

Michelle Hassanin, Shareholder, of the Marrish Development Corporation, also of the City of Monrovia, Liberia APPELLANT VERSUS **Elaise Antoune**, Shareholder of the Marrish development Corporation, by and thru his Attorney-In-Fact, Chon Davis of the City of Monrovia, Liberia APPELLEE

LRSC 11

PETITION FOR ACCOUNTING

Heard: October 17, 2012 Decided: February 19, 2013

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

A seven (7) count petition for accounting of the management and operation of a rubber farm was filed on February 25, 2010, before the Civil Law Court, Sixth Judicial Circuit, Montserrado County, by Elias Antoune, appellee herein, represented in these proceedings by and thru his Attorney-In-Fact, Mr. Chon V. Davies. The petition alleged that appellee owned sixty percent (60%) shares in a corporation registered under the Associations Law of Liberia as the Marrish Development Corporation; that the appellant, Michelle Hassanin, is operating the farm in Todee which is part of the Corporation's assets; and though only a minority shareholder in the Corporation, she is operating the Todee farm to appellee's total exclusion, failing to account to him despite his various communications to have her do so.

The facts as gathered from the records before us are that Mary Page, now deceased, along with the informant one Joseph Antoune formed a corporation, named, Marrish Development Corporations. The Articles of Incorporation of the Corporation proffered by the petitioner shows that the Corporation was formed on the sth day of December, A.D. 1976; that the names of shareholders and the number of shares each shareholder agreed to take were: Mary Grace Page, 500 shares; Elias Antoine (petitioner}, 400 shares; and Joseph Antoine, 10 shares. The Todee farm, appellant alleged, formed a major asset of the Corporation. When Mary Page died, the appellee said he operated the farm until he had to flee the Country as a result of the civil crisis. Now, the appellant, respondent herein, has moved on the farm and is managing the farm but has refused to deal with the petitioner or to account to him on the running of the farm.

Responding to the petition, the appellant filed her returns praying the court to deny the petition. Her returns stated substantially that the petitioner had no capacity to sue as he had shown no evidence of his share in the Corporation since an Articles of Incorporation of a company is not proof of ownership of share in the company, the only valid evidence of

ownership in a company is the share certificate(s) which is issued upon payment of the full value of the shares, and the appellee has shown no evidence that he paid for the shares he claims he owns. The returns further stated that the petitioner could not claim property right in the rubber farm because as a foreigner he was barred by the Liberia Constitution from owning real property in the country; that even if the appellee could show that he indeed had shares in the Marrish Corporation, there is no showing of any connection between the Corporation and the farm as petitioner has not shown a deed or a lease agreement between the Corporation and Mary Page, as the land on which the rubber farm is located was totally owned by the late Mary Grace Page as evidenced by the public sale deed signed by President Tubman; that the Monthly and Probate Court had, by directive as contained in the late Mary Grace Page's will, granted the respondent Letters of Testamentary to administer and manage the testate estate of Mary Grace Page.

The returns stated further that the mere existence of a corporation in Liberia is not enough to qualify such corporation, that in order to do business in Liberia, a corporation or business entity must apply for and obtain from the Ministry of Commerce and Industry a business registration certificate; in this case as alleged by appellee/petitioner, he has shown no business registration certificate to indicate that the Marrish Development Corporation is authorized to do business in Liberia. Therefore, the court should deny the appellee's prayer to have appellant account to appellee for the management of the Todee Rubber Farm.

Filed along with her returns, the respondent filed a motion to dismiss the petitioner's petition, challenging the capacity of the petitioner to sue as he had shown no authentic document of ownership of share in the Corporation such as his share certificate and that the appellee could not claim share in the Todee rubber farm since the Liberia Constitution specifically prohibits foreigners from owning real estate within the Republic.

The respondent filed a reply to the respondent's returns and a resistance to the motion basically stating that the Articles of Incorporation remains an authentic and valid document following its filing with the Ministry of Foreign Affairs as required by statute, and that it shows the basic feature and characters of the entity by which all authorized financial and business transactions are carried out; i.e. the shareholders, board of directors and officers who are charge to oversee and manage the affairs of the corporation; the best evidence as to the existence of the Corporation and all relevant information thereto and the burden of claim rest on anyone making counterclaim as to its shareholder, board of directors and officers; that the Marrish Development Corporation has the right to own property, and by

operation of law, a shareholder can assert claim as to his or her interest in the Corporation, so petitioner claim to the Corporation's property is not an Issue of ownership to real property but rather a corporate matter regarding benefits to all shareholders as required by law; that the respondent is also a beneficiary of the Corporation and is asserting claim against the validity of the Corporation's document only to deprive her fellow shareholder of his entitlement. For appellant to assign to herself the total benefit of the corporation will be an unjust enrichment, the appellee pleaded.

Further in his reply, the petitioner stated that the owner of the farm, the late Mary Grace Page was a major shareholder of the Marrish Development Corporation. He along with the petitioner organized and managed the Todee Farm, and that in confirming the ownership of the Todee Farm by the Marrish Development Corporation, Mary Grace page in her will even distributed her shares in the Corporation as follows:

I direct that my entire ownership and interest, represented by shares, in the Marrish Development Corporation (Todee Farm) consisting of 2000 acres of plantations, developed and undeveloped land of which Mr. Elias L. Antoune also owns 50% while I own the other 50%, be given to and divided among these persons as follows:

My grand-daughter, Muna Grace Hassanin, 20% My grand-daughter, Michel Gloria Hassanin, 20% Mr. Elias Antoune 60%

The last will and testament of Mary Grace Page, the appellee said, confirms the ownership of the land being giving to the Marrlsh Development Corporation; that the respondent cannot admit and avoids that she accepts the will of Mary Grace Page and at the same time refuse that portion of the will with respect to ownership of the Todee Rubber Farm by the Marrish Development Corporation; that the will of Mary Grace Page did not only named Michelle Gloria Hassanin, the appellant and her sister Muna Grace Hassanin as Executrixes but named the appellee, Mr. Elias Antoune, as an executor of the will as well. The appellee prayed that as the appellant was contradicting her position when she accepted the Articles of Incorporation but refused to accept the shareholding of the Corporation, the Court below should deny and dismiss the appellant's returns and adjudge her liable and compel her to account to her fellow shareholder for the management and operation of the subject Corporation in relation to the Todee Farm.

Dealing with the issue of the capacity of the petitioner to sue, same was raised in both the appellant's returns and motion to dismiss. In his ruling on the motion to dismiss, the judge ruled:

On the issue of the ownership, or the interest of the respondent in the rest of this petition, this court takes recourse to the articles of incorporation of the entity and to the will which was pleaded by the movant and the respondent.

The court observed that in the article of incorporation, the respondent herein is referred to as one of the shareholders of the said Corporation; with forty percent (40%) ownership of the shares therein.

More besides the court reviewed the will which was annexed to the returns of the movant in the proceedings. In the said will and it is also provided that the respondent herein is a 50% owner of shares in the Corporation. The court is at a loss as to what other evidence needs to be produced to establish the ownership of interest of the respondent in this Corporation. By the movant's own admission which is evidence by the will which the movant relied upon in this action, the respondent herein is a bona fide owner of shares in this Corporation. How then can the movant challenge the authority, the right and interest of the respondent to institute these proceedings?

Relative to the issues of a foreigner owning real property in this jurisdiction, this court agreed with the movant that our organic law jealously protects the ownership of real property in this jurisdiction. No foreign subject shall own real property in this jurisdiction. But is the issue in this matter the ownership of real property by a foreigner in this jurisdiction? Certainly the pleading does not demonstrate this. According to the pleading, that is to say the petition and the returns thereto, the Corporation was organized [and] to whom the ownership of this property was transferred; and the share of which portion is owned by the respondent herein. Does the ownership of shares in the corporation make one the owner of the property of the corporation?

The Court says no; under the law of corporation, a corporate body is an artificial person created by law that has the right to own property and to sue and to be sued. And therefore none of the shareholders of a corporation can claim ownership to the asset of the corporation.

In this connection, this court does not see how the issue of a foreigner owing real property can come into play in this matter. Relative to the issue of the difference in name of the Corporation, this court again takes recourse to Chapter one (1) of our Civil Procedural Code.

Finally, on the issue of what authority the movant herein is operating under? The court takes judicial notice of the letters of administration issued by the Probate Court to the movant. The court however says that the accounting which is a subset of this petition is not for intestate estate of the late Mary Grace Page, for which the Probate Court appointed the movant herein to administer. The accounting here is for a corporate entity which is separate and distinct from Mary Grace Page, and in which the respondent herein is a shareholder. The Court is not questioning the right of Mary Grace Page, as a shareholder in a Corporation; but the position is that the shareholders of Mary Grace Page cannot be used as an avenue to make the asset of the Corporation the sole domain of the asset of Mary Grace Page. The Corporation remains to be an artificial person living under the law and breathing with the strength of the law. And therefore no one shareholder should be permitted to usurp the corporate authority vested in that body.

The trial court denied the motion to dismiss and ordered the matter proceeded with.

When the petition was called for hearing, the Judge informed the parties that argument being for the court, the court was waiving arguments. He required the parties to file their respective legal memorandum to include the counsels' issues and the laws relied on and arguments, in order for the court to make an informed determination of the matter. Accordingly, the petitioner and the respondent presented their legal memorandums containing their law citations and supporting arguments of claims and counterclaims.

Referencing the legal memorandums filed and making his rulings thereon, the Judge of the trial court ruled:

The court says that only one issue is left to be determined in view of the fact that the ruling on the motion to dismiss has been incorporated in this ruling, and the said ruling resolved most of the issues raised by the petition and the resistance.

That issue is whether or not, the 2000 acres of land is a part and parcel of the assets of the Marrish Corporation in which the petitioner herein is the majority shareholder and

therefore the respondents are under a duty to account for their stewardship of the said 2000 acres of land?

The Judge then ruled:

According to the respondent, the 2000 acres of land is owned by Mary Grace Page. The respondent further alleged that the petitioner has failed and neglected to show any evidence of transferred of the said 2000 acres of land, to the Marrish Corporation. This Court takes judicial notice of the will of the late Mary Page. It is this will that the respondents herein are relying on as their authority to manage and operate the 2000 acres of land that is the subject of this accounting. In the said will, which is not contested by any of the parties, the late Mary Page acknowledged the existence of a corporation known and style as the Marrish Corporation. The late Mary Grace Page, also acknowledged the Marrish Corporation as a corporation registered under the law of the Republic of Liberia and that the petitioner herein is the majority shareholder by virtue of the fact that the petitioner owned fifty percent (50%) of the entire share and the late Mary Grace Page owned the remaining fifty percent (50%). The will is also clear on its face that the assets of this Marrish Development Corporation, is a farm consisting of 2000 acres of plantation land developed and undeveloped. The will also provides that Munah Grace Hassanin will be entitled to twenty (20%) percent of the share of the late Mary Grace Page, in the Marrish Development Corporation. The will also provides that Michelle Gloria Hassanin will be entitled to twenty (20%) percent of the fifty (50%) percent shares that is owned by Mary Grace Page, in the said Corporation. Further, the will provides that Mr. Elias Antoune will be entitled to fifty (50%) percent plus ten (10%) share of the late Mary Grace Page in the said Corporation.

Certainly, if the respondents are administrators or executrix of the testate estate of the late Mary Grace Page, then of course they are bound by the term and condition of the will of the late Mary Grace Page. The late Mary Grace Page having acknowledged the existence of the Marrish Development Corporation, and having also acknowledged the fact that the Marrish Development Corporation is the owner of the 2000 acres of plantation land, in Todee, and further, the late Mary Grace Page having acknowledged that she shares ownership of the Marrish Development Corporation with Elias Antoune, on the fifty-fifty basis and that upon her death, fifty percent (50%) of the sixty percent (60%) shares should go to Elias Antoune, and there being no challenge of the will of the late Mary Grace Page by anybody whatsoever, then of course the parties must be guarded by the term and condition of the said will. And in the process of the administration of the estate of the late Mary Grace

Page, the executrix must proceed in keeping with the strict and unambiguous language of the said will. The will having acknowledged that the 2000 acres of land is owned by the Marrish Corporation, and that Elias Antoune holding in the said property as described in the will, the executrix cannot be permitted to come and challenge the clear language of the will which guard them in the administration. More besides, under our corporate law, a corporation is distinct from its owner. Mary Grace Page was a shareholder in the Marrish Development Corporation. As much as the late Mary Grace Page own shares in the Marrish Development Corporation, her entitlement in the said Corporation is limited to dividends and right that accrued to her by virtue of her ownership of those shares. Her estate can only exercise control over that portion of the shares of the Corporation that is owned by her. But the estate cannot claim ownership of the Corporation itself; since the Corporation is an artificial person, independent, and distinct from its shareholder. So in the process of managing the estate of the late Mary Grace Page, the executrix cannot take over the Marrish Development as part of that estate. The Marrish Development Corporation being an artificial individual, different, and distinct from its shareholders, is a personality on its own. And therefore the shareholders are entitled to an accounting in the said Corporation.

This Court having found that the 2000 acres of plantation land is owned by the Marrish Development Corporation, as it is evidenced by the will of the late Mary Grace Page, the Court says that the petitioner herein being the majority shareholder, is indeed entitled to an accounting.

WHEREFORE AND IN VIEW OF THE GOING, this court hereby ruled, upholding the petitioner's petition. The respondents are hereby ordered to make a full account of their stewardship of the said Marrish Development Corporation owner of the 2000 acres of plantation land and have the same account filed with this Court, on or before the 15th day of January 2011, at the hour of 4:00 p.m.

Excepting to this ruling of the Judge, the respondent, appellant herein, filed the following fourteen (14) bill of exceptions:

1. Because Your Honour committed a reversible error when passing on the motion to dismiss on October 21, 2010, without the benefit of any evidence. You concluded that the rubber farm of the late Mary Grace Page was the asset of the Marrish Development Corporation found on pages 10 & 11 of said ruling.

2. And also because Your Honour committed a reversible error when on December 15, 2010, you incorporated the erroneous ruling of October 21, 2010 in your final ruling as found on pages nine (9) and ten (10) of said final ruling.

3. And also because Your Honour erred when you refused to accept the position of the Honorable Supreme Court of Liberia that a shareholder in a corporation cannot maintain a suit in his personal name for the recovery of corporate property or money as clearly stated by the Court in HAIDER VERSUS SCOTT ET AL 37 LLR (1994), SYL. 1 TEXT AT 469.

4. And also because Respondent says that Your Honour committed further reversible error when you refused to accept the position of the Honorable Supreme Court of Liberia that a shareholder cannot will any asset of the corporation because such assets do not form part of the decedent's assets. Ibid, page 899.

5. And also because Your Honour committed a reversible error when you concluded that because the late Mary Grace Page acknowledged the existence of the 2000 acres of land and the Marrish Development Corporation, therefore the 2000 acres of land is an asset of the Corporation although the will does not devise the property to the corporation. This assumption was wrong and resulted in your prejudicial ruling of December 15, 2010.

6. And also because Your Honour committed a reversible error when you failed to recognize the fact that the will violated the Constitution of Liberia when it attempted to will real estate to a foreigner. This issue was clearly raised in count two (2) of the amended motion to dismiss as well as count two (2) of the amended returns.

7. And also because respondent says that Your Honour committed a reversible error when you ruled that the Articles of Incorporation was sufficient proof of ownership of share in a corporation whereas the ASSOCIATION LAW provides that the shares of a corporation shall be represented by certificates signed by the President or Vice President and the Secretary or the Assistant Secretary or the Treasurer or an Assistant Treasurer of the corporation. (Emphasis ours) 2 LCLR SECTION 5.8 PAGE 245.

8. And also because Your Honour committed a reversible error when you failed to rule on or consider the fact that the corporation had no Business Registration Certificate and therefore not authorized to do business in Liberia.

9. And also because Your Honour committed a reversible error when you failed to take into consideration the fact that the respondent is not an employee, an officer or agent of the Corporation. She is only the administratrix of the estate of her grandmother, and that rubber farm is not owned by the Corporation.

10. And because Your Honour committed a reversible error when you concluded in your final ruling as found on page eight (8) thereof that because Mary Grace Page acknowledged the existence of the Marrish Development Corporation and the 2000 acres of land, which are two distinct and separate entities, she, by such acknowledgment, willed the 2000 acres of land to the Corporation.

11. And also because respondent says that Your Honour erred when you concluded that Mary Grace Page willed 60% of the 50% share she owned in the corporation to Elias Antoune, the petitioner. There is nowhere in the will that gives 60% of 50% of Mary Grace Page share in the Corporation.

12. And also because Your Honour wrongfully and prejudicially concluded that Mary Grace Page willed the 2000 acres of land to the corporation when no such devise is expressly made in the will. The most accurate conclusion any reasonable person can get from reading the Will is that Mary Grace Page considered and treated both the Marrish Development Corporation and the Todee Farm as one and the same. This does not mean that Mary Grace Page willed the land to the Corporation.

13. And also because Your Honour erred when you held this court having found that the 2000 acres of plantation land is owned by the Marrish(sic) Development Corporation as it is evidenced by the will of the late Mary Grace Page, the court says that the petitioner herein being the majority shareholder, is indeed entitle(sic) to an accounting. See pages 11 and 12 of your final ruling.

14. And also because Your Honour failed to pass on the issue that the Marrish Development Corporation is not legally authorized to do business in Liberia because they do not have Business Registration Certificate to indicate that they are engaged in business activities in Liberia.

To this Court, the appellant's exceptions raise two relevant issues for our consideration:

1. Whether the appellee established that the Todee Rubber Farm being managed by the appellant is an asset of the Marrish Development Corporation, and whether there is sufficient proof establishing him as a shareholder in the Corporation?
2. Whether the appellee, a shareholder in the Marrish Development Corporation could sue in his own name for accounting of the management of the Corporation?

The appellee in his petition for accounting has alleged that the Todee rubber farm being run by the appellant is part of the assets of the Marrish Development Corporation and for which he is requiring an accounting to him as a major shareholder of the corporation. The appellant denied the appellee's claim stating that the farm is for her mother Mary Page and she is administering the farm as part of her mother's testate estate. That the farm does not form part of the Marrish Development Corporation; that the appellee should show proof of a connection between the Corporation and the rubber farm either by a transfer deed or a lease agreement from Mary Page, the owner of the farm, to the Marrish Development Corporation.

This brings us to the issue of proof required by the appellant that the Todee farm is an asset of the Marrish Development Corporation.

A corporation under our Associations Law of Liberia, section 2.5 is a legal entity, considered in law as a fictional person distinct from its shareholders and members and with separate rights and liabilities. Chapter 2: § 2.2 list the general powers of a corporation and what every corporation shall have power in furtherance of its corporate purposes irrespective of corporate benefit to do. Subsection (d) states that a corporation has the power:

To purchase, receive, take by grant, gift, devise, bequest, or otherwise, lease to purchase, receive, take by grant, gift, devise, bequest, or otherwise, lease or otherwise acquire, own, hold improve, employ, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated.

In this case, the appellee did not only have to show that the farm became a corporate asset by lease or deed transfer but other means such as grant, gift, bequest as enumerated in section 2.2 (d) quoted above. However, our property law relating to real property states:

Every instrument affecting or relating to real property shall be signed by the grantor if a deed poll, and by the parties thereto if an indenture in the, presence of two witnesses.

The appellee did not exhibit documentary evidence of transfer of the property to the Corporation as the appellant required. The appellant instead referred the court to the will of Mary Grace Page, pages 3 and 4 written supra, as evidence that even Mary Page whom the appellant allege is owner of the property and whose estate she is administering has herself referred to the Todee Farm as an asset of the Marrish Development Corporation.

A review of the will of Mary Grace Page shows that that she mentioned two rubber plantations, the Todee farm and the farm in Cinta, Margibi County, comprising two thousand (2000) acres and one thousand and two hundred (1200) acres of land respectively.

Of the one thousand two hundred (1200) acres of Cinta farm land located in Margibi County, the decedent wrote in her will:

I direct that my 600 acres of rubber plantations, which are a part of my 1200 acres of rubber farm and farm land in Cinta, Margibi County, be divided among my son Richard Eugene Hassanin, and my two grand-daughters, Muna Grace Hassanin and Michelle Gloria Hassanin, who are daughters of my son, Richard Eugene Hassanin, equally, with each receiving a third, that is to say 33.33%.

Of the two thousand (2000) acres of rubber farm in Todee, she wrote:

I direct that my entire ownership and interest, represented by shares, in the Marrish Development Corporation (Todee Farm) consisting of 2000 acres of plantations, developed and undeveloped land of which Mr. Elias L. Antoune also owns 50% while I own the other 50%, be given to and divided among these persons as follows:

My grand-daughter, Muna Grace Hassanin, 20%

My grand-daughter, Michelle Gloria Hassanin, 20%

Mr. Elias Antoune 60%

The giving of the 60% to Mr. Antoune is in consideration and appreciation of his investment in, care of and hard work on the entire Todee Farm for all of us, the owners, and is intended

to encourage him to continue doing so for my grand-daughters, Muna and Michel, who are his Godchildren and for whom he promises to do the same.

This Court in considering this issue of the farm being an asset of the Marrish Corporation must look to the will of the Mary Grace Page, the owner of the said farm, where she herself has admitted to the existence of the Marrish Development Corporation; referring to the Corporation in her will, she placed in parenthesis beside the words Marrish Corporation, Todee farm. Words used in parenthesis are often used to enclose a qualifying or explanatory remark, or used as an apposition to a phrase or word. In this case, the Todee farm in parenthesis was the explanatory equivalent of the Marrish Corporation, and of which the deceased Mary Page willed her 50% share to the appellant, her sister, and the appellee. If a will explicitly and with reasonable certainty designates and applies to a particular existing person, society, or corporation, and contains no ambiguity, extrinsic evidence will generally not be admitted to show an intention of the testator (80 Am Jur 2d. § 1123).

Mary Grace Page during her life could have transfer her property to whomever she wanted. Her admission that she give her Todee farm to be an asset of the Marrish Development Corporation cannot be contested by one of her executors, appellant, especially where appellant failed to contest the will or that portion relating to the Todee farm as an asset of the Marrish Corporation. Our Decedent Estates Law, title 8, section 113.11 provides that any person whose interest in property or in the estate of the testator would be adversely affected by the admission of a will to probate may file objections to the probate of the will or of any portion thereof. Also appellant cannot question the existence of the Corporation, as this court has said, a corporation's existence cannot be challenged by anyone other than the Minister of Foreign Affairs or shareholders in proper proceedings, Karen vs. Omar 42 LLR 216 225 (2004). The appellee derives her authority from the decedent's will and it is a violation of her fiduciary duty to construe the will in such a way as to maximize her own benefits, attempting to profit from the trust and placing her interests ahead of duty. Besides, the appellant is not the only executrix of Mary Page's will; the decedent also named the appellee as an executor to act along with the appellant and her sister to carry out the wishes of her will.

The Corporation being a separate and distinct entity, it cannot be treated by the appellant as a testamentary disposition. The disposition in the will relative to the Marrish Corporation is the decedent's shares in said Corporation that she willed to the appellee, appellant and appellant's sister, Muna Grace Hassanin. The Corporation is legally required to be operated separately

and in accordance with the corporations' law, with proper accounting being given to shareholders by one who is managing the Corporation.

The appellant required proof of the appellee being a shareholder in the Marrish Corporation. She alleges that the appellee has no capacity to sue since he has shown no evidence of his share in the Marrish Corporation. Subscription to shares of a corporation, appellant said, is proof of ownership of share in the company; the only valid evidence of ownership in a company is a share certificate which is issued upon payment of the full value of the shares, and the appellee has shown no evidence that he paid for the shares he claims he owns.

The provisions in Article IV of the Articles of Incorporation of the Marrish Corporation state therein:

The name and Post office addresses of each subscriber of this CERTIFICATE OF INCORPORATION and the number of shares of stock of the Corporation which each agrees to take are:

NAMES:	POST OFFICE ADDRESSES	NO.	OF SHARES
Mary Grace page	Box 371 Monrovia, Liberia	500	
Elias Antoine	Box 371 Monrovia, Liberia	400	
Joseph Antoine	Box 371 Monrovia, Liberia	10	

Whether this is sufficient proof of the appellee's as shareholder in the Corporation, relevant sections of the Association Law of Liberia, Liberian Code of Law Revised, Vol. **II**; Title 5, relating to subscription for shares in a corporation are Sections 5.8, 5.4,

Section 5.8 (1) states:
Signature and seal. The shares of a corporation shall be represented by certificates signed by the president or vice- president and the secretary or assistant secretary or the treasurer or assistant treasurer of the corporation and may be sealed with the seal of the corporation, if any or a facsimiles thereof.

Section 5.4 (1) also states:
Quality of consideration. Consideration for the issue of shares shall consist of money or other property, tangible or intangible, or labor or services actually received by or performed

for the corporation or for its benefit or in its formation or reorganization, or a combination thereof. In the absence of fraud in the transaction, the judgment of the board or shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive.

Resisting the appellant's contention of his proof of shares in the Corporation, the appellee said, the testator, a shareholder of the Corporation who and him organized the Corporation to own and manage the Todee farm confirmed his share in the said Corporation when in her will she admitted that she owned fifty percent of the shares in the Corporation and he, the appellee, owned fifty percent. In her will, the deceased did further will the appellee ten percent of her share stating that the giving of the majority share to the appellee was in consideration of his investment in, care and hard work on the entire Todee farm for all the shareholders, and was to encourage him to continue doing so for her grandchildren, the appellant and her sister.

Corporaterecordsandstockcertificates provide a soundevidentiary foundation for a judicial finding as to ownership of stock. In this case, a stock certificate though a clear and convincing evidence of ownership of share in the Marrish Corporation, a shareholder may however prove his or her ownership of shares by evidence other than that of a certificate. For example, the act and conduct of the parties may constitute sufficient evidence of a person's status as a shareholder or as a member of a corporation. A person claiming to be a stockholder or member in the corporation has burden of proof in such claim, and the claim be may aided by an inference of rebuttal presumption as to his or her status as a stockholder as a member (18A Am Jud 2d, §619). In this case, the appellee said that he ran the farm until the war broke out and he fled the country. This brings to mind the question, on what basis was he running the decedent's farm? The only logical conclusion could be that he and the deceased formed a close corporation where he as a shareholder was left to manage the asset of the Corporation.

A corporation may normally be referred to as a close corporation whose stock is not freely traded and is held by a few shareholders often family members and/or close associates. Normally, in closed corporations, shareholders adopt understanding regarding their conduct in relation to the corporation who shares they own and they seek to conduct their businesses as if they were partners operating under a partnership agreement. As stated, a person claiming to be a stockholder or member in the corporation has burden of proof in such claim, and the claim may be aided by an inference of rebuttal presumption as to his or her status as a

stockholder. We do not think that it would be a mistake to infer from the reading of the will of Mary Page that there was an agreement where she and the appellee formed a corporation; where she offered her Todee property in consideration of her shares in said corporation and the appellee his resources in developing the farm as an asset of the Corporation.

On the other hand, assuming that the appellee did not prove that he owns shares in the Marrish Corporation, the sole shareholder of the Marrish Corporation would then be Mary Page the testator. Where she has placed provision in her will for distribution of her shares in the Corporation as sixty percent (60%) willed to the appellee, twenty percent (20%) to the appellant, and the other twenty percent (20%) to her other grandchild, it would be incumbent on the appellant, her sister, Muna Grace Hassanin, as well as the appellee and others as executor and executrix to ensure that the effective reorganization of the Corporation is carried out and that those organs necessary for the proper running of the Corporation and accountability to shareholders are put in place.

In the case where appellant is administering the testate estate of her grandmother, she is under an obligation to carrying out her grandmother's wishes regardless of how she feels about the decedent's distribution of her properties. The appellee's share in the Corporation, as the Judge of the lower ruled, does not constitute ownership of real property as alleged by the appellant. We must also be emphatic that our opinion in this matter relates only to the Todee farm as an asset of the Marrish Corporation and not any personal transfer of real property to the appellee, as the Constitution is clear on who can own real property and the appellee is not one that can own real property as per our Constitution. But as the Judge stated in his ruling, owning shares in a company cannot be equated to owning real property as none of the shareholders in the Corporation can claim ownership to the Corporation's asset.

As a shareholder or beneficiary of majority shares in the Marrish Corporation which was transferred by Mary Grace Page in her will to the appellee, the appellee has sufficient interest as a majority shareholder in the Corporation to seek proper accounting of the management of the Corporation.

The appellant alleged that the appellee as a shareholder could not sue in his own name for accounting of the management of the Corporation. Appellant's counsel argued before Court that a stockholder may not bring a suit individually when the whole body of the stockholder is injured. Generally, he said, it is only when a stockholder alleges that certain

wrong have been committed by the corporation as a direct fraud on him and such wrong does not affect other stockholder that the appellee can maintain a direct action in his individual name. The action of the appellee, the counsel said, seemed to be an action to correct a wrong allegedly done or committed against the Corporation; therefore, the appellee's action cannot be maintained without bringing a shareholder suit duly authorized by the board of directors or the shareholders of the corporation. Actions by stockholders may be divided into three general categories: stockholders' derivative actions, which are brought by one or more stockholders of a corporation to remedy or prevent a wrong against the corporation; direct actions which are brought by one or a few shareholders to remedy or prevent a direct wrong to the plaintiffs; and a representative or class action which arise if the parties who have a direct claim against a corporation are too numerous to be joined in a direct action.

We do not agree with the argument of the counsel for appellant that the appellee could not bring an action to correct a wrong allegedly done or committed against him as in this case. The appellant is executing the will of her grandmother who has acknowledged in her will that she owns shares in the Marrish Development Corporation and has willed therein her shares. In this case where the Corporation is a closed corporation with only family members as shareholders, and the appellee being the appellant's Godfather, their shareholders dealing with each other is more personal and the nature of the appellee complaint goes directly to the attempt by the other two shareholders to discriminate against the appellee, to ostracize him as a shareholder of the Corporation. The trial court in determining whether a shareholder has an individual or derivative claim against a corporation must look to the nature of the wrong alleged and the relief sought, especially where the injury arises out of a special duty running from the alleged wrongdoer directly to the appellee. In this case, the whole body of the stockholders is not injured. In fact, it is the two shareholders who are refuting the appellant interest in the Marrish Corporation and who seek to ostracize him, stating that he is a foreigner and cannot own real property in Liberia. As the appellant counsel himself has said, the appellee can bring a direct suit if it is a direct fraud on him. What better reason can the appellee have to bring a suit in his name where the other shareholders of a Corporation seek to deprive him of benefits from the Corporation of which he is the majority shareholder.

We disagree with the appellant that the appellee could not sue in his own name. In this case, the appellee is not contenting a wrong done to the Corporation, but that the appellant who is managing the Corporation is refusing to account to him of the running of the said

Corporation and is trying to deprive him an interest in the said Corporation, a direct wrong to him.

Our Association Law title 5, section 8.2.1 gives shareholders of a corporation the right to inspect books and records of the corporation. It reads:

Right stated. Any shareholder or holder a voting trust certificate in person or by attorney or other agent, may during the usual hours of business inspect, for a purpose reasonably related to his interest as a shareholder, or as the holder of a voting trust certificate, and make copies or extracts from the share register, books of account, and minutes of all proceedings.

This clearly provides for an accounting to the shareholders of a corporation. Where a shareholder managing the Corporation refuses to give access or information to a shareholder on the running of a Corporation, he can sue as in this case in an action for proper accounting.

In face of what we have said, the ruling of the trial Judge stating that the appellee, a majority shareholder in the Marrish Corporation is entitled to accounting of the operation of the Todee farm (200 acres), an asset of the Marrish Corporation, same is hereby upheld. Costs are ruled against the appellant. AND IT IS HEREBY SO ORDERED.