The Central Bank of the Republic of Liberia,Carey Street, Monrovia, Liberia, APPELLANT Versus IN RE: **Ms. Veronica J. Doe**, by and thru Mother Mme. Nancy Bohn Doe, Attorney-in-Fact, of the City of Monrovia, Liberia, APPELLEE

APPEAL

Heard: October 29, 2014 Decided: January 8, 2015

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

The undisputed facts of this case on appeal before us is that Madam Nancy B. Doe, former First Lady of the Republic of Liberia, on March 21, 1989 opened a savings account S/A#36229 in trust for her daughter, Ms. Veronica J. Doe, at Citibank Liberia, a foreign financial institution operating in Monrovia, Liberia at the time; that Mrs. Nancy B. Doe total deposit plus interest between March 21, 1989 to February 8, 1990,aggregated an amount of Seventy Four Thousand, Four Hundred Seven Dollars and Fifty-one cents ($74,407.51); that on the 31st of January 1992,Citibank upon its request to and by consent of the National Bank of Liberia (NBL) ceased operations in Liberia, and went into voluntary liquidation; that with the consent of the NBL, Citibank entered a paying agency agreement with the Meridian Bank Liberia Limited to pay off Citibank's liabilities in Liberia.

Counsellor Varney Sherman was appointed by Citibank as its general agent in Liberia. The necessary information to depositors and other customers were complied with by and through the media. The winding up statutory period of three years having ended on January 31,1995, the National Bank of Liberia (NBL), predecessor institution of the Central Bank of Liberia (CBL), gave a certificate to the Citibank striking it off the list of banking institutions in Liberia; thereby, terminating Citibank's existence as a financial institution in Liberia.

This appeal stems from a complaint filed by Madame Nancy Doe, before the Commercial Court of Monrovia, alleging that her deposits made in trust for her daughter Veronica J. Doe with Citibank were never paid back to her during the liquidation period as she and her daughter lived out of the country at the time of the liquidation by Citibank; that she made a brief visit to Liberia in 1994, but did not follow up on her deposits with Citibank. Subsequently upon her return to Liberia, in 2011, she made inquiries about recovering her deposits; she was told that Counsellor Varney G. Sherman was the representative of Citibank in Liberia and so she approached him concerning her deposits. Counsellor Varney Sherman referred her to the Central Bank of Liberia (CBL), the new nomenclature of the National Bank of Liberia (NBL); Counsellor Sherman informed her that after Citibank had completed its obligation under the statutory winding up period of three years, it turned over to the NBL all records and balances of accounts with Citibank. Upon this information, Madam Doe said she had her lawyer write to the CBL inquiring about her deposits made with the Citibank, but the CBL failed to answer her inquiry. Therefore, acting as attorney-in-fact for her daughter Veronica J. Doe, Madam Doe filed an action of debt for deposit contract in the Commercial Court of Monrovia, naming Counsellor Varney Sherman and the CBL as party defendants. She prayed the court to have the defendants pay her deposit amounts of Seventy-four Thousand Four Hundred Seven and Fifty-one cent United States Dollars (US$ 74, 407.51) held illegally by the defendants and have the defendants pay six percent (6%) legal interest on the principal amount withheld. She further prayed the court to have the defendants pay all other costs associated with the filing of her complaint and to grant her all other reliefs as the court deemed just, legal and equitable.

On May 16, 2013, CBL filed its answer simultaneously with a motion to dismiss the complaint on the following grounds: (1) The complaint was devoid of factual allegation which sufficiently demonstrate a legal relationship linking the CBL to the plaintiff Nancy B. Doe, or the showing of any instrument linking CBL to any debt wherein the CBL obligated or promise to liquidate any indebtedness to the Nancy B. Doe/Veronica J. Doe, (2) Mrs. Doe had not exhibited any evidence to substantiate that the funds sued for by her had not been paid by Citibank at the time of liquidation, (3) CBL was not an agent of the defunct Citibank nor did it appoint Counsellor G. Varney Sherman as liquidator for the aforesaid bank, (4) the caption of the case is at variance with the averments in the pleadings, and the averments do not support the title of action; and (5) plaintiff/ appellant Nancy B. Doe was paid

according to documents submitted by the liquidating bank, Meridian Bank and the General Agent of the defunct Citibank, Counsellor Varney G. Sherman.

Counsellor Varney G. Sherman, the second defendant filed a nine count answer and because of the position taken by the Court in this matter, we deem it necessary to include in this opinion the returns of Counsellor Sherman, which reads:

"2nd defendant in the above-entitled cause of action denies the legal and factual sufficiency of the complaint and for reasons showeth the following to wit:

1. Citibank, N.A. operated a branch in Liberia, but consistent with provisions of the 1974 Financial Institutions Act, Part VI, and on its application to the National Bank of Liberia, and upon approval of the National Bank of Liberia, ceased its operations in Liberia on January 31, 1992. In keeping with the plan for cessation of its operations, Citibank, N.A. appointed 2nd defendant as its General Agent in Liberia to manage all its liabilities and dispose of all of its assets. 2nd defendant was not appointed by the National bank of Liberia and 2nd Defendant was never an agent for the National Bank of Liberia during the cessation of the operations of Citibank, N.A. Because of the long time that has expired since 1992, it is difficult to find the documents to substantiate these averments. 2nd defendant therefore gives notice that at the trial, if necessary, 2nd defendant shall present written document evidencing its power and authority as the General Agent for Citibank, N.A.

2. That in keeping with law, after cessation of its business in Liberia, Citibank, N.A. continued as a business entity for a period of three (3) years, from February 1, 1992 to January 31, 1995, to liquidate its business operations in Liberia. It is for this purpose that 2nd defendant was appointed General Agent for Citibank, N.A. for this period of three (3) years.

3. That to cover all its liabilities to the general public, Citibank, N.A. was required by the National Bank of Liberia to deposit with Meridian Bank Liberia Limited, a financial institution then doing business in Liberia, the total amount of money owed by all its deposit and current account customers and other claimants, which Citibank. N.A. did. Those customers of Citibank, N.A. who were owed any moneys presented evidence of the debt and in consultation with 2"d Defendant, payment of the debt was made by Meridian Bank Liberia Limited.

4. The information about the cessation of the banking operations of Citibank. N.A. in keeping with the plan approved by the National Bank of Liberia, was published for several weeks before January 31, 1995, in newspapers of general circulation in Liberia and in the electronic media. This announcement contained the process through which any claim, including claim of depositors, would be settled; and most claimants appeared and got their claims settled.

5. That at the end of the liquidation period, any funds payable to depositors or other creditors who had not claimed them were turned over to the National Bank of Liberia consistent with the 1974 Financial Institutions Act, Section 42(b). And in keeping with the same 1974 Financial Institutions Act, Section 42, upon showing that Citibank. N.A. had complied fully with the approved plan for its liquidation, the National Bank of Liberia struck it [Citibank] from the list of licensed financial institutions doing business in Liberia effective January 31, 1995. Because of the long time that has expired since 1995, it is difficult to find the documents to substantiate these averments. So, 2nd defendant gives notice that at the trial, if necessary, the documentary evidence of the striking of Citibank. N.A. from the list of financial institutions doing business in Liberia will be presented.

6. That assuming without admitting that plaintiff had any deposit with Citibank, N.A. at the time it ceased its operations in Liberia on January 31, 1992, and such deposit was not paid up to January 31, 1995,the funds were passed over to the National Bank of Liberia consistent with the plan for the cessation of the operations of Citibank, N.A. and the 1974 Financial Institutions Act. And 2nd defendant says all liabilities of Citibank, N.A. were thereupon assumed by the National Bank of Liberia, and Citibank, N.A. was simultaneously relieved from those liabilities.

7. That had Citibank N.A. remained in existence, given that plaintiff never made any new deposit into the savings account or made any withdrawal as of February 8, 1990, after 15 years of dormancy of the account, the proceeds of the savings account would have been considered as abandoned property as per the 1974 Financial Institutions

Act, Part V11. And in that event Citibank, N.A. would have been required by law to give the proceeds of the account to the National Bank of Liberia not later than February 8, 2005. And 2nd defendant says all liabilities of Citibank, N.A. would thereupon been assumed by the National Bank of Liberia, which was succeeded by the Central Bank of Liberia.

8. That it is now twenty-one (21) years since Citibank, N.A. ceased its banking business in Liberia. A claim for any deposit with Citibank, N.A. is barred by the statute of limitations.

9. That 2nd defendant was merely an agent for Citibank, N.A. for the winding up of its banking operations in Liberia; and as such 2nd defendant is not personally liable to any depositor, including plaintiff, for any funds such person may have kept with Citibank, N.A. 2nd defendant has no obligation to plaintiff for the deposit that plaintiff claims to have made with Citibank, N.A. Therefore 2nd defendant is not a proper party defendant in this action of debt by deposit contract and should accordingly be dropped.

WHEREFORE and in view of the foregoing, 2nd defendant prays Your Honor to dismiss the case as against 2nd defendant with costs against plaintiff, and grant unto 2nd defendant any other and further relief in such matters is made and provided by law."

Counsellor Sherman also filed along with his answer a motion to drop him as a misjoined party.

During the call of the motion to drop for misjoined party, the plaintiff Nancy B. Doe interposed no objection to have Counsellor Varney G. Sherman dropped, conceding that 2nd defendant, Counsellor Varney G. Sherman was wrongly joined as a party to these proceedings and that appellant CBL was the proper institution against whom this matter could be brought.

The CBL motion to dismiss was heard and the court below held in its ruling of 16th August, 2013, that the New Financial Institution Act of 1999 grants CBL the authority to regulate any dissolution of financial institutions in Liberia whether voluntary or involuntary for assurances of payment to depositors and creditors; that a depositor or creditor of a financial institution in liquidation need not be in privy of contract with CBL in order to be compensated, since a fiduciary duty is established pursuant to CBL's statutory obligation to depositors and creditors of defunct financial institutions. Moreover, the trial court ruled that request of a financial institution to NBL/CBL for voluntary liquidation or a forced liquidation by NBL/CBL triggers a timeline within which that financial institution must fully pay depositors and creditors. Accordingly, the court ruled, the issue of whether there existed a contract between plaintiff Veronica J. Doe/ Nancy B. Doe and NBL/CBL, whether an action in debt is established between the parties, and whether a variance between the case caption and averments declared in the case are grounds for dismissal were untenable. Accordingly, CBL's motion for dismissal was denied. The court then held that the parties in the hearing of the motion to dismiss having raised legal and factual issues which the court could not determine without further examination of the matter, it would rule the case to trial.

Following consideration of all pre-trial formalities, the trial commenced with the production of appellee's witnesses in persons of Madam Nancy B. Doe, Mr. George Wright and a subpoenaed witness, Mr. Kwesi I. N. Garmo; while appellant CBL produced Mr. George Wright and Counsellor G. Varney Sherman, as witness and subpoenaed witness respectively, who testified on the CBL behalf.

The appellee's first witness, Madam Nancy denied having received the payment of her deposits allegedly said to have been paid. She testified that she did not have an authority from her daughter for whom the account was created to withdraw the deposits and at the time of the alleged payment, neither she nor her daughter was in the country. The second and third witnesses of the appellee basically testified to them having accompanied Madam Nancy B. Doe on her visits to Counsellor Sherman at his Office between 2011 and 2012, in an attempt to retain him to help her with some of her legal matters. From her inquiry made as to her deposit with Citibank, Counsellor Sherman requested for her bankbook. Madam Doe had her daughter Veronica send the bankbook which was then taken to Counsellor Sherman who upon seeing the book referred Madam Doe to the Central Bank since the NBL, now Central Bank, had received and taken over all unpaid deposits with Citibank and he had no further dealing with the matter. After the appellee's testimonies denying that the deposit was paid to her or her daughter Veronica J. Doe as alleged by CBL, the appellee put into evidence her deposit book.

The Central Bank first witness, Mr. Steve A. Wright testified to the two kinds of liquidations: Compulsory liquidation where a financial institute is seized because of mismanagement resulting to insolvency; and voluntary liquidation where a financial institution, not because of mismanagement but for reasons best known to itself files with CBL a request to close its financial institution and carry out all liquidation. In the case of Citibank which requested voluntary liquidation, he testified, that CBL set up certain conditions to be met, particularly, to protect depositors, creditors, and other liabilities. Conditions such as, payment of depositors at 100%,payment of former employees of the bank and creditors were set. When these conditions were met, the National Bank permitted authorization for the voluntary liquidation. The Citibank then hired Meridian Bank Liberia Limited (MBLL) and there was an agency agreements entered into between the MBLL and Citibank with Counsellor Varney G. Sherman serving as Citibank's General Agent. The National Bank conducted a due diligence of the MBLL and found out that MBLL was fit and proper to carry out the liquidation. It was agreed that at the end of the liquidation process, a list of deposits paid, and deposits unpaid would be turned over to the National Bank of Liberia. All conditions were met, and at the end of the liquidation period, the remaining funds were turned over to the NBL. A former report was prepared and signed by both of Citibank's agents, Meridian Bank Liberia Limited and Counsellor Varney G. Sherman and submitted to CBL. The report comprised two listings, one of depositors' and deposits made in United States Dollars, and another of depositors' and deposits made in Liberian Dollar. The liquidation report with listings of Citibank's depositors, the witness said, carried the words paid or unpaid before each account. On the Liberian accounts listing, the account #36229 bearing the name Nancy B. Doe ITF Veronica J. Doe was listed with the notation "paid" placed before said account, an indication that the agents of Citibank had settled the total amount of $74,407.51plus deposits made by Madam Doe.

Counsellor Varney G. Sherman, CBL's subpoenaed witness, took the stand and confirmed Mr. Steven Wright's testimony as follow:

"To the best of my knowledge, Citibank Liberia was the first foreign financial institution that voluntarily closed down its operation in Liberia without transferring its business to another bank. Under the law, then governing financial institutions which was the Financial Institution Act of 1974, the liquidation of Citibank was under the direct supervision of the National Bank of Liberia which was succeeded by CBL as recently as 1999. The NBL required Citibank to present a plan for its voluntary liquidation to be approved by it. The plan that was eventually approved, provided that Citibank would appoint another bank in Liberia to be the depository of all funds that Citibank owed to its customers in Liberia. The plan also provided that Citibank deposits with the same bank all liabilities, both accepted and contingent liabilities. The process for the liquidation was that any claimant, including depositors would lodge their claims with the bank which was the Meridien Bank Liberia Limited. When the Meridian Bank Liberia Limited required verification the verification was done by me as the General Agent for Citibank in liquidation."

"Some claims were lodged with me directly and passed over to Meridian Bank Liberia Limited with the certification that the claim was valid and Meridian Bank would then pay or with the certification that the claim was not valid. Where claims were contested, in my personal capacity as the General Agent of the Citibank, I made the contestation; and as Sherman and Sherman, the Law Firm, we provided legal services to Citibank in liquidation. That was the process for the three years, February 1,1992 to January 31, 1995. Those three years were the liquidation period that the National Bank of Liberia allowed for Citibank to wind up its operation in Liberia. During that period we regularly reported to National Bank of Liberia on the disposition of the liabilities; I believe the report was submitted every three months. At the end of the three years period the final report was submitted to the National Bank of Liberia, which included the record of all claims which were paid off and the record of claims or deposits that had not been paid off. For deposits that had not been paid off, in addition to submitting the list to the National Bank of Liberia, funds for those deposits was transferred to the National Bank of Liberia. That is, even though the funds physically remained with the Meridian Bank Liberia Limited, the National Bank of Liberia took control over them. When the National Bank of Liberia was satisfied that Citibank had complied with the terms of the approved plan for its liquidation in Liberia, it struck Citibank off the list of financial institutions doing business in Liberia."

The trial Judge, after hearing arguments pro and con, and based on the testimonies of the witnesses and documents submitted into evidence, held that this was not a matter of dealing with obligations growing out of a contractual relationship where the terms and conditions are set by the parties. The Judge stated that it was dealing with

obligations imposed by law on CBL to govern the affairs of financial institutions that are solvent or insolvent for the purpose of ensuring payment to depositors and creditors when a demand is made, and the fiduciary duty imposed by law on CBL to depositors and creditors of insolvent financial institutions during a voluntary and involuntary liquidation. The trial court reasoned that the burden shifted to CBL in regards to its affirmative plea that appellee Nancy B. Doe was paid and CBL did not meet its burden of proof by a preponderance of the evidence as required by our statute, making reference to Vol.lof the Liberia Code of Law Revised, section 25.5 - "Burden of Proof." It states, "Burden of proof rests with one who pleads affirmatively in response to a complaint." The trial court said CBL showed no source document to include any residual documents that may have revealed that the plaintiff Veronica/Nancy Doe was paid off, and which supported the listing stating "paid" and "unpaid" especially when there was undisputed evidence that these documents were sent to the NBL. The Court ruled that CBL was liable to the appellee Doe in the amount of $74,407,51together with cost and interest in these proceedings.

Both parties in the action excepted to the ruling of the judge and announced an appeal to this Honorable Supreme Court.

The CBL in its bill of exceptions basically contended that Judge Morgan's ruling was erroneous in that CBL was not the agent of the defunct Citibank at the time; that Madam Doe should not have sued CBL since she did not deposit any money with the CBL, had not established by the preponderance of the evidence that there was a contract between her and the CBL wherein CBL obligated itself to pay plaintiff the amount being sued for; and that the document submitted by Meridien BIAO Bank Liberia (MBLL), the liquidating bank, showed that the plaintiff/appellee had been paid and the currency she was paid in. And that the Judge also committed a serious error when she ruled that CBL on whom the burden of proof shifted to prove that plaintiff was paid did not meet its burden of proof by a preponderance of the evidence and therefore found the CBL liable when CBL produced documentary evidence to prove that plaintiff was paid the money she deposited with the defunct Citibank and witnesses testified also to the effect that plaintiff was paid her money.

The CBL also questioned the constitutionality of Article IV (APPEALS) of the Act Establishing the Commercial Court. Article IV (2) and (3) of the Act creating the Commercial Court provides: (2) "An appeal from the judgment of the Commercial Court shall not serve as a stay on enforcement of the judgment provided that the amount of the judgment paid shall be placed in an interest bearing escrow account with a commercial bank to be designated by the Commercial Court pending disposition of the appeal." (3) /(Payment of the full amount of the judgment shall be a condition precedent for the completion of an appeal from a judgment of the Commercial Court but the appeal bond, which may be required of the appellant shall be exclusive of the amount of the judgment paid."

The plaintiff/appellee on the other hand excepted to the Judge's final ruling as it relates to the currency in which the CBL was held liable, stating that said ruling was vague. Appellee alleges that in spite of the Statutory Provision of the New Financial Institution Act of 1999, the Honorable Supreme Court has held in several opinions that even though, a law exists which declares the United States Dollars and the Liberian Dollars to be equal, and either is legal tender to discharge an obligation yet such declaration gives no right to a party to discharge its obligation in Liberian Dollar where such party has contracted to the contrary. The appellee cited the case American Life Insurance Company v. Fawzi K. Ajami, 37 LLR, 530 533 (1994). By the trial Judge's failure to state precisely whether the appellant/plaintiff should be paid in Liberian Dollars currency or the United States Dollars, the appellee Nancy B. Doe maintained that her deposit while her deposit was in United States Dollars, she was afraid that the CBL might pay the judgment in Liberian Dollars. And even then, when her deposits were made in March 1989 through February 1990, the prevailing rate of both Liberia Dollar and United States Dollar currencies was one-to-one-parity, in which case the appellee Doe is still entitled to United States Dollars. The burden the appellee said shifted to the CBL to show that Madam Nancy B. Doe did not establish her account in United States Dollars, since it is the CBL who has in its custody all of the source documents which would show the time, date, currency and depositor.

We have found the following issues determinative of this case:

1) Whether Veronica J. Doe and Madam Nancy B. Doe can claim from the CBL their deposits made with the Citibank?

2) Under the facts and circumstances, can the appellees recover deposits made with the Citibank?

The CBL contends that the Judge below should have dismissed the claim made against it by the appellee, Madam B. Doe, as there was no privy of contract between the CBL and the plaintiff/appellee, and it was not an agent of the plaintiff/appellee; that the appellees should have made its claim against Citibank or its General Agent, Counsellor Varney G. Sherman who certified payments made during the liquidation period and presented to NBL that payment had been made to the appellee Nancy B. Doe.

Judge Morgan, in her ruling dealing with this contention of the CBL to dismiss the suit based on the lack of privy of contract between the parties, ruled that by virtue of the CBL statutory duty under the Financial Institution Act to provide relief through effective regulation of solvent and insolvent financial institutions, the CBL, by it consent to have the Meridian Bank act as liquidating bank and Citibank's appointment of Counsellor Sherman as its general agent, was duty bound to ensure all depositors were paid their deposits.

We agree with this aspect of Judge's ruling dismissing the CBL's claim of lack of privy between it and the appellee for payment of appellee's deposits and referring the appellee to make its claim against Citibank or its General Agent, Counsellor Varney G. Sherman. We make reference to a case recently handed down by this Court, CBL v. TRADEVCO, March Term of the Supreme Court, 2014.

In that case, the Central Bank of Liberia (CBL} sought to cancel an agreement with the Liberian Trading and Development Bank Ltd. (TRADEVCO) which had been liquidated and stricken off the list of banks doing business in Liberia. CBL named TRADEVCO Bank as the party defendant represented by its authorized officer, Stefano Pellegrino of Milan, Italy. TRADEVCO appeared and filed a motion to dismiss the CBL's petition for cancellation of contract. The lower court granted the motion to dismiss the CBL's petition and CBL appealed to the Supreme Court. Questioning whether the CBL could bring a suit against TRADEVCO for cancellation of an agreement more than six years after TRADEVCO's dissolution, and whether TRADEVCO could appear to defendant the action, this Court held that a corporation which has been dissolved in accordance with the law for a period of more than three years and thereby no longer exist as a corporate entity under the law can neither be sued nor appear and defend against an action brought against it. This Court held that TRADEVCO, was a dead entity under the law, with no further corporate existence after the period allowed by law to institute and defend against any action and was without legal authority to appear and defend against the action or to raise any issue, jurisdictional or otherwise, and the lower court's judge should have so declared. Any judgment, this Court said, secured under such circumstances could not be binding on or enforceable against the completely dead entity which for all legal and practical purposes had no legal existence.

In the instant case, Citibank ceased banking operations in Liberia on January 31, 1992. It thereafter underwent voluntary liquidation, and continued its activities for three years for the purpose of winding up its affairs as required under Chapter 11, Section 11.4(1) and 11.5 of the Associations Law. In February, 1995, after Citibank's liquidation period the CBL had Citibank stricken off its books as one of the banking institutions doing business in Liberia. If a claim or demand for deposits with the Citibank should have been made against the Citibank, it should have been within the three years winding up period and any claim made, particularly twenty-one (21) years thereafter was barred by statute.

As stated, where Citibank was dissolved and its winding up period ended on January 31, 1995, it became dead for all intents and purposes especially when it was certified and stricken from the list of Financial institutions doing business in Liberia. The law extant in this jurisdiction is that an agent's authority ceases to exist upon the death of his principal. Caranda v. Fiske 12LLR 245 (1956); Caranda et al. v. Porte 13LLR 57 1 60{1957); Buchanan-Horton v. Belleh et al. 39LLR 169 (1998}. And it is also held that "when an agency is limited to a particular object or the accomplishment of a particular transaction, the agency is terminated by the completion of the transaction for the accomplishment of which it was created." 3 Am Jur 2d,Agency, Section 35.

In this light, Counsellor Sherman, who was the general agent of Citibank during the liquidation period, authority and responsibility ceased after Citibank's winding up period ended and it was stricken off the list of financial institutions operating in Liberia. Absent showing of fraud in the discharge of his duty as agent of Citibank, Counsellor Sherman cannot be held liable for any claim arising out of his duty as an agent of his principal, Citibank.

In this case then, the CBL was the proper party for the appellee to look to for her deposits consistent with the Financial Institutions Act, since the CBL is clothe with the authority to grant the request for voluntary dissolution and it is duty bound to ensure that all of the requirements with respect to the voluntary liquidation of Citibank were complied with, and monies of all depositors paid.

Our Financial Institution Act of 1974, Part VI-Seizure, Liquidation and Reorganization of Financial Institutions, reads inter alia.

41. The authorization to go into voluntary liquidation shall not prejudice the property rights of a depositor or other creditor to payment in full of his claim nor the right of an owner of funds or other property held by the financial institution to the return thereof. All lawful claims shall be paid promptly and all funds and other property held by the financial institution shall be returned to their rightful owners within such maximum period as the National Bank may prescribe.

42. Within the judgment of the National Bank, a financial institution has discharged all the obligations referred to section 41,it shall be struck from the list of licensed financial institutions and the remainder of its assets shall be distributed amongst its stockholders in proportion to their respective rights. No such distribution shall be made before:

(a) All claims of depositors and other creditors have been paid or in the case of a disputed claim the national bank or to any other person proposed by the liquidating financial institution and approved by the National Bank sufficient funds to meet any liability that may be judicially determined;

(b) Any fund payable to any depositor or other creditor who has not claimed them have been turned over to the national bank or to any other person proposed by the liquidating financial institution and approved by the national bank;

(c) Any other funds and property held by the financial institution that could not be returned to the rightful owners in accordance with the provisions of section 41have been transferred to the national bank or to any other person proposed by the liquidating financial institution and approved by the national bank, together with the inventories [emphasis our] pertaining thereto. Any funds or property not claimed within the period of fifteen years following the transfer thereof shall be presumed to be abandoned property for purpose of section 66.

Whether the CBL showed sufficient proof of payment of deposits to the appellee, Counsel for the appellee stated that the source documents were necessary to establish the veracity and authenticity of payment made. He argued that Counsellor Varney G. Sherman had testified that the Citibank submitted a report in which these documents were all turned over to the erstwhile National Bank of Liberia. These documents establishing payments, appellee's counsel said, were necessary as proof that payment was indeed made since neither the appellee nor her mother withdrew their deposits, It was only when Madam Doe went to see Mr. Samuel Thompson, the deputy Governor of the CBL between 2011and 2012, and Mr. Thompson asked for Madam Doe for her bank deposit book, that she, Madam Doe, requested her daughter in England, Veronica J. Doe to send her the bank book which was with Veronica.

Judge Morgan in her ruling agreed with the appellee Doe that the showing of a listing with the name of appellee and the word "paid" opposite her name as evidence of deposits paid was insufficient evidence to substantiate that payment was indeed made. The source documents, she said, were the best evidence to substantiate payment of claims actually made, especially as Madam Doe still had her bank deposit book in her possession. Certainly, the trial Judge ruled, there must be a showing of some document bearing a signature, a thumb print, some marking, evidencing receipt of money by persons who is alleged to have received money paid. The Judge cited as her reliance, 1LCLR, Section 25.5 "Burden of Proof". This statute reads, "The burden of proof rests on the party who alleges a fact except that when matter of a negative averment lies peculiarly within the knowledge of the other party the averment shall be taken as true unless disprove by the party. It is sufficient if the party who has the burden of proof establishes his allegations by the preponderance of the evidence."

We again agree with the Judge that the evidence produced was not sufficient to substantiate payment of the deposits in dispute in face of the bank book still being in the possession of the depositor. In the case Leigh-Parker v. International Bank (Liberia) Ltd, March Term of the Supreme Court, 2007, this Court held:

"Payment of a deposit is a defense to an action to recover the deposit, but the bank has the burden of sustaining its plead of payment by proof that the money has been paid out on a valid check or other order drawn by the depositor."

"The bank has a burden of showing that a depositor's account was paid out by his order, or that the depositor has so acquiesced in the payment of the amount to another as to be estopped to deny that such payment was authorized."

This Court posed a question to the appellant CBL about the whereabouts of the supporting documents of the listing carrying the names of depositors II paid" since it was obvious that CBL could not have certified Citibank merely based on this listing, the CBL. In its answer to the Bench, CBL stated that because of the time interval and the destruction of documents due to the Liberia civil crisis especially the burning and destruction of the building which hosted the NBL, in 1996, many documents at its institution could not be found or retrieved.

We take note that the winding up period and the stricken of Citibank from the roll of financial institutions was done in 1995, and all outstanding liabilities (financial and safekeeping) turned over to the CBL along with supporting documents. We also take note of the historical fact of the burning of the CBL building in 1996, which may have resulted into the destruction of the CBL records, include those relating to the liquidation of the Citibank eighteen years ago.

Both the Financial Institutions Act of 1974 and 1999 provide that any funds or property with the regulatory body, that is to say the CBL, not claimed within the period of fifteen years following a transfer thereof shall be presumed to be abandoned property. The Financial Institution Act {1974) Part VII, Section 66 and The Financial Institutions Act {1999) Part V Section 45 (3).

This transaction having transpired under the 1974 Act, Sections 66 and 67 on abandoned properties read:

66. (1) "The following items held or owing by a financial institution, unless subject to subsection (2), are presumed to be abandoned:

(a) any general deposit (demand, savings or matured time deposit) made in Liberia with a financial institution together with any interest or dividend, excluding any lawful charges;..."

(2) The items enumerated in subsection (1) (a) through (c) shall not be presumed to be abandoned if the owner has, within fifteen years of date of deposit, payment of funds or issuance of instruments as the case may be :

(a) increased or decreased the amount of the deposit or funds presented the passbook or other record for the crediting of interest or dividends in respect of the items enumerated in sub-section (1) (a) or (b);

(b) corresponded in writing with the financial institution concerning the items;

(c) otherwise indicate an interest in the items as evidenced by a memorandum concerning them written by the financial institution.

We note the testimony of Madam Nancy B. Doe when she took the stand. She testified as follows:

Thank you, "the reason I sued them is because, in 1989 I opened an account for my daughter and I put US$74,000 plus in that account. Before I opened the account, my daughter was in school in England and when the war was can I ran away and went to exile so I was in exile , we went to America, we were in America my children and myself in Maryland, she {Veronica J. Doe) and myself went to the Citibank and she asked for her money. They told her that the money is in Liberia and she said, I cannot go to Liberia now, so we left. That was in 1993; I came to Liberia to see about certain things and came in October and left from here December 2, 1994, when I came I did not even go after the money business because she, Veronica J. Doe did not give me authority to run after it and when I came to Liberia Citibank was not even here. Before I came back in Liberia again it was 1998 that time Taylor was here

and I did not talk about the money and before I came back to Liberia it was 2003, so she asked me Mama my money business now and I told her there is no Citibank here in Liberia."

"I came back to Liberia and met a friend from Cote d'lvoire in 2011or 2012, I asked Mr. Samuel Thompson the Deputy Governor at that time for Central Bank how could I get my daughter's money"

Madam Doe's testimony above indicates that she came to Liberia in October of 1994, and stayed until December 1994. She stated that she knew that Citibank had closed but made no effort to follow up on her deposits as her daughter veronica had not given her the authority to run after her money. She came again in 1998 and 2003, but as she stated on the cross she was after her own business. It was not until 2011or 2012, based upon the insistence of her daughter Veronica Doe that she approached the Deputy Governor of the CBL, Mr. Samuel Thompson about her deposit and was referred to Counsellor Sherman.

The law requiring the abandonment of property held by CBL after fifteen years applies to the appellee, Veronica J. Doe/Nancy B. Doe, since her bankbook does not show that after February 1990 when she made her last deposit of $6000 that she thereafter interacted with the bank on her deposits, or corresponded in writing with the CBL before August 22, 2011, when she wrote to the Governor of CBL requesting her deposits.

Madam Doe as the depositor of funds on account for her daughter could have followed up on her deposits without instructions from her daughter. Where she or her daughter failed to follow up on her account more than fifteen years after the liquidation of Citibank, or show a communication with the CBL concerning her deposits within the fifteen years after the liquidation of Citibank, she is barred from making said claim, and in light of the attaining facts and circumstances, this Court is left with no alternative but to declare her deposits abandoned in keeping with our Financial Institutions Act.

As regards the third issue by the appellant CBL challenging the constitutionality of Article IV (APPEALS) of the Act establishing the Commercial Court which requires filing of an appeal bond after settling the judgment amount, we note that the judge required no bond for the filing of the appeal in this matter and the appellant was not affected thereby. As this Court has held it would be restrained from delving into constitutional questions unless absolutely necessary (In RE: Morris M. Dukuly v. NEC, Supreme Court Opinion, Special Session, September 21, 2005), and we having determined that judgment should have been entered in favor of the appellant, the issue of the constitutionality of the requirement of the appeal bond from the Commercial Court is rendered moot. Hence, there is no need to deal with said issue.

This Court also having decided this case disallowing the appellee's Doe deposits based on her abandonment of the said deposits, it deems it unnecessary to deal with appellee's exception as to the currency in which appellee should be paid.

Wherefore and in view of the foregoing, it is the opinion of this Court that the judgment of the lower court finding CBL liable to the appellee for deposits made to Citibank is hereby reversed. The Clerk of this Court is ordered to send a mandate to the Court below to give effect to this judgment. Costs are disallowed. AND IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING COUNSELLORS ROSEMARIE B. JAMES AND EMMANUEL B. JAMES OF THE INTERNATIONAL GROUP OF LEGAL ADVOCATES AND CONSULTANTS IN ASSOCIATION WITH COUNSELOR JOSEPH K. JALLAH, IN-HOUSE COUNSEL FOR THE CENTRAL BANK OF LIBERIA (CBL) APPEARED FOR THE APPELLEE/APPELLANT. COUNSELLOR MILTON D. TAYLOR OF THE LAW OFFICES OF TAYLOR AND ASSOCIATES, INC. APPEARED FOR APPELLEE/APPELLANT.