Liberia Material Ltd., by and thru Mr. Stephen Imbert And Mr. Jean Claude Dalalosse and all those acting under their Authority of the City of Monrovia, Liberia, APPELLANT VERSUS **His Honour Peter W. Gbeneweleh**, Assigned Circuit Judge, **the Sheriff and his Deputies** all of the Sixth Judicial Circuit Court, Civil Law Court, Montserrado County, and **the Management of the National Port Authority**, by and thru its Managing Director, Hon. Matilda W. Parker also of the City of Monrovia, Liberia, APPELLEE

LRSC 12

APPEAL

Heard: November 18, 2014 Decided: February 15, 2015

MR. JUSTICE BANKS delivered the Opinion of the Court.

The sanctity of contract, without reference to form, nature or kind, including lease agreements, is guaranteed both by the Constitution and the statutory laws of Liberia. Article 25 of the Liberian Constitution states that the "obligation of contract shall be guaranteed by the Republic and no laws shall be passed which might impair this right." LIB. CONST., ART 25 (1986). Consistent with that guarantee and pursuant to the powers granted under Article 34 of the Constitution, the Liberian Legislature has enacted a number of statutes seeking to effectuate the guarantee of the Constitution.

Under interpretations of the provisions of both the Constitution and the relevant statutory laws, the Supreme Court has consistently recognized the sanctity and upheld the guarantee of contracts and the rights of the parties thereto as long as the provisions contained therein do not contravene or infringe upon the Constitution and the statutory laws enacted by the Legislature under authority of the Constitution, or is not adverse to or against public policy. Republic v. The Leadership of the Liberian National Bar Association, 40 LLR 635 (2001); Chicri Brothers, Inc. v. lsuzu Motors Overseas Distribution Corporation, 40 LLR 128 (2000); Emirates Trading v. Global Import and Export Company, 42 LLR 204 (2004); Liberia Realty Management Corporation v.Montgomery,33 LLR 11(1985).The Court has also been clear, in that regard, that it does not matter whether one or more of the parties to the contracts include the State, its sub- divisions or public entities owned in part or in whole by the State, the guarantee will be upheld and respected. The instant case presents one such situation wherein the National Port Authority, an entity owned by the State, is a party to a contract, a lease agreement, concluded with the plaintiff/appellant.

The records certified to this Court reveal that on the 27th day of January, A. D. 2014, the National Port Authority (NPA), a wholly owned government entity created by Act of the Liberian Legislature and charged with responsibility to develop, maintain and operate all public ports within the Republic of Liberia, filed in the Circuit Court for the Sixth Judicial Circuit, Montserrado County, a petition for the cancellation of a lease agreement against Liberia Materials Ltd. In the petition, the NPA alleged that pursuant to authority granted it under its charter, it had, on the 1st day of July, A.D. 2010,entered into a lease agreement with the respondent, Liberia Materials Ltd., for the lease to the respondent of certain property owned by the petitioner; that under the lease agreement, all things being equal, the respondent was to have a lease of the property for a period of twenty-five (25) years. However, the petitioner recited that "all things" had not been equal, as anticipated by the parties; that the respondent had not only failed to conform to certain of the core provisions of the lease agreement, but that the respondent had in effect consciously violated the terms and the tenets of the lease agreement, especially with respect to commencing work within ninety days of the execution of the agreement and investing Five Million United States dollars (US$5,000,000.00), both of which were provided under provisions of the agreement. The petitioners alleged further that under the terms of the agreement, where there were such material violations, it was vested with the right to seek cancellations of the agreement. This, the petitioner said, formed the basis for the petition for cancellation of the lease agreement and thereby to restore to it the possession to the property covered under the lease agreement.

The respondent, in its resistance to the petition, while not denying that certain of the terms of the agreements were not

complied with by it, set forth what was tantamount to an excuse for the noncompliance with the strict dictates of the agreement not due to acts by the respondents but attributed to factors over which the respondent did not have control. But more than that defense, the respondent prayed for the dismissal of the petition for reason that the petition had failed to comply with the law governing the filing of pleadings. In the resistance, the respondents asserted that while the petition was venued in the December 2013 Term of the Civil Law Court, which commenced on the Third Monday in December of that year, the petition was not filed until on January 27, 2014, contrary to the Civil Procedure Law which states that a complaint or petition must be filed fifteen days prior to the opening of the court before which the complaint or petition is venued. The respondent stressed that the filing of the petition on January 27, 2014, in the December 2013 Term of the Civil Law Court, being a clear violation of the law, rendered the petition and the entire action dismissible.

The respondent also averred, as a further ground for seeking the dismissal of the petition, that the affidavit which was attached to the petition, in verification of the factual allegation set forth in the petition, was dated January 28,2014,even though the petition was allegedly filed a day earlier on January 27, 2014. And, as if to further bolster its demand on the trial court for the dismissal of the petition and the entire action, the respondent filed simultaneously with its resistance a motion to dismiss, as required by section 11.2 of the Civil Procedure Law.

The records further reveal that on February 14, 2014, the petitioner, appellee herein, withdrew the petition with reservation to refile. On the same day and date, it filed an amended petition, which it duly served on the respondent. On February 24, 2014, the respondent filed its resistance to this amended petition. In this new resistance, the respondent challenged the legality of the amended petition and, as before, prayed that the petition and the entire action be dismissed, noting as the reason for the request that the petitioner, rather than withdrawing the entire action and filing a new action, had instead, by the withdrawal of the original petition and the filing of a new petition, sought to change the venue of the court from the December 2013 Term to the March 2014 Term, which action by the petitioner was invalid and therefore rendered the amended petition similarly dismissible. The respondent proclaimed in the new resistance, filed simultaneously with a motion to dismiss, that the changing of the venue of the Civil Law Court from the December 2013 Term to the March 2014 Term, did not cure the defect evidenced in the original petition and that therefore the new petition was not properly before the March 2014 Term of the court. As such, the respondent maintained that the petition and action were proper subjects for dismissal, and it prayed the trial court to the effect.

We see further, from the records before us, that in the wake of the new attack on the amended petition, the petitioner on February 24,2014,withdrew the petition and the entire action, reserving the right to file a new action; that one day thereafter, on February 25, 2014, the petitioner filed a new petition against the respondent, stating basically the same allegations as set forth in the initial petition regarding the respondent's default of the terms of the lease agreement and advancing the same reasons for seeking cancellation of the lease agreement. We believe that it is important that the petition is quoted verbatim, as it captures the full essence of the basis and rationale for the petitioner prayer to the trial court to cancel the lease agreement entered into between the petitioner and the respondent. This is how the eight-count petition sets out the premise for the request for cancellation:

AND NOW COMES PETITIONER, in the above entitled cause of action and complains the within named Respondent and prays Your Honor and this Honourable Court to cancel Respondents Lease Agreement, for the following legal and factual reasons to wit:

1. That petitioner in these proceedings is a corporate entity owned and operated by the Government of the Republic of Liberia, which was created by an Act of the Legislature and doing business in Liberia and seek this action of cancellation of lease agreement against the within named respondents based upon a Board of Directors Resolution. A copy of the Act

of the Legislature and the Board of Directors Resolution are hereto attached and marked as Petitioner's Exhibit "XP/1" and "XP/2" to form a cogent part of this complaint.

2. That petitioner says and avers that it entered into a lease agreement with the respondent on the 1st day of July, A.D. 2010 for a period of twenty five (25) years. Copies of said lease agreement and photograph of the demised premises are hereto attached and marked as petitioner's Exhibit "XP/3" in bulk to form a part of this Petition.

3. That petitioner says that clause 8 of the original lease agreement provides that "In the event of undeveloped premises, the LESSEE shall commence construction within 90 days immediately upon the obtaining of all necessary permits and approvals and continue until completion, the LESSEE'S failure to comply with the provision, in spite of a written notice, shall constitute a breach of the agreement which may lead to the termination in accordance with clause 23 as follows: Default "If default of a substantial nature, including nonpayment of rent or as above provided in made by LESSEE in compliance with any of the covenant or agreement contained herein such default is to rectified (or rectification shall not have been commenced and pursued with reasonable dispatch) by LESSEE within ninety (90) days after written notice from LESSOR) LESSOR shall have the right to terminate the lease..."

Further petitioner also says that under said lease agreement under clause 4 is stated that "It is also agreed that the LESSEE shall make investments of US$5 Million Dollars into the property within the first five years to justify the extended lease of twenty-five years. Failure to achieve this investment threshold may result in the termination of the lease."

4. Petitioner says that the respondents have contravened major provisions of the lease agreement by falling to live up to the terms and conditions of the lease agreement. Petitioner thither says that the respondents have abandoned the leased property without any development; and the provision of the lease agreement provides that the lessee/respondents shall commence construction on the lease property within ninety days and failing to do so is considered a breach of the lease agreement and the LESSOR shall have the right to terminate said lease agreement.

5. Petitioner further says that Respondents as to counts two and three above have contravened major provisions of the lease agreement which constitute a breach of the provision of the lease agreement. Petitioner therefore says that cancellation proceedings will lie because of the above mentioned breach.

6. Petitioner says that, the respondents were written on September 4, 2013 giving them notice about their failure to live up to the terms and conditions of the lease agreement, but the Respondents failed to meet with the LESSOR to discuss the reason for them not been able to live up to the terms and condition of the lease agreement. Another communication was written on the 24th day of January, 2014 to the Respondents about their failure to comply with the terms and condition of the lease agreement. As evidence copies of the two communications written to the Respondent are marked as Exhibit "XP/4" in bulk to form a cogent part of this petition.

7.That after series of demands made by petitioner in these proceedings, respondent elected to write petitioner on the 6th day of February, A. D. 2014 requesting an audience with the Managing Director, adding extraneous matters outside the lease agreement as a cover up of their guilt. Attached and marked as Petitioner exhibit "XP/5" is a copy of said letter to form part of this petition.

8. Petitioner petition and says that the conduct of respondent is in gross violation of the terms and conditions of the Lease agreement entered into with petitioner for which cancellation will lie.

WHEREFORE AND IN VIEW OF THE FOREGOING, petitioner most respectfully prays Your Honour and this Honourable Court to adjudge the respondents liable in these proceedings, cancel the lease agreement between petitioner and respondent and also grant unto petitioner any and all further relief that Your Honour may deem just, legal and equitable."

In resisting this new petition, venued in the March 2014 Term of the Civil Law Court, the respondent advanced much the

same substantive defense as it had set out in its initial resistance to the initial petition. But in addition, the respondent advanced new contentions and a new request or prayer to the court to dismiss the new petition and the entire action. In the twenty-five count resistance, filed on March 3,2014,the respondent advanced the argument that under Section 11.6 of the Civil Procedure Law, a party cannot withdraw an action and file a new action, as was done by the petitioner in the instant case, without an order of the court, or in the alternative, before the filing and service of a responsive pleading or an agreement with the adversary party and the payment of costs. None of the foregoing, the respondent proclaimed, had occurred, and therefore, the petition was a fit subject to dismissal. Accordingly, the respondent prayed the court to the effect, that is, to dismiss the petition and the action; and, as it had done with regard to the earlier resistance filed in response to the initial and amended petitions, which were filed and withdrawn by the petitioner, the respondent buttressed its resistance with the simultaneous filing of a new motion to dismiss. Both because of the peculiar nature of the case, especially with respect to the substantive and procedural defenses raised by the respondent to the petition and the allegations levied against the trial judge in the bill of exceptions, and for the benefit of this Opinion and the analysis made herein, we deem it appropriate to quote verbatim the twenty-five count resistance of the respondent, which we do herewith, as follows:

Respondents in the above entitled cause of Action most respectfully pray this Honourable Court to deny and dismiss the petitioner's petition in its entirety and showeth the following legal and factual reasons therefor to wit:·

1. Respondents in the above entitled cause of action have filed a motion to dismiss the petitioner's petition, together with the entire action. Respondents request court to take Judicial Notice of its file In this case.

2. Respondents say that an Initial action was filed in the December Term, A.D. 2013 of this Honourable Court, involving the same parties and the same subject matter on the 30th day of January, A.D. 2014,and served on the respondents the 3rd day of February,A.D.2014,and to which action respondents filed its resistance to the petition and a motion to dismiss the action on the 6th day of February,A.D.2014.Respondents request Court to take judicial notice of its records in this case.

3. Respondents say that to their responsive pleadings, the respondent/petitioner should have filed its reply on or before February 16,2014,but instead of doing so, elected on February 14, 2014,to withdraw its petition, reserving the right to file an amended petition and on the same day filed an amended petition and, even though the action was still pending and venued in the December Term, A. D, 2013, in this Honourable Court, the said amended petition was venued in the March Term of Court, while the affidavit was dated on a different date than that of the amended. Petitioner/respondents request Court to take judicial notice of the records on its file in this case.

4. Respondents say that to this amended petition they again filed their resistance and a motion to dismiss on February 21, 2014 and to which responsive pleading petitioner should have filed its reply on or before March 4, 2014. Respondents request court to take judicial notice of the records on its file in this case.

5. Respondents say that instead of replying to the resistance to its amended petition, petitioner again elected to withdraw, this time, withdrawing the entire action on February 24, 2014, with reservation to file. Respondents request Court to take judicial notice of the records on its file in this case.

6. Respondents say that the notice given on February 24, 2014, is unspecified, uncertain and unclear as to "reserving the right to file", as it does not state whether to file a new action or any other precept but simply state, "to file", which is contrary to the practice and procedure in this jurisdiction.

7. Respondents say that on February 25, 2014, they received a writ of summons from this Honourable Court, venued in its March Term, A. D. 2.014, together with a petition and accompanying documents, all in the March Term, A. D. 2014 of this court, with the notice that the entire action had been withdrawn, reserving the right to file.

8. Respondents say that the entire action should be denied and dismissed and the petitioner be forever barred from bringing this action because it is provided in Volume 1, Liberian Code of Laws Revised, at Page 121, Section 1.6, that:

1. Without an order. Except as otherwise provided by law, any party asserting a claim may discontinue it without an order.

(a) By serving upon all parties to the action a notice of discontinuance at any time before a responsive pleading or a motion for summary judgment is served, whichever first occur and filing the notice with proof of service with the court, or

(b) By filing with the court a stipulation in writing signed by the attorneys of record for all parties.

2. By order of court. Except as provided in paragraph 1, an action shall not be discontinued by the claimant except upon order of the court and upon such terms and conditions as the court deems proper.

9. Respondents say that the petitioner, instead of complying with this necessary and mandatory statutory provision, proceeded to withdraw the prior action and the amended petition, after the respondents had filed and served responsive pleadings and motions to dismiss against the petition, amended petition and the action. Respondents request court to take judicial notice of the records on its file in this case.

10. Respondents say that the petitioner should have withdrawn/discontinued this action without the order of court, where a responsive pleading had been filed, by the filing with the court of a stipulation, in writing, by the counsels of record by the both parties or upon such terms and conditions as the court deemed proper upon notice to the adversary. For this failure to comply with the law controlling, this entire action should be denied and dismissed and the petitioner barred from ever reinstituting it again. This rule is established and confirmed by the Supreme Court of Liberia in the case Maryland Wood Processing Industries Vs. American Insurance Management Inc., (41LLR 327).

11. That as to count one (1) of the petitioner's petition, respondents say that the same presents no traversable issue.

12. That as to count two (2) of the petition, respondents say that the same presents no traversable issue.

13. That as to count three (3) of the petitioner's petition, respondents say that the same should be denied and dismissed together with the entire action because the averments made therein are in defense of the respondents, for the reason that the said clause eight (8) as quoted by the petitioner states that the lessee, who is respondents herein, "shall commence construction within ninety (90) days immediately upon the obtaining of all necessary Permits and approvals." It is clear from the language quoted herein "that the construction shall commence conditional upon obtaining of all necessary permits and approvals. Respondents say they have not been able to obtain the necessary permits and approvals, at no fault to them and the Petitioner has not established, in this petition that the respondents have obtained the necessary permits and approvals, anticipated under the terms of the Lease Agreement, so as to compel the respondents within ninety (90) days from that time to commence construction.

14. And also because further to the above, respondents say that the said default cannot be attributable to the petitioner because the agreement clearly provides for respondents to construct cement grinding, manufacturing, storage and administrative facilities, the nature of which is of a specialized character, which must be done with the necessary Permits and approvals, granted by agents of the Republic of Liberia, which permits and approvals respondents are seeking from the appropriate Government agencies and expect to obtain them, but have not done so up until now, so as to be considered "in default", thereby authorizing and permitting petitioner to bring this action under the terms and conditions of the Agreement between the parties.

15. And also because further to the above, respondents say that the petitioner has clearly stated that the Lessee shall make investments of US$5 Million Dollars into the property within five (5) years to justify the extended lease of twenty five (25) years. Respondents say that the Lease Agreement was entered into on the 1st day of July, A. D.2010,and it is not yet five (5) years since the Agreement was entered into, mathematically calculating from the date the Agreement was signed and so therefore the respondents are not in default, at this time.

16. That as to count four (4)) of the petitioner's petition, respondents say that the same should be denied and dismissed as being false and misleading because the respondents have not abandoned the property and are not in default in the payment

of rent and respondents intend to continue to exert every effort to perform in keeping with the terms and conditions of the Agreement, except for Acts of God and conditions beyond the control of the respondents, including inhibition imposed due to delay, depended upon acts to be performed by other governmental authorities.

17. That as to count five (5) of the petition, respondents say that the same should be denied and dismissed and reconfirm counts twelve (12) through sixteen (16) of this resistance in defense of the representation made therein.

18. And also because further to the above, respondents say that they confirm the allegation made that their failure to commence construction is a condition precedent upon obtaining of all necessary permits and approvals, which in their case, are due from other, governmental agencies and they are seeking to obtain said Permits and approvals.

19. That as to count six (6) of the petitioner's petition, respondents say that while it is true the Petitioner wrote the respondents, their two (2) executives, to whom the letters were addressed, are frequently in and out of the Republic of Liberia, and are negotiating additional financing while out of the country and when in the Republic of Liberia, are engaged with the relevant authorities to obtain the permits and approvals so as to meet up with the terms and conditions of the Lease Agreement existing between the parties. For the reason that the respondents did not have adequate information to address the issues raised at the time petitioner wrote the letters, respondents thought it wise to continue to pursue the efforts to consolidate their additional financing and obtaining the permits and approvals and with sufficient information, engage the petitioner.

20. That as to count seven (7) of the petition, respondents say that the same should be denied and dismissed for being frivolous because the respondents are pleading matters beyond their control as a reason for the non-performance, even though its period for compliance has not expired but the respondents want to negotiate, by its letter of February 6, 2014 to the petitioner to provide for the period of impossibility of performance.

21. Respondent says that further to the above, by virtue of the date of its letter of February 6, 2014, the same is an act in good faith because even though the petitioner had filed its action and withdrew the petition, respondents was instigating the meeting, to show evidence of its capacity to fully comply with all of the terms and conditions of the Lease Agreement and reasons for the prior delay so that the both parties can come to a common understanding for the expeditious commencement and execution of the project under the lease Agreement.

22. That as to count eight (8) of the petition, respondents say that the same should be denied and dismissed because the date for the completion of the construction has not yet expired so as to conform with the petitioner's assertion that it is in gross violation of the terms and conditions of the Lease Agreement entered into between the parties and for which cancellation will lie.

23. And also because further to the above, respondents say that it has valid and justifiable reasons for the delay in the commencement of the construction and completion of the project under the lease Agreement, due to impossibility of performance and so therefore cancellation will not lie.

24. Respondents say that as to the entire petition, coincidently, since the institution of this action, all of their efforts are now materializing and are prepared to commence performance under the terms and conditions of the contract and therefore pray that this Honourable Court and the petitioner will not allow the institution of this suit to impede all of the efforts made thus far and further served as a stay to the implementation of the Agreement.

25. Respondents deny all and singular the allegations of law and facts as are contained in the petitioner's petition and are not specifically traversed in this resistance.

WHEREFORE and in view of the foregoing law, facts and circumstances, respondents most respectfully pray Your Honour to deny and dismiss petitioner's petition, to ether with the entire action and the respondents be allowed adequate opportunity to perform under the said Agreement, giving its technical nature and the requirements imposed by regulatory

agencies and to grant respondents any and all equitable relief that may be deemed fit in these premises barring the petitioner from forever reinstituting this action; and to rule the costs in these proceedings against the petitioner. And grant unto respondents such other and further relief that this Court in its Judgment will seem just and equitable.

We do not see the need to quote the motion to dismiss, filed by the respondent, since it contained the same averments contained in the resistance, quoted above. By the same token, we deem it unnecessary to quote the resistance to the motion to dismiss filed by the petitioner since it also contained the same responses made in the reply, also filed by the petitioner to the resistance to the petition. We however believe that there is need to quote the reply since it provides highlights of the basis for the rulings made by the trial judge, both in respect of the motion to dismiss and the resistance to the petition. Hence, we herewith quote verbatim the reply filed by the petitioner on the 11th day of March, A. D. 2014:

"AND NOW COMES petitioner replying to respondents' resistance and most respectfully request Your Honor to deny and dismiss said resistance in its entirety and showeth the following reasons to wit:

1.That as to count one (1) thru eight (8) of respondents resistance, petitioner says that said counts should be deny and dismiss in that the averments contained therein are saying almost the same thing as it relates to mistake in date or term in the pleadings. The Honourable Supreme Court of Liberia opined that "mistakes in pleading as to date or term are not grounds for dismissal, and may be corrected during trial". For reliance see the case Tuning versus Yankee 15 LLR page 137. Hence counts one thru six of respondents resistance should be denied and dismissed.

2. That as to counts nine (9) thru twelve (12) of respondents resistance, petitioner says that it is in full compliance with the provision of the statute, in that he voluntarily withdrew his entire action which was approved by the court and he paid accrued cost in keeping with statute attached and marked as petitioner's exhibit "PR/1 and PR/2 are copies of his notice withdrawal approved by the court and payment receipt of accrued cost to form a cogent part of this reply. Therefore counts nine thru twelve of respondents returns should be denied and dismissed.

3.That as to count thirteen (13) of the resistance ,respondents alleged that they had not been able to obtained the necessary permit to commence construction at no fault to them. Petitioner says that same should be denied and dismissed because the respondents herein have failed and neglected to show or proved to this court any effort made by them to contact any agency of Government responsible for the issuance of the necessary permits to carry out the construction.

4. That further to count three (3) above, petitioner says that count eight of the lease agreement states that "In the event of undeveloped premises, the LESSEE shall commence construction within 90 days immediately upon the obtaining all necessary permits and approvals and continue until completion; the LESSEE failure to comply with this provision, in spite of a written notice, shall constitute a breach of the agreement for which may lead to its termination in accordance with, paragraph 23 below.

The LESSEE shall have title and ownership on the constructions erected by the LESSEE on the premises during the term of this agreement and any extension thereof. Counsel says that the Respondent herein has woefully failed to annexed or proved that it has written the necessary Government agencies for permit which was denied or has not been granted.

5. Further to count four (4) above, petitioner again inform Your Honor that on two occasions that is to say on September 4, 2013 and January 24, 2014 wrote the respondents informing them that they have failed to commence construction works for the past three and half years and therefore in violation of the lease agreement. Petitioner request Your Honor to take judicial notice of Exhibit "P/4 in bulk" annexed to petitioners petition. Hence count thirteen and Respondents entire resistance should be denied and dismissed.

6. That as to counts fourteen (14) thru twenty-two (22) of respondents resistance, petitioner says that said counts are false and misleading which are intended to mislead this Honourable Court, the respondents have woefully failed, refused and neglected to attach any piece of evidence or document evidencing that they have made any necessary effort to obtain any

necessary permit from Government institution and was denied. Therefore counts fourteen through twenty-two of respondents' resistance, their prayers and the entire resistance should be denied and dismissed and the lease agreement ordered cancelled.

7. Petitioner denies all and singular the allegations of law and facts as are contained in respondents' resistance and are not specifically traversed in this reply.

WHEREFORE AND IN VIEW OF THE FOREGOING, Petitioner most respectfully Prays Your Honor to deny and dismiss Respondents resistance, order the lease agreement cancelled and grant unto petitioner any other relief Your Honor may deem just, legal and equitable."

The parties having rested pleadings, and issues having been joined, the trial judge proceeded to entertain arguments on the motion to dismiss, and, on the 9th day of May A.D. 2014,to give his ruling thereon, wherein he denied the motion, reasoning that not only had the petitioner not violated the law, but that by his approval of the new petition, the same was tantamount to an order by the court, in fulfillment of sub-section (1) (b) of section 11.6. Having denied the motion, the judge then noted that the court would thereafter entertain arguments and make a ruling on the law issues as directed by the Civil Procedure Law. Because of the importance to the ruling with respect to the allegations contained in the bill of exceptions, and the analysis which we make herein relative to the said allegations, we proceed herewith to quote the said ruling verbatim as follows:

"Section 11.6, Page 121of our Civil Procedure Law, Subsection 2 provides as follows:"By order of Court. Except as provided in Chapter 1,an action shall not be discontinued by the climax except upon order of the Court and upon substance and conditions as the Court deems proper. Subparagraph 4 provides the effect of discontinuance, which says in essence that the order of discontinuance is without prejudice." This Court also takes judicial notice of Chapter 9, Section 9.10 of our Civil Procedure Law, which provides for an Amendment of Pleading. It is the law, practice and procedure in this jurisdiction that when leadings are amended under Chapter 9.10,the plea is withdrawn and a subsequent plea is filed to substitute the main claim and accrued cost also paid. The subsequent pleading filed is tied and known as amended pleading. When Pleadings are amended, the writ that brought the private defendant under the jurisdiction remains part of the records and the defendant or defendants remain under the jurisdiction of the court for reasons that the action is still pending before the Court undetermined. Unlike amendment of pleading, voluntary discontinuance under Chapter 11, specifically Chapter 11.6, provides that the entire action or petition is withdrawn, reserving the right; to file a new petition, commencing with the insurance and service of the citation consistent with Chapter 16 of our Civil Procedure Law that governs special pleadings. In this case, the actions or the citation that brought the defendant or respondent under the jurisdiction of the Court is no longer before the court because a new petition commencing with the issuance of the new citation have been issued to bring the respondent or respondents under the jurisdiction of this court. With this distinction, we now give the grounds of movant's motion to dismiss petitioner's petition for cancellation of lease agreement.

The records before us reveal that the Management of the National Port Authority by and through the legal counsel, instituted or file a cancellation proceedings against the Liberia Materials Limited on February 26, 2014.

The records further indicated that prior to February 26, 2014,the petitioner has filed previous petition as pertaining to the same subject matter. The previous petition determines by the counsel for the respondent. When the respondent challenged the withdrawal of the petition for the second time, the petitioner discontinued the entire action with the approval of this court consistent with Chapter 11,Section 11.6 of our Civil Procedure Law.

The new petition that was filed by the petitioner on February 26,again was challenged by the respondent's counsel on ground that there were discrepancies in the notices of withdrawal because the copy of the notice of discontinuance that was attached to the copies of the petition that was delivered to the respondent did not carry the approval of the judge as required by the

statute.

The petitioner on the other hand, argued that once the court's copy carried the approval of the judge, the respondent's argument is an attempt to challenge the authority of the court. More so, the petitioner argued that in keeping with Chapter 11,Section 11.6,Subparagraph 4, voluntary discontinuance, as a matter of law is without prejudice, meaning that once a party discontinues the matter under Chapter 11of our Civil Procedural Law, he has the right to refile a new petition under Chapter 16 of Civil Procedure Law, which will commence with the issuance of the citation to bring the respondent or respondents under the jurisdiction of the court as the withdrawn petition and the citation are no longer before this Honorable Court and the respondent or respondents previously cited are also no longer before the jurisdiction of the court.

The argument by both counsels for the parties before us presents one issue and that is, whether or not the approval of the judge of the notice of voluntary discontinuance amounts to an order by the judge to allow discontinuance.

The court is of the considered opinion that the approval of the notice of voluntary discontinuance by a judge amounts to an order to allow the parties to discontinue the matter by order of Court with the right to refile. Paragraph 11,Chapter 11,Section 11.6 provides for voluntary discontinuance, which is without prejudice.

More so, the approval of the judge by a notice of voluntary discontinuance constitutes an order. To question said approval by the Judge is an attempt to challenge authority of the court.

Wherefore and in view of the foregoing, it is the Ruling of this court that the voluntary discontinuance once approved by this court is sufficient order for the petitioner to withdraw its petition with the right to refile a new petition commencing with the issuance and service of the citation to be served upon the respondent and bring the Respondent under the jurisdiction of the Court. The motion to dismiss is accordingly denied and the resistance thereto is sustained. AND IT IS HEREBY SO ORDERED."

Six days following the court's ruling denying the respondent's motion to dismiss the petition, a notice of assignment was issued and served on the parties for the hearing and disposition of the law issues on the 19th day of May, A. D. 2014. One day following the court's entertainment of arguments, that is, on May 20,2014,the respondent filed a motion to rescind with the clerk of the court, wherein the respondent implored the court to rescind its ruling on the respondent's motion to dismiss, reasoning that the court had failed to rule on the most critical issue which would have warranted the dismissal of the action. The respondents averred as one of the omissions by the court that it had ignored the fact that the petitioner, rather than withdrawing its action and filing a new action, or withdrawing the petition and filing an amended petition, to cure what the respondent considered as defects in the petition, attempted to cure the defects by raising new matters in and attaching new documents to its reply.

Specifically, the new matters and new documents to which the respondent referred was the attachment of a copy of the notice of withdrawal of the previous petition and the receipt showing that the accrued costs of court had in fact been paid by the petitioner, contrary to what the respondent had alleged in the motion to dismiss and the resistance.

One day after the filing of the motion to rescind, being May 19, 2014, the day on which hearing of the law issues was to be had, when the case was called for the disposition of the law issues, the respondent informed the court of the motion and that it needed to be disposed of before hearing and disposition of the law issues. A submission for postponement of the case to hear the motion having been denied by the court, and the petitioner's counsel request to spread its resistance to the motion on the records having been granted and the resistance to the motion having been spread on the minutes of the court, the court proceeded to entertain arguments on the motion to rescind and to deny the same. The court, in denying the motion, stated that it had not omitted passing on any issue raised in the motion to dismiss, and that therefore there was no legal basis presented to warrant the court granting the motion to rescind.

Following the denial by the court of the motion to rescind, the parties were allowed to argue the law issues presented in the

case. Under the Civil Procedure Law, the disposition of the law issues is a prerequisite to any hearing on the factual merits of a case. Hence, the trial judge, having entertained arguments on the issues of law raised in the pleadings, proceeded to rule thereon, holding, after reciting the facts, that the respondent had breached substantial provisions of the lease agreement for which cancellation will lie and that as the failure of the respondent to commence construction work on the leased property within ninety days of the execution of the lease agreement was sufficient ground for the cancellation of the lease agreement, the agreement be ordered cancelled. The court opined that as there was "no justifiable issue of fact presented in the disposition of law issues which warrants the trial by the court", it therefore felt obliged to "enter judgment in favour of the petitioner" and "that the lease agreement between the parties is hereby decreed cancelled and that the property is hereby reversed to its owner." While the foregoing summarizes the rationale advanced by the trial court for decreeing the cancellation of the lease agreement executed between the petitioner and the respondent, we believe that justice is served by the full verbatim recitation of the ruling of the lower court. We therefore quote the said ruling as follows:

"COURT'S RULING ON THE LAW ISSUES

The National Port Authority and the Liberia Material Limited entered into a lease agreement on the 1st day of July 2010 to take effect in August 2010 for a period of 25 years for a certain piece of land containing 7.414 acres of land located within the Freeport of Monrovia, for the purpose of constructing a cement grinding, manufacturing, storage administrative facility. The said lease agreement was duly probated and registered according to law.

Clause four of the lease agreement provides that the lessee shall make investment of the USD 5 million into the property within the first five years to justify the extended lease of 20 years. Failure to achieve this investment of the threshold may resolve in a termination of the lease. Clause eight of the lease agreement provides that in the event of underdeveloped premises, the lessee shall commence construction within 90 days immediately upon the obtaining of all necessary permits and approvals and continue upon completion. The Lessee failure to comply with this provision, in spite of the written notice, shall constitute the breach of the agreement for which may lead to its termination in accordance with paragraph 23 below." It is this provision of the lease agreement breached by Lessee for which lessor has instituted this action for cancellation of lease agreement which is the subject of litigation before this Honorable Court.

Clause 23 of the lease agreement provides "Default: A default of a substantial nature, including non-payment of rent or as below provision is made by Lessee in compliance with any of the averments or agreement contained herein such default is to be rectified (all rectification shall now have been commenced and pursued reasonable dispatched) by Lessee within ninety (90) days after written notice from Lesser, lesser shall have the right to terminate this lease."

This court observes that since the signing of the lease agreement on the 1st day of July 2010, a period of three years four months, the Lessee has not made any attempt to commence construction works on the leased property and on the 4th day of September 2013 the Lesser wrote a letter to the Lessee informing him of his obligation as per the lease agreement but the Lessee did not reply to said letter. Thereafter the Lessor again wrote the Lessee another letter on the 24th day of January 2014 again, the Lessee did not reply.

During the December Term of the Civil Law Court, the Lessor instituted an action for cancellation of Lease Agreement. Upon the receipt of the writ of summons on February 6, 2014,the Lessee wrote the Lessor seeking for audience, which audience never took place. The issues for the determination of this case are:

1. Whether or not the respondent breached any substantial provision of the lease agreement for which cancellation will lie.

2. Whether or not failure of the lessee/respondent to commence construction works on the leased property within ninety days is sufficient grounds for the lessor to cancel the lease agreement.

As to the issue number one, this court says the answer is yes. The respondent breached substantial provision of the lease agreement for which cancellation will lie. A lease agreement is a written contract in which the rights and liabilities of the

parties, in the absence of ambiguities, fraud, duress or mutual mistake, are to be determined by the terms and agreement and not by the proposed intention of the parties.

This court says that the lessee/respondent signed and committed himself to the lease agreement and in clause four of agreement, Lessee promised to invest US5 million within five years. If lessee/respondent cannot start with the construction of the cement factory within four years, it is, most likely that he cannot complete the agreed Investment on the property within one year, which Is sufficient ground to cancel the lease agreement. As to issue number two the answer is yes.

The failure of the appellee/respondent to commence construction works on the lease property within 90 days is sufficient ground for the lesser to cancel the lease agreement. Clause eight of the lease clearly emphasized this provision of the agreement which the Lessee breached and constitutes ground or the cancellation of the agreement. In the case Emirates Trading Agency Company versus Global Africa Import and Export Company, as reported in 42 LLR 204, syllable 8 (2004), Mr. Justice Korkpor Sr. speaking for the Supreme Court held that "the Liberian Constitution, at Article 25,states that obligations of contract shall be guaranteed by the Republic and no laws shall depart which shall incurred that right." This court says that the petitioner and the respondent entered into contract consistent pith Article 25 of our Liberian Constitution and that the obligations of the parties as enshrined in the contract should be performed consistent with the provisions of the contract. The failure of the respondent to perform his contractual obligations indicated in the contract specifically Article 8 of the contract which provides that the respondent should commence construction work within 90 days upon the signing of the contract and that failure on his part to commence construction work shall be ground that may lead to the termination of the contract. The respondent failed to commence construction work after the signing of the contract for three years, four months contrary to the provision of the clause 8 of the contract which mandated the Respondent to commence construction work within ninety days as of the execution of the contract by the parties. The court says the legal grounds for termination of the contract is provided in the contract specifically clause 8 and clause 23 of the contract and this court cannot disrespect the obligation of the parties but under obligation to enforce the provisions of the contract.

To the mind of this court the act of the Lessee clearly shows that it is no longer interested in the lease agreement. This court says that there is no justifiable issue of fact presented in the disposition of law issues which warrants the trial by the court. This court should therefore enter a judgment in favor of the Petitioner and that the lease agreement between the parties is hereby decreed cancelled and that the property is hereby reversed to Its owner. The clerk of this court is hereby ordered to prepare a writ of possession and place same in the hands of the Sheriff to have the Defendant ousted and place the Petitioner In possession thereof consistent with the metes and bounds of the title deed as indicated in the contract. Costs against the respondent. AND IT IS HEREBY SO ORDERED.

The above forms the backdrop to the proceedings before this Court, exceptions having been taken to the ruling of the trial court's entry of final judgment against the respondent/appellant at the stage of the disposition of the law issues. The major contentions of the respondent/appellant, in excepting to the ruling of the trial court and appealing the matter to this Court, are three- fold: Firstly, that the pleadings exchanged between the petitioner and the respondent contained both issues of facts and mixed law and facts which the trial court was under a legal duty to rule to a jury trial, but which the trial judge, rather than ruling same to trial, proceeded to pass upon the said facts, and on that basis, proceeded further to enter judgment against the respondent/ appellant while disposing of the law issues, which act by the trial judge was reversible error; secondly, that the trial judge had erred in denying the motion to dismiss since the petitioner had not only violated the law in its discontinuance of the initial petition and action and the filing of the new petition for cancellation, but that it had compounded the breach by introducing new evidence in the reply, contrary to law, and thereby deprive the respondent of the opportunity to traverse the new evidence introduced by the petitioner in its reply; and thirdly, that the trial judge, in entering judgment against the respondent/appellant while disposing of the law issues, deprived the respondent/appellant

of the opportunity to present its defense, with the effect that the respondent/ appellant was deprived of the due process of law. This is how the respondent/ appellant captured those contentions in the bill of exceptions filed against the trial judge and which formed the basis for the appeal to this Court of dernier resort.

"AND NOW COMES Appellant in the above entitled cause of action, and most respectfully excepts to the Ruling/Final Judgment of May 22,2014,on the disposition of law issues and the Motion to Rescind the ruling on the motion to dismiss growing out of Your Ruling of May 9th 2014, hereby tendering this bill of exceptions for Your Honour's approval for the following reasons:

1. That Your Honour was in error when you denied the appellant's motion to dismiss, despite appellant's argument that the appellee failed to follow a laid down procedures provided for under the statute regarding voluntary discontinuance where responsive pleading had been filed. And for this reason, appellant excepts and tenders this bill of exceptions for Your Honour's approval.

2. That Your Honour committed a reversible error when you denied appellant's motion to dismiss the appellee's petition for cancellation of lease agreement, where appellant strongly argued that the appellee disregarded the rules of pleadings, which clearly states that a reply is not the office to aid the complaint by supplying omission or adding new ground of relief, but to join issue or avoid new matters in the answer. For this reason, appellant excepts and tenders this bill for Your Honour's approval.

3. That Your Honour erred when you ignored a cardinal procedure required by statute under the rules of pleadings and also the fundamental principles of notice, because appellant were served by this court, on February 25, 2014, a writ of summons with its accompanying documents such as ,copies of the appellee's new petition, notice of withdrawal, accrued costs, and thereafter, appellants filed its responsive pleadings to the appellee's new action, raising the issue of procedural error in appellee's voluntary discontinuance, the appellee in curing this material defect in its petition, filed its reply adding new evidence as exhibits, contrary to the rules of pleadings, which denied the appellant's the opportunity to traverse the new issues raised in the appellee's reply. Your Honour inadvertently ignored this error and proceeded with the hearing of the motion to dismiss and denied same which is tantamount to grave reversible error.

4. That Your Honour committed a reversible error when you denied the appellants' motion to rescind your ruling of May 9, 2014,stating therein that the appellee's notice of withdrawal was approved by Your Honour and thereby ignoring the procedure of notice and the rules of pleadings which are fundamental to litigation and as such prejudicial to the appellant for which appellant excepts and tenders this bill of exceptions for Your Honour's approval.

5. That Your Honour also erred by and in the following statement contained in your ruling on Wednesday, May 22, 2014, when you stated that there are no justifiable issues which warrants the trial by this court, in that the issue raised by the appellee are determinative of by trial, which appellant strongly argued are issues of fact that should be ruled to trial for this court to determine whether or not the said provisions of the agreement upon which the appellee's relied to institute this action were breached by the appellant.

6.That Your Honour conducted an unfair hearing of the motion to dismiss despite appellant's argument that the appellee's notice of withdrawal attached to the appellee's new petition dated on February 24,2014,stated therein that appellee's hereby withdraws its entire action with the right to file. This attachment carried the original signature of Cllr. Dexter Tiah, without any approval of the court. More besides, when this issue was raised by appellant in its returns and motion to dismiss, the appellee's attempting in curing this material defect attached a new notice of withdrawal in its reply, this time stating therein that the appellee hereby withdraws its entire action with the right tore-file, with the word of "approved" and the signature of Your Honour. Despite these glaring irregularities in the procedure, Your

Honour ignored same and denied the motion to dismiss and motion to rescind instead of dismissing the said action.

7. That Your Honour committed a reversible error when you denied the appellant's motion to dismiss, where appellant argued strongly that, its responsive pleading to appellee's second action, challenged the procedure on voluntary discontinuance followed therein by the appellee in an attempt to correct an omission made, as provided for under the principle of notice, which should have been served on the appellant at the time of the commencement of the new action, but appellee elected to attach to its reply to the appellant's returns and motion to dismiss another copy of a "notice of withdrawal", with new wordings thereon and the handwriting of the Assigned Circuit Judge, consisting of his signature and the word "Approved". Appellant says the statute at page 121,I LCLR, Section 11.6(2), provides that, voluntary discontinuance shall be made "upon order of the court and upon such terms and conditions as the court deems proper" and not by approval.

8. That Your Honour erred when you proceeded to hear the appellant's motion to rescind judgment on May 22, 2014, without a regular notice of assignment, when the parties appeared on the same said date for the ruling on the law issues. However, appellant's counsel informed court of the pendency of its motion to rescind the ruling denying its motion to dismiss and the court immediately permitted the appellee's counsel to spread its resistance on record and instructed the parties to proceed and argue the motion to rescind and the resistance thereto. After the parties argued the motion to rescind, pro et con, Your Honour, on the same May 22, 2014, hastily proceeded to rule on both the motion to rescind and the law issues in the case. For which appellant excepted and now tenders this bill of exception for Your Honour's approval.

9. That Your Honour also erred when you ruled on May 22, 2012, denying the motion to rescind and on page 10 of the records of the day's sitting, which included the court's ruling, stated that, "to question said approval by the Judge, it is an attempt to challenge the authority of the court". Appellant says that this statement by Your Honour compromises your neutrality in the proceedings before you. The Supreme Court of Liberia, in the case Lamco vs. Azzam, 31LLR, text at page 38,said: "This Court has held in several of its opinions that a court cannot do for a party which he ought to do for himself. The rationale behind this principle is to ensure pure neutrality on the part of the court".

10. That Your Honour committed a reversible error when you denied appellant's motion to rescind and proceeded to immediately rule on the law issues. When ruling on the law issues, Your Honour was also in error when you ruled, passing on the facts and documents pleaded by the parties but not admitted into evidence, stating that "legal ground for termination of the contract is provided in the contract, specifically clause 8 and clause 23 of the contract and this court cannot disrespect the obligation of the parties but under obligation to enforce the provisions of the contract" and for which appellant excepted and now tenders this bill of exception for Your Honour's approval.

11. That Your Honour committed a reversible error when, after the ruling on the law issues, granted the petition for cancellation of lease agreement without trial, even though appellant's counsel excepted to the ruling and announced an appeal to the Honourable Supreme Court, sitting in its October Term, A.D. 2014,and yet ordered a writ of possession to be issued and served in the case. Appellant says that it is a sealed principle of law in this jurisdiction that the taking of exceptions and announcement of appeal serve as a stay and the trial court should be guided thereby and not proceed to enforce its judgment, especially where the court, as in the instant case, noted the exception and granted the appeal as a matter of right. This is all reflected on the same page 15 of the court's ruling and further indication of Your Honour's demonstration of partiality in this matter.

12. That Your Honour also erred when you ordered the issuance of a writ of possession, notwithstanding the announcement of the appeal, the appellant not been served and has not signed a bill of costs in the case, yet Your Honour ordered the issuance of the writ of possession and directed the sheriff herein to proceed to enforce the court's judgment by ousting and evicting the appellants from the property without trial, which is tantamount to depriving appellants of its day in court. This act on the part of Your Honour is partial and arbitrary; to which appellant excepted to, and now tenders this bill of

exceptions for Your Honour's approval.

13. That Your Honour erroneously denied the appellant their day in court by exhibiting and demonstrating prejudicial acts in matters before you when the court is under duty to demonstrate greater knowledge of the law, both substantive and procedural. Mr. Justice Banks, speaking for the Court in the case: Kamara et al., vs. The Heirs of Essel, recently decided on July 5, 2012, on page 8 of the printed text, said: "We therefore feel compelled, again, to admonish our judges to demonstrate greater knowledge of the law, both substantive and procedural (emphasis ours), pay greater attention to trial procedural and the issues presented by the parties, and to take special care in how they respond to and make determination of matters brought before them or to their attention, as not to expose the courts to ridicule.

Wherefore and in view of the foregoing, appellant prays Your Honour to approve this bill of exceptions in according with law, practice and procedure."

Following the approval by the trial judge of the appellant's bill of exceptions and the filing thereof with the clerk of the court, and the other procedural requirements for perfection of the appeal having been duly met by the appellant, the Supreme Court was thereby vested with the requisite jurisdiction to dispose of the appeal and make a determination of the case on the merits. Appellee, believing there was urgency attached to the disposition of the appeal by this Court, filed a motion for the advancement of the hearing so that the case would be heard in the March Term, A.D. 2014 of this Court rather than the October Term, A. D. 2014,to which the appeal was taken. However, as the records had, at the time, not been formally transmitted to this Court, and for others legal reasons, the motion was not taken up by this Court. Hence, the case was called for hearing at the October Term, A.D. 2014,the term of court to which the appeal was taken. When the case was called for hearing, the attention of the Court was drawn to the motion to advance and the resistance thereto. As the Court believed that that the motion and the resistance had been rendered moot by the passage of time and the sitting of the Court in the term to which the appeal was taken, the Court determined to dispense with the hearing of the motion and ruled that the hearing of the case be proceeded with on the merits, with the briefs filed by the parties forming the basis for their respective arguments.

In its brief filed before this Court, the respondent/appellant set out four issues which it felt needed consideration by the Court. This is how the respondent/appellant framed the issues it desired the Court to address:

1. Whether or not the appellant violated any of the provisions contained in the Lease Agreement executed by and between the parties?

2. Whether or not the averments contained in the appellee's petition were purely issues of facts which were to be determined during trial by jury in order to aid the Court in making an informed determination?

3. Whether or not the appellee breached the office of a reply, by supplying new evidence to cure a material legal defect in its complaint?

4. Whether or not the trial judge committed reversible error when he disposed of the case and rendered judgment in favor of the petitioner, while ruling on the law issues, without giving the respondent the opportunity to present its defense even if ruled to bear denial and thereby depriving the respondent of due process?

The petitioner/appellee for its part, although not disputing the issues as framed by the appellant, presented the issues rather differently. This is how, in its brief filed before this Court, the petitioner/appellee couched the issues:

1. Whether or not the requirement that a notice of voluntary discontinuance is satisfied as provided for in Chapter 11,section 11.6(2) of 1LCL Revised once the notice of withdrawal is approved by the presiding judge?

2. Where the provision of an agreement require the lessee to commence the development of the lease property within ninety (90) days but the lessee fail to comply with such provision, will the Lessor be justify to seek the cancellation of such an agreement.

3. Where both the Lessor and Lessee agreed upon clear provision of an agreement as to the obligation of each party, can one of the parties proceed to cancel the agreement based upon such failure by the other party to comply with the provision of the agreement?

We note from the issues presented by the parties that while there are a number of similarities, the issues, as presented, differ in respect of their emphasis. This variance in how they are structured reflects the differing points of view of the respective parties. A careful review of the issues presented, for example, shows that the respondent/appellant placed emphasis primarily on the procedure adopted and pursued by the trial court, devoting only one issue to the substantive elements of the petition. The petitioner/ appellee, on the other hand, structured its issues primarily on the premise advanced by it, the substance of petition, the basis for seeking cancellation of the lease agreement executed between the parties, noting only one procedural issue which it considered to be of sufficient importance, or in its interest, to warrant the consideration of this Court.

And while it is true that this Court has decided repeatedly and consistently that it doesn't have to pass on all of the issues raised by the parties for its consideration [Halaby et al. v. Cooper and Messrs. Import-Export Company, 41 LLR 136 (2002); Vargas v. Morris et al., 39 LLR 18 (1998); The Management of United States Trading Company v. Morris et al., 41 LLR 191 (2002)], we also acknowledge that the underlining theme of those decisions is that justice is served by the issues which the Court determines to address. Accordingly, this Court, as the final arbiter of the matter appealed to it for its review and consideration, and accepting to pass on the critical issues presented by the parties, has determined, in its wisdom ,to frame the issues from a more objective perspective, as follows:

1. Whether the trial court erred in its denial of the appellant's motion to dismiss the petition and the action, and in determining that the approval by the trial judge of the petition satisfied the statutory requirements governing voluntary discontinuance?

2. Whether the petitioner's attachment to the reply of the notice of withdrawal of the petition and action and the receipt from the sheriff attesting to the payment of costs in violation of the law governing pleadings?

3. Whether the trial judge acted in violation of the law when in disposing of the law issues, he probed into the facts and entered judgment thereon rather than submitting the case to a trial by jury?

In regard to the first issue, that is whether the trial erred in denying the respondent's motion to dismiss and in determining that the new petition filed by the petitioner satisfied the requirements of the law governing discontinuance of an action and the filing of a new action, we hold, for the reasons stated hereunder, that the trial court did not err in denying the motion. The appellant contends that the motion to dismiss showed that the petitioner had acted in clear violation of Chapter 11.6 of the Civil Procedure Law in not meeting the mandatory requirements set out therein and that the denial of the motion by the trial judge was a reversible error, warranting the reversal of the judgment of the court cancelling the lease agreement executed between the appellant and the appellee. The appellant points out that section 11.6 requires that for a complaining party to voluntarily discontinue an action, the party must withdraw the action either before a responsive pleading is filed by the adversary party, or if a responsive pleading is filed, must seek the approval of the adversary party before such withdrawal can be effected, or in the alternative, that the complaining party must secure an order of the court before the action can be legally withdrawn. Here is what section 11.6 of the Civil Procedure Law says:

"Voluntary Discontinuance.

1. Without an order. Except as otherwise provided by law any party asserting a claim may discontinue it without an order.

(a) By serving upon all parties to the action a notice of discontinuance at any time before a responsive pleading or a motion for summary judgment is served, whichever first occurs, and filing the notice with proof of service with the court; or

(b) By filing with the court a stipulation in writing signed by the attorneys of record for all parties.

2. By order of court. Except as provided in paragraph 1, an action shall not be discontinued by the claimant except upon

order of the court and upon such terms and conditions as the court deems proper." Civil Procedure Law, Rev. Code 1:11.2(2). In considering the contention of the appellant that the appellee had not met the requirement of section 11.6,quoted above, we note that sub-section 1 of section 11.6, quoted above, is not relevant to the issue raised since the appellee had, for reasons best known to the appellee, opted not to pursue the course stated in sub-section 1, but rather to pursue the course stated in sub- section 2. Hence, it is this latter sub-section that the appellant contends the plaintiff had failed to comply with. According to the appellant, the appellee could only discontinue the action, under sub-section 2,by an order of the court, which order, it says, the appellee had failed to obtain from the court. The appellee, responding to the contention, admitted that it did not obtain a formal order, as the term may have been envisioned by the appellant, but asserted that it had sought and obtained the approval of the trial judge, noting that the approval of the trial judge was tantamount to an order by the court; and hence, that for all intents and purposes the requirement of the law had been met.

The trial judge, subscribing to and endorsing the argument of the appellee, held that the requirement of the statute had been met by the trial judge's approval of the petition. He therefore denied the motion to dismiss the petition and the action. It is this action by the trial judge that the appellant says was erroneous and that it was of such magnitude that we should not only reverse the same but also reverse the final ruling of the trial judge.

We do not disagree with the appellant that the law does require that where a plaintiff or petitioner decides to pursue the course prescribed in sub- section 11.6(2) in seeking to effect a voluntary discontinuance, the plaintiff/ petitioner must secure from the court an order to discontinue that action. The question, however, is whether there is a specific form that the order must take. We admit and recognize that ordinarily the form that is pursued in this jurisdiction is that a formal written instrument captioned "order" is prepared and signed by the judge of the court, evidencing that it is the court that has ordered the discontinuance. We do not see, however, that when one considers the intent of the statute, that the approval of the judge is of any significant departure from the standard form that it can be said that the requirements of the statute have not been met. To the contrary, the approval of the judge the judge signifies that the court has agreed to the voluntary discontinuance, which is what the statute actually seeks.

We note also that no prejudice is suffered by any party by the judge's approval of the voluntary discontinuance as opposed to the execution of a formal document captioned "judge's order". This is such a minute and insignificant technical point that does not warrant the infliction by this Court of substantial injustice, or for that matter, any injustice, upon any of the parties. Indeed, this Court has spoken on many occasions of the utility, or the lack thereof, of applying technicalities to the administration of justice. This Court has been very vocal in stating that it will not allow any semblance of technicalities, not of any significant magnitude, to defeat the ends of justice. As far back as 1898, more than one century and one and one-half decades, the Supreme Court stated its abhorrence to technicalities designed to defeat the ends of justice. In the case Dennis v. Republic, 1LLR 323 (1898), the Supreme Court, speaking of technicalities, said: "The object seems to be to allow every facility to the parties to place fully before the court their whole case, and to enable the court to administer substantial justice before the parties without security of action or turning round in court, and never to allow a party to overcome his adversary by the man-traps and spring-guns of covert chicanery, or by the surprise of technicalities of mere pleading or practice." Id., at 330. See also Moore v. Gross, 2 LLR 45 (1911) wherein the Court said: "this Court will give little or no attention to technicalities not affecting the merits of a controversy; but will endeavor always to get at the substance of the complaint brought before us." ld., at 46. Also Page et al. v. Jackson, 2 LLR 47 (1911) where the Court said: 1"This Court is not inclined to look favorably upon technical points, which do not go to the merits of a controversy. A court of last resort should deal with the principles underlying every issue brought before it. Causes properly on the calendar of this Court should be heard

speedily and fully, and should be disposed of upon their merits/' ld., at 48. Pratt v. Hazely, 3 LLR 127 (1929); Adorkor v. Adorkor, 5 LLR 172 (1936); Dennis v. Gooding, 10 LLR 123 (1949); Hill v. Parker, 13 LLR 556 (1960);Gbae v. Geeby, 14 LLR 147 (1960);Kobina v.Abraham,15 LLR 502 (1964); West African Trading Corporation v. Alrine {Liberia) Ltd.,25 LLR 3 (1976).

As noted before, the intent of the Legislature was to prevent the continuous voluntary discontinuance of an action and thereby subject the adversary to untold expenses and inconveniences. The way to cure such situation and prevent the harm engendered by the behavior, the Legislature felt was to require the agreement of the adversary party or the order of court before a voluntary discontinuance could be undertaken. We could and would understand and appreciate more the contention or argument of the appellant if the appellee had failed completely to obtain or secure the approval of the trial court. This would clearly have been a violation of the law. But there was no such occurrence. The approval contemplated by the statute was met, especially as the judge had attached no other terms and conditions to the approval as by law he had the authority to do if he felt that there was a need for such additional terms and conditions. All that the appellant claims or can claim is that the requirements was not met in the form to the letter as it believed was prescribed by the statute. Unfortunately, the argument omits any focus on a major element of the statute, which is the spirit and intent of the statute. We therefore agree with the judge that the approval of the count was in fact tantamount to an order which authorized the voluntary discontinuance of the action and therefore laid the basis for the filing of a new action by the appellee and that the course pursued by the judge has in no way adversely affected the appellant or render the imposition of an injustice. Rather, it is our view that the cause of transparent justice was served by the action of the judge, although not as is regularly pursued in this jurisdiction. To the contrary, were we to hold otherwise or as advocated by the appellant, we would be promoting injustice a course this Court has always rejected. Kuyete et al. v. Wadsworth et al, 28 LLR 163 (1979);Nasser v. Smith, 26 LLR 115 (1977).

Accordingly, we reject the contention of the appellant and hold that as the trial judge did not err in ruling that the approval of the judge satisfied the requirements of the voluntary discontinuance statute, the Court sustains the ruling in that respect.

On the second issue of substance presented by the appellant, that is, whether the petitioner's attachment to the reply of the notice of withdrawal of the petition and action and the receipt from the sheriff attesting to the payment of costs were in violation of the law governing pleadings, we hold that it neither violated the law governing pleadings nor was it tantamount to the introduction of new evidence. We note that the appellant, upon receipt of the new petition for cancellation, in the new action commenced by the petitioner, attacked the petition and the action, using as the basis therefor that the petitioner had failed to file a notice of withdrawal of the previous action and had failed to pay the accrued costs of the previous action, as mandated by the law.

We agree with the appellant that Section 11.6 of the Civil Procedure Law requires that in order to effect a legal voluntary discontinuance of any action and file a new action in its stead, a plaintiff or petitioner must scrupulously adhere to one of two procedural steps. In the one case where the discontinuance is attempted without the order of court, it must be done prior to the filing of any responsive pleading by the adversary and a copy of such notice of discontinuance served on the adversary or alternatively, where pleadings have been exchanged by the execution of an agreement with the adversary party to the effect of that a discontinuance is being undertaken. This is where the discontinuance is without an order of court.

The second procedural step, where the discontinuance is undertaken by order of court, an order of the court must be secured in order to effect the discontinuance. We have already determined that in the instant case, the petitioner had determined to effect the voluntary discontinuance by pursuing the course of an order of the court, and that it had secured in that respect the approval of the judge, which approval, we have held, was tantamount to an order of the court and that the action was not of such material nature or prejudicial to the respondent or worked any injustice as would have warranted the dismissal of

the action. We note that once this option is pursued, even where pleadings had been exchanged by the parties, the procedure prescribed for discontinuance without a court order becomes inapplicable. In that case, the law does not require that service be made on the adversary, although it seems prudent that such service should be made.

But the respondent contends that even if our conclusion is that the approval of the notice by the judge was tantamount to an order of the court for the discontinuance of the action, and thus disposed of the further contention that the petitioner should have followed the requirements for discontinuance without a court order, the appellee was still in violation of the Jaw in that it had failed to annex to the new petition copy of the notice of withdrawal evidencing that the appellant had withdrawn its prior action and which the appellee relied upon to support the institution of the new action, as well as document showing that it had paid the required accrued costs. Both of these, the appellant assert, were necessary to give validity to the new action, and that a failure to comply with these mandatory requirements of the statute render the new action dismissible. This is what sub-section 11.6(5) says with regard to the payment of accrued costs:

"5. Costs of previously discontinued action. If a plaintiff who has discontinued an action in any court, domestic or foreign, commences another action based upon or including the same claim against the same defendant, the court, upon motion by the defendant, may make such order for the payment of costs of the action previously discontinued as it may deem proper and may stay the proceedings In the subsequent action until the plaintiff has complied with the order."

Our examination of the records in the case convinces us that there is no legal basis for the contention of the appellant that the appellee introduced new evidence in the reply, and hence that the contention cannot be sustained. We note from the records that it was in response to the allegations made by the appellant that the appellee had failed to meet the requirements of the statute that the appellee attached to the reply copies of the notice of withdrawal and of the receipt of the payment of the accrued costs to rebut the allegation made by the appellee that it had violated the statute. We reiterate that had the appellee not filed the required notice of withdrawal or paid the accrued costs, a proper basis would have been presented for the dismissal of the new petition and action. It was therefore no introduction of new evidence that the appellee, in refuting the allegations made by the appellant in the resistance annexed to the reply the documents that refuted the allegations.

But more than not regarding the annexing of the documents mentioned herein as the introduction of new evidence, we hold that it was not necessary for the appellee to attach those documents to the reply and hence the attaching of the documents worked no harm, injury, or prejudice or injustice to the appellant, since the documents attached to the reply were already part of the court's records. All that was required of the appellee was that it ask the court to take judicial notice of its records, which under the law of this jurisdiction, the court has a legal duty to do. lung Park et al. v. Brumskine, Supreme Court Opinion, March Term, A. D. 2010, decided June 29, 2010; Constance et al. v. Ajavon et al., 40 LLR 295 (2000); Dopoe v. City Supermarket, 34 LLR 215 (1986) the notice of withdrawal, once filed with the court became a part of the records of the court; and the same is true for the receipt evidencing that accrued costs had been paid. The court's records, as public records, are open for inspection by any of the parties in case there are doubts as to certain actions having been taken by the parties. In the event the appellant formed the opinion that the appellee had not complied with the statute regarding the filing of a notice of withdrawal or the payment of accrued costs, the proper and appropriate thing to do was to secure from the clerk of the court certificates to the effect that those mandatory statutory requirements had not been met by the appellee. See Section 23.10 of the Civil Procedure Law.

The failure of the appellant to secure itself by taking the necessary action to protect its interest, especially given that the records before us show the contrary to be the case, renders the allegation and argument untenable. This Court has said repeatedly that it will not do for parties that which the parties are under a legal obligation to do for themselves. Berry v. Intestate Estate of Bettie, Supreme Court Opinion, March Term, A. D. 2014, decided June 16,2014; Citibank, NA v. Jos Hansen and Soehne (Liberia) Ltd. and Silla, 36 LLR 198 (1989); Liberia Agricultural Company v. Hage et al., 38 LLR 259

(1995). This Court has also said that documents issued by the clerk or other officers of the court will be deemed to be true and correct unless specifically rebutted by other evidence to the contrary. Kparnee v. Tano-Freeman, 18 LLR 159 (1967). We have seen nothing in the records, except for the allegations made by the appellant evidencing that the notice of withdrawal in the records and the receipt executed by the sheriff acknowledging payment of the accrued costs are false or did not exist at the time the new petition was filed and the new action commenced. This information, being a part of the court's records, it is inconceivable that the contention can be raised that the appellant was without notice of the existence of such records. And, as noted earlier, if the appellant believed that they did not exist, then it had the legal duty to secure a certificate, affidavit or other statement to the effect from the clerk of court and from the sheriff. In the absence of those, we deem the contention dismissible and we so hold.

This brings us to the final and most important issue presented by the parties, that is, whether the trial judge acted in violation of the law when, while disposing of the law issues, he probed into the facts and entered judgment thereon rather than submitting the case to a trial by jury? The appellant makes the argument that the averments contained in the petition for cancellation were of a purely factual nature which should have been submitted to a trial jury for its determination and that the trial judge was therefore in gross error in cancelling the lease agreement based on his determination of the facts alleged by the parties in the respective pleadings. In other words, the contention is that the judge should have limited himself to ruling on the law issues rather than intruding into the facts which under the law are reserved for the jury. In addition, the appellant maintained that by adjudging it in breach of the agreement and cancelling the lease agreement, the trial judge had denied it of the due process of law since he effectively deprived it of the opportunity to present evidence in its defense. It therefor seeks reversal of what was in effect a final ruling or judgment in the case.

In his ruling, the trial judge found that the appellant was in substantial breach of the lease agreement and that the breach warranted the cancellation of the lease agreement. Accordingly, he decreed the lease agreement cancelled and ordered that the appellee be put in possession of the property, formerly the subject of the lease agreement.

Taking the appellant's first argument on the issue, this Court concedes and acknowledges that it had repeatedly and consistently held that the province of the court is the disposition of the law issues and that it should therefore confine itself within the realm of that authority, leaving the determination of the facts to the jury which is legally the province of the latter. Abi Jaoudi and Azar Trading Corporation v. Monrovia Tobacco Corporation, 36 LLR 156 (1989); Lamco J. V. Operating Company v. Azzam, 31LLR 23 (1983). Indeed, this Court has held that ordinarily where the lower court or the trial judge has transgressed the province allowed to the court by law, by passing on the facts of a case, it will be deemed to have usurped the function of the jury and its action constitutes a reversible error. St. Stephens v. Gbedze ;Walker v. Morris, 15 LLR 424 (1963);Nyumah v. Kemokai, 34 LLR 226 (1986). We reiterate and affirm our adherence to the principles stated in the cited cases that the province of the lower court is limited to the disposition of law issues and that it is the prerogative of the jury to make determinations of the facts in a case.

In the instant case, the judge, having disposed of the motion to dismiss the petition and thereafter the motion to rescind proceeded to the next phase of the pleadings, which was to dispose of the issues of law raised in the pleadings. But where there is no dispute of the basic and underlining facts in a case, the trial judge may determine whether a trial by jury is warranted or whether a sufficient basis is presented for the entry of the facts admitted by the parties. The question then is whether such a situation is presented in the instant case.

In this case, as narrated before, the National Port Authority, the appellee herein, a wholly owned government entity charged with managing the ports of Liberia including the Free Port of Monrovia concluded a Land Lease Agreement with the appellant, Liberia Materials Ltd. for the lease of property of the appellant for a period of twenty-five years certain, beginning the 1st day

of August ,A.D. 2010,up to and including the 31st day of July, A. D. 2035, with the option of renewal or extension for an additional period of ten years. In addition to the lease payment, which the appellant was required to make annually, the appellant also undertook and was required to make an investment on the property of US$5 million within a period of five years of the date of execution of the agreement. There was no disputing by the parties as to the provision of Clause 4 regarding the undertaking of investment. To the contrary, there was a clear acknowledgment by the parties both as to the execution and existence of the agreement and the terms contained therein.

Amongst the terms of the agreement, contained in Clause 5, was the purpose of the agreement, stated to include the construction of a cement grinding, manufacturing, storage and administrative facilities, but would not be used for residential purposes. The parties also do not disagree as to the stated purposes. Also not disputed by the parties, in fact clearly acknowledged by the parties, both in the petition and the resistance thereto, is the provision of Clause 8, captioned Non Use of Premises-Development of Premises, which stated: "In the event of undeveloped premises, the Lessee shall commence construction within 90 days immediately upon the obtaining all necessary permits and approvals and continue until completion; the Lessee failure to comply with this provision, in spite of written notice, shall constitute a breach of the agreement for which may lead to its termination in accordance with paragraph 23 below." It is this Clause that the appellant asserted the appellee had failed to honour, and which failure constituted a breach, for which cancellation was sought as per paragraph 23 of the agreement.

The appellant did not dispute that it should have commenced construction work on the leased premises within ninety days of the execution of the agreement; it did not dispute that it had failed to commence such construction work; and it did not deny that in the event of such non-performance or failure, the appellee was vested with the right to seek cancellation. Indeed, it admitted as much to all of the foregoing in the resistance filed by it in response to the petition for cancellation. But it set forth two defenses: (1) that the failure to conform to the agreement was due to it not being able to secure the relevant permits from the proper government officials or agencies to commence the construction; and (2) that it is granted a period of five years within which to construct the US$65 million facilities on the premises, and hence, as only three and one-half years had elapsed, it still had a period of one and one-half years within which to construct the facilities stated in the agreement.

The trial judge was accordingly faced with the task of deciding whether, in view of the acknowledgments made by the parties as to the facts, and particularly the genuineness of the Land Lease Agreement and the admission made by the appellant of a failure to perform the terms of the agreement with the excuse provide for the non-performance, a jury trial was warranted. He therefore seemingly determined that under the circumstances a jury trial was not necessary, and he proceeded, in that regard, to hold that the breach acknowledged by the appellant was material and fell within the provisions of the agreement for cancellation and that the excuse provided by the appellant was legally insufficient to cure the breach. Predicated upon the foregoing, the trial judge entered a decree cancelling the agreement. This is the background to the issue as to whether the judge erred in entering judgment against the appellant while disposing of the law issues and to the claim that he exceeded his authority in so acting and invaded the province of the jury.

We do not dispute that the judge could have, and in the normal situation should have, submitted the case to a jury trial. Indeed, we are in agreement with the appellant that ordinarily a judge must first dispose of the issues of law before he rules the facts to trial, and that in the process of disposing of the issues of law the judge should confine himself/herself purely and exclusively to the disposition of the law issues and not intrude into the facts of the case. We also agree that a judge's intrusion into the facts while disposing of the law issues is an invasion of the province of the jury, and that in so doing he acts without the authority of the law. Moreover, this Court has held on numerous occasions that when a judge intrudes into the examination of the facts and the adjudication of the case predicated upon that intrusion, his or her action constitutes a reversible error and that the Court will not hesitate to reverse the judgment and order a new trial, beginning anew with the disposition of the law

issues.

However, while we acknowledge all of the foregoing and reaffirm the principles and holdings of this Court in all of those respects and reiterate that ordinarily the case should have been submitted to a jury trial, we believe that the instant case presents a number of extraordinary scenarios which may have militated against that normal course. Firstly, we note that where instruments or documents are pleaded, the rule is that they must be testified to, identified, confirmed and admitted into evidence for consideration by the jury or by the court where the parties have opted for a bench trial. This is designed to not only test the genuineness of the documents but also to provide the jury or the court (in the case of a bench trial) the opportunity to pass on the credibility of the documents and/or the witnesses. In the instant case, the both parties, in their pleading had acknowledged the existence of the Land Lease Agreement, its genuineness and its credibility. While these did not obviate the need for a jury trial, they militated against any claim that the documents necessarily should have been passed upon and admitted into evidence before the court could comment on the same or consider them in a determination of whether there was and contract and whether the contract was breached.

Secondly, in the pleadings the appellant admitted and acknowledged that it had breached the Agreement and the terms thereof by not commencing construction work within ninety days of the execution stated in the Agreement as a basis for cancellation of the Agreement. That acknowledgment and admission made by the appellant, of its failure to perform the specific term of the Agreement, relative to commencing construction works on the leased premises, being of the magnitude placed on it in the Agreement, not having been undertaken for almost four years following the execution of the Agreement, certainly provided a clear and undisputed basis for cancellation of the Lease Agreement by the very terms of the Agreement and a jury could not legally have determined otherwise had the case been submitted to a jury trial. The question then is whether the appellant was injured, harmed or made to suffer any prejudice or injustice by the course pursued by the trial judge in reaching conclusions on the matter while disposing of the law issues. We hold that except for the procedural error committed by the trial judge which under the circumstances we deem to be a harmless error, the appellant suffered no prejudice or injustice, in light of the acknowledgment and admission made by it. This holding conforms to prior opinions and decisions of this Court that while a trial judge is precluded from delving into the facts of a case while disposing of the law issues the confession, acknowledgment or other acts of the parties and the lack of dispute as to the core facts and issues in the matter will excuse the error of the judge, especially where no prejudice or injustice is suffered by any party growing out of the action of the judge. Cooper-Hayes v. The International Trust Company of Liberia (ITC), 37 LLR 277 (1993); Firestone Plantations Company v. Tulay et al.,34 LLR 116 (1986);Vargas v. Eid, 40 LLR 624 (2001).

The appellant argues that it had provided excuses for its non-performance of the Agreement, other than the payment of the annual rental. It asserted and argued that the admitted non-performance was due to the fact that it could not obtain the co-operation of the relevant government officials and agencies in securing the required permits to commence the construction work of the facilities it was to establish and build on the premises. Yet, it attached no instruments to the pleadings filed to substantiate that it made the efforts and that the delay in commencing the construction works or causing the non-performance of the Agreement for more than three and one-half years were due to factors beyond its control. It did not attach a single letter to a single government official or agency to give credence to the allegations and it provided no notice that at any trial it would provide such evidence. Under the circumstances, the allegations would have remained mere allegations and therefore completely absent of any proof. Knuckles v. Liberia Trading and Development Bank (TRADEVCO), 40 LLR 511 (2001); Bestman v. Republic, Supreme Court Opinion, October Term, A. D. 2012,decided February 19,2013; Morgan v. Barclay, 42LLR 259 (2004).

But even more importantly, the appellant did not deny that the appellee wrote to it informing it of the defaults and the non-

performance of those critical obligations under the Agreement; it did not deny that the defaults pointed out by the appellee did exists; and it did not deny that beyond the period of the ninety days provided in the Agreement for it to commence construction work on the leased premises, a period of over three and one-half years had passed. Its only excuse was the unsubstantiated and unsupported allegation that its non-performance was due to the fact that the relevant officials and agencies of the government had not accorded the permits needed for it, the appellant, to the commence the construction work stipulated in the Agreement. This Court has said over and again that when an allegation is made by a party which requires rebuttal, the failure to rebut will be deemed as an admission of the allegation. Inter-Con Security v. Miah and Yarkpawolo, 38 LLR 633 (1998); Ministry of Lands, Mines and Energy v. Liberty Gold and Diamond Company et al, decided on January 10, 2014. Thus, taking the failure to rebut as an admission, would a jury trial have altered the result reached by the trial judge? We think not.

The sole question then is whether the trial judge acted without the law in passing on the facts stated above or stated in the alternative, should he have allowed them to go to a jury trial? We hold that under the special circumstances of this case, while it would have been more prudent for him to have submitted the facts to a jury trial, the error was excused by the acknowledgment and admissions by the appellant. Further, that as the action of the judge in decreeing the cancellation of the Land Lease Agreement resulted in no harm, injury, prejudice, injustice or denial of due process, which recognizes the principle of acknowledgment and admissions, the error made by the judge cannot be deemed to be one of a reversible nature. We therefore cannot sustain the contention of the appellant that the error was a reversible one and that we should therefore reverse the decision of the judge.

We would like to caution our judges that the decision we have made today have taken into account the special circumstances presented in the case that warranted our pursuing an exception to the general rule and should not form the basis for any departure from the precedents this Court has adhered to for more than one and one half centuries and it should form the basis for any trial judge to usurp the function or invade the province legally vested in the jury. This Court will not hesitate to declare any such invasion as erroneous and illegal and reverse decisions growing out of such invasion.

Wherefore and in view of the above, the ruling of the trial court adjudging the appellant in violation of the land lease Agreement executed between the appellant and the appellee and decreeing the cancellation of the said Agreement is hereby affirmed and confirmed.

The Clerk of this Court is mandated to send a Mandate to the lower court directing the judge presiding therein to resume jurisdiction over the case and to enforce the judgment of that court in accordance with law. Costs are adjudged against the appellant. AND IT IS HEREBY SO ORDERED.

Counsellor Molley N. Gray, Sr. of Jones and Jones Law Firm appeared for the appellant. Counsellor Betty Lamin Blamo, Solicitor General of Liberia, for the Ministry of Justice and Counsellors Cooper W. Kruah and ldriss S. Sheriff of the Henries Law Firm, appeared for the appellee.