

NATIONAL MILLING COMPANY OF LIBERIA, represented by its Managing Director, **WILLIAM K. COLLIER**, Petitioner/Appellant, v. **HIS HONOUR FRANCIS N. PUPO, SR.**, Judge, Debt Court, Montserrado County, **MIATTA FAMILY CENTER**, represented by its President, **ABRAHAM SANTANA**, Respondents/Appellees.

MOTION TO CONSOLIDATE

Heard: November 13, 1986. Decided: January 23, 1987.

1. A motion to consolidate is intended to obviate a multiplicity of suits and delay of trial, especially when there are common questions of law and facts.
2. When actions involving a common question of law of fact are pending before a court of record, the court, upon motion of any party or sua sponte, may order a joint trial of any or all the matters in issue or the consolidation of the actions; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.
3. Where the statute provides a remedy, the common law must remain silent. In such cases, it is unnecessary for the court to go outside of the statute to adjudicate a matter.

The National Milling Company of Liberia, petitioner/ appellant herein, filed a motion to consolidate the several actions of debt, information and error, stating that the several proceedings contained the common questions of law and fact, and relate to the same subject matter pending before the Supreme Court; and that a consolidation would save the parties both time and expense.

The Supreme Court agreed and granted the motion. The Court noted that from its review of all the records, it had seen common questions of law and fact. The statute, it said, provided for the consolidation of actions or issues where the law and facts in the matters are the same. The court observed that as consolidation was provided for by the statute, there was no necessity for it to resort to the common law to make the determination, especially since the statute imposed a mandatory duty upon the Court to not resort to common law where a remedy was provided for by the statute. The motion to consolidate was therefore granted.

The Steele and Steele Law Firm appeared for the petitioner/ appellant. *The Philip J. L. Brumskine Law Chambers* and *Findley and Associates* appeared for the appellees/respondents.

MR. JUSTICE DENNIS delivered the opinion of the Court.

The basis or genesis of these proceedings, consisting of an action of debt, a bill of information and a petition for a writ of error, is to have the several actions consolidated by this motion. The records reveal that on the 23rd day of May and the 6th of November A. D. 1985, respectively, the respondents/ appellees filed and argued their respective briefs in response to the motion to consolidate. The motion to consolidate comprised the below salient issues:

(a) In counts 4 & 5 of the motion, the movant/petitioner/ appellant averred that there existed common questions of law and fact relating to the same subject matter and parties, awaiting adjudication in this Court of dernier resort.

(b) The movant/petitioner aforementioned submitted as further justification for this Court granting this motion that it would save both time and expense if the mentioned causes were consolidated, and disposed of by court.

(c) The movant/petitioner/appellant further contended that the motion to consolidate would expeditiously dispose of and terminate all of the controversial issues involved in the several proceedings without any prejudice to the adverse party.

In resisting the motion to consolidate, the respondent/ appellee contended that the motion was legally un-meritorious was and contrived merely to baffle, delay and confuse the main issues in the several proceedings pending before the Court; and they therefore prayed that the motion should not be granted. The respondents however admitted that the statute extant does provide for the consolidation of causes whenever there exists a common question of law and fact. In the instant situation, common questions of law and fact are found in the petition for a writ of error and the bill of information and they all relate to the several acts of irregularity alleged to be in contravention of the relevant statutes, as would admit of consolidating the several cases.

In traversing counts 2 & 3 of respondents/appellee's resistance, which is repetitious of count one thereof, and taking judicial notice of the records in this case which courts of justice may pursue without additional evidence, we conclude that both the petition for a writ of error and the bill of information contain similar issues. Moreover, according to the certificate issued on the 16 thday of May, A. D. 1986, by Veronica L. Corvah, Acting Clerk of the Supreme Court, the writ of error is still pending before this Court.

A further legal analysis and critical review of the records in these proceedings, referring particularly to the contents of the petition for a writ of error and bill of information, which are the

joint trial of any or all the matters in issue or the consolidation of the actions; and it may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

2. *Order to avoid unnecessary costs or delay.* The court in which the actions are consolidated or issues or claims tried together may make such orders concerning the proceedings therein as may tend to avoid unnecessary costs or delay." Civil Procedure Law, Rev. Code I: 6.3.

In resolving and finalizing the subject matter of the motion to consolidate the issues therein contained, it is absolutely unnecessary to extend our research beyond the unequivocal and pertinent statutory principles, especially so when our statute mandatorily provides that when the statute states a remedy, the common law must remain silent. Vide: 1956 Code, 14:40, non-statutory law; *Attia v. Summerville*, [1888] LRSC 1; 1 LLR 215 (1888); *Pratt v. Phillips*, [1947] LRSC 25; 9 LLR 446 (1947).

It is therefore our considered opinion that the motion to consolidate is legally meritorious, it being crystal clear from the facts, circumstances and the law applicable thereto. The motion is therefore hereby granted and, in the absence of any proof of delay in the final termination of the basic suit of debt, the claims or matters so correlated and the legal criterion therefor, be tried as expeditiously as trial procedure allows.

Costs to abide final determination of the basic action of debt.

Motion granted.