

The **Management of the National Port Authority**, by and thru its Chairman of the Board or its Managing Director or the appropriate Legal Representative, also of the city of Monrovia, Liberia PETITIONER VERSUS His Honour **James Jones**, Judge, Debt Court, Montserrado County, Temple of Justice Monrovia, Liberia and the **Intestate Estate of the late Chayee A. Doe, Sr.**, by and thru its Attorney -in-fat, Counsellor Marcus R. Jones, of the city of Monrovia, Liberia RESPONDENT

PETITION FOR THE WRIT OF PROHIBITION

HEARD: March 26, 2008 DECIDED: June 27, 2008

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

The Administratrix of the Intestate Estate of the Late Chayee Z. Doe, Sr. file an action of debt, by and thru her attorney-in-fact, Counsellor Marcus R. Jones, to recover US\$106,200.00 (one hundred six thousand, two hundred United States dollars) representing allowances and other benefits, in addition to salary arrears accrued from October 2003 to September 2004 in the amount of L\$42,000 (forty-two thousand Liberian dollars) which was not paid him prior to his death. Respondent complained that all attempts to collect the arrears and benefit owed the intestate estate by the petitioner, NPA proved futile and so respondent was left with no alternative but to seek legal redress and pray the Honourable Debt Court to grant respondent summary judgment adjudging petitioner liable to pay the respondent's estate the just (emphasis ours) amount claimed, with interest, and to rule cost against the petitioner.

In its answer to the complaint, the petitioner countered as follows:

- 1. That the respondent had not exhibited any documentary evidence, as a matter of notice, to establish that the late Chayee Z. Doe was employed by the Government.*
- 2. That the petitioner lacks information sufficient to form an opinion as to the authenticity' of petitioners' claim in that the document exhibited by the respondent as exhibit "A", which reflected amount allegedly owed respondent is a financial instrument which should have been authenticated and attested by the financial section of the National Port Authority (NPA). In the absence of this, the petitioner has no reason(s) to believe that the instrument, merely a computer print out, was legal and binding on the petitioner.*

3. That the communication from Counsellor Jones does not of itself establish a claim unless this claim can be proven.

Respondent in its reply, countering the allegation of their claim which petitioner referred to as mere computer instruments that did not pass through its Management's Finance Section, maintained that the financial document pleaded with the complaint was signed and sealed and/or stamped by the Managing Director of petitioner's management which makes petitioner's argument feeble and only an attempt to brush aside respondent's responsibility of paying respondent's genuine debt.

The Debt court ruled against the petitioner and prepared a bill of cost which it was about to enforce when the petitioner filed a writ of prohibition alleging that:

1. Contrary to I LCL Revised, Title 1, Section 45.4 (1973) the statute, which states that cost should not be Imposed against and in favor of the Republic of Liberia or any agency wholly owned by the government of Liberia, the court had assessed cost of US\$8, 000 (eight thousand United States dollars) against the petitioner.

2. That although the late Chayee Doe died on June 9, 2004 yet, in calculating the total award in the case, the co-respondent Judge included the period July to October, 2004, far beyond the period after the death of Mr. Doe by including the amount US\$37,000.00 (thirty seven thousand United States dollars) as salary for this period.

3. That when the co-respondent Judge delivered his final decision in the matter, wit/judging the petitioner liable, the petitioner excepted to the ruling and announced an appeal as there is no sum certain as to the amount of the claim.

4. The co-respondent Judge deliberately and erroneously included in his final award US\$8,000.00 (eight thousand United States dollars), that was paid by Joe T Gballah, Managing Director of NPA, to Mrs. Doe, the decedent's wife, as part payment for her travel against her husband's benefit.

5. That, in keeping with I LCL Revised, Title 1, Section 44.29 (1973), Judgment against the Republic (against Officers sued in their Official Capacities, or any authorities wholly owned by the Government), the Clerk shall deliver to the plaintiff a certified copy thereof When such copy of the judgment is presented to the President, he/she shall endorse thereon, an order to the Secretary of the Treasury, directing payment of the amount named therein. Such payment shall be paid forthwith.

The Justice in Chamber issued the alternative writ and had a hearing in which he ruled on two issues:

1. *Whether in the case at bar, I.N.A. Decree #6 is applicable to stay enforcement of a Debt Court's award, for which prohibition will lie?*
2. *Whether the petitioner (NPA), as a wholly owned-government agency, is exempt from payment of Court's costs under Section 45.4 of ILCLR, for which prohibition will lie?*

Ruling in the reverse, the Justice in Chambers stated that the court would not uphold the respondent's argument that 63.8 of 1LCLR requiring public corporation to pose appeal bond is analogous to Section 45.4 on cost of court against or in favor of the Republic or agencies wholly owned by the Government. Section 45.4 expressly excludes all 100% owned Government Agencies from imposition of court cost. Petitioner seeking legal entitlement to exemption as contemplated under said Section 45.4 was meritorious and therefore sustained.

Ruling on the first issue, the Justice in Chambers stated that the petitioner/defendant disclaimed any indebtedness, a position amounting to general denial and from which pleading, the Justice citing the case, **CFAO (Liberia), Ltd. Vs. Morgan, 35 LLR 258, 272 (1988); Liberia United Bank, Inc. (LUBI) Vs. Swope, 39 LLR 537, 545 (1999)**; and that the petitioner had assumed a position both of denial and admission of respondent/plaintiff's claim and for which this Court has said that when a party assumes a plea of evasiveness, said plea must be dismissed. Having failed to specifically and intelligently plead against figures it believed were wrongly included or erroneously computed and the failure to so specifically plead and refute respondent/plaintiff's claim by a 'preponderance of the evidence, as required by law, does not present the figure nor place same under the category of disputed figure to justify stay of enforcement of the Debt Court's judgment. He therefore ruled that stay to enforcement of the Debt Court's judgment as regulated in the statutory phrase "**where the amount of the indebtedness is in dispute**", does not apply in the instant case; hence prohibition will not lie.

The petitioner appealed to the Bench en banc contending that although the Chambers Justice ruled in its favor as regards Court Cost, and stated that the calculation of US\$37,000 (Thirty Seven Thousand United States Dollars) as amount owed for salary from June 9 to October 2004 when Chayee Doe had died on June 9, 2004 was erroneous, yet, he sent a mandate to the court below to resume jurisdiction and enforce its judgment.

The Bench en banc having reviewed the ruling of the Justice in Chambers does agree that the petitioner/defendant's answer to the complaint was evasive and his entire handling of the case was unprofessional since it is a historical fact that Mr. Chayee Doe was the Managing Director of the petitioner and died on June 9, 2004. Whether or not the petitioner was indebted to Mr. Doe for salary arrears or benefits could have been clearly established as petitioner had access to all the financial records.

Be what it may, however, our statute requires that Judges take judicial notice of the law and the records filed before it whether or not its attention is called to it. **1 LCLR Title 1 Section 25.1 (1973); MIM Liberia Corporation vs. Towel, 30 LLR 611, text at 618.** The authority (plaintiff's exhibit -B") given by the administratrix to Counsellor Jones, attached to the Complaint by the respondent/plaintiff, itself stated that Chayee Z. Doe died on June 9, 2004, The testimonies of respondent/plaintiff's first witness also stated that Chayee Z. Doe died on June 9, 2004.

Respondent/plaintiff's first witness, Joe Gbalah, stated that although Chayee Z. Doe died on June 9, 2004, his office was held by the late Chayee Z. Doe after his death until said office was officially turned over in October (Court's Minutes, Tuesday, Oct. 10, 2006). These records form part of the evidence taken by the court; the court was therefore under a duty to take judicial cognizance in its debt judgment award.

Regarding the payment of an advance of US\$8,000 paid by the petitioner's Managing Director to Mrs. Chayee Z. Doe, respondent's first witness, Joe Gballah, testified as follows:

When we took over from the late Chayee S. Doe, Sr. we were able to go through the files of NPA and it was realized that salary arrears and executive benefits were due to be paid to the Late Chayee Z. Doe, Sr. but due to the financial burdens that we experienced at the time we took office, we were able to go into a conference and promised on behalf of Management that said obligation would be paid in the future at which time. We were able to ascertain from the Human Resources Department to give us the full details of said benefits. Also. the Accountant Department was also contacted to submit the full details of the demised brother. Chayee Z. Doe's benefits. By so doing, during the conference, we were able to discuss with Miss Helena Freeze Doe that while it is true that the Entity was obligated to her, we request that she see reasons to prevail that at this point in time, the Management of NPA is incapacitated at this juncture to make prompt payment and it was honoured by her. Because of it that, to help facilitate her travel, we were able to borrow the amount of US\$8,000.00 (eight thousand United States dollars) from a viable entity to enhance her travel

expense that during the payment of said benefits, the said US\$8,000.00 (eight thousand United States dollars) would be paid back from the entity we credited said amount from, and a document was prepared attached full analysis of the benefits in question to her.

From the testimony, and even on the cross examination, Joe Gballah, who succeeded Mr. Chayee Z. Doe as Managing Director, stated that because of the petitioner management been unable to settle its obligation, the entity. awarded \$8,000 to Mrs. Doe to help offset her travel expense which would be paid back to the loaning entity. Assuming that the US\$8,000 was indeed credited by management to give to Mrs. Doe, why was it calculated in the court cost? Who was responsible to pay the money credited, the correspondent estate or petitioner NPA who credited the money? Wouldn't it be reasonable to assume that having credited the money to give to Mrs. Doe, the management NPA whenever it had money would pay back the loan to whatever entity said money was gotten and apply it against the amount owed the deceased estate? We feel that including the US\$8,000 in the calculation of the court cost was erroneous.

Also included in the calculation of the financial statement attached to the respondent/plaintiff's complaint was an amount of US\$31,000 (thirty one thousand United States dollars) representing car rental. If we were to award this amount, it would be US\$23,200 (twenty three thousand United States dollars), representing monthly car rental from October to January 2003, and January to June 2004, at US\$2,600 a month. However, we are all aware that the normal business practice of any business entity is that the entity renting cars for its managers and employees is responsible to contract with the car rental company and pay the rental company when the rent becomes due. Nowhere in the pleading or evidence given has the respondent justify why car rental should be paid to the decedent's estate. Whether the respondent paid the rent personally to be reimbursed later by the petitioner has not been explained or receipts presented. A plaintiff has a duty or burden of proving his claim and to do so by the best evidence available to him. **Knuckles vs. The Liberian Trading and Development Bank, 40 LLR511, 524 (2001); 1 LCLR 25.5 Burden of Proof.** Regarding the payment of car rental, we believe that the responsibility to pay for car rental is that of the Petitioner and not the respondent. Awarding this cost to the respondent without any proof of the deceased having assumed the responsibility is erroneous and cannot be upheld by this Court.

It has been ruled by this Court that it may render such judgment in any case on appeal as, in its opinion, the court below should have rendered. **Simpson vs.**

Caranda, 13 LLR, 121, 124 (1957); John vs. Republic, 13 LLR, 143, 152 (1952).

The grounds outlined in petitioner's petition disputing award of assessment of court cost, advance payment of US\$8,000, and payment of salary and other benefits from July to September 2004, after the death of Chayee Z. Doe, are indeed meritorious and upheld on this appeal.

Since this Court has modified the ruling of the Justice in Chambers, and taking judicial notice of respondent's financial statement attached to the complaint as part of petitioner's EXHIBIT "A", and petitioner's management payment to its Managing Director at the time Chayee Z. Doe served, this Court has decided that the petitioner NPA *bay* to the respondent the amount of US\$59,500.00 (fifty-nine thousand, five hundred United States dollars) and L\$31,500.00 (thirty-one thousand five hundred Liberian dollars). These amounts represent nine (9) months housing arrears, plus nine months United States benefits and salary arrears, less the US\$8,000 advanced the decedent's widow.

The Clerk of this Court is ordered to send a mandate to the Debt Court for Montserrado County to resume jurisdiction over this case and give effect to this judgment. Costs disallowed. IT IS HEREBY SO ORDERED.