that the plaintiff/appellant failed to state a sum certain.

However, we must say that statement in the complaint of a sum certain or an amount which can be made certain in itself, does not amount to proof of debt. The plaintiff is required to provide clear and convincing evidence of the amount stated in the complaint in order to recover against the defendant in an action of debt.

In deciding whether during the course of the transaction between the parties the plaintiff/appellant supplied certain quantities of rice to the defendant/appellee for which payments were not made and which constitute an action of debt, we take a careful look at the testimony of Tony Hage, the so-called middleman between the parties. Tony Hage, an independent businessman, seemed to have had good relationship with both the plaintiff/appellant and the defendant/appellee; the parties appeared to have relied on him. It must be noted that even though it is the defendant/appellee who requested him to contact the plaintiff/appellant for regular supply of rice to the defendant/appellee's workplace, he served as a witness for the plaintiff/appellant in this case. His testimony is therefore crucial because of the special relationship he had with the two parties to this case.

The relevant portion of his testimony is that LAC's payments for consignments of rice supplied by Bridgeway Corporation were regular up to 2008 when Bridgeway Corporation ceased importing rice into the country; that sometime in 2008, Bridgeway Corporation called him and complained that LAC was in arrears for rice supplied and that he should intervene; that he went to LAC, Grand Bassa County himself and showed the outstanding balance; that LAC then decided to conduct an investigative audit; that the audit was conducted by VOSCON which revealed that indeed LAC was in arrears with Bridgeway

Corporation for 4,000 bags of rice supplied for which payment was made to Bridgeway Corporation.

He also testified that Bridgeway called him again and said that only one invoice was paid by LAC, leaving an outstanding debit note and waybill # 0008750 dated December 18, 2004 for 800 bags of rice and invoice # 0008911 dated December 21, 2004 for 2,208 bags of rice which totaled 3008 bags of rice in the amount of US\$67,680.00. He said that he contacted the new General Manager of LAC and advised him to pay Bridgeway Corporation for the supply of rice which was outstanding so the good relationship between the two companies would remain. He was asked on the cross-examination: Mr. Witness, were you informed at any time from the time you advised LAC to pay, that they ever paid the outstanding debit notes? He answered: Not the last one that I mentioned. The General Manager told me verbally that he does not want to pay. Although, the rice was received in the warehouse as I mentioned in my statement.

The testimony of Tony Hage highlighted above leaves much to desire. Questions still linger on our minds as to whether during the course of the transaction between the parties, the plaintiff/appellant supplied certain quantities of rice to the defendant/appellee for which payments were not made and which constitute an action of debt. Tony Hage narrated that he contacted the new General Manager of LAC and advised him to pay Bridgeway Corporation for the supply of rice which was outstanding so the good relationship between the two companies would remain. From this statement, one would conclude that Tony Hage was convinced that the defendant/appellee was indebted to the plaintiff/appellant. But the question is, what was this outstanding amount referred to by Tony Hage and how did it come about? Unfortunately, no question was asked by the counsel for the plaintiff/appellant on the direct examination or by the counsel for defendant/appellee on the cross-examination or by the court during court questions to know what the outstanding amount mentioned by the witness was and how it was derived.

Besides, Winston Dorbor, who testified for the defendant/appellee stated that when Bridgeway Corporation made demand for the payment of 400 bags of rice supplied which prompted the audit conducted by VOSCON, Tony Hage had in his possession and he produced documents i.e., clearance/receipts. The question is, does Tony Hage have in his possession document(s) to establish that the defendant/appellee is indeed still indebted to the plaintiff/appellant for any additional supply of rice which was not paid for? If yes, such document(s) were not solicited and were not produced at trial.

We must say, at this juncture, that the parties to this case transacted business with one another for a long time, trusting each other. Because they trusted each other, the plaintiff/appellant supplied consignments of rice to the defendant/appellee at any time requests were made with the understanding that payments would be made later without first ensuring that previous consignments of rice supplied have been paid for. Even though the procedure was that a local purchase order for every supply of rice would be raised by the defendant/appellee and payment for the supply of rice would be made 30 days after delivery as clearly stated on the face of several purchase orders raised by the defendant/appellee, this procedure was not always followed. The parties even adapted a practice whereby in emergency situations, rice supplies were made to the defendant/appellee upon requests via telephone and the necessary documents were prepared at a later date. And they allowed a third party, Tony Hage, to serve as a middleman between them. As a result, many documents of the transactions by the parties were lodged with Tony Hage and were not in the possession of either party.

Clearly by their conduct, the parties made reconciliation of their accounts difficult, cumbersome and complicated, if not impossible, without the help of an expert. This may explain why when dispute arose between them concerning certain supply of rice that was not paid for, they could not readily and easily decide among themselves; the defendant/appellee had to commission an audit which established that indeed the defendant/appellee was indebted to the plaintiff/appellant. Except, as we have said, that that audit was not commissioned by the both parties and that said audit did not end the claim of the plaintiff/appellant against the defendant/appellee, this was a sure way of deciding whether there were consignments of rice supplied by the plaintiff/appellant for which the defendant/appellee had not paid.

In complicated situations of this nature the law allows the court to seek the assistance of experts to guide it in reaching decision. The court may appoint, on a motion of any of the parties or on its own initiative, a referee to take evidence, make findings, and determine specific issues, to report issues, to perform particular acts, or to receive and report evidence. A reference to a referee shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without jury such as the action before us, a reference shall be made only to determine matters of account when some exceptional condition requires it. Reliance: Civil Procedure Law, Rev. Code, 1:24.1

In the instant case it is our opinion that the trial court needed the assistance of experts, preferably auditors to have audited the rice transaction between the parties before reaching a decision.

For example, the plaintiff/ appellant contended that the defendant/appellee owes the amount of US\$25,560 for rice supplied to the LAC Workers Union on the instruction of the defendant/appellee through George Momolu and Johnson Gardea, Payroll Supervisor and President of LAC Workers Union respectively. The defendant/appellee denied the claim and argued that George Momolu and Johnson Gardea who committed LAC were never employees of LAC and LAC does not know these men.

We see in the records before us, several communications under the signatures of George Momolu and Johnson Gardea requesting the plaintiff/appellant to supply rice to LAC Workers Union indicating that payment would be made through salary deductions and the check remitted by LAC to the plaintiff/appellant. George Momolu and Johnson Gardea, as seen on the face of the communications, purport to be Payroll Supervisor and President of LAC Workers Union respectively. Here, again, no effort was made at the trial below to particularly pursue this important contention and counter contention of the parties. This Court has held that where it appears that a court, tribunal, or officer proceeded without the proper evidence for both parties, it creates an irregularity in the trial and no judgment should be pronounced therefrom. *Taylor v. Worrel et al.*, 3LLR 14 (1928).

WHEREFORE, and in view of the foregoing, the judgment entered by the Debt Court of Montserrado County dismissing the plaintiff/appellant's action is hereby reversed and the case remanded. In our opinion the proper thing to do under the circumstance of this case in the interest of justice is for the parties to proceed back to the Debt Court of Montserrado County with the instruction that the court will cause the parties to select an auditing firm acceptable to them, to conduct a comprehensive audit of the rice transaction between the parties. All parties shall fully comply with the audit. Tony Hage, the middleman, shall be called upon to cooperate with and provide all information and document(s), if any, to facilitate the conduct of the audit. The report of the audit shall be submitted to the Debt Court of Montserrado County and that Court shall use the audit report as guide in reaching decision in this case. The Clerk of this Court is ordered to inform the Debt Court of Montserrado County to resume jurisdiction over this case and give effect to this judgment. Costs to abide final determination. IT IS SO ORDERED.

COUNSELOR COOPER W. KRUH OF HENRIE'S LAW FIRM APPEARED FOR PLAINTIFF/APPELLANT. COUNSELORS CYRIL JONES AND NANCY SAMMY OF JONES & JONES LAW FIRM APPEARED FOR DEFENDANT/APPELLEE.