

Ministry of Finance, Republic of Liberia, by and through the Ministry of Justice,
Republic of Liberia APPELLANTS VERSUS **Former employees and retirees of
the Bong Mining Co.(Beneficiaries of the Bong Mining Company
Termination Benefits Trusts)**, by and thru its Chairman J. Jaye Larblah and/or
David A. Clarke, G, Aagon Gwaikolo, Secretary APPELLEES

APPEAL. APPEAL DISMISSED

HEARD: March 18, 2008 Re-argument waived: Nov. 27, 2008. DECIDED: Dec. 19,
2008

MR. JUSTICE JA'NEH DELIVERED THE OPINION OF THE COURT

Under the law extant, a cause of action may be dismissed on the statutory ground that the instituting party lacks legal capacity or standing to sue. Civil Procedure Law, 1 LCLR title I, section 11.2(1) (e) (1973). Whether the trial court properly dismissed appellants' petition for declaratory judgment is the issue urged on this Court for answer.

A summary of the facts informing these appeal proceedings reveals as follows: On February 26, 2004, the appellees/plaintiffs, all being former employees and retirees of the Bong Mining Company (Beneficiaries of Bong Mining Company Termination Benefit Trust) filed an action of damages against the appellant/defendant, Liberian Bank for Development & Investment (LBDI) for breach of a deposit contract. Appellees claimed that they left with appellant-bank the tax portions of their end-of-service compensations and benefits for a period of eighteen months with the understanding that said deposits will be returned to them when the eighteen month period would have expired. But in violation of the agreement and instead of following the instruction of operating the time deposit or money market account, appellant/bank committed conversion and breach of contract when said appellant refused to return their benefits with interest in keeping with their agreement.

In their nineteen-count complaint venued before the Sixth Judicial Circuit sitting in its March Term, 2004, the appellees alleged that the appellant-bank was liable for special damages in the principal aggregate amount of US\$677,792.26. Appellees also requested court to hold appellant liable for additional special damages representing accrued interest in the rate of eighteen percent per annum, beginning as of the date of the initial deposit, to the date of satisfaction of judgment against appellant/bank, in

keeping with the terms of the instructions for payment of end-of-service benefits and compensation as well as the statutory and decisional laws of Liberia.

Appearing, the appellant-bank filed a fifty-nine count answer not denying receiving appellees' deposits. Appellant however contended that the monies deposited and left with it were tax components deducted from appellees' benefits, which represented legitimate taxes owed to the Liberian government. Appellant also claimed that appellees having neglected and failed to comply with the conditions for waiver of the income tax, appellant-bank, in line with standing regulation of the Ministry of Finance, properly paid these tax components to the Liberian government, for which the Ministry of Finance duly issued a release in appellant's favor, evidencing the receipt of said monies. Appellant also argued that by its action, appellees suffered nothing and that their claim of special damages, as prayed for in appellees' complaint, was merely speculative and therefore must crumble.

On August 11, 2004, appellees filed a motion for summary judgment and relied on Civil Procedure Law, section 11.3 (3) 1 LCLR, title I (1973). The section essentially provides that upon its satisfaction about non-existence of a genuine issue as to any material fact and that the party in whose favor judgment is granted is entitled to same as a matter of law, the court shall grant said summary judgment. Appellees insisted on the applicability of this law, as appellant-bank, the records show, did not deny receipt and deposit of appellees monies.

On assignment for hearing of the motion for summary judgment, appellant filed a motion to join the Liberia Government as party defendant. In count three of its motion to join, the appellant contended: "That under the law, persons who ought to be parties to an action if complete relief is to be accorded between the persons who are parties to such action shall be made plaintiff or defendant..." Appellant, urging the court, said that having paid those monies to the Government of Liberia, and said funds being the outgrowth of the damages suit, the government is the proper party, and should be joined, as a matter of law, to defend the tax deduction claims from appellees' benefits.

When the motion for joinder was called for hearing, the Government of Liberia, represented by the Ministry of Justice, its statutory legal counsel, conceded the legal soundness to be joined as a party defendant. The presiding judge, His Honor Yussif D. Kaba, however denied the motion. In its ruling denying said motion, the court held that the Liberian government was not a party to the transaction between the appellant and appellees; that the payment instruction was clear and nothing in it

required any of the appellees to provide any matching forms before the appellant-bank could accept their deposits. The court also stated that if any of the appellees were obliged to pay income tax, on failure of any persons to pay such taxes, the Liberian government had adequate remedy at law to compel said persons to pay their income taxes consistent with section 11.93 (1) of the Revenue and Finance Law and to apply the necessary sanctions as provided under section 71.1, and 71.3.

Strangely, the Government of Liberia neither excepted to the trial court's ruling nor availed itself of available legal remedy.

Subsequently, the appellant-bank fled with a petition to the Justice in Chambers praying for a writ of certiorari. The Chambers Justice ordered the trial court to stay all proceedings pending the outcome of a conference. But having determined that appellant's petition was unmeritorious, the Justice in Chambers lifted the stay and ordered the matter proceeded with.

Notwithstanding this mandate read in open court on September 6, 2004, appellant-bank filed a number, but unsuccessful applications to join the Liberian government as party defendant. The court proceeded and granted appellees' motion for summary judgment.

By a ruling dated November 25, 2004, granting appellees' motion for summary judgment, the judge by assignment, His Honor Yussif D. Kaba, held appellant-bank liable in damages to appellees. The court also ruled that the amount of damages will however be assessed in a latter proceedings.

This ruling granting summary judgment was appealed, but the appellant-bank failed and fatally neglected to perfect said appeal.

Passing on appellees' motion filed before the appellate court to dismiss appellant's appeal, Mr. Justice Korkpor speaking for the Supreme Court en banc on September 15, 2005, observed in the following words:

"What is interesting in this case is that counsel for respondents (i.e. appellant's counsel) requested for the issuance of the notice of completion several days before the sixty-day period for completing the appeal process had expired. The ruling on the motion for summary judgment was rendered on November 24, 2004; and this means that the last day for completing an appeal process was January 19, 2005 — the sixtieth day after rendition of the ruling. The notice of completion of appeal was

issued, upon the request of counsel for respondent, on January 7, 2005 a full twelve (12) days before the period for the appeal process was to lapse. Then it was on January 12, 2005 that the appeal bond was approved by the trial judge and filed that same day — five (5) days after obtaining the notice of completion of appeal. This Court does not understand why counsel for respondent was in such a hurry to obtain the issuance of the notice of completion of appeal before filing the appeal bond."

The Supreme Court then granted the said motion and dismissed appellant-bank's appeal for being fatally and incurably defective and proceeded to order the clerk of the Supreme Court to:

"...send a mandate to the trial court to resume jurisdiction and proceed with the determination of the amount of damages in the action of damages consistent with the ruling on the motion for summary judgment. The right is still reserved to either of the parties to appeal from whatever final judgment is rendered by the trial court at which time the entire case may be reviewed on its merits..."

Consistent with the Supreme Court's mandate of September 15, 2005, a regular jury trial was had. By a ruling dated June 8, 2007, His Honor Emery S. Paye sitting by assignment at the Sixth Judicial Circuit, the court found the appellant-defendant liable ordered it to pay to the appellees of US\$677,992.26 and US\$677,792.26 in special damages and general damages, respectively, as well as eighteen percent interest for wrongful withholding of appellees' monies.

Exercising its right provided by law, appellant-bank excepted to this final judgment and announced appeal to the Supreme Court sitting in its October Term, 2007. Said appeal is pending undetermined before this Honorable Court.

While appellant-bank's appeal is pending, the Ministry of Finance of the Republic of Liberia, by and through the Ministry of Justice, R.L., on April 25, 2007, again made another appearance, this time by filing a fifteen count petition for declaratory judgment. In the petition, appellant/petitioner-Ministry of Finance principally submitted that:

"The Ministry of Finance of the Republic of Liberia, the above named petitioner, submits this petition, respectfully requesting Your Honor to declare that respondent's funds, which were maintained in an escrow account at the Liberian Bank for Development and Investment (LBDI), were valid and legitimate income taxes due and payable to the Liberian government under the provisions of the relevant and

applicable sections of the tax law, and further, that the Ministry of Finance as the official tax collection arm of the Liberian government was statutorily empowered and authorized to demand and collect these funds from LBDI,...."

The appellant/petitioner-Ministry of Finance then prayed the court to grant its petition for declaratory judgment and to make the following declarations of law;

"(1) That the funds maintained in BMC/GOL Tax Escrow Account at LBDI were legitimate income taxes assessed against the Bong Mining Termination Benefit and therefore owned by petitioner, the Minister of Finance;

(2) That LBDI was the withholding agent of the Minister of Finance, and by statute, was obligated to withhold the assessed income taxes on the Termination Benefits and then remit same to the Minister of Finance of all those beneficiaries who failed to qualify for the tax waiver proposed by the Minister of Finance."

Against this petition, the appellees/respondents-former Bong Mine workers filed a thirtyeight count resistance along with a motion to dismiss said petition. In the resistance, the appellees/respondents submitted that the Ministry of Finance is clearly an integral part and parcel of the Liberian government; that the government has previously attempted to join and intervene as a party defendant in the original suit of action of damages instituted against the LBDI, and was denied; that whereas the government sought no review of the rulings denying both its motions of joinder and intervention, the government thereafter was barred from instituting an action in respect of the same and identical subject matter of the action of damages instituted by the appellees against the LBDI. Appellees further contended, that the Supreme Court of Liberia having also held in its opinion and judgment delivered during its March Term 2004 that the funds saved in the money market account with the LBDI were legitimate funds of the appellees/respondents, the right as to the ownership of said funds has been decided and settled by the Supreme Court. Hence, the matter is res judicata and the trial court lacks subject matter jurisdiction over the instant matter and same should therefore be denied and dismissed.

But in its nineteen count reply to the resistance, the appellant/petitioner-Ministry of Finance argued as follows:

"(a) The doctrine of res judicata can only be applied against those who are parties to judicial proceedings. It is an elementary principle of law that a court's judgment can only be binding on those who are actual parties to proceedings. Your Honor is asked

to take judicial notice from the records of the action of damages filed by the respondents as plaintiffs against LBDI, that the Liberian government was never made a party to the proceedings and this fact is also admitted and confirmed by the respondents in their returns. Since the government was never a party to the proceedings, the respondents cannot invoke either the doctrine of res judicata or that the court's judgment is binding on the petitioner.

(b) Petitioner says in the alternative, that since the court's denial of LBDI's motion to join and the Liberian government's motion to intervene was not on the merits, therefore the doctrine of res judicata cannot be applied against the petitioner. Res judicata can only properly be invoked when the issues raised were heard and disposed of on the merits. Indeed, "Res Judicata" literally means "The thing has been decided." Petitioner says recourse to the records in the respondents action of damages against LBDI confirms that neither of the two motions — to join and to intervene — were decided on the merits, and therefore the doctrine of res judicata cannot be applied."

The court entertained arguments on the pleadings and by a ruling dated June 14, 2007, the judge, His Honor, Emery S. Paye, held that the Honorable Supreme Court having confirmed the ownership of the funds left with LBDI, and same issue having previously been passed upon by his predecessor, the trial court is without authority to assume jurisdiction over the subject matter of action of declaratory judgment. The court said further that to do otherwise would be a violation of fundamental principle of law requiring all subordinate courts to abide by the mandate of the Honorable Supreme Court.

The court also observed that the trial court during its March Term 2007, conducted a jury trial pursuant to the mandate of the Supreme Court. That at said trial, the petit jury returned a verdict of liable against the LBDI and awarded the appellees the amount of US\$667,792.26 as special damages and US\$667,792.26 United States Dollars as general damages. And thereupon the court entered its final judgment, confirming the verdict of the trial jury in respect of the same and identical subject matter of the petition for declaratory judgment. Wherefore, the court refused jurisdiction, granted the motion and dismissed the petition for declaratory judgment.

It is to this final ruling dismissing the petition, appellant/petitioner-Ministry of Finance excepted and announced this appeal now before us. In support thereof, appellant has placed a five-count bill of exceptions before this Honorable Supreme Court for review and ultimate determination.

Counts 4(four) and 5(five) being germane and dispositive of the issue at bar, are quoted verbatim as follows:

"(4). Respondent says Your Honor committed a reversible error when you incorrectly ruled that the doctrine of res judicata applies in this case. Respondent says res judicata apply to persons who are parties to judicial proceedings, and neither the Minister of Finance or the Liberian Government was ever made a party to the action of damages which was instituted by the Movant against LBDI. It is an elementary principle of law that a court's judgment is only binding on a person who is a party to a judicial proceeding. The records of the action of damages instituted by the Movant against the LBDI will confirm that the Government was never made a party to the proceedings, and this fact is also admitted and confirmed by the Movant in their Motion to Dismiss. Since the Government was never a party to the proceedings, the Movant cannot invoke either the doctrine of res judicata or that the court's judgment is binding on the Respondent. Res judicata may only be invoked where in the instant case if the respondent was a party to the action of damages."

(5) Your Honor committed reversible error when you misapplied the doctrine of res judicata and dismissed respondent's petition for declaratory judgment. Respondent says the question of the Government's right to be a party to the action of damages instituted by the Movant against the LBDI was never decided on the merit.

Two attempts were made to make the Government a party to the proceedings. The first was a motion by LBDI to have the Government joined as a party defendant; the second was the Government's motion to intervene. The records of the action of damages will confirm that neither of the two motions was heard and decided on their respective merits.

Both were denied on purely procedural grounds....The Motion not having been disposed of on its merit, the denial cannot and does not preclude the respondent from subsequently maintaining in its own right a separate independent action of declaratory judgment to determine its rights to the funds. Therefore, the doctrine of res judicata cannot be applied against the respondent. Res judicata can only properly be invoked when the issues raised were heard and disposed of on its merits. Indeed, the term "res judicata" literally means "the thing has been decided."

As heretofore indicated, the one issue dispositive of the controversy in these proceedings is whether the trial court properly dismissed the petition for declaratory judgment filed by the Ministry of Finance?

The principle argument put forward by appellant, the Ministry of Finance, which is seeking to represent the Liberian Government, is that the Liberian Government was not made a party to the action of damages instituted by the appellees-plaintiffs/movants. As such, appellant Ministry of Finance has therefore assigned as error, the trial court's ruling applying the doctrine of res judicata to the Ministry's attempt to assert its right to protect its statutory interest as representative of the Liberian Government. According to the Appellant, the Ministry of Finance, said representation being a right protected by law, it was reversible error on the part of the trial to dismiss appellant's petition for declaratory judgment. Appellant Ministry strenuously contends that the trial court misapplied the law, as the doctrine of res judicata applies only where a matter has been decided on its merit, a situation at variance with the case at bar, as both attempts by the Government of Liberia, through motion to join and motion to intervene, were both dismissed on technical grounds and not on the merits of the case.

This Court is not persuaded by this argument. Recourse to the certified records before us succinctly reveals that appellant/petitioner-Ministry of Finance filed this petition for declaratory judgment on May 15, 2007, seeking a judicial determination as to whether the funds maintained in the BMC-GOL tax escrow account at LBDI were legitimate taxes to which the petitioner was legally entitled; that this then will ensure that when the legal owner is determined, then LBDI will not have to re-litigate by bringing an action against the petitioner, Ministry of Finance for the recovery of the funds remitted to same by said LBDI.

What appellant-Ministry of Finance clearly seeks to do in filing the petition for declaratory judgment is to do what the Ministry of Justice, Liberian Government legal counsel as well as LBDI as party defendant, failed to do.

It is well to state here the statutory functions of the Ministry of Finance as distinguished from those of the Ministry of Justice. Section 22.2 of the Executive Law succinctly states the duties and functions of the Minister of Justice. These include:

"(a) Procure the proper evidence for, and conduct, prosecute or defend all suits and proceedings in the courts in which the Republic of Liberia or any officer thereof, as

to such officer, is a party or may be interested." Whereas, section 21.2 also of the Executive Law, defines the duties and functions of the Minister of Finance in these words:

(b) To effectively and efficiently manage the financial resources of the Republic; be depository of Government funds and of all indicia of title assets of Government;

(c) To administer the revenue program of the Government, including supervision of the collection of the revenues;

(d) To report the financial activities and financial position of the Government to the President and to the Legislature;

(e) To maintain the central accounting records of the Government and prescribe for all Government agencies of accounts reporting and documentation necessary to safeguard the assets of the Government;

(f) To formulate fiscal policies for financial planning;

(g) To disburse Government funds in accordance with Legislative appropriations;

(h) Generally to perform all such services relating to the Government finances as are imposed by law;

(i) To be responsible for the administration of the Government maritime program."

Nowhere in the statute controlling the Ministry of Finance is clothed with authority to substitute the functions of the Ministry of Justice in institution of suits and defending the legal interest of the Republic of Liberia in courts of law.

As shown in the records, the Ministry of Justice, representing the Liberian Government, on October 5, 2005, filed a motion to intervene in this matter, almost nineteen (19) months following institution of action for damages by appellees in February, 2004.

In the aforementioned motion to intervene, the Government of Liberia represented by the Ministry of Justice, raised the same issue of ownership of the monies in dispute and stated as follows:

"That the Government of Liberia says that the tax portion of the respective compensations and benefits of the former Bong Mines workers, which were maintained in an ESCROW Account at LBDI being legitimate taxes, are funds owned by government, because Government Tax is the obligation of all persons who earn income within the Republic of Liberia, unless otherwise provided by statute or treaties; that on this ground, the Liberian Government instructed and ordered the transfer of said money to its NIOC/GOL Account at Eco Bank and GOL General Tax Account at LBDI; therefore, LBDI cannot be liable to another person or group of persons for the same said money."

It is also well to say that when hearing was had on this motion, the Ministry of Justice, both as Intervener and statutory legal representative of the Liberian Government, failed and neglected to appear. Having un-excusable failed to appear and defend its motion, same was properly dismissed. The records are void of any showing that the Ministry of Justice, representing the Liberian took any further steps to assert its right under the law.

As it is the practice hoary with time in this jurisdiction, the Government of Liberia, by its conduct of failing to appear for the hearing, and also neglecting to avail itself of any remedial process, has, under these circumstances, waived any defects or error contained in the ruling denying its motion to intervene. Said conduct must therefore be regarded as a bar to the Liberian Government raising any issue of law or fact concerning the correctness or legality of the said ruling. Freeman v. Twe, et al. 7 LLR 227, 228-9 (1941). Also in: William P. Merriam, President, International Trust Company of Liberia versus His Honor J. Henrique Pearson 32 LLR, 513,523, this Court held: "where a party against whom a ruling is entered fails to except thereto and to appeal there from, he is considered to have consented to abide by the ruling or judgment."

In Marshall-Coleman v. Dennis et al. 30 LLR 501, 505, Mr. Chief Justice Gbalazeh, speaking for this Court on intervention as a right, as provided under section 5.61, 1 LCLR, title I (1973), stated: "According to [the] statute..., any established right under a statute dealing with intervention as of right, in this Court's view, does not fall under a judge's discretion and therefore intervention in this matter was mandatory and the judge had no discretion. Accordingly, the intervenor should have availed herself of the benefit of the writ of mandamus...."

Further compounding the problem, the party defendant at the conclusion of the trial in action for damages, also failed to perfect its appeal in order to confer jurisdiction on the Supreme Court to critically examine and review the entire case records.

The Supreme Court pointed this failure in its September 15, 2004 opinion in which it observed:

"What is interesting in this case is that counsel for respondents (i.e. appellant's counsel) requested for the issuance of the notice of completion several days before the sixty-day period for completing the appeal process had expired. The ruling on the motion for summary judgment was rendered on November 24, 2004; and this means that the last day for completing an appeal process was January 19, 2005 — the sixtieth day after rendition of the ruling. The notice of completion of appeal was issued, upon the request of counsel for respondent, on January 7, 2005 a full twelve (12) days before the period for the appeal process was to lapse. Then it was on January 12, 2005 that the appeal bond was approved by the trial judge and filed that same day — five (5) days after obtaining the notice of completion of appeal. This Court does not understand why counsel for respondent was in such a hurry to obtain the issuance of the notice of completion of appeal before filing the appeal bond."

Also, appellant has substantially contended that that it was in-proper to invoke the doctrine of res judicata when the issue raised were not heard and disposed of on its merits, as the term "res judicata" literally means "the thing has been decided."

Advancing this argument, appellant ostensibly relied on the case: *Liberia Trading Corporation v. Abi-Jaoudi*, 14 LLR 43 (1960). In this case, Mr. Justice Pierre, speaking for the Court held that unless the proceedings and judgment in a previous case afforded full legal opportunity for an investigation and determination of the merits of a case, "a former judgment will not operate as a bar to subsequent suit upon the same cause of action." *Ibid.* 50. Emphasis supplied.

Appellant has further argued that the motions to join and intervene in favor of the Liberian Government, were both dismissed on technical grounds and not the merits of the issue at bar; whereas the case: *Liberia Trading Corporation*, aforementioned holds that "[A] judgment dismissing a suit on account of any technical defect, irregularity or informality is not on the merits and therefore no bar to subsequent actions." *Ibid.* 52.

We uphold the principle in the Liberia Trading Corporation. But given the lack of similarity of facts of that case to the one at bar, we cannot see how the principle would apply to the issue at bar.

In the Liberia Trading Corporation suit, the cause of action was dismissed based on the irregularity of filing, refiling and withdrawal of the complaint. In which case, a judicial determination was not made on the merits of the matter brought before the trial court. In the words of the court, it is stated thus: "A judgment on the pleadings, if it determines the merits of the controversy, as distinguished from the merits of the pleadings attacked, is a bar to another action for the same cause, a motion for such judgment being in the nature of a demurrer to the pleading of the adverse party; and the fact that the pleader designates it as a motion to dismiss is immaterial. Ibid. 51.

Guiding judicial determination of merit of a case as basis for proper invocation of res judicata, the case: Phelps v. Williams, 3 LLR 54, 57 (1928), is instructive. Borrowing from common law, this Court held that res judicata applies under the following circumstances:

"Identity in the thing sued for; identity of the cause of action; and identity of persons and of parties to the action. Such judgments are conclusive on the parties, and no party can recover in a subsequent suit. It does not matter whether or not the judgment is pleaded."

We again revert to the records. Clearly, the controversy pleaded in the action for damages is essentially the ownership of the monies left at LBDI based on the deposit contract. In its ruling, the trial court pointedly passed on this issue. We quote the relevant portion of said ruling by his honor Emery S. Paye, dated June 8.

"...Based upon this [Supreme Court's] mandate, this court proceeded with the hearing of the matter with a trial jury sitting. Under the circumstance, it was upon the defendant (LBDI) to prove to this court the allegation to the effect that some of the employees had already benefited from the tax portion which is under dispute. [But] before this court, the defendant failed, neglected and refused to establish to the effect that some of the employees were already being paid; but instead, the efforts on the part of the defendant before this court during this trial was to exempt itself from the liability. By this, this court was of the opinion that the defendant have failed to have established proof of its contention. The trial jury having been charged proceeded into their room of deliberation and came in open court with the unanimous verdict holding the defendant liable to the plaintiffs in the amount of US\$667,792.26 as

special damages and the US\$667,792.26 as general damages respectively. Counsel for the defendant thereupon filed a motion for new trial and the new trial having been argued, this court ruled denying movant's motion for new trial."

Based upon the unanimous verdict of trial jury, awarding the amount under review as both special and general damages respectively, this court will proceed to confirm and affirm the verdict of the trial jury. As I said earlier in the complaint of the plaintiffs praying this court to grant unto them eighteen percent on the special damages as interest per annum due to fact that the defendant had withheld this amount against the consent of the plaintiffs [and] to their detriment.

Wherefore and in view of the foregoing, it is the final judgment of this court, that defendant, LBDI, is liable to the plaintiffs to pay to the plaintiffs the amount of special damages of US\$677,792.26 and general damages US\$677,792.26; that the defendant is to pay to the plaintiffs as interest of eighteen percent for withholding this amount over a protracted period of time against the will and consent of the plaintiffs. The Clerk of this court is hereby ordered to prepare the necessary documents for service on the defendants, LBDI, with an order that this amount be paid to the plaintiffs through this honorable court within seventy-two hours; otherwise execution is the next result..."

Further on this question, and speaking for this Court, Mr. Justice Korkpor, Sr., on appeal, summarized the facts as gleaned from the certified records, said:

"When pleadings rested, the trial judge heard and denied the motion to dismiss which was filed by the appellant in the court below. The trial court also heard two other pre-trial motions: a motion to join filed by the Republic of Liberia which was denied; and a motion for summary judgment filed by the BMC workers which was granted. In ruling on the motion for summary judgment, the trial judge held that LBDI erred when it gave the funds to the Liberian Government and that LBDI, as a bank, was liable to return the funds deposited with it by the BMC workers. The trial judge did not determine the amount of liability because, according to him, there was a dispute over that issue. The Trial Judge ruled that the amount of liability will be determined at a separate proceeding. From this ruling on the motion for summary judgment, counsel for LBDI announced an appeal to the Supreme Court for review; but counsel for the BMC workers objected on the grounds that the ruling was interlocutory and not appealable. The Trial Judge overruled the objections and granted an appeal."

Subsequently, this Court, on a motion to dismiss, determined that LBDI posted a fatally and incurably defective bond. This Court therefore granted said motion to dismiss LBDI's appeal. This Court also ordered the Clerk to send a mandate to the trial court to resume jurisdiction and proceed with the determination of the amount of damages in the action of damages, being the main suit, consistent with the trial court's ruling on the motion for summary judgment, reserving the right of either of the parties to appeal from whatever final judgment is rendered by the said court.

LBDI's appeal from this final judgment to the Supreme Court has not been determined by this Honourable Court.

Under circumstances recited herein, the Supreme Court opinion during the March Term 2005, confirming the trial court's ruling, was a final judgment on the merits in respect of the ownership of the funds deposited on the strength of a contract entered between the former workers and retirees of Bong Mining Company and LBDI. Res judicata therefore attaches in the event the Government of Liberia would seek to set aside the judgment of the trial and confirmed by the Supreme Court by contending that the deposits, being legitimate income taxes, belong to the Government and that LBDI was only withholding agent for the former workers.

In Liberia Trading Corporation versus Abi-Jaoudi 14 LLR 43, 50 (1960) Mr. Justice Pierre speaking for this Court said:

"A judgment is on the merits when it amounts to a decision as to the respective rights and liabilities of the parties, based on the ultimate fact or state of facts disclosed by the pleadings or evidence, or both, and upon which the right of recovery depends, irrespective of formal, technical, or dilatory objections or contentions..."

Given what has been herein recited and the laws cited, we hold that the trial judge properly refused jurisdiction over the petition for declaratory judgment and accordingly denied and dismissed same

WHEREFORE, this Court confirms the ruling of the trial judge, and grants appellees' motion to dismiss the appeal. AND IT IS HEREBY SO ORDERED.