

**KAREN MARITIME LIMITED**, represented by the Minister of Foreign Affairs and the LISCR Trust Company, Petitioner, *v.* **HIS HONOUR WILLIAM B. METZGER, SR.**, Assigned Circuit Judge, Civil Law Court, Sixth Judicial Circuit, Montserrado County, and **OMAR INTERNATIONAL, INC.**, represented by its President, **PAUL A. AJLOUNY**, represented by the Law Firm of Sherman & Sherman, Respondents.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE GRANTING THE  
PETITION FOR A WRIT OF CERTIORARI.

Heard: April 19, 2004. Decided: August 16, 2004.

1. There is a fundamental difference between arbitration as an extra judicial or alternative dispute resolution and other non judicial methods of resolving conflicts, such as negotiations and mediation.
2. The public policy of Liberia favours arbitration.
3. Arbitration is a contractual proceeding and preferred as it is most inexpensive, speedy, flexible and amicable method of settling disputes and avoiding litigation.
4. Arbitration is a quasi-judicial proceeding in that it involves rules set by statutes or stipulated by contract and may involve testimony, hearing, deliberation and decision that can be enforced as any other judgment under the Civil Procedure Law.
5. Under the Arbitration Law, a court may compel a party to arbitrate if he/she has agreed but refuses to do so, as well as order a stay of court proceeding in certain circumstances on issues found to be referable to arbitration.
6. When a Liberia company and a foreign company freely negotiate and conclude a charter party agreement with provision for arbitration of disputes, it is obligatory to give full effect to the contract except there be not sufficient ground to do so as would render the contract revocable.
7. Under Liberian law, dissolution or moves to dissolve a Liberian corporation must begin with the stockholders of the corporation by way of voluntary dissolution, or by action of the minority shareholders when the corporation is insolvent.
8. A corporation may also be dissolved by the State since it is the State that creates the corporation and which therefore has the right to forfeit the charter of the corporation.
9. A private persons who is not a shareholder and who is not the Minister of Justice or the Minister of Foreign Affairs may not challenge the continued existence of a corporation.
10. Certiorari will be granted to review a ruling on law issues of trial courts which are clearly and manifestly prejudicial to the interest of the party.
11. Where the ruling on law issues erroneously determines the main question in an action, certiorari will lie to review the erroneous ruling.

12. The power granted to the courts under the provisions of law empowering the courts to render declaratory judgment is discretionary.
13. A court is empowered to use its discretion to refuse to render or enter a declaratory judgment when such judgment, if rendered, would not terminate the controversy giving rise to the proceedings.
14. Any declaratory judgment rendered in a matter that is under arbitration will go back to the arbitration proceeding which will then continue to its conclusion.
15. The court in Liberia does not give advisory opinion.

The petitioner/appellee, Karen Maritime Limited filed a petition for a writ of certiorari against the respondents, Omar International, Inc. and the Judge of the Circuit Court for the Sixth Judicial Circuit, Montserrado County. The petitioner and co-respondent Omar had entered into a chartered party agreement in 1984, under the terms of which they had agreed that disputes arising under the agreement would be submitted to arbitration in London. A dispute had arisen between the parties and had been submitted to arbitration, as per the agreement. However, while the arbitration was still awaiting final disposition, the petitioner was dissolved by the Liberian Minister of Foreign Affairs for failure by the company, a Liberian registered company, to pay the annual registration fee as required by law and which, under the Liberian Business Corporation Act, is ground for revocation of the articles of incorporation of a corporation by the Minister of Foreign Affairs.

The co-respondent, Omar International, Inc., believing that following more than ten years after the annulment of the petitioner's charter by the Minister of Foreign Affairs, the petitioner no longer had corporate existence to continue with the arbitration, requested the Umpire appointed to dispose of the arbitration and to discontinue the arbitration proceeding, stating that the petitioner lacked the capacity de to its annulment. Also requested was payment to the co-respondent of the amount which had been placed in escrow. The request was resisted by the petitioner who, with the backing of legal opinions issued by a Liberian counsel and a New York counsel, maintained that under the Liberian Business Corporation Act, it had the legal authority and competence to continue the arbitration. The petitioner's position was sustained by the Umpire and the request of co-respondent Omar was denied.

Thereafter, in 2002, twelve years following the annulment of Karen as a Liberian corporation, the Liberian Minister of Foreign Affairs issued a Proclamation reinstating the petitioner as a Liberian corporation. When the Minister refused to withdraw the Proclamation, as requested by Omar, the latter filed a petition in the Civil Law Court for the Sixth Judicial Circuit, praying for a declaratory judgment against the petitioner and the Minister of Foreign Affairs, stating that the Minister had exceeded his power under the law in reinstating the petitioner as he had done. The trial judge, in ruling on the law issues, held that arbitration could not be continued under the Liberian statute governing dissolution of

corporations, that the Minister of Foreign Affairs did not have the discretion to reinstate the petitioner to corporate status, the latter being a non-resident corporation, and that the co-respondent, an American company had the right to question the Minister's reinstatement of the petitioner as a corporation. From this ruling, the petitioner filed a petition for a writ of certiorari before the Justice in Chambers.

The Justice held the trial judge's ruling in error and therefore found in favour of the petitioner. On appeal to the Full Bench, the ruling of the Chambers Justice was affirmed and the petition granted.

The Supreme Court, in affirming the Justice's ruling, noted that certiorari will lie not only where the ruling of the trial judge on the law issues is clearly and manifestly prejudicial to the interest of the party, but also where the ruling erroneously determined the main question in action. The Court opined that the judgment of the trial judge was advisory since the matter was still under arbitration and would have to be returned to the arbitration forum. The trial court, it said, was not in the business of giving advisory opinions.

The Court further opined that Co-respondent Omar, not being a shareholder of the petitioner or the Minister of Foreign Affairs of Liberia or the Minister of Justice of Liberia was without the legal competence to challenge the continuous existence of the petitioner, such right being reserved only to the persons stated herein; and as such could not challenge the action of the Minister of Foreign Affairs in reinstating the petitioner to corporate existence.

The Court also held that under the laws of Liberia, arbitration was recognized and that once the parties, by virtue of having entered into an agreement agreeing to arbitrate their disputes arising under the agreement, were bound by the agreement and the courts were obligated to give full effect to the contract, and could therefore compel a party to arbitrate if he/she had agreed to arbitrate but refused to do so.

Accordingly, the Supreme Court, agreeing with the decision of the Chambers Justice, affirmed his ruling that the declaratory judgment proceedings be dismissed, and hence that the trial judge should dismiss and set aside the said proceedings, that the parties return to arbitration for its continuation, that the certiorari be *granted* and the peremptory writ ordered *issued*.

*H. Varney G. Sherman* and *J. Johnny Momoh* of Sherman and Sherman Law Firm appeared for appellant. *James E. Pierre* and *N. Oswald Tweh* of Pierre, Tweh and Associates appeared for the appellee.

MR. CHIEF JUSTICE COOPER delivered the opinion of the Court.

This matter comes before the full Bench on appeal from the ruling of then Chambers Justice, His Honour Micah Wilkins Wright, on a petition for the writ of certiorari, which

grew out of a petition for declaratory judgment. In the declaratory judgment proceeding, which was filed in the Sixth Judicial Circuit Court, Montserrado County, petitioner Omar International, Inc., an American company (hereinafter referred to as “Omar”) requested the said circuit court to make certain declarations under the declaratory judgment law (Chapter 43, Civil Procedure Law, 1 LCLR), concerning the status of Respondent Karen Maritime Limited, an offshore or nonresident Liberian company (hereinafter referred to as “Karen”). The trial judge, having made certain rulings which were adverse to Karen, to the effect: That arbitration proceeding cannot be continued by a non-Liberian corporation under section 11.4 (1) of the Business Corporation Act of Liberia (BCA) (1976); that the Minister of Foreign Affairs has no discretion in re-instating a non resident corporation; and that Omar, an American company, may question the authority of the Minister of Foreign Affairs to reinstate Karen. Karen filed a petition for issuance for a writ of certiorari before Mr. Justice Wright, Chambers Justice. Upon the ruling of Justice Wright in favor of Karen, Omar excepted thereto and appealed to the full Bench of the Supreme Court.

Omar, the charterer, and Karen, the owner, entered into a Charter Party Agreement in September or October 1984, under which Omar chartered Karen’s vessel, The M/V Karen. The Charter Party Agreement provided for arbitration of disputes arising under the Charter. Clause 58 of the Agreement provides: “Any dispute arising under the Charter to be referred to arbitration in London, one arbitrator to be nominated by the Owner and the other by the Charterer, and in case the arbitrators shall not agree, then to the decision of an Umpire to be appointed by them, the award of the arbitrators or the Umpire to be final and binding upon both parties.” A dispute arose between the parties in respect of the outstanding balance of payment claimed by Karen. In keeping with the agreement, the matter was submitted to arbitration in London, England, in 1986. While the arbitration proceeding was in progress, Karen was annulled or dissolved in February 1989 by the Minister of Foreign Affairs of Liberia, allegedly for its failure to pay annual business registration fees and to maintain a registered agent in Liberia, in keeping with the law (Section 11.3 of the Business Corporation Act). Karen was consequently removed from the ship register of Liberia.

Charterer’s appointed arbitrator died and a new arbitrator was appointed. The two arbitrators found themselves unable to agree, and duly appointed an Umpire. In June 1998, about ten years after the annulment and prior to the conclusion of the arbitration proceeding, Omar applied to the Umpire for an order to discontinue the arbitration proceeding, on ground that Karen lacked legal capacity due to its annulment or dissolution by the Minister of Foreign Affairs of Liberia. Omar also requested that the sum of One Hundred and Twenty Thousand United States Dollars (US\$120,000.00) in the joint escrow account be ordered released to it. Karen replied alleging that notwithstanding its purported annulment, under Section 11.4 (1) of the Business Corporation Act, it continued to have legal capacity to maintain the arbitration proceedings to its conclusion. Section 11.4(1) of the BCA deals with continuation of corporations for winding up. In support of its position,

Karen, in 1998/1999, presented to the Umpire two legal opinions, one from a former Attorney General of Liberia and Associate Justice of the Supreme Court of Liberia, and the other from a prominent New York Law Firm, both of which legal opinions supported the position of Karen that it had legal authority and competence to continue the arbitration proceedings to its conclusion, notwithstanding the annulment. Omar then made no submission on the question of Liberian law. In October 2000, the Umpire, in ruling on Omar's application, adopted and applied the advice in the opinions of the Liberian and the New York lawyers. He ruled that Karen did have legal capacity and competence to maintain and continue the arbitration proceeding to the end. The Umpire then entered an Interim Final Award in favor of Karen and dismissed Omar's application. This was in October 2000. The arbitration proceeding remained pending.

In March 2002, Omar submitted to the arbitrator a legal opinion from another Liberian lawyer which gave an interpretation of Liberian law contrary to the two opinions which had been submitted to Karen and acted upon by the Umpire. The additional opinion went on to suggest that: "Since only a Liberian court of law can definitely state what Liberian law is, the issue [concerning Liberian law] should be submitted to a Liberian court of competent jurisdiction in a declaratory judgment proceedings."

The record shows that on May 10, 2002, some twelve years after Karen had been proclaimed annulled in 1989, upon petition of Karen pursuant to provision of the Liberian Business Corporation Act, the Minister of Foreign Affairs of Liberia issued a Proclamation reinstating Karen as a Liberian corporation retroactive to the time of its purported annulment in 1989. The Minister relied on Section 11.3(2) of the Business Corporation Act which states that "whenever it is established to the satisfaction of the Minister of Foreign Affairs that the articles of incorporation were erroneously annulled, he may restore the corporation to its full existence by publishing and filing in his office a proclamation to that effect." Omar then made inquiries at the Office of the Minister of Foreign Affairs of Liberia with a view of having the Minister withdraw his Proclamation which reinstated Karen to full corporate existence. Omar stated that the Minister of Foreign Affairs had exceeded his power under the law to reinstate Karen, as he had done. Omar requested the Umpire to reconsider his earlier interim final award in view of the contrary opinion obtained from the second Liberian lawyer.

On August 6, 2002, Omar began declaratory judgment proceedings before the circuit court in Monrovia, Liberia, whilst the arbitration proceeding in London remained pending. Karen, as well as the Minister of Foreign Affairs of Liberia, were designated as co-respondents. Karen filed its returns but the Minister of Foreign Affairs did not do so. The proceedings progressed to the stage where the circuit judge gave a ruling on the law issues on February 10, 2003, as stated above. Whereupon Karen excepted to the said ruling and petitioned the Justice in Chambers for the issuance of a writ of certiorari. The alternative writ was issued on February 12, 2003. Briefs were filed and the matter duly heard by the

Chambers Justice. He decided the matter on two points: (a) the jurisdiction of the Civil Law Court to entertain the declaratory judgment suit when arbitration was mutually and voluntarily agreed upon and stated as the exclusive method of resolving any dispute(s) arising from the Charter Party Agreement between the parties; and (b) the standing or legal capacity of petitioner Karen to maintain or continue prosecuting the prior arbitration proceedings after its subsequent annulment as a body corporate.

On the jurisdictional question, Justice Wright reviewed the arbitration clause and ruled that the parties having fully agreed to the provision of the clause, they should be bound to return to arbitration which he saw as the only method to resolve any dispute arising from their Charter Party Agreement. He based his ruling on the decision of the Supreme Court in the case *Chicri Brothers, Inc. v. Isuzu Motors Overseas Distribution Corporation*, 40 LLR 128 (2000), that in keeping with section 64.1 of the Civil Procedure Law, Rev. Code 1, “A written agreement to submit to arbitration any controversy existing at the time of the making of the agreement or any controversy thereafter arising is valid, enforceable without regard to the justiciable character of the controversy, and irrevocable except upon such grounds as exist for the revocation of any contract.”

Justice Wright then considered the second issue: Whether a Liberian offshore or nonresident corporation, which has commenced arbitration proceedings in a foreign jurisdiction prior to its annulment for failure to pay its annual registration fees and maintain a registered agent in Liberia, has the legal capacity, pursuant to section 11.4 of the Liberian Business Corporation Act, to maintain said arbitration proceeding beyond the three years statutory winding up period, to its conclusion. He disagreed with the trial court’s ruling that although the provision in the 1976 BCA extended the corporate life of a Liberian corporation beyond the three years winding up period in respect to an “action, suit or proceeding” until “judgment, order, or decree”, such provision did not apply to arbitration since such an arbitration does not end with a “judgment, order or decree.” He found that the primary purpose of section 11.4 of the BCA was to give a dissolved corporation ample time to windup all of its affairs.

While we do not completely agree with the reasoning of the Chambers Justice as to the primary purpose of this provisions, we believe that it is necessary to point out that there is clearly a fundamental difference between arbitration as an extra judicial or alternative dispute resolution method, on the one hand, and other non judicial methods for resolving conflicts, e.g. negotiations, mediation, on the other hand. These latter methods of conflict resolution neither involve any neutral third party nor do they necessarily end with a decision that is legally binding on the parties. Furthermore, these other methods of conflict resolution do not enjoy the support of courts in any way similar to the manner in which arbitration is strongly supported not only by courts but also by businessmen worldwide. Justice Wright correctly pointed out in his ruling that the public policy of Liberia now favors arbitration, as confirmed in *Chicri Bros., supra*. Arbitration is a contractual proceeding and has been found to

be the most inexpensive, speedy, flexible and amicable method of settling disputes and avoiding litigation. Arbitration may be said to be a quasi-judicial proceeding in that it involves rules set by statutes or stipulated by contract and may further involve testimony hearing, deliberation, and decision (the award) that can be enforced as any other judgment under section 64.13 of the Civil Procedure Law, 1 LCLR, concerning Arbitration. Indeed, under section 64.2 of the Arbitration Law of Liberia, a court may now compel a party to arbitrate if he has agreed but refuses to do so, as well as order a stay of court proceeding in certain circumstances on issues found to be referable to arbitration. This Court is not unmindful of the fact that this case centers around the interpretation and implementation of an international agreement involving a foreign charterer and a Liberian non-resident corporation or that charter party agreements in use in the shipping business usually include the same or similar arbitration clause as the one now under consideration. Nor is this Court unmindful of the importance of the maritime program and policies of Liberia. When, as it appears to be the case here, a Liberian company and a foreign company have freely negotiated and concluded a charter party agreement with provision for arbitration of disputes like the arbitration clause here involved, it would appear to us almost obligatory to give full effect to their contract except there be sufficient grounds not to do so as would render any contract revocable. We find present in this matter so far no ground whatsoever for revocation of the arbitration clause.

We note that the Minister of Foreign Affairs of Liberia was made a party to this suit and that he did not appear or answer the complaint. He has in substance confirmed the continuation of the corporation's existence as Omar has conceded on the record. He is now being requested by Omar to revoke his reinstatement Proclamation. In another case the way and manner in which the Minister has used his discretion to reinstate Karen to corporate existence may be crucial to proper determination of such matter. In this case, however, it does not appear to be so crucial to a decision since the gravamen of the complaint by Omar against the Minister is clearly a challenge to the continuing corporate existence of a Liberian corporation. Under our law dissolution or moves to dissolve a Liberian corporation must begin from the stockholders of the corporation by way of voluntary dissolution, or by action of minority shareholders when the corporation is insolvent. A corporation may also be dissolved by the State under the theory that the State created the corporation and that it has the right to forfeit the charter of the corporation. Example of this latter situation is when the Minister of Foreign Affairs annuls the charter of a corporation in the manner and for reason stated above or when the State acts through the Minister of Justice/Attorney General in *quo warranto* proceeding, which said proceeding may not be proceeded with by a private party. Omar is clearly not a shareholder, or the Minister of Justice or Minister of Foreign Affairs and therefore may not challenge the continuous existence of Karen.

In this whole proceeding, therefore, there was only one issue to be resolved involving the question of whether or not in view of Liberian law and public policy favoring arbitration, a

Liberian court should act in a manner requested by any corporation which is not a shareholder of, in respect to, a Liberian corporation. We hold in the negative for the reason stated above. We hold that only the Minister of Justice or the Minister of Foreign Affairs or shareholders in proper proceedings may so challenge the existence of a Liberian corporation.

We agree with the conclusion of Justice Wright that the declaratory proceedings should have been dismissed by the trial judge so that arbitration can continue to its end, in keeping with the agreement of the parties. A review of the arbitration clause in question reveals an agreement to arbitrate any dispute arising under the charter. In our opinion, the parties agreed to arbitrate all disputes arising under their contract, whether they involved issues of facts or law or mixed issues of facts and law. The record before us does not reveal any reservation made by either party to their submission to arbitration. It should be noted in this connection that the Liberian statute on arbitration, Section 64.11 thereof, 1 LCLR, provides grounds for vacating an arbitration award, then goes on to say that “the fact that the relief granted in the award was such that it could not or would not be granted by a court of law or equity is not a ground for vacating or refusing to confirm an award”.

Certiorari will be granted to review a ruling on law issues of trial courts which were clearly and manifestly prejudicial to the interest of a party. See, *Liberian Bank for Development and Investment v. Badio*, 37 LLR 60 (1992); *Monrovia Breweries Inc. v. Hilton and Tarpeh*, 37 LLR 396 (1993).

The Supreme Court has also held that where the ruling on law issues erroneously determines the main question in an action, certiorari will lie to review the erroneous ruling. *CFAO (Liberia) Limited v. Cooper, et al.*, 39 LLR 511 (1999).

Our statute further provides that the power granted to the courts under the provisions of law empowering the courts to render declaratory judgment “is discretionary.” Civil Procedure Law, Rev. Code 1:43.1. Additionally, a court is empowered to use its discretion to refuse to render or enter a declaratory judgment when such judgment, if rendered, would not terminate the controversy giving rise to the proceeding. Civil Procedure Law, Rev. Code, 1:43.5. It is clear that any declaratory judgment rendered in a matter that is under arbitration will go back to the arbitration proceeding which will then continue to its conclusion---the award. Such a judgment, as the court has been requested to render, would be advisory, and our court is not in the business of giving advisory opinions. . . It appears that the Umpire as well as the Minister of Foreign Affairs would prefer to have a Liberian court ruling on the question raised by Omar and that is the principal reason why Omar decided to initiate declaratory judgment proceedings before the circuit court in Monrovia, Liberia. In other words, it can be concluded that the principal reason for the filing of the declaratory judgment proceedings by Omar is to obtain advice on issues of Liberian law from the Liberian court in order for the Umpire to continue with the arbitration proceeding. In this connection, we do not agree with the contention of counsel for Omar that only a Liberian court can definitely state what Liberian law is, that only the decision of the Liberian Supreme



Court on a point of Liberian law is final. But our court may refuse to render declaratory judgment in some cases, as is here being done.

Wherefore and in view of the foregoing, the ruling of the Chambers Justice is hereby affirmed for the reasons stated herein. The writ of certiorari is hereby granted and the peremptory writ is accordingly ordered issued. The trial judge is ordered to dismiss and set aside the declaratory judgment proceedings and the parties are ordered to continue the arbitration proceedings. The Clerk of this Court is hereby ordered to send a mandate to the Civil Law Court, Sixth Judicial Circuit, ordering the judge presiding therein to resume jurisdiction and give effect to this ruling. Cost are ruled against the respondent And it is hereby so ordered.

*Petition granted*