Central Bank of Liberia, by and thru its **Board of Governors**, of the City of Monrovia, Republic of Liberia, APPELLANT Versus **The Liberian Trading and Development Bank Ltd**. (TRADEVCO), Its Owners, Administrators, Executors, Assignees and Successors-in-Business, represented by its Authorized Officer, **Stefano Pellegrino** of Milan, Italy, APPELLEE

LRSC 44

APPEAL

HEARD: October 18, 2012 DECIDED: August 15, 2014

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT.

This appeal grows out of a judgment entered by the Civil Law Court, Sixth Judicial Circuit for Montserrado County, upon a motion to dismiss a Petition for Cancellation of Agreement, filed on October 30, 2009, by the appellant, petition, the trial judge advanced asthe reasons for sustaining the contentions set out in the motion to dismiss, that: (1) The petition in cancellation was barred by the statute of limitations since the action had been filed beyond the three-year period prescribed by section 2.20 of the Civil Procedure Law, and that accordingly, as stated in section 11.2(1)(a) of the said Civil Procedure Law, the court lacked jurisdiction to hear and determine the petition; and (2) that the petitioner in cancellation had failed "to show any fraud or false representation of any material fact in the execution of the July 2000 Agreement which the petitioner sought to have the court cancel.

The genesis of the case, culled from the pleadings exchanged by the parties, and upon which the trial court dismissed the petition for cancellation of Agreement, are as follows:

On October 30, 2009, petitioner/appellant, Central Bank of Liberia (CBL), successor Bank to the National Bank of Liberia (NBL), a wholly owned Government entity, duly established by an Act of the Legislature to regulate financial and banking institutions in Liberia and enforce the provisions of the Financial Institutions Act, filed a petition in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, against the Liberian Trading and Development Bank (TRADEVCO), seeking cancellation of an Agreement which the two institutions had allegedly entered into in the year 2000, and which was subsequently modified or amended in 2004 and 2005. The nine- count petition set out the following allegations which we believe important to recite in order to fully understand and appreciate the intricacies of the proceedings:

1: That in 1995, the respondent/appellee, Liberia Trading and Development Bank (TRADEVCO), a financial institution operating in Liberia and subject to the Financial Institutions Act, sued the National Bankof Liberia to have it payover to the respondent US$11,923,310.81 (Eleven Million Nine Hundred Twenty-Three Thousand Three Hundred and Ten United States Dollars and Eighty- One Cents), instead of LD$11,923,310.81 (Eleven Million Nine Hundred Twenty-Three Thousand Three Hundred and Ten Liberian Dollars and Eighty-One Cents), alleged by TRADEVCO to be excess reserves maintained by it with the National Bank of Liberia; that the law issues having been ruled

on by the trial judge, the respondent therein not being satisfied with the said disposition of the law issues, filed with the Justice in Chambers of the Supreme Court of Liberia a petition for the issuance of a writ of certiorari; that the writ having been issued and hearing held on the petition by the Justice, the writ prayed for was denied and the petition dismissed; that an appeal taken therefrom to the Bench en banc, having been withdrawn by the respondent, the case was remanded to the Civil Law Court for the Sixth Judicial Circuit, under mandate from the Supreme Court that the trial court resumes jurisdiction over the matter and proceed therewith.

2. That following the remand of the case to the trial court, the respondent, being of the impression that the action could not be maintained, expressed an interest in compromising the matter through negotiations and withdrawing the case from court; that subsequent to the withdrawal, the respondent initiated negotiations to compromise the matter, as earlier suggested by it, proposing that if a compromise was reached and agreed upon favorable to respondent and in United States Dollars as the excess reserve currency, instead of Liberian Dollars (which latter position was held by the National Bank of Liberia at the time), it (the respondent) would, as an important part of the arrangement, and did commit itself to continuing its operations in Liberia as a Bank.

3. That on the basis of the compromise worked out, the Executive Governor at the time entered into a purported agreement with the respondent in 2000 for US$14,927,000.00 (FOURTEEN MILLION NINE HUNDRED AND TWENTY SEVEN THOUSAND UNITED STATES DOLLARS), rather than Liberian dollars, as the excess reserves and turned the said reserve amount into a loan obligation of petitioner to respondent; that a portion of the amount, stated in the document to be US$2,570,000.00 (TWO MILLION FIVEHUNDRED SEVENTY THOUSAND UNITED STATES DOLLARS) was set aside from the said purported obligation stipulated in the Agreement as capital requirement for the respondent to continue its operations in Liberia as a Bank, as per its professed commitment and undertaking; that the purported Agreement, in Articles I, II and III, converted the Liberian Dollars Currency to United States Dollars, which act of the Executive Governor required the express authorization of the Board of Governors of the CBL, given the materiality and substantial potential debt implication of the act on the financial standing and obligation of the CBL.

4. That the purported Agreement of 2000, being of a material nature, both because of the substantial amount involved and the serious consequences for depositors, creditors, shareholders, other investors, the National Bank of Liberia, and generally the Government of Liberia·, same should have been brought to the attention of the Board of Governors of the CBL for approval as required by law; that approval by the Board of Governors was particularly crucial, given the weak financial position of the CBL at the time, (just coming out of a Civil Crisis) with a net balance "of the Bank at the time; that the Board should have mandatorily been involved and given its approval, which would have been consistent with Part IV (9) of the Act which vests authority in the Board to make policies, particularly with regards to matters that will definitely have material effect on the operations of the Bank; that in the absence of such approval, the Agreement lacked the necessary legality and enforceability, and the basis for cancellation of same thereby exists.

5. That there is no Board Resolution, minutes or circulation, duly made or executed to show evidence of the approval of the Board for the then Executive Governor to enter the compromise and obligate the Bank to such a magnitude of the financial transaction covered in the Agreement, the Executive Governor

was legally obligated to seek and obtain Board's approval since, according to the Act establishing the Central Bank of Liberia, the powers of the Central Bank are vested in the Board of Governors.

6. Petitioner says moreover that there is also no Board Resolution, minute(s) or circulation authorizing the then Executive Governor to change the currency from Liberian Dollars to United States Dollars without the necessity of Board approval giving him the power to execute agreement exposing and obligating petitioner to such huge financial burden as mentioned herein. The decision to effect such currency change was a policy decision which, under the Financial Institutions Act, only the Board of Governors has the authority to effect or promulgate.

7. Petitioner says further that even assuming arguendo, without admitting, that the Agreement was legal and valid, the respondent, after it had obtained the compromise in its favor from the then Executive Governor in 2000, ceased its banking operations and closed its doors in Liberia in June 2003, in violation of the Agreement and its intent and purpose. The cessation by respondent of operations in Liberia and the closing of its doors were done in bad faith and deprived its depositors of access to their deposits, left the CBL with enormous debt without any benefit to CBL, the depositors and the public a t large, all of whom would have potentially benefitted from the continuing operations of this major financial institution, which TRADEVCO was at the time. The action of respondent was not only in violation of the Agreement, but created a systemic problem within the banking industry. Moreover, respondent, knowing that it had acted in breach of the Agreement, applied for voluntary liquidation, being fully aware of the problems its depositors would have been faced with. Copies of some of the communications highlighting these difficulties are hereto' attached as Exhibit P/4 in Bulk.

8. Petitioner says also that due to the refusal of respondent to remain in operation, the then Executive Governor, in the interest of protecting the depositors, entered into a further Agreement in 2004 with respondent for the latter's voluntary liquidation. Petitioner says that given the materiality and magnitude of the amount involved and that the respondent was in voluntary liquidation, same should have been brought to the attention of the Board of Governors and the Board's approval obtained. From all indications, this was not the case. Copy of the 2004 Liquidation Agreement carrying the name of the Acting Executive Governor is hereto attached as Exhibit P/5.

9. Petitioner contends that:

a) Given the CBL success in the proceedings commenced by the respondent, concerning the excess reserves, in which the respondent, on its own, withdrew the appeal in the remedial process and went on to withdraw the entire matter from the trial court, there was no basis for the then Executive Governor to enter the compromise Agreement he purported to enter into with respondent, but especially to do so without the consent and approval of the Board of Governors;

b) Further, given the magnitude of the obligation created b y the then Executive Governor, the compromise, done at the instance of the respondent, required approval of the Board, the same as the respondent itself did relative to the Agreements, but which in the case of the CBL was not done, and therefore makes this obligation not binding on or enforceable against petitioner;

c) That the unilateral acts of the then Executive Governor in entering into an agreement that had material impact on the operation of the Bank without Board's approval were illegal, ultra vires and beyond the scope of his duties and therefore said Agreement is not binding on the petitioner;

d) Even if the approval was obtained or if it could be argued, but without admitting, that such approval may be implied, the intent of the Agreement, the promise and commitment of the respondent to continue its banking operations in Liberia and serve the depositors and the general banking public, in the interest of credibility in the banking system, all of which formed the basis upon which the Agreement was said to have been executed but which were violated, broken and destroyed by the departure of respondent from the banking scene and from the country, constitute sufficient bases for cancellation of the Agreement;

e) The lack of approval by the petitioner's board of governors renders voidable the agreement for which petitioner requests this Honorable Court to declare same null and void;

f) In addition to the averments stated in (a), (b), (c), (d), and (e), petitioner states that the action of the respondent in ceasing operation, closing its doors and pursuing other acts, all contrary to the intent and spirit of the Agreement, show deceit and artifice by the respondent and provide the requisite legal basis for cancellation of the Agreement.

WHEREFORE AND IN VIEW of the foregoing, petitioner respectfully requests Your Honor to declare null and avoid the 2000 agreement and all subsequent agreements of the purported loan and cancel same and render all and any further relief to petitioner as this Honorable Court may deem legal and just under the circumstances of this case.

Based on the Sheriff's report that the respondent TRADEVCO could not be found, and on orders of the Judge of the Civil Law Court, Sixth Judicial Circuit, the writ of summons was published and a copy with the petition posted via mail as required by section 3.40 of the Civil Procedure Law (1976). TRADEVCO appeared on January 18, 2010, and filed a motion for enlargement of time to file its returns. The lower court ruled granting the application for enlargement of time, given the respondent a time frame within which to file its resistance to the petition. The movant/respondent, on February 17, 2010, filed with the clerk of the Circuit Court, Sixth Judicial Circuit, Montserrado County, its returns to the petition, along with a motion to dismiss the petition. We herewith also quote verbatim the returns filed by TRADEVCO simultaneously with its motion to dismiss the petition. The thirty- two count returns reads, as follows:

The Liberian Trading & Development Bank Ltd., ("TRADEVCO"), respondent in the above entitled cause of action denies the legal and factual sufficiency of petitioner's petition for Cancellation of Agreement (the "Petition") and respectfully prays Your Honour to deny and dismiss the petition in its entirety and for cause showeth the following legal and factual reasons, to wit:

1. Respondent, The Liberian Trading & Development Bank, Ltd. ("TRADEVCO"), brings to the attention of this Honourable Court that respondent has filed a motion to dismiss the petition together with the entire cause of action and respectfully requests Your Honour to take judicial notice of the records in these proceedings.

2. That as to count one (1) of the petition, respondent says that It is without information sufficient with which to admit or deny the allegation that petitioner is a wholly owned Government entity.

3. That also as to count one (1) of the petition, respondent submits that assuming without admitting that petitioner is a wholly owned Government entity, this in and of itself does not make petitioner the Government or a sovereign. On the contrary, petitioner is established as a corporation and, in

substantiation hereof, respondent requests Your Honour to take judicial notice that the Act establishing the petitioner states expressly that petitioner is a body corporate and that petitioner has general corporate powers to inter alia : (a) sue and be sued; (b) enter contracts and issue and redeem obligations; and (c) exercise all powers generally available to corporations. Respondent prays that said count one (1) of the petition be overruled and the petition be dismissed in its entirety.

4. That as to count two (2) of the petition, respondent says that said count presents no traversable issue except with regard to the use of the words "purported Loan Agreement". Respondent submits that the · Agreement and the terms thereof executed between the petitioner and the respondent on July 19, 2000 was prepared by petitioner pursuant to the Financial Institutions Act of 1999 and the Central Bank Act of 1999, and which Agreement and the terms thereof are legally binding and enforceable. Respondent prays that the said count two (2) of the petition be overruled and the petition be dismissed.

5. That as to count three (3) of the petition, respondent denies the allegations contained therein. On the contrary, respondent contends that statutory reserves of financial institutions licensed to engage in banking business in Liberia were received and held by the National Bank of Liberia ("NBL") in United States Dollars and certified on a daily basis by NBL. Indeed, respondent was operating as a bank in Liberia for forty (40) years, that is since the 1950's, under a US Dollar tender system.

6. That further to count five (5) above, respondent contends further the on April 20, 1988, the NBL certified respondent's reserve account as US$11.9 million. Further that on April 21, 1988, the NBL unilaterally changed and denominated respondent's reserve account as L$11.9 million. Following a series of unsuccessful attempts through negotiations by respondent to get the NBL to recognize and accept respondent's reserve account in United States Dollars, respondent instituted court action against the NBL in 1995, which court action remained pending undetermined until the year 2000. Respondent prays that count three (5) of the petition be overruled and the petition be dismissed in its entirety.

7. That as to count four (4) of the petition, respondent categorically and vehemently denies the allegations that: (a) Respondent expressed an interest in compromising the matter through negotiation and withdrawal of the case because respondent was of the impression that its action could not be maintained; (b) Respondent withdrew its action as an inducement for negotiations with petitioner; (c) Respondent initiated negotiation to compromise the matter; and (d) Respondent committed itself to continuing operations as a bank if a compromise was agreed for respondent to be paid its reserve account in United States Dollars. Respondent submits that these allegations are total fallacies and, besides being a figment of someone's imagination, have absolutely no basis in fact, and for which petitioner ought to be sanctioned and respondent so prays.

8. That further to count seven (7) above, respondent says on the contrary that at the time of the negotiations for the renewal of licenses for financial institutions for the year 2000, including the necess1ty for financial institutions to be in compliance with the capital requirements of the Financial Institutions Act of 1999, petitioner expressed its dissatisfaction with a law suit pending in the courts by a financial institution (the respondent) against petitioner, the regulatory authority. Consequently, petitioner proposed and discussions commenced between petitioner and respondent resulting in the execution of the Agreement of July 19, 2000 (the "Agreement"). copy of which Agreement is attached and marked Exhibit "Ft/1" to form a part hereof. Respondent therefore prays that said count four (4) of the petition be overruled and the petition be dismissed in its entirety .

9. That further to count eight (8) above, respondent requests Your Honour to take judicial notice of the specific points and objective of the Agreement as follows:

a. The second whereas clause confirms that up to April 20, 1988 respondent's reserve account was consistently received and held in US Dollars by the NBL;

b. The third whereas clause confirms that on April 21, 1988, the NBL unilaterally changed the denomination of the reserve. accounts of commercial banks, including respondent, from US Dollars to Liberian Dollars;

c. The fourth whereas clause confirms the respondent's legal action against petitioner was pending before the courts up to and including the execution of the Agreement; and

d. The fifth whereas clause confirms that the expressed purpose and objective of the Agreement was to have the legal action filed by respondent against petitioner removed from the courts and equitably settled in the interest of petitioner and respondent as well as in the interest of the banking system and the public at large.

Respondent submits that in light of the foregoing points and objective of the Agreement, count four (4) of the petition ought to be overruled and the petitioner dismissed in its entirety and respondent so prays.

10. That as to count five (5) of the petition, respondent denies the allegations contained therein and - respondent confirms and affirms counts six (6) seven (7) and eight (8) of these returns. Respondent therefore prays that said count five (5) of the petition be overruled and the Petition dismissed in its entirety.

11. That further to count five (5) of the petition and with particular reference to the allegation that the Executive Governor turned respondent reserves into a loan obligation to be paid by petitioner, respondent says that recourse to the Agreement confirms that the petitioner, represented by the then Executive Governor, equitably, correctly and within the scope of his authority utilized respondent's reserve account of US$11.9 million at the time of the denomination in 1988 by the NBL plus interest over the period of twelve (12) years (1988 to 2000) and thereby recognized and accepted the amount of US$14.927 million as of the year 2000 as the accepted obligation of petitioner to be paid to respondent in full and final satisfaction and settlement of the claims and counter-claims between petitioner and respondent and the withdrawal the law suit filed by respondent against petitioner. The said action of the Executive Governor was intended to and did in fact compromise the claims and counter-claims over the denomination by the NBL of respondent reserve account from US Dollars to Liberian Dollars, and the legal action filed by respondent against petitioner was withdrawn. Your Honour is respectfully requested to take judicial notice of Article I of the Agreement. Respondent therefore prays that said count five (5) of the petition be overruled and the petition denied in its entirety.

12. That still further to count five (5) of the petition and with particular reference to the allegation that a portion (US$2.570 million) of the compromised amount of US$14.927 million was set aside as capital requirement based on an alleged commitment by respondent to continue its business, respondent categorically denies said allegation of a commitment by respondent and challenges petitioner to substantiate said alleged commitment and undertaking by respondent.

On the contrary, respondent requests Your Honour to take judicial notice of Article II of the Agreement which confirms that of the compromised amount of US$14.927 million, petitioner deducted US$2.570 million as the reserve requirement against respondent's deposits at that time, and petitioner applied the said amount of US$2.570 million against respondent's required reserves, leaving a balance of US$12.357 million to be paid to respondent by petitioner. Respondent therefore prays that the said count five (5) of the petition be overruled and the petition dismissed in its entirety.

13. That still traversing count five (5) of the petition and with particular reference to the allegation of a loan obligation of petitioner to respondent, respondent says that owing to the inability of petitioner to pay the agreed compromised amount of US$12.357 (US$14.927 million -US$2.570 million) in cash, petitioner proposed and respondent accepted that the said agreed compromised amount of US$12.357 million be treated as a loan to be paid by petitioner within a period of twenty (20) years inclusive of a ten (10) years grace period. Respondent requests Your Honour to take judicial notice of Article III and Article IV of the Agreement and prays that the said count five (5) of the petition be overruled and the petition dismissed in its entirety.

14. That still traversing count five (5) of the petition and with particular reference to the allegation that the Agreement required the expressed authorization of the Board of Governors of petitioner, respondent respectfully draws Your Honour's attention to the fact that the ten (10) years grace period is about to end and petitioner is now unscrupulously searching for a reason to avoid the payments that are to become due under the Agreement. Respondent prays that the said count five (5) of the petition be overruled and the petition denied in its entirety.

15. That further to count fourteen (14) above, respondent denies that the Agreement required the expressed authorization of the Board of Governors of petitioner as alleged. Respondent submits that recourse to the Central Bank Act of 1999 (the "Act") does not disclose any requirement for expressed authorization by the Board of Governors for actions by the Executive Governor within the scope of his authority. On the contrary, the Act provides that the Board of Governors is responsible for formulation and implementation of policy, while the Executive Governor, who is also the Chairman of the Board of Governors, is responsible for the day to day management and has the power to act, contract and sign instruments and documents for and on behalf of the Bank. Consequently, the actions taken by the Executive Governor within the scope of his authority and in the interest of petitioner, as well as in the interest of the banking system and the public at large, are brought to the attention of the Board of Governors for information purposes, as was done in the instant case. Respondent therefore prays that said count five (5) be overruled and the petition be dismissed in its entirety.

16. That as to count six (6) of the petition, respondent denies that the Agreement was required by law to be approved by the Board of Governors. On the contrary, respondent says that the Executive Governor acted within the scope of his authority as mandated by the ' Act when he (the Executive Governor) executed the Agreement for and on behalf of the petitioner, which Agreement was and is concerned with the day to day management and affairs of petitioner as opposed to the formulation of policy. Moreover, the Executive Governor, as Chairman of the Board of Governors did bring to the attention of the Board of Governors the terms and conditions of the Agreement for information purposes and, at the trial, if any, respondent will introduce evidence in substantiation hereof. So that the Agreement having been executed by the Executive Governor, for and on behalf of the petitioner, and within the scope of

authority of the Executive Governor, the Agreement is legal and enforceable and there is no legal basis for cancellation of · the Agreement. Respondent therefore prays that said count six (6) be overruled and the petition be dismissed in its entirety.

17. That traversing count seven (7) of the petition, respondent denies the allegations contained therein and confirms and affirms counts fourteen {14), fifteen (15) and sixteen (16) of these returns and therefore prays that said count seven (7) be overruled and the petition be dismissed in its entirety.

18. That traversing count eight (8) of the petition, respondent denies the allegations contained therein and confirms and affirms counts four- teen (14), fifteen (15) and sixteen (16) of these returns and therefore prays that said count eight (8) be overruled and the petition be dismissed in its entirety.

19. That traversing count nine (9) of the petition1 respondent categorically and vehemently denies the allegations contained therein and confirms and affirms counts seven (7)1 eight (8) and nine (9) of these returns. Respondent prays that said count nine (9) of the petition be overruled and the petition be dismissed in its entirety.

20. That further traversing count nine (9) of the petition 1 respondent submits that nowhere in the Agreement is there any commitment, expressed or implied, that as a condition for the Agreement respondent would continue the operations of its business in Liberia. Respondent says that respondent ceased operations in Liberia in June 2003 as a direct consequence of the civil crisis that engulfed Liberia at the time. Respondent prays that said count nine (9) of the petition be overruled and the petition be dismissed in its entirety.

21. That further to count nineteen (19) and twenty (20) hereof, respondent submits that respondent having been faced with a series of crises commencing from the year 1979 to 2003, respondent made a decision to cease its operations in Liberia and applied for voluntary liquidation, which voluntary liquidation was approved by the petitioner predicated on the fact that respondent would and did make available sufficient liquid assets to repay all of its assets and other creditors without delay as required by the prevailing law. The said decision to voluntarily liquidate and the approval by the petitioner for voluntary liquidation by respondent consistent with the prevailing law1 was made without reference to and was not in violation of the Agreement. Respondent prays that said count nine (9) of the petition be overruled and the petition be dismissed in its entirety.

22. That further traversing count nine (9) of the petition and with particular reference to the allegation that the cessation of respondent's operations in Liberia created a systemic problem within the banking · industry, respondent categorically denies that the cessation of respondent's operations in Liberia created a systemic problem within the banking industry. On the contrary, respondent submits that consistent with its request for approval by petitioner for voluntary liquidation, respondent submitted a Liquidation Plan pursuant to which respondent agreed to and did make available US$8.382 million and L$46.4 million in cash (liquid assets) with which to discharge all of respondent liabilities, including depositors, creditors, severance, and other claims, including reasonable contingencies for dormant and abandoned accounts, which amounts were accepted by petitioner as sufficient liquid assets in order to ensure full payment of all of respondent liabilities including depositors, creditors, severance, and other claims, including reasonable contingencies for dormant and abandoned accounts. Copy of the Agreement

dated September 17, 2004 executed between petitioner and respondent in substantiation of the foregoing is attached and marked Exhibit "R/2" to form a part hereof.

23. That further to count twenty-two of these returns, respondent submits that the amount of US$8.382 million that was made available for the discharge of respondent's liabilities in connection with the voluntary liquidation of respondent includes US$1.805 million which represented the balance of the reserve capital requirement held by petitioner for respondent at the commencement of the liquidation and which was part of the accepted obligation by petitioner in the Agreement.

24. That further to counts twenty-two (22) and twenty-three (23) of these returns, respondent submits that by the terms of the September 17, 2004 Agreement (respondent's Exhibit "M/2"), executed for and on behalf of petitioner by a succeeding Executive Governor, petitioner reconfirmed the validity and enforceability of the Agreement and the promissory notes issued by petitioner to respondent pursuant to the Agreement. Respondent prays that said count nine (9) of the petition be overruled and the petition be dismissed in its entirety.

25. That further to counts twenty-two (22), twenty-thee (23) and twenty-four (24) of these returns, respondent submits that besides the amounts of US$8.382 million and L$46.4 million in cash (liquid assets) made available by respondent for the voluntary liquidation, respondent supplemented the said amounts by additional funding of liquid asset of US$597,40 1.02, L$4,683,810. 95 for the purpose of discharging U SD Stated Liabilities and LD Stated Liabilities; US$107,500.00 for the purpose of settling rents due on respondent's rental building for the period 2005 to 2006 together with liquidation expenses; and US$400,000.00 to cover contingent liabilities, which amounts were again accepted by petitioner and pursuant to which acceptance, petitioner agreed that the voluntary liquidation process would be closed and terminated by June 30, 2005. Copy of the Agreement dated May 25, 2005 executed between petitioner and respondent in substantiation of the foregoing is attached and marked Exhibit "R/3.. to form a part hereof.

26. That further to counts twenty-two (22), twenty-three (23), twenty-four (24) and twenty five (25) of these returns, respondent submits that respondent discharged its liabilities consistent with the Agreement of September 17, 2004 (Respondent's Exhibit "R/2") and the Agreement of May 25, 2005 (respondent's Exhibit "R/3") and, at the termination of the liquidation process respondent, by letter dated July 5, 2005, turned over to petitioner the balance of the aggregate liquid assets which had not been disbursed in the amounts of US$460,557.31 and LD$7,144,598.33. Petitioner issued an order striking respondent from the list of licensed financial institutions authorized to do business in Liberia and respondent was dissolved. .Documentation in substantiation of the foregoing is attached and marked Exhibit "R/4" In Bulk. At no time commencing from the beginning of the liquidation process up to the termination of the liquidation process, including the turnover by respondent of the undisbursed liquid assets to petitioner did petitioner raise the issue of the non-validity or non-enforceability of the Agreement, as a consequence of which petitioner is guilty of waiver and laches. Respondent prays that said count nine (9) of the petition be overruled and the petition dismissed in its entirety.

27. The traversing count ten (10) of the petition, respondent categorically denies the allegations contained therein, especially the allegation that: (a) a condition of the Agreement was that respondent give a commitment and undertaking to continue its operations in Liberia; and (b) the Agreement required that approval of the Board of Governors of petitioner. On the contrary, respondent confirms and affirms

counts 7, 12, 14, 15, 16, 20, 21, 24, 25 and 26 of these returns and prays that said count ten (10) of the petition be overruled and the petition be dismissed.

28. That traversing count eleven (11) of the petition, respondent says as follows:

(a) As to paragraph (a), respondent denies the allegations contained therein including that respondent, on its own withdrew the appeal in the remedial process and went on to withdraw the entire matter from the trial court. On the contrary, respondent confirms and affirms counts 6, 7, 8, and 9 of these returns and prays that paragraph (a) of count eleven (11) be overruled and the petition be dismissed.

(b) As to paragraph (b), respondent denies the allegations contained therein, including that the compromise was at the instance of respondent. On the contrary, respondent confirms and affirms counts 7, 8, and 9 of these returns and prays that paragraph (b) of count eleven (11) be overruled and the petition be dismissed.

(c) As to paragraph (c), respondent denies the allegations contained therein including that the Executive Governor in executing the Agreement acted unilaterally, that his action was beyond the scope if his duties and hence the Agreement is not binding on the petitioner. On the contrary, respondent confirms and affirms counts 14, 15, and 16 of these returns. Respondent therefore prays that paragraph (c) of count eleven (11) be overruled and the petition be dismissed.

(d) As to paragraph (d), respondent denies the allegations contained therein, including that:

(1) Respondent made a promise and commitment to continue operations in Liberia; (2) such promise and commitment were the basis upon which the Agreement was executed; (3) the Agreement was violated and destroyed by respondent's departure from Liberia; and (4) the said reasons constitute sufficient basis for cancellation of the Agreement. On the contrary, respondent confirms and affirms counts 7, 8, 9, 12, 20, 21, and 22 of these returns. Respondent therefore prays that paragraph (d) of count eleven (11) be overruled and the Petition be dismissed.

(e) As to paragraph (e), respondent denies the allegations contained therein. On the contrary, respondent confirms and affirms counts 14, 15, and 16 of these returns. Respondent therefore prays that paragraph (e) of count eleven (11) be overruled and the petition be dismissed.

As to paragraph (f), respondent denies the allegations contained therein. On the contrary, respondent confirms and affirms counts 7, 8, 9, 12, 20, 21, and 22 of these returns. Respondent therefore prays that paragraph (f) of count eleven (11) be overruled and the petition be dismissed in its entirety.

29. That as to the entire petition, respondent submits that although petitioner in this petition has contended that: (a) the Agreement was required by law to be approved by the Board of Governors of Financial Statements have been approved and ratified by the Board of Governors of petitioner.

30. That further to count twenty-nine (29) of these returns, respondent submits that petitioner's allegation that the Agreement was not approved by the Board of governors and, as a consequence, the Agreement should be cancelled, is merely a smoke screen deliberately intended to deny and avoid the payment of the promissory notes issued pursuant to the Agreement which promissory notes become due commencing in 2012. Respondent submits further that as clearly confirmed by petitioner's Financial Statements for the years 2006, 2007 and 2008, the Board of Governors have indeed approved and ratified the Agreement in each of the said years. Consequently, and in view of the approval and ratification of the Agreement by

petitioner's Board of Governors, respondent submits that there is no legal basis for the petition for cancellation filed by petitioner. Documentation in substantiation of the foregoing is attached and marked Exhibit "R/5" in bulk to form an integral part hereof. The entire petition should therefore be dismissed and respondent so prays.

31. That further to count twenty-nine (29) and thirty (30) of these returns, respondent submits that petitioner's allegation that the Agreement was not approved by the Board of Governors, which allegation is blatantly false, appears to be a deliberate attempt to perpetuate a fraud as well as to dupe and mislead this Honourable Court, and which action on part of petitioner may not only be scrupulous and despicable but also may be criminal for which petitioner and its counsel ought to be investigated. Respondent therefore prays that the entire petition be dismissed.

32. That respondent denies all and singular the allegations of both law and facts as contained in petitioner's petition not herein made a subject of special traverse in these returns.

Wherefore and in view of the foregoing, respondent prays Your Honour and this Honourable Court to deny and dismiss petitioner's petition in its entirety; and grant to respondent such other and further relief as to Your Honour may deem legal, just and equitable in the premises."

We quote the motion of the respondent based upon which this matter was decided. The thirteen-count motion to dismiss reads:

The Liberian Trading & Development Bank Ltd. (TRADEVCO), movant in the above entitled cause of action respectfully moves Your Honour to dismiss the respondent's/plaintiff's petition for cancellation of agreement, and for reasons shows the following, to wit:

1. That movant says that the law extant within this jurisdiction provides that at the time of service of a responsive pleading, a party may move for judgment dismissing one or more claims for relief asserted on several grounds including that the court lacks jurisdiction over the subject matter of the action. Movant says that this court lacks jurisdiction to hear and determine this matter because the respondent's petition for cancellation of Agreement.

2. That movant says further that by respondent's own admission, the herein action is a petition for cancellation of an agreement executed in July 2000 between movant and respondent.

3. Movant says that respondent's petition is barred by the statute of limitation because it is further the law extant within this jurisdiction that all actions for which no other period of limitation is specifically provided shall be commenced within three years of the time the right to relief accrued. Movant submits that the herein petition for cancellation of agreement falls in the category of other actions referenced in. Moreover, the right to relief in respect of cancellation of an agreement accrued as of the date of the agreement sought to be cancelled, that is to say, in July 2000. Concisely, if such action is not brought within three years of the time the right to relief accrued (July 2000), the action is statutorily barred.

4. That movant says further that by respondent'sown further admission, the Agreement (respondent's Exhibit "P/3") on which respondent's claim is based was signed on July 19, 2000, pursuant to which respondent recognizedand accepted to pay as respondent's total obligation to movant, and movant agreed and accepted to receive in full satisfaction of movant's claim US$14.927 million as of June 30, 2000, which amount constituted the total obligation of respondent to movant as of June 30, 2000. Copy of the

Agreement dated July 19, 2000 is attached and marked Exhibit M/1 to form a part hereof. Movant respectfully requests Your Honour to take judicial notice of the records of this petition.

5. Movant says that further to counts three (3) and four (4) hereof, that consistent with the law extant within this jurisdiction, respondent's right to relief accrued on July 2000, the date on which the total obligation of respondent to movant was accepted between movant and respondent. So that respondent had three (3) years commencing from July 2000, that is to say up to July 2003, within which to have instituted this petition for cancellation. On the contrary, respondent instead instituted this petition for cancellation in (October 2009, more than six (6) years after the right to relief accrued. Movant submits that respondent not having instituted this petition for cancellation by July 2003, respondent is statutorily barred from instituting this petition, and this Honourable Court lacks jurisdiction to hear and determine this petition. Movant therefore prays that the petition be dismissed with costs ruled against respondent.

6. That movant submits further that the statute of limitation give rise to subject matter jurisdiction of this Honourable Court to hear and determine this petition for cancellation arising out of an agreement executed in July 2000; in the absence of which the Honourable Court is without authority to hear and determine this petition.

7. That movant concedes that this Honourable Court has general jurisdiction to hear and determine petitions for cancellation of Agreement. However, in the instant and particular case, respondent/plaintiff having failed and neglected to file this petition within the statutorily permitted period, this Honourable Court is without authority to hear and determine this petition. Accordingly, movant's motion to dismiss, being supported by law, ought to be granted and movant so prays.

8. And also because movant says that it is further the prevailing law in this jurisdiction, with particular respect to winding up affairs of corporations after dissolution, pursuant to the Associations Law, that all corporations, whether they expire by their own limitation or are other-wise dissolved, shall nevertheless be continued for a period of three years after such expiration or dissolution for the purpose of: (a) prosecuting and defending suits filed by or against them; (b) discharging their liabilities; (c) disposing of and conveying their property; (d) settling and closing their business; and distributing to their shareholders any remaining assets.

9. That further to count eight (8) above, movant says that it is further the prevailing law that all claims that are not timely filed within the required statutory period, that is to say, within three (3) years after the dissolution of a corporation, shall be forever barred as against the corporation, its assets, directors, officers and shareholders.

10. Movant says that movant requested authorization of the Central Bank of Liberia to conduct voluntary liquidation pursuant to Sections 41-46 of the New Financial Institutions Act of 1999 (the "Act"), and the said requested authorization was granted to movant by the Central Bank of Liberia, as evidenced by Agreement dated September 17, 2004 and Agreement dated May 25, 2005, copy of each of which is attached and marked Exhibit "M/2" in bulk.

11. Movant says further to count ten (10) above, that upon movant complying with the terms of the approved voluntary liquidation consistent with the Act, movant was stricken from the list of licensed

financial institutions authorized to do business in Liberia and movant was dissolved on December 11, 2003. Documentation in substantiation of the:

(a) closure of the liquidation process;

(b) turnover by movant to respondent of the balance of the liquid assets which had not been disbursed during the liquidation process in the amounts of US$406,557.31 and LD$7,144,598.33;

(c) Order withdrawing and nullifying movant's license together with movant's Articles of Dissolution, are attached and marked Exhibit "M/1" In bulk.

12. Movant contends that in light of the fact that movant's Articles of Dissolution were filed on December 11, 2003, in order for a claim to be timely filed against movant consistent with the Associations Law, such claim must have been filed within three years after movant's dissolution, that is to say, such claim must have been filed on or before December 10, 2006. On the contrary, respondent instead instituted this petition for cancellation in October 2009, approximately three (3) years after the statutory period allowed by the Associations Law for suits by or against a dissolved corporation.

13. Movant submits that respondent not having instituted this petition for cancellation by December 10, 2006, the said petition for cancellation is not timely filed, and the said petition for cancellation is therefore forever barred as against the movant, its assets, directors, officers and share-holders. Consequently, respondent is statutorily barred from instituting this petition for cancellation, and this Honourable Court lacks jurisdiction to hear and determine this petition. Movant therefore prays that the petition be dismissed with costs ruled against respondent.

WHEREFORE and in view of the foregoing, movant respectfully prays and moves Your Honour to grant this motion to dismiss and, by so doing, to: (a) deny and dismiss this petition for cancellation of agreement on the grounds that this court lack jurisdiction to hear and determine this petition/claim on the merits in that the petition/claim is statutorily barred; (b) rule all costs of these proceedings against respondent; and (c) grant to movant such other and further relief as may be deemed legal, just and equitable."

TRADEVCO's motion to dismiss above, filed with its returns, basically states that the CBL's petition was barred by the statute of limitation, particularly under section 2.20 of the Civil Procedure law, and the Associations Law, Chapter 11, Sections 11.4(1) and 11.5. TRADEVCO prayed the trial court to dismiss the petition. The CBL resistance to the motion to dismiss states that its petition was not time barred; that the transaction sought to be cancelled falls under section 2.13(2) which allows seven years for an action upon a bond or note secure by mortgage; therefore, the court should deny TRADEVCO's motion to dismiss.

The trial judge sustained the contentions of the appellee, TRADEVCO, raised in its motion to dismiss, and denied the resistance thereto. The Judge's ruling on the motion is as follows:

"This Court says that the motion to dismiss and the resistance thereto raised the following issues for the consideration of this court.

1. Whether the statute of limitation for the filing of a petition for cancellation of agreement is three (3) years or seven (7) years?

2. Whether a motion to dismiss will lie to terminate the petition for cancellation of Agreement where the respondent failed to show any false representation of any material fact in the execution of the Agreement sought to be cancelled?

With respect to issue one (1), our Civil Procedure Law provides at 1 LCLR, Section 2.20, page 36, that actions for which no other period of limitations is specifically provided shall be commenced within three (3) years of the time the right to relief accrued. Movant argued that petitioner/respondent's right to relief accrued on July 19. 2000, the date on which the total obligation between movant and petitioner/ respondent was accepted, so that petitioner/respondent had three (3) years commencing from July 19, 2000, up to July 18, 2003, within which to have instituted the petition. Movant argued further that no period of limitations is specifically provided for a petition for cancellation of agreement. Consequently, a petition for cancellation of agreement falls in the category of other actions and, as such, the statute of limitations for the filing of a petition for cancellation of agreement is three (3) years of the time the-right to relief accrued. Our Civil Procedure Law also provide at 1 LCLR, Section 2.13, (2), Page 32, that an action on a note the payment of which is secured by a mortgage upon real or personal property, shall be commenced within seven (7) years of the time the right to relief accrued.

Petitioner/respondent argued that its right to relief having accrued "in 2005 that petitioner/respondent filed the petition in Oct. 2009, and that the statute of limitation is seven (7) years of the time the right to relief accrued, so that the petition is within the period of the statute of limitation of seven (7) years. This court takes judicial notice of the July, A. D. 2000, Agreement proffered as Exhibit "M/1" to the motion to dismiss and "R/1" to the resistance, and observes that nowhere in the said Agreement is there any mention of or reference to the ten (10) promissory notes issued by petitioner/respondent to relevant being secured by a mortgage on real or personal property. Additionally, Article IV of the Agreement, Repayment Term, state that "the repayment obligation of the CBL is and shall be represented by ten (10) equal promissory notes to mature seriatim at yearly interval from year 11 to 20. Without any reference to collateral security for the said promissory notes, in the mind of the court, the promissory notes, which form an integral part of the July, A. D. 2000 Agreement, which is sought to be cancelled, and the payment thereof, are not secured by a mortgage upon real or personal property. It follows, therefore, that if the payment of the promissory notes is not secured by a mortgage upon real or personal property, 1 LCLR, Section 2.13, (2) page 32, argued by petitioner/respondent, does not apply.

Consequently, the answer to the first issue is that the statute of limitations for the filing of a petition for cancellation of agreement is three (3) years, with the result that petitioner/respondent's right to relief having accrued on July 19, 2000 and petitioner/respondent not having instituted the petition by July 18, 2003, petitioner/respondent is statutorily barred from instituting the petition, and that in accordance with 1 LCLR, section 11:2, (1) (a), page 118, the court lacks jurisdiction to hear and determine the petition.

With respect to petitioner/respondent's argument that its right to relief, accrued in 2005, because 2005, was the date of the last transaction in the account on either side, 1 LCLR, Section 2:33, page 39, this court states in passing that the statute of limitations for the filing of a petition for cancellation of agreement being three (3) years and giving petitioner/respondent the benefit of the doubt, petitioner/respondent's petition ought to have been filed by 2005. Thus, petitioner/respondent not having instituted the petition, by 2008, petitioner/respondent is statutorily barred from instituting the

petition. Thus, and in accordance with 1 LCLR, Section 11.2(1)(a), page 118, the court lacks jurisdiction to hear and determine the petition.

As regards issue 2, petitioner/respondent alleged in the petition that the July, A. D. 2000 Agreement should be cancelled because the July, A. D. 2000 Agreement was not approved by petitioner's Board of Governors. petitioner/respondent also alleged in the resistance and argued that the July, A. D. 2000 Agreement required that movant remain in operation but that instead that applied for voluntary liquidation and ceased operation in breach of the July 2000 Agreement, which action by movant was fraudulent.

Firstly, concerning petitioner/respondent's allegation that the July Agreement was not approved by petitioner/respondent's Board of Governors and, as a consequence, the Agreement should be cancelled, this Court takes judicial notice of petitioner/respondent's audited Annual Report and Financial Statements proffered as Exhibit "R/5'in bulk with movant's return to the petition. The said audited Annual Report and Financial Statement for the years 2006, at page 22, Note Number 21, Commercial Bank Loan (TRADEVCO Loan Payable) 1007, at page 39, No 18 Commercial Bank Loan (TRADEVCO LOAN PAYABLE), and 2008, at page 60, Note No, 30 Commercial Bank Loan, confirm that petitioner/respondent's Board of Governors approved and ratified the July, 2000 between movant and petitioner/respondent Agreement in each of the said year.

Secondly, concerning petitioner/respondent's allegation that the July 2000 Agreement required that movant remain in operation but that instead movant applied or voluntary liquidation and ceased operation in breach of the July 2000 Agreement, which action by movant was fraudulent, this court once again takes judicial notice of the July, 2000 Agreement and notes that the said Agreement is silent on movant remaining in operation. The said Agreement neither states nor implies that a condition of the Agreement was that movant continued its operation in Liberia. More besides, this court also notes that voluntary liquidation of a financial institution is subject to the prior authorization of petitioner/respondent. Additionally, the authorization for voluntary liquidation is granted only if the petitioner/respondent is satisfied that the financial Institution is solvent and has sufficient liquid assets to discharge its obligation to its customers and that the liquidation is approved by two-thirds of the financial institution's stockholders. Financial Institutions Act, Section 41 (1) (2) (a) and (b), page 550.

The records before us reveal that movant applied for voluntary liquidation and movant's application was approved by the petitioner/ respondent. The records further reveal that petitioner/respondent's approval of movant's application for voluntary liquidation consistent with the prevailing law made without reference to and was not in violation of the July, A. D. 2000 Agreement. In the mind of the court, if a condition of the July 2000 Agreement was that movant would continue its operations, then and in that event, petitioner/respondent had the option to deny authorization for movant's voluntary liquidation at that time. Petitioner/ respondent's action in not having denied authorization for movant's liquidation leads to the irrefutable conclusion that: (a) no such condition existed in the July 2000 Agreement and (b) there is no false representation of any material fact or fraud by movant having ceased operation.

Additionally, the records further reveal that upon movant discharging its obligations to its customers and creditors to the satisfaction of petitioner/ respondent, movant was stricken by petitioner/respondent from the list of licensed financial institutions authorized to do business in Liberia in keeping with law. Financial Institutions Act, section 45, page 559.

Consequently, the answer to the first issue 2 is that a motion to dismiss will lie to terminate the petition for cancellation Agreement where, as in this case, the petitioner/respondent has failed to show any fraud or false representation of any material fact in the execution of the July 2000 Agreement.

In view of all that we have said and the facts and circumstances of this case, it is the considered opinion of this court that movant's motion to dismiss be and the same is hereby granted and the resistance is not sustained. The petition for cancellation of Agreement filed by the petitioner/respondent is therefore dismissed in its entirety. AND IT IS HEREBY SO ORDERED."

The petitioner Central Bank of Liberia (CBL) excepted to this ruling of the trial court and announced an appeal to this Court asking for review of the Judge's ruling. In furtherance of its appeal, the petitioner/appellant filed a bill of exceptions containing twelve counts.

This bill of exceptions principally reiterated the two issues raised by the trial judge and asserted that the trial judge erred in his ruling thereon, both as to the substance of the issues and as to the procedure which he adopted in addressing the issues. Firstly, the respondent CBL said the bill of exceptions stated that the issues relating to the allegations of fraud were of both law and fact and that the judge should not have made a determination of the facts while disposing of the law issues or the motion to dismiss; that the laws of this jurisdiction is that issues involving fraud must be submitted to trial of the facts before they can be disposed of; and that the judge could not dispose of the said issues when dealing with the issues of law. Secondly, it stated that none of the grounds asserted by TRADEVCO constituted any of the grounds enumerated in the statute for the dismissal of a case based on a pre-trial motion to dismiss a complaint or an action as a matter of law. Thirdly, the petitioner in its bill of exceptions averred that the trial judge erred in his interpretation of when the right accrued to the petitioner, and from which he could calculate the period stated by the statute as barring the institution of the action; and fourthly, that the trial judge omitted addressing other issues of law raised in the pleadings by the parties.

Our synopsis of the historical facts and contentions culled from the extensive pleadings presented by the parties are that consistent with the practice of issuing "certificates of balance" on a daily basis, the National Bank of Liberia ("NBL") issued a Certificate of Balance dated April 20, 1988, to TRADEVCO by which the NBL confirmed that TRADEVCO'S current balance as at April 20, 1988 was US$11.9 Million United States Dollars. The next day, April 21, 1988, the NBL changed TRADEVCO'S balance as at April 21, 1988 from US$11.9 Million United States Dollars to L$11.9 Million Liberian Dollars. TRADEVCO contested this reversion. Owing to the refusal of the NBL to re- denominate TRADEVCO's reserve balance from Liberian Dollars back to United States Dollars, TRADEVCO instituted a court action on September 4, 1995 ("Petition For Declaratory Judgment") against the NBL requesting the court to declare its reserve balance as US$11.9 Million United States Dollars, same being TRADEVCO's current reserve balance as reflected in TRADEVCO's Certificate of Balance dated April 20, 1988. TRADEVCO's case against the NBL remained pending undetermined up to the year 2000. In October 1999, the Central Bank Act of 1999 was promulgated and the Central Bank of Liberia ("CBL") was established replacing the NBL as the regulatory authority of financial institutions. In the year 2000, during negotiations for the renewal of licenses for financial institutions, the CBL, through its then Executive Governor, commenced discussion with TRADEVCO with the view of resolving the claims and counterclaims over the balances of TRADEVCO's reserves accounts with the erstwhile NBL.

Following discussions between TRADEVCO and the CBL, the CBL drafted a compromised settlement agreement dated July 19, 2000, that was executed between the Parties. Relevant parts of the Agreement outlining the specific points and objectives are as follows:

a. CBL acknowledged its indebtedness to TRADEVCO and agreed to pay and TRADEVCO agreed to accept in full satisfaction of TRADEVCO'S claim a currency mix of US$7.6 million and L$3.9 million with interest. The conversion of the L$3.9 million portion to United States Dollars together with the US$7.6 million portion aggregated US$14.9 million which CBL agreed to pay to TRADEVCO.

b. Of the US$14.9 million amount, US$2.5 million was deducted and set aside as the required reserves of TRADEVCO leaving a net balance of US$12.4 million to be paid by CBL to TRADEVCO.

c. Owing to the inability of CBL to pay the agreed compromised amount of US$12.4 million in cash, CBL proposed and TRADEVCO accepted that the said amount be treated as a loan to be paid by CBL within a period of twenty (20) years inclusive of a ten (10) year moratorium/grace period, represented by ten (10) equal unsecured promissory notes to mature seriatim at yearly intervals commencing from July 1, 2011.

d. Article IV (A) (iv) of the 2003 Compromised Agreement prohibited negotiation of the promissory notes outside of Liberia during the moratorium/grace period.

On December 5, 2003, the shareholders of TRADEVCO resolved to request the authorization of CBL to voluntarily liquidate and on December 11, 2003, TRADEVCO formally requested CBL authorization for voluntary liquidation. On December 22, 2003, CBL issued a Press Release confirming that TRADEVCO had requested and CBL has granted authorization for TRADEVCO to voluntarily liquidate.

On September 17, 2004, a second agreement was entered into by the parties based on the cessation of TRADEVCO's operations in Liberia. By this second agreement, CBL granted approval for the promissory notes to be negotiated outside of Liberia. Though there is no documents in the file relating to the assignment of the promissory notes; however, TRADEVCO made available liquid assets of US$8.382 Million and L$46.4 Million and the voluntary liquidation commenced with the payout to depositors and other creditors.

Due to some differences between CBL and TRADEVCO over the funds required to make certain payments, whereupon the CBL seized TRADEVCO, on May 25, 2005, CBL and TRADEVCO entered yet another agreement in which, in addition to the US$8.382M and L$46.4M previously made available for the liquidation process, TRADEVCO committed (a) an additional US$597.4 Million and L$4.7 Million in order to fully discharge all liabilities to depositors and other creditors; and (b) the amount of four hundred thousand United States Dollar (US$400,000.00) for contingent liabilities. Further, CBL authorized that the voluntary liquidation process by TRADEVCO ceases and terminates on June 30, 2005, and all funds not disbursed by TRADEVCO as of June 30, 2005 be turned over to CBL to carry on the liquidation process.

Consistent with the May 25, 2005 Agreement, the voluntary liquidation process by TRADEVCO ceased and terminated on June 30, 2005. And by the letter dated July 5, 2005, TRADEVCO, through its liquidator, turned over to CBL the undisbursed funds in the liquidation account as follows:

a. US$460,587.31 (Four Hundred Sixty Thousand Five hundred Eighty Seven United States Dollars & Thirty One Cents) representing the remaining USD unpaid liabilities;

b. L$7,144,598.33 (Seven Million One Hundred Forty Four Thousand Five hundred Ninety Eight Liberian Dollars & Thirty three Cents) representing the remaining LD unpaid liabilities; and

c. US$350,906.13 (Three Hundred fifty Thousand Nine Hundred Six United States Dollars & Thirteen Cents) representing the remaining undisbursed portion of the contingent liabilities provision (See Page 264 of the certified records).

Pursuant to the Financial Institutions Act of 1999, on September 5, 2005, CBL withdrew and nullified the license issued to TRADEVCO and struck TRADEVCO from the list of licensed financial institutions doing business in Liberia.

Accordingly, the ten (10) years moratorium/grace period for repayment of the Promissory Notes was scheduled to end on July 1, 2011. However, in October 2009, nine years and three months after the agreement of July 19, 2000 was signed by CBL, CBL filed a petition for cancellation of the Agreement claiming the Agreement should be declared null and void and cancelled substantially because: (a) the Agreement was signed without the consent and approval of CBL's Board of Governors; and (b) TRADEVCO in return for the agreement signed committed itself to continue its banking operations in Liberia, but instead, TRADEVCO ceased its banking operations in Liberia in violation of the Agreement.

TRADEVCO in its returns to CBL's petition for cancellation contended that the agreement of July 19, 2000, was legally binding and enforceable substantially because: (a) the agreement was approved and ratified by CBL's Board of Governors evidenced by the CBL's various Annual Financial Reports which reflected TRADEVCO loan payable; (b) at no time either orally or in writing did TRADEVCO give a commitment that it would not discontinue its banking operations in Liberia; and (c) CBL did give its consent and approval for the voluntary liquidation of TRADEVCO.

Simultaneously with the filing of its returns, TRADEVCO also filed a motion to dismiss CBL's petition for cancellation on grounds that the petition was barred by the statute of limitations under our Civil Procedure Law, section 2.2 and section 9.8(4) and the Associations Law, Chapter 11, Section 11.4(1) and 11.5 which required the CBL's action to have been filed in three years. That having filed the action more than nine years after the agreement of July 19, 2000, the petition for cancellation of the agreement was time barred.

CBL, on the other hand filed a resistance to TRADEVCO's motion to dismiss contending that its petition for cancellation was not barred by the statute of limitations but that it fell under section 2.13 (2) of the Civil Procedure Law which requires seven years for an action upon a bond or note secured by mortgage on real or personal property, and therefore its right to relief accrued as of the last transaction of May 25, 2005 agreement.

The matter having been brought before the Supreme Court, we must make a determination of the issues deemed germane in resolving it before proceeding to address any other issue raised in the pleadings,)d4332654 bill of exceptions and briefs of the parties. We do so, being fully aware that this Court is not required to address every issue presented to it; and the courts are required to take cognizance of the laws, especially where the disposition of a relevant law will dispose of the entire cause. Vargas v. Morris et al., 39 LLR 18 (1998); Rev. Code, Civil Procedure Law, 1.25.1.

Hence, the legal issue determinative of this case is whether the trial court had jurisdiction to hear and determine this matter?

The law extant is that a court must first determine whether it has jurisdiction to hear and determine a matter before proceeding further. 41 LLR 181, 188-189 (2002). This Court has held in several cases that courts must in all cases refuse jurisdiction in cases where it is wanting. The ruling of any court or tribunal is incurably defective and reversible where it is without jurisdiction over the cause or the parties, and a court must in all cases consider its jurisdiction first." Umehai et al. v. The Management of Mezbau, 35 LLR 406,413 (1988); Bestman v. Republic, 20 LLR 216, 217(1971); LAMCO J.V. Operating Company v. Verdier, 26 LLR 445{1977); African Mercantile Agencies v. Verdier, 26 LLR 80 (1977); Cooper v. Alamendine, 20 LLR 416(1971); Union National Bank v. MCC, 20 LLR 525(1971).

The records, including the exhibits of both the appellant/petitioner and the appellee/respondent named in the petition, indicate that the appellee corporation was dissolved as far back as December 2003, when its articles of dissolution were filed with the Ministry of Foreign Affairs; and its dissolution being in consonance with the opinions of this Court and the Business Corporation Act. (Multinational Gas and Petrochemical Company v. Crystal Steamship Corporation, SA et al., 27 LLR 198, 203-204(1978); Rev. Code, Associations Law, Section 5.11.1(1)(2)(3)(4). This fact is not contested by the appellant, and it is clear from the certified records that the statutory requirements for dissolution of a corporation were met by the Liberia n Trading and Development Bank (TRADEVCO). Most importantly, this dissolution was done with the approval of the petitioner, Central Bank of Liberia.

It is a well established principle of law in this jurisdiction that all corporations, whether they expire by their own limitations or are otherwise dissolved, shall nevertheless be continued for the term of three years from such expiration or dissolution as bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their business, to dispose of and convey their property, to discharge their liabilities, and to distribute to the shareholders any remaining assets, but not for the purpose of continuing the business for which the corporation was organized. With respect to any action, suit, or proceeding begun by or against the corporation either prior to or within three years after the date of its expiration or dissolution, and not concluded within such period, the corporation shall be continued as a body corporate beyond that period for the purpose of concluding such action, suit or proceeding and until any judgment, order, or decree therein shall be fully executed... International Trust Company v. His Honour J. Henrique Pearson, et al., 32 LLR 513, 530-531(1985); Rev. Code, Associations Law, Section 5.11.4(1)

The petitioner Bank knew or should have known, as the regulatory institution for the banking sector and whose approval was mandatory in order for the dissolution and liquidation to occur, that TRADEVCO had a period of only three years within which to wind up all of its affairs, including the institution and defense of law suits. Hence, it should have then instituted the petition within the period 2003 to 2006. In such a case, the law as cited above, states that the existence of TRADECVCO could be further prolonged, but for the sole purpose of concluding the pending lawsuit(s) and for no other purpose.

In both Merriam v. Pearson and Buchanan-Horton, 32 LLR 513 (1985) and Buchanan-Horton v. Belleh and Raymond Concrete Pile, 39 LLR 169 (1998), the Supreme Court recognized, as stated by the Associations Law, Title 5, Liberian Code of Laws Revised, and the predecessor statute thereto, the Associations Law of 1956, that upon dissolution of a corporation, it loses its corporate existence and

becomes a dissolved entity for all practical purposes, and that a quasi-existence is maintained for a three-year period only for a limited purpose, which it to wind up its affairs, not to continue its existence beyond the stated period. In both cases also, the Supreme Court pointed out that at the end of the three year period, the corporation no longer exist and cannot operate as such, except as to suits which were commenced against it prior to or during the three year period the filing of the articles of dissolution or during the allowable three year period after the filing of the articles of dissolution. The corporation cannot therefore appear and defend against any claim or suit commenced after the expiration of the three year period, for at that time the corporation is a truly legally dead entity.

Supportive of that position is that contained in American Jurisprudence, one of the most cited secondary sources of law by the Supreme Court of Liberia. This is what American Jurisprudence says:

The dissolution of a corporation apart from statutes extending the existence of, or conferring power upon, corporations for the purpose of winding up their affairs implies the termination of its existence and its utter extinction and obliteration as an entity or body in the favour of which obligations exist or accrue or upon which liability may be imposed. Liquidation of a corporation has been defined to mean the winding up of the affairs of the corporation by reducing its assets, paying its debts, and apportioning the profit or loss. A distribution of all assets is a 'winding up of the affairs' of the corporation and is synonymous with 'liquidation'". 19 AM JUR 20, Corporations, § 2348.

With specific reference to the entertainment of suits by or against the corporation, this is what the law says:

Unless a statute provides otherwise, no law action can be maintained by or against a dissolved corporation in its corporate name. However the legislature has power to authorize the prosecution of suits in the corporate name after a corporation has ceased to exist for general purposes. Thus a statute may permit a dissolved corporation to sue or be sued in its corporate name, for a specified period after dissolution. Indeed, all jurisdictions now have statutes dealing with the matter of litigation by and against corporations after dissolution. In determining whether a dissolved corporation has the capacity to be sued, courts look to the state of incorporation. 19 AM JUR 20, Corporations, § 2427.

Our statute, the Associations Law 11.4 states:

All corporations, whether they expire by their own limitations or are otherwise dissolved, shall nevertheless be continued for the term of three years from such expiration or dissolution as bodies corporate for the purpose of prosecuting and defending suits by or against them, and or enabling them gradually to settle and close their business, to dispose of and convey their property, to discharge their liabilities, and to distribute to the shareholders any remaining assets, but not for the purpose of continuing the business for which the corporation was organized. With respect to any action, suit, or proceeding begun by or against the corporation either prior to or within three years after the date of its expiration or dissolution, and not concluded within such period, the corporation shall be continued as a body corporate beyond that period for the purpose of concluding such actions, suit or proceeding and until any judgment, order, or decree therein shall be fully executed.

Under the circumstances, the CBL could not have commenced a suit to cancel an agreement with TRADEVCO six years following the dissolution of the Corporation, and three years after TRADEVCO's statutory mandate to wind up its affairs had been completed and the Bank ceased to exist as a corporation.

We find no authority in the law why CBL commenced such suit at the time. On the other hand, the CBL and the trial judge should have recognized that fact once it had come to the attention of the court, not by any defense made by TRADEVCO because such defense was also not legally valid before the court, but rather because it was the prerogative of the court to take judicial notice of public records, of which the documents referred to and constitute a part of. The trial judge should have recognized the fact that any judgment secured under such circumstances could not be binding on or enforceable against the completely dissolved entity which for all legal and practical purposes had no legal existence. Rev. Code, Associations Law, ibid.

On the other hand, TRADEVCO under the circumstances as a dissolved corporate entity, could not have made representation in a suit that was commenced six years following its dissolution and three years after it statutorily winding-up of its affairs and after it ceased to exist as a corporate entity. What the appellee has done in the instant case is to appear as if it is a viable legal entity when its legal existence had been exterminated. It could therefore not appear before the court and plead to a suit brought against it. A dissolved corporation has no name and no identity.

The trial court was therefore without the authority, jurisdictional or otherwise, to entertain the appearance, not a special appearance, of TRADEVCO and to proceed with a regular hearing on the issues between the parties for the purpose of contesting an agreement entered into six years after the dissolution of the Bank and four years after its winding up period.

From the foregoing legal premise, any assertions made by either party against the other should not have been entertained, given that TRADEVCO as a legally extinguished entity could not sue or be sued or legally appear to defend any action; and on the other hand, CBL could not sue a corporation which had been dissolved by it.

We are of the considered opinion that Section 11.4(1) of the Associations Law written supra is a clear expression of a legislative intent normally prohibiting the commencement of actions by or against dissolved corporations more than three years after their dissolution.

Taking cognizance of the certified records and judicial notice of the law, the trial court should not have entertained the parties and it should not have gone into matters raised by the parties and ruled thereon. In addition the Judge's ruling on the factual issues was erroneous since this Court has consistently held that a judge is charged with the responsibility of passing on issues of law and the jury on issues of fact; that where the judge sits as both trier of law and facts document pleaded must be testified to and admitted into evidence. It is improper for a trial judge to rule on issues of fact without the taking of evidence as was done by the judge in this case.

The ruling of the trial court granting the motion to dismiss is therefore reversed. This is because the appellee named therein is a legally dissolved corporate entity which cannot be served any legal precept because the three years period for claims to be served against the said corporate entity had long expired. And as stated, the trial judge should have recognized the fact that any judgment secured under such circumstances could not be binding on or enforceable against the dissolved Corporation which for all legal and practical purposes had no legal existence.

Wherefore and in view of all that has been discussed herein, the judgment of the trial court is hereby reversed in its entirety as it lacked jurisdiction to entertain the petition or to have passed on any issue

raised in the answer of the respondent; the parties, the petitioner CBL and TRADEVCO are both wanting in individual respects; that is ,the petitioner was time barred to bring the petition against a legally dissolved corporate entity; and the respondent being legally extinct could not filed any pleadings.

However this Opinion does not bar the institution of an action by any competent party(ies) in which case the matter will be determined based on its merits.

The Clerk of this Court is hereby ordered to send a mandate to the court below, ordering the Judge presiding therein to resume jurisdiction and give effect to this ruling. Costs are ruled against the appellant. AND IT 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 COUNSELLOR JOSEPH K. JALLAH, IN-HOUSE COUNSEL FOR CENTRAL BANK OF LIBERIA APPEARED FOR THE APPELLANT. COUNSELLOR STEPHEN B. DUNBAR, JR., OF DUNBAR AND DUNBAR LAW OFFICES, APPEARED FOR THE APPELLEE.