The Ministry of Lands, Mines and Energy, by and thru its Minister, **Dr. Eugene Shannon,** Deputy and Assistant Ministers, Director of cartography, and all persons, corporations, including but not limited to **Ascension Mining Company, Yelloping Green, China Union,** et al., entities acting under their authority, of the City of Monrovia, Liberia, APPELLANTS VERSUS **Liberty Gold and Diamond Mining Company, Magma Mineral resources Inc., Crayton Development Inc.,T-Rex Resources Inc.,G-10Exploration Inc.,** by and thru its Acting general manager, **Charles Davis**, of the City of Monrovia, Liberia, APPELLEES

APPEAL

LRSC 5

Heard: July 1, 2013 Decided: January 16, 2014

MR. JUSTICE BANKS delivered the Opinion of the Court

One of the core values upon which Liberia's economic system is built Is respect for the sanctity of contracts. So strong was the conviction of the framers of the Liberian Constitution that the nation and its Government should show respect for the sanctity of contracts that they embedded in that most sacred document a provision that obligated the Government to respect the principle of sanctity of contracts, without reference to whether the contract was between the Government and a private individual or between two private individuals, natural or legal. Article 25 of the Constitution expressed that conviction in the following words: "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).

Indeed, it was with that core value in mind that the framers of the Liberian Constitution, while noting that in order to ensure that the mineral and other natural resources which the Republic potentially possessed are utilized for the public good and that the benefits of that utilization accrue directly, beneficially and equitably to the entire populace, and for that purpose stipulating in the document that private property rights do not extend to such resources on or beneath any land or to any lands under the seas and waterways of the Republic, that all mineral resources in and under the seas and other waterways shall belong to the Republic and be used by and for the entire Republic [LIB. CONST.,ART 20(b)],and that therefore the Republic, acting by the Government, has the obligation to manage the natural resources for the advancement of the general welfare of the entire Liberian people and the economic development of the nation [LIB. CONST., ART. 7], they ensured that Article 25 of the sacred constitutional instrument made it very clear that in the course of such management of the national resources, the Government should honour and respect the sanctity of contracts.

These proceedings, on appeal from the several rulings of the lower court, challenge the very core of the government's respect, or more appropriately, according to the appellees, the government's lack of respect, for the sanctity of contracts. They alleged that the government body primarily entrusted with the task of fulfilling the constitutional command stated above, that body being the Ministry of Lands, Mines and Energy, created by the Liberian Legislature under authority granted the Legislature by Article 34 of the Constitution, and whose functions, amongst others, stipulated under the Executive Law, inter alia: to review, and in the proper cases grant or deny applications for prospecting, explorations, and mining rights; approve or deny applications for permission to prospect, mine, purchase, sell, import, export or otherwise deal in diamonds; and suspend operations of mining concessionaires for violations of the Mining Law or regulations issued thereunder and to impose fines on such concessionaires" [Executive Law, Rev. Code 12:33.2], had violated and transgressed two key principle commands set forth in the Constitution: (a) The command to honor and respect the sanctity of contracts, and (b) The command to ensure that in all of its activities, it does not deprive any person of the right to life, property, privilege and the like without according them due process of law.

The allegation also is that the Legislature, in furtherance of the authority granted it under Article 34 of the Constitution, had enacted, in 2000, a new Mineral and Mining Law which was to be the law governing all mining activities in the country. The new law, they said, stipulated the conditions, requirements and extent to which all mining activities were to be carried out and the body that was to be responsible for granting licenses and overseeing the mining sector. See: Mineral and Mining Law of 2000.

It was, they further said, against this backdrop that Leonard Lindstrom, a Canadian national, utilizing the provisions of Chapter 4 of the Associations Law, Title 5, Liberian Code of Laws, formed the Liberty Group of Companies comprising six mining companies, viz: Liberty Gold and Diamond Mining Inc., T- Rex Resources Inc., G-10 Exploration Inc., Golden Ventures Inc., Magma Mineral Resources Inc. and Crayton Developments Inc., each of which then proceeded, under the New Mining and Mineral Law of 2000, and in accordance with both the Associations Law and the Executive Law, to secure from the Government a number of Mineral Reconnaissance Licenses. Each Mineral Reconnaissance License was for a period of six months and was renewable for a further six months; each such license conferred in the licensee the right to conduct rapid geologic assessment for primary sources of diamond, gold and other minerals for detailed scientific exploration, but it did not vest the right in the licensee to explore for such minerals.

The records further reveal that, based on the request of the appellees, or the parent company of the appellees, and to enable further reconnaissance to be undertaken of the areas in order to determine if there were good prospects for economically viable mineral findings and mining, and perhaps because the Ministry of Lands, Mines and Energy was satisfied that the appellees had conformed to the conditions and requirements imposed, the Ministry renewed the Mineral Reconnaissance Licenses of the appellees for an additional period.

The appellees alleged further that based upon geological data evidencing the presence of commercial quantities of gold in the demarcated areas for which they held Mineral Reconnaissance Licenses, they applied to the Ministry of Lands, Mines and Energy for six Mineral Exploration Licenses, which application was granted. Accordingly, the appellees alleged that in October 2005, they executed with the Government of Liberia, represented by the Ministry of Lands, Mines and Energy, six Mineral Exploration Licenses.

The appellees further alleged that under the terms of the aforementioned Agreements, executed on October 25, 2005, and pursuant to the new Mineral and Mining Law of 2000, each exploration license was to last for a period of three years, from October 25, 2005, to October 26, 2008. They further alleged that as the law allowed an extension period of two additional years, they applied to the Ministry of Lands, Mines and Energy for such extension. That application or request for an additional extension period of two years, they say, was granted by the Ministry in a communication dated September 18, 2009.

However, prior to the granting of the extension, the Ministry of Lands, Mines and Energy, in August of 2009, wrote a letter to Mr. Lindstrom stating that the $160,000 figure the Ministry had previously informed him that his six companies owed to the Government, which was due to unpaid fees that accrued during the initial three year term, was an inaccurate amount. The letter notified Mr. Lindstrom that, after a reconciliation of their records and payment vouchers, his companies were actually indebted to the Government to the tune of $280,000. The Ministry stated, in the letter to Mr. Lindstrom, that the discrepancy was due to the protocol with regards to his payment of the fees permitted by the Ministry's previous administrators being completely unorthodox and not in consonance with established procedures by the Ministry. The specific unorthodoxy the Ministry disapproved of was payments from the companies that were addressed to individuals at the Ministry as opposed to the payments being paid directly into the Government revenue. The Ministry advised Mr. Lindstrom that he had until August 31, 2009 to settle his total arrears and failing to make total payment by that date would trigger the cancellation of each of the mineral exploration agreements.

Notwithstanding the appellees' failure to pay the total outstanding amount by the expressed deadline, as mentioned in the preceding paragraph, not only did the Ministry not cancel the agreements but it granted the two year extension for all of the six companies in September of 2009. However, on January 25, 2010, with the total arrears still unsettled, a notice of termination of the mineral exploration agreement that contained the amount owed was sent to each of Mr. Lindstrom's companies. Each notice explained that the debt was due within thirty days of the date of the notice and failure to pay would result in the termination of the agreement.

At that point, the debts for Golden Ventures Inc., Liberty Gold and Diamond Mining Inc. and G-10 Exploration were fully paid. However the balance for T-Rex Resources Inc., Crayton Development Inc. and Magma Mineral Resources Inc. remained unresolved. Consequently, each of the latter three companies received the following letter:

March 8, 2010

Len Lindstrom President & CEO

Monrovia, Liberia

Re: Termination of Mineral Exploration Agreement by the Government of Liberia

Dear Sir:

We present our compliments and wish to refer you to our letter of January 25, 2010 (Re: Notice of Termination of Mineral Exploration Agreement by Government of Liberia) informing you of your company's arrears with the Government of Liberia in the tune of [US$29,710.54 for Magma Mineral, US$28,227.91 for Crayton Development and US$44,594.75 for T-Rex Resources Inc.] representing outstanding payments for Mineral Exploration License and Surface Rental fees for tax period Oct.'09- Oct. '10.

You were to remit into Government of Liberia revenue the [total amount due] within thirty (30) days of the date of issuance of said notice, i.e. January 25,2010. As of today's date you have not done so.

Hence, in keeping with Sections 9.9 and 9.14 of the New Minerals and Mining Law of 2000 and Section 27.2(a) of your Mineral Development Agreement which states that "the Government shall have the right to terminate this agreement. where the operator shall fail to make payments described In this agreement on the due payment date, and such default is not cured within thirty (30) days after notice by the Government (or within such longer period as may be specified in said notice)",we wish to inform you that your Mineral Exploration Agreement with the Government of Liberia has been terminated and that the properties of this license [Grand Kru and Nimba East for T-Rex Resources, Gibi Mountain Area for Crayton Development Inc. and Nimba South for Magma Mineral Resources Inc.] have reverted to the Government of Liberia.

The cancellation of your Mineral Exploration Agreement takes effect as of April 26, 2010 in keeping with Section 9.16 of the New Minerals and Mining Law of 2000.

Kind regards.

Very truly yours,

E.C.B. Jones

ACTING DIRECTOR

Although Liberty Gold and Diamond Mining Inc. and G-10 Exploration Inc. had satisfied their financial obligations to the Government, the Ministry revoked their respective licenses as well due to a failure of those two companies to submit work programs.

In response to the cancellation of Liberty Gold and Diamond Mining Inc., the company's counsel wrote to the Ministry on September 21,2010, asserting that a lack of work plan is not a sufficient ground for termination of a license and, moreover, prior to any

termination, his client was entitled to a hearing. Therefore, he concluded, we are constrained to invoke our right to a hearing, consistent with the administrative procedure law.

It was this action by the Ministry of Lands, Mines and Energy, the appellees assert, done without even affording them the opportunity of a hearing and against the Administrative Procedure Act and the new Mineral and Mining Law of 2000, that prompted them, on October 25, 2010 to seek redress in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, Sitting in its September, A. D. 2010 Term, by way of a petition for declaratory judgment. We have determined that given the nature of the claim set forth in the petition, the manner in which the same was dealt with by the trial court, and the need for a full understanding and appreciation of the contentions of the appellees, along with the facts and circumstances of the case, that the petition be quoted verbatim in its entirety. We should note, however, that although the counts in the petition were not numbered as required by law, and was not challenged by the respondent/appellant, we believe that as numbering is important for the purpose of reference, we have supplied the appropriate numbers in the order of the sequential appearance of the counts. Accordingly, and with that notation, we herewith quote the petition as follows, to wit:

AND NOW COMES petitioner in above entitled cause of action showing therefore the following cogent reasons, to wit:

1. PETITIONER says that at all times herein it has been a corporate entity operating under the Laws of the Republic of Liberia. Copy of petitioner's Business Registration is hereto attached, marked p/1in bulk.

2. PETITIONER says that all times herein the respondents have been officials appointed by the President of Liberia to discharge various duties and offices within the Ministry of Lands, Mines and Energy.

3. PETITIONER says that since 2004, as can be seen by the attached exploration agreement and licenses marked p/12, in bulk, it has conducted scientific exploration of several mineral clusters within territories demarcated by licenses duly issued by the Ministry of Lands, Mines and Energy.

4. PETITIONER says that for several years it has operated the territories demarcated by the licenses, deployed geologists to collect samples, and paid nearly 1 million United States dollars into the general revenues of the Liberian government, as can be seen by current license payments marked p/3 in bulk.

5. PETITIONER says that in addition to the payment of license fees and taxes, it has employed nearly one hundred Liberian citizens throughout territories covered by the aforementioned licenses.

6. PETITIONER says further to count five above that its exploration pro- gram in Liberia, like many other corporations, was severely impacted by the worldwide economic downturn in 2008/2009. As a result, there was a negative effect on the petitioner's business that necessitated a slowdown in the vigorous exploration program heretofore being vigorously pursued.

7. PETITIONER says that it was during this period of general worldwide recession that the respondent, completely ignoring the substantial investment of the petitioner prior to the onset of the recession, commenced a systematic process designed to decapitate petitioner's business with the sole purpose of turning over petitioner's licenses to third parties, for reasons, best known to themselves.

8. PETITIONER says that even though the respondent extended petitioner's license in 2009 for an additional period of two (2) years, with the first year license payment been received by the Central Bank of Liberia, and, despite the fact that the period for which payment was received by the Government, yet the respondent illegally cancelled the self same license issued to the petitioner, contrary to laws extant in this jurisdiction. Copy of the letters of extension and cancellation is hereto attached, marked p/4 in bulk.

9. PETITIONER says that notwithstanding the fact that the last paragraph of the subject letter expressly states that the petitioner is entitled to a hearing, as indicated in the cancellation letter, and, notwithstanding the petitioner's counsel letter to respondents specifically requesting a full scale hearing of the matter prior to any action that will tend to deprive the petitioner of vested property rights. In the instant case the respondents have arbitrarily, illegally and clandestinely cancelled the petitioner's property, in flagrant disregard to procedures set forth in the mineral and mining laws 2000, as well as the Administrative Procedure Act.

10. PETITIONER says that it is the law that Any person interested under a deed, will, written contract or other writing constituting a contract, or whose rights, status, or other legal relatives are affected by a statute, municipal ordinances, contract or franchise, may have determined any question of construction or validity arising under the instrument and obtain a declaration of rights, status, or other legal relations there under. See 1LCLR,43.2, page 218.

11. PETITIONER says that it is also the law (see 17.2 of the Mineral & Mining Regulation) that a notice setting forth a license termination event becomes effective two (2) months as of the date of issuance, moreover when the licensee requests a hearing, as in the instant case, and until a hearing is held; Petitioner attach for information of court, copy of a letter of request addressed to the Ministry of Lands, Mines marked/S.

12. PETITIONER says that without any hearing, judicial review as promised for under section 18 of the Regulations governing mineral exploration in Liberia, the respondent have commend regulations with the named co- respondent relative to turning over the identical properties of the petitioner.

13. PETITIONER says that the entire conduct and action of the respondent hereinabove mentioned constitutes a deviation from generally accepted corporate practices, violates the statutory and constitutional law of Liberia and if unchecked and corrected by this honorable court, will take negatively impact on the credibility of our mining program worldwide.

WHEREFORE AND IN VIEW OF THE FOREGOING facts and circumstances, petitioner pray court for the following orders:

1. An order restraining, preventing and prohibiting the respondent herein above named and Co-respondents or any other company that matter, from introducing into, operating, exploring or taking over territories covered by the licensees issued to the Petitioner; pending the outcome and final determination of this case;

2. An order to the respondent to maintain the status quo ante, that is to say the state of things prior to the issuance of the illegal cancellation orders above mentioned;

3. A declarative order, after a hearing of this matter, confirming and affirming the petitioner's mining right to the subject property; and that the respondent actions herein above described to arbitrarily cancel the petitioner's licensees, were inconsistent with law.

AND TO GRANT UNTO THE petitioner each and every relief deemed by your honor to be just, legal and equitable.

The appellees, in support of the petition, attached thereto a number of documents as exhibits, including receipts of payments made, the appellant's two termination letters (January 25, 2010 and March 8, 2010), several communications from the authorities of the Ministry of Lands, Mines and Energy to the authorities of the Ministry of Finance directing the latter to receive from the appellees payments for the exploration activities being carried out under the mineral exploration agreements, business registration certificates, certificates of registration, letter from the Ministry of Lands, Mines and Energy extending for two years the exploration activities of the appellee from October 24,2009 to October 24,2011, letter from appellees counsel to the Ministry of Lands, Mines and Energy, etc.

We also note that on the same day the appellees filed the petition for declaratory judgment, they also filed with the Sixth Judicial Circuit Court a motion for the issuance of a preliminary injunction to restrain the appellant from terminating the mineral exploration agreements pending the disposition of the declaratory judgment proceedings. In the motion, the appellees alleged that by virtue of instruments which they had attached as exhibits to the motion, they held vested property rights over certain demarcated mineral areas stated in the licenses issued to them by the Government ,for which fees had been paid into the public treasury; that those rights were constitutionally protected and that they could not be deprived of same except by the outcome of a hearing consistent with due process of law; and that they were therefore entitled to a preliminary injunction as stipulated in section 7.61 of the Civil Procedure Law, Title 1, Liberian Code of Laws Revised.

The trial court, presided over by the Resident Circuit Judge, His Honour Yussif D. Kaba, upon review of the motion and accompanying documents, and being satisfied that the conditions had been met for the issuance of a writ, on October 25, 2010, ordered the clerk to issue a writ of injunction restraining the appellant from cancelling or terminating the mining licenses of the appellees pending the determination of the main suit of declaratory judgment, as well as a writ of summons directed to the appellant, ordering the appellant to file returns and a motion to vacate within ten days.

Predicated upon the documents exhibited and the Mineral and Mining Law of 2000 as well as the Administrative Procedure Act, Chapter 86 of the Executive Law, Title 12, Liberian Code of Laws Revised, the appellees sought to make the case that the action taken by the Ministry of Lands, Mines and Energy, representing the Government of Liberia, not only violated the agreements, the laws and appellees' constitutional right to due process of law, but asserted that, given the foregoing, the trial court should reversed the said termination action of the Ministry of Lands, Mines and Energy and restore the appellees' right of exploration for which they had been granted licenses.

The appellant, believing that it had acted legally, properly and correctly, both with respect to the agreements, which it had cited in the letter of termination, and the governing Mineral and Mining Law of 2000, contested the petition for declaratory judgment, resisted the motion for preliminary injunction, moved the court to vacate the injunction. In making its prayer to dismiss the petition and vacate the preliminary injunction, the appellant, on November 3, 2010 filed a sixteen count returns and a five-count resistance and motion to vacate. We herewith quote the appellant's returns verbatim, the same as we had done with the petition:

"AND NOW COMES, the Ministry of Lands, Mines and Energy, co-respondent in the above reference cause of action most humbly praying this Honorable Court and Your Honor to set aside, deny, dismiss and quash the petitioner's petition for the following reasons, to wit:

1. That as to counts one (1) and two (2) of the petitioner's petition, the co-respondent says that same present no traversable issue.

2. That because as to count three (3) of the Petition, the co-respondent denies the petitioner's claim that it did conduct scientific exploration of several mineral clusters within territories demarcated by licenses issued by co-respondent in 2004. Co-respondent challenges the petitioner to produce any license(s) Issued by the co-respondent, Ministry of Lands, Mines and Energy in 2004 to Petitioner as claimed in count three (3) of the petition. Therefore, said count three (3) should be denied along with the entire petition as being false and misleading, the co-respondent so prays.

3. And that as to count 5 (five) of the petitioner's petition, co-respondent says that it is true that the petitioner paid taxes and fees for two (2) of the Companies, G-10 and Liberty Gold, Diamond Mining Companies but it failed, refused and neglected to present the budget for them.

4. Further to count three (3) of these returns, co-respondent says that the petitioner did not pay anything for the rest of the companies owned by the petitioner. Co-respondent says it challenges the petitioner to demonstrate that, besides G-10 and Liberty Gold Diamond Mining Companies, it (petitioner) did pay its obligation to orbit as claimed in count five (5) of the petitioner's petition.

5. That as to counts six (6) and seven (7) of the petitioner's petition, co- respondent says that when the petitioner officially appealed to co- respondent to defer payment of

petitioner's obligations for two (2) months, due to what the petitioner called "World Wide economic downturn, same was granted by GOL but petitioner later failed, refused and grossly neglected to honor same and the requested period was misused. Therefore, counts six (6) and seven of the petition should be set aside as a legal nullity, in that the GOL was not even under obligation to grant any appeal as was granted. Thus co-respondent so prays the dismissal of the petition.

6. That further to count six (6) of the co-respondent's returns, co- respondent says that petitioner did not in fact demonstrate and/or show any evidence that there was global downturn, yet, co-respondent granted the request of the petitioner, demonstrating its good faith, but still Petitioner deliberately elected to ignore same by refusing to honor its obligations, consistent with the contract concluded with co-respondent.

7. That as to count eight (8) of the petitioner's petition, co-respondent denies that it cancelled and/or suppressed the petitioner's license before the expiration of the period covered by petitioner's payment to GOL in keeping with the contract's provisions. The truth of the matter is that the petitioner was in complete default at all levels; that is to say, the petitioner failed and refused to honor its contract obligations by not paying taxes and fees for three companies - Magma Mineral Resources, Inc., Crayton Development, Inc.; and T-Rex Resources, Inc., and paid only for Liberty Gold and Diamond Mining and 6-10 Exploration, Inc., and said Licenses were reactivated, but the petitioner again refused to provide Government with the proposed work plans and budgets for these two Companies, Liberty Gold and Diamond Mining and 6-10 Exploration, Inc., in contravention of the Mineral Regulation and Agreement. Therefore, count eight (8) of the petition should be ignored.

8. That as to count nine (9) of the petitioner's petition, co-respondent vehemently denies engaging in any clandestine and/or extra-judicial conduct when it terminated the licenses of petitioner, in that the petitioner's consultant, Jonathan Mason and lawyer, Cllr. Samuel R. Clark, represented petitioner. The petitioner was informed via its legal counsel and consultant that petitioner had failed to comply with the provisions and exhaustion of the grace period granted by Government, thus amounting to termination. Co-respondent herein gives notice that it shall prove during hearing that the petitioner was represented and notified before the action was taken. All of the processes as laid out in the Mineral Law were complied with.

9. Co-respondent contends that count ten (10) of the petitioner's petition is vague and indistinct, and says further that the said count ten (10) presents no factual issue to be traversed;henceforth, said count ten (10) should be ignored.

10. That because as to counts eleven (11) and twelve (12) of the petition, co-respondent denies claim laid therein, in that the co-respondent complied with the provisions of the Regulations made and contained in the Mineral and Mining Law, Section 17.2, as cited in the petitioner's petition. Co-respondent gives notice that it shall prove during hearing that the above cited provisions by the petitioner were observed by the co- respondent before acting in compliance with said Regulations.

11. That further to count eleven (11) of the petition, co-respondent says that series of meetings were held between the petitioner and the co- respondent concerning the termination communications issued to petitioner by the co-respondent and that conclusion was reached that the Ministry of Lands, Mines and Energy served and/or notified Liberty Gold and Diamond Mining and G-10) Exploration, Inc., thus providing the petitioner an opportunity for due process to cure petitioner's defaults, but to no avail.

12. Also further to counts eleven (11) and twelve (12) of the petition, co-respondent contends and says that if petitioner felt that it was not afforded due process by the Ministry of Lands, Mines and Energy, then petitioner should have reverted to the Ministry of Justice for remedy as a means of exhausting local remedy before proceeding to this Honorable Court in the manner or fashion that the petitioner did. That not having been done, the petitioner's petition is a fit subject for dismissal and the co-respondent so prays. This is a requirement of the statute.

13. That as to count thirteen (13) of the petitioner's petition, co- respondent says that the claim by petitioner to the effect that the co- respondent deviated from generally accepted corporate practices, violates the Law of Liberia and if unchecked and uncorrected by this court, will have negative impact, it is false and misleading. The truth of the story is that, the petitioner in these proceedings has deliberately elected to by-pass, circumvent and completely fail and refuse to respect and abide by the provision of our law, while at the same time attempting to enjoy from the very law it refuses to obey.

14. Further to the above, the petitioner has elected not to honor its obligations to Government as required by the Mineral and Mining Regulations, despite series of notices to petitioner, coupled with the petitioner's own admission that it has failed to obey the law due to global downturn, without offering any proof. Government granted petitioner's appeal and extended the time, but thereafter, the petitioner again refused to honor its obligation to Government; thus making the entire petitioner's petition a fit subject for dismissal and the petitioner so prays.

15. Co-respondent submits and says that the inability of the petitioner to be in tune with and/or keep to its obligation is due to the fact that the petitioner's company, Liberty International Mineral Corporation, the parent company of Liberty Gold and Diamond and G-10 Exploration, Inc. and its President and Chief Executive Officer (CEO), Leonard Allen Lindstrom, was barred from trading on the Alberta Stock Exchange for engaging in illegal distribution of Liberty International Securities in Alberta Province, Canada. Co-respondent gives notice that it shall produce evidence during trial to substantiate this claim.

16. Co-respondent denies all issues both of fact and law that are not specifically traversed in these returns.

WHEREFORE AND IN VIEW OF THE FOREGOING, the co-respondent most humbly prays Your Honor and this Honorable Court to deny, dismiss and set aside the petitioner's

petition as its service was not filed at all; and further grant unto co-respondent all that is legal, Just and equitable.

As for the motion for preliminary injunction, as well as in obedience to the order of the court to file resistance and a motion to vacate the injunction, the appellant, on November 3, 2010 filed an instrument which it captioned as "Co-respondent Ministry of Lands, Mines and Energy Resistance and Motion to Vacate Injunction." In that instrument, the appellant contended basically that (a) the petition for declaratory judgment was totally false and misleading and not supported by the Mineral and Mining Law of 2000, and the motion for preliminary injunction should therefore not be entertained; and (b) that the law relied on by the appellees for the issuance of the preliminary injunction (section 7.65 of the Civil Procedure Law) was not applicable to the instant case, given the facts and circumstances of the case, and that even if the law was applicable, the appellant would indemnify the appellees if the case was decided in favor of the appellees.

The appellees, believing that the respondents/appellants had set forth issues which needed to be traversed, and cognizant of the provisions of the Civil Procedure Law stating that a failure to traverse issues set forth in a pleading is deemed as admitted as true, the appellees, on November 13, 2010, filed a twenty-two count reply in response to the returns filed by the respondents/ appellants. We quote the said reply as follows:

And now comes petitioner in the above entitled cause of action, denying the legal and factual sufficiency of co-respondent, Ministry of Lands, Mines and Energy returns, showing therefore the following cogent, reasons, to wit:

1. That count one of the returns presents no issue for traversal and must be taken for what it is worth.

2. That as to count two of the returns, and in direct rebuttal of averments contained therein, petitioner attaches copies of its mineral licenses granted in 2004, covering 21,950 square kilometers, as well as receipts for payment for the reconnaissance period totaling US$432,050 marked p/1 in bulk.

3. Petitioner says further to count two above, and still traversing count two (2), brings to the attention of court that, as is evident by attached exhibit, the petitioner received its first exploration licenses on June 18, 2004; subsequently, on October 26, 2005, the licenses were delineated to 9,150 square kilometers. During this period commencing June 2004 up to April 2009, the petitioner operated an aggressive and continuous exploration program that employed hundreds of Liberians on a full time or part time contractual basis; ran a team of up to 20 professional Geologists in it programs, sponsored 21 geological students at the University of Liberia, collected over 90,000 geological samples, conducted three (3) large geophysical programs, a short drill program and identified 17 highly potential mineral deposits, most specifically in the Belefunai and Putu licensed areas to Liberty.

4. Petitioner, traversing count three, requests court to observe that said count traverses only count five(5) of the petition, completely ignoring count four. Therefore, by such failure

to traverse count four, then averments in a pleading to which a responsive pleading is required, is deemed admitted. See 1 LCLR 9.8(3) page 110.

5. Petitioner says further to count four above, and still traversing count three, again request court to take judicial notice of the averment contained therein that even though licenses fees were paid for petitioner's companies, for the current year, yet, said licenses were illegally terminated by the co-respondent, contrary to laws, practice and procedure.

6. Petitioner further to count six above and still traversing count four informs court that for the period October 26, 2005 to October 26, 2008, the petitioner paid a total of US$520,000 in license fees. Petitioner hereby attached copies of its receipts for 2006 to 2008 license period, and copies of the receipts petitioner was allowed to pay in 2009 to 2010 period totaling US$194,033.73 for G-10 Exploration Inc., Liberty Gold and Diamond Mining Inc., and Golden Ventures Inc. In total Petitioner has paid US$1,146,094 in Mineral licenses fees. Petitioner hereby attached copies of its receipts for October 2009-2010 for G-10 exploration And Liberty Gold and Diamond Mining in marked p/2 in bulk.

7. Petitioner denies count five of the returns as being untrue, evident by the conspicuous absence of any written instrument annexed in support of said averment; an" official appeal" cannot be verbal in the context of government operation. On the contrary, petitioners submit that the extensions of the petitioner's licenses represented an appreciation by the respondent of petitioner's investment in Liberia during a period of civil war when many exploration companies considered the country too risky.

8. Petitioner traversing count seven (7) reiterates that, as per Respondent's own admission, full payments for the current period was received for two (2) of petitioner's companies, namely: G- 10 Exploration and Liberty Gold and Diamond; assuming without admitting respondents contention that three (3) companies were not paid for, could the respondents legally proceed to terminate the licenses of the companies for which payments were admittedly received, especially so where a direct request was made for a hearing, prior to termination?

9. Petitioner further traversing count seven informs this honorable court that in an attempt to make settlement of the license fees on July 17, 2009, Petitioner submitted a letter to the respondent requesting authorizing to make US$160,000 payment to the Ministry of Finance, per respondent's bill Copy of the letter is hereto attached, marked P/3.

10. Petitioner still traversing count seven informs court that on the next day,July 19, 2009, petitioner again requested for authorization to make the payment to the Ministry of Finance, see copy attached marked P/4.

11. Petitioner still traversing count seven on July 22,2009 informs court that again, they sent another letter to respondent, informing the Assistant Minister that funds totaling US$160,000 had been wired and designated to make the payments on its licenses; Co-respondent was also requested in the letter stating that the licenses would be renewed and extended as per the 50% delineation requirement and delineations previously submitted to the co-respondent on October 24,2008. See copy attached marked P/5.

12. Petitioner still traversing count seven informs that notwithstanding its above stated preparedness to make the above payments for all of its companies, consistent with respondents own bill, yet, on August 5, 2009, co-respondent Assistant Minister wrote a letter overcharging petitioner indicating that during his predecessor tenure, partial payments were allowed and received thus resulting in arrears being carried forward and cumulating over the years". He indicated the first bill did not take into account this unique situation A cumulative tally of your arrears reflects an outstanding balance of US$280,000 on all six agreements; thus, in one swoop, an astronomical US$200,000 was arbitrarily imputed to petitioner. See exhibit P/6.

13. Petitioner still addressing count seven (7) determined to at least make payments on G-10 Exploration license and Golden Ventures license in the amount of US$60,000.00 and US$40,000.00 even though the payment fees were too high in order to protect its two most advanced and highly potential licenses area on which it has spent millions of dollars and years of work.

14. Petitioner still traversing count seven submits that they prepared and submitted copies of receipts for all payments on licenses and also prepared an unmistakable and clear set of charts and details of payments which were all submitted to Assistant Minister and co-respondent but received no response or notice of correction, in regards to the overcharge of US$200,000.00. See exhibit p/7 in bulk.

15. Petitioner traversing count eight denies that the undersigned represented petitioner at any hearing, interrogatory, conference, or proceeding, consequent upon which, the petitioner's licenses were terminated. Petitioner respectfully calls the attention of the court to the fact that of conspicuously absent from the Returns is any documentary evidence suggestive of any hearing conducted prior to the deprivation of petitioner rights.

16. Petitioner traversing counts nine of the returns says that same presents no traversable issue and must be taken for what it is worth.

17. Petitioner traversing counts 10 of the returns says that said count being utterly false presents no legally traversable issue.

18. Petitioner traversing counts (11) of the petition says that the principle of due process envisages proceedings conducted, whereupon, prior to a deprivation of property rights, a person will be able to confront evidence against him; cross examine adverse witnesses; and most importantly, exercise the constitutional right of appeal. In the instant case, the respondent terminated petitioner's property without a hearing or the right to an appeal. Obviously, these basic tenets of our legal jurisprudence did not obtain in the present case. Therefore averment which suggests that" a series of meeting were held between the respondent and the petitioner" falls short of the statutory requirement relative to due process safeguards. Hence, said counts eleven (11) must be overruled and dismissed.

19. Petitioner traversing count twelve(12) maintains that where an Agency of the Executive branch of government, as is self-evident herein, flagrantly violates the rights of persons, the remedy is not to resort to another agency (Ministry of Justice) of the Executive Branch; further,

that provisions of the Administrative Procedure Act, as well as the Mineral and Mining Law of 2000, makes it emphatically clear, that where there is an improper termination of a Mining license, the remedy is to seek judicial relief.

20. Petitioner traversing counts thirteen, (13) fourteen (14) and fifteen(15) reiterates count three (3) though nine (9) of it petition in traversal of said counts.

21. Petitioner further to count fifteen(15) above, and still traversing count thirteen, (13) through fifteen (15) of the returns, submits that its alleged failure to maintain payment on all of its properties was not because of the action-of the Alberta Securities Commission. On the contrary, this state of affairs was a direct result of bureaucratic manipulation, over billing of license fees, outright greed, and diversion of funds intended for payment of license fees into the legitimate revenues of the Liberian State. During trial, petitioner shall present evidence to show how foreign investors are strangulated, extorted, harassed and businesses frustrated by some operatives of government.

22. Petitioner denies each and every allegation contained in the respondents returns, not specially traversed herein.

WHEREFORE and in view of the foregoing, petitioner prays court to overrule respondent's returns, and grant unto the petitioner each and every relief deemed just, legal and equitable."

On November 26, 2010, as per notice of assignment, the trial court entertained arguments on the motion for preliminary injunction, reserving ruling thereon for December 3,2010. On December 6,2010, the court made its ruling on the motion for preliminary injunction, granting the same and making permanent the temporary restraining order which, according to the court, restrained the Government from reassigning the rights complained of by the appellees in the petition for declaratory judgment.

Interestingly, between the period of the hearing of the motion for preliminary injunction on November 26,2010 and the ruling of the court on the petition, which was made on December 6,2010, the appellees, on December 1, 2010, filed with the court a second motion, this time for summary judgment. The motion for summary judgments stated that as to certain facts the parties were not in disagreement and that as a matter of law, including the failure by the appellant to accord to the appellees their due process of law right, as prescribed by the Constitution, the obligation of the appellant to conduct an administrative hearing as required by the Administrative Procedure Act and the Mineral and Mining Law of 2000, the appellees were entitled to summary judgment. The sixteen-count motion set forth in detail the following as the basis for the request to the court for summary judgment, which details we believe to be worth noting:

"And now comes movant in the above entitled cause of action, showing for cause the following cogent reasons, to wit:

1. Movant says that it is a party petitioner in a pending declaratory judgment action before this honorable court. Court is requested to take judicial notice of its records.

2. Movant says that a careful review of the pleading of the parties reveal that it is undisputed that fundamental due process guarantees, i.e., citation to appear, hearing, right of appeal from any adverse ruling, etc., were denied the petitioner/movant herein. Court is requested to take judicial notice of the entire records of these proceeding.

3. Movant says further to count two above, that the failure of the respondents to conduct any hearing into this matter, even though they were requested to do so, prior to the termination of the petitioner's licenses, and issuance of the identical properties covered by the licenses to third parties, makes it obvious that there is absolutely no material issue that is in dispute, and the movant is entitled to judgment, as a matter of law.

4. For additional information of court, movant submits the following record of funds wired to its account at the International Bank of Liberia and specific designations to the Ministry of Finance of Liberia for payment of mineral license and land rental fees which requests were strangely ignored by the respondent; and which funds were in addition to the US$1,146,093.79 paid by the petitioner to Government of Liberia during the license period commencing June 2004 to present as per previous submission to court. These facts are also not in dispute.

5. For further information of court, movant says that on February 23, 2010, petitioner designated US$160,000 to Ministry of Finance for payment of licenses and land rental fees due Government of Liberia as per initial instruction of respondent's letter dated July 10, 2010, but during the process of requesting the required letters of authorization to make said payment to Government of Liberia petitioner received another letter from the respondent on August 4, 2009 overcharging petitioner by US$200,000, to which petitioner wrote respondent clearly and unmistakably pointing out the gross complete with all receipts for payment of mineral license and land rental fees attached, but petitioner once again received no response from the respondent. Subsequently, petitioner paid the inflated bill of US$40,000 on the Golden Ventures Inc. license Treasury Receipt # 638752 on August 10, 2009 and petitioner also paid the inflated bill of US$60,000 on the G-10 Exploration Inc. license Treasury Receipt# 638753. On August 10, 2010, as per previous submission to court, in order to protect two of its principal licenses which hold petitioner's two most advanced projects. This Is also not in dispute. Copy of the movant's instruction letter to the IBL Bank is hereto attached marked M/1.

6. For further information of court, movant says that, on February 23, 2010, petitioner designated US$39,652.65 to Ministry of Finance for payment of the mineral license and land rental fees of G-10 Exploration Inc., but again respondent ignored the request and payment was subsequently not made. This is also not in dispute. Copy of the movant's instruction letter to the IBL Bank is hereto attached marked M/2.

7. For further information of court, movant says that, on April 22, 2010, petitioner wired additional funds and designated US$39,652.652.65 for the second time to Ministry of Finance for payment of mineral license and land rental fees of G-10 Exploration Inc. and finally were authorized to make the payment as per Treasury Receipts # 442630 & 442626 on April

27 2010, as previously submitted to the court. This is also not in dispute. Copy of the Movant's instruction letter to the IBL Bank is hereto attached, marked M/3.

8. For further information of court, movant says that on April 23, 2010, petitioner wired additional funds and designated US$29,710.54 to Ministry of Finance for payment of the mineral license and land rental fees of Magma Mineral Resources Inc., but once again respondent strangely ignored the request and payment could not be made. This is also not in dispute. Copy of the movant's instruction letter to the IBL Bank is hereto attached, marked M/4.

9. For further information of court, movant says that, on May 7, 2010, petitioner wired additional funds and designated US$54,421.08 to Ministry of Finance for payment of the mineral license and land rental fees of Liberty Gold and Diamond Mining Inc. and received authorization to make the payment as per Treasury Receipt # 448377 on May 10,2010, as previously submitted to court. This is also not in dispute. Copy of the movant's instruction letter to the IBL Bank is hereto attached marked M/5.

10. For further information of court, movant says that, on June 7, 2010, petitioner wired additional funds and designated US$29,710.54 for the second time to Ministry of Finance attempting to make payment of the mineral license and land rental fees of Magma Mineral Resources Inc. and once again, for the second time in regards to payment for Magma mineral Resources Inc., Respondent strangely ignored the request and payment could not be made. This is also not in dispute. Copy of the Movant's instruction letter to the IBL Bank is hereto attached, marked M/6.

11. For further information of court, movant says that, on March 8, 2010, respondent issued a "Termination of Mineral Exploration Agreement with the Government of Liberia" to Liberty Gold and Diamond Mining Inc., despite the fact that the mineral license and land rental fees were completely paid in full up to the anniversary date of October 26, 2010, and furthermore stated in the notice of cancellation that Petitioner had "the right to a hearing to be held to contest the assertion that a License Termination has occurred." This fact remains un-rebutted and uncontroverted in the entire record.

12. For further information of court, movant says that, on August 12,2010, respondent issued a "Termination of Mineral Exploration Agreement with the Government of Liberia" to G-10 Exploration Inc., despite the fact that the mineral license and land rental fees were completely paid in full up to the anniversary date of October 26,2010 ,and furthermore stated in the notice of cancellation that Movant had "the right to a hearing to be held to contest the assertion that a License Termination has occurred". This fact is also not in dispute.

13. Petitioner's legal counsel requested a hearing to address and refute the cancellation, but once again the request wasignored by the respondent, as usual, thereby negating the Petitioner's right to hearing or due process of law. This fact also remains uncontroverted.

14. For further information of court, movant says that, on August 23,2010, respondent illegally issued a mineral license to Co-respondent Ascension Resources Corp. over the Belefunai property which contains one of the petitioner's most advanced projects licensed to G-10 Exploration Inc., despite the fact that the license of the Petitioner had been paid in full until October 26, 2010 and the cancellation was in direct flagrant violation of the Mineral Law of Liberia and in total contradiction of the petitioner's right to appeal which facts were totally ignored by the respondent. The issue of the Mineral Exploration License (MEL #11048) was issued to the co-respondent Ascension Resources Corp only 13 days after issue of the notice of cancellation to Petitioner in blatant disregard of the Mineral Law of Liberia for reasons known only to the Respondent and the co-respondent Ascension Resources Corp resulting in the benefit of co-respondent Ascension Resources Corp becoming the benefactor and new possessor of the main portion of the property under license of petitioner. Copy of the license granted to the co-respondent is annexed marked M/7.

15. Movant says that a court of law shall grant summary judgment if it is satisfied that there is no genuine issue as to any material fact and that the party in whose favor judgment is made is entitled to it as a matter of law. See 1 LCLR 11.3 (3) page 119.

16. Movant says and submits that consistent with applicable provisions of the Administrative Procedure Act, as well as the Mining Regulations 2010, specifically section 18.1and 18.2, it is provided:

"HEARING AND APPEAL

(a) Upon receipt of notice requesting a hearing, the Minister must cause a hearing to be held in compliance with the Administrative Procedure Act, to commence not more than 45 days following the date of such notice. Licensee must be given at least 20 days' notice of the date such hearing is scheduled to commence. The notice must comply with the requirements of section 82.4....." consequently ,given the complete failure of the respondent to comply with their own regulations, as well as the mining law, there exist absolutely no material issue concerning the illegal termination of the movant licenses in dispute, and movant, by operation of law, are entitled to summary judgment, and Movant so prays.

Wherefore and in view of the foregoing fact, and the preponderance of the evidence, movant pray court to enter an order adjudging irregular, illegal and improper the act of the Respondent to terminate all of the movant licenses, order same reinstated forthwith with clearly written official extensions of at least four years from current date, with all rights and privileges appertaining thereto, and to grant unto movant each and every relief deemed just, legal, and equitable."

The motion for summary judgment was assigned for hearing on March 3, 2011,before His Honour Peter W. Gbenewelleh, presiding by assignment at the December 2012 term of the court. The records reveal that at the call of the case, the respondent Government of Liberia requested that it be allowed to spread its resistance to the motion for summary judgment

on the minutes of court. The request was granted and the following resistance to the motion for summary judgment was made on the minutes of the court:

"CLLR. FAYIAH: One of counsels for the respondent for the motion for summary judgment filed by the movant against the petitioner counsel says as follow to wit:

One,that because as to count one of the movant's motion, counsel for plaintiff says that the said count in the mind of counsel for respondent present no traversable issue.

Two, that the movant's motion, counsel for respondent denies that respondent counsel was denied hearing as claimed this in the movant's motion for summary judgment. To the contrary counsel for respondent say there was a hearing and movant was represented. Further, counsel also denied that there is no material issue bordering in contesting the said count, as the said count presents no traversable issue. That because as to counts two and three of the movant's motion, respondent denies that the movant was denied hearing as claimed in its motion, as same hearing was available but the movant did not act timely. Further, the respondent also denies that these disputed proceedings do not present material issues.

Three, that as to count three of the motion, respondent says to the best of respondent's knowledge, the movant paid for two of its institutions- Liberty Gold and Diamond Mining and the G-10 and that other institutions bills/payments were not made; and that even the two institutions named above that the movant paid for, movant failed and refused to submit the work plan as required for those institutions, thus, making the motion filed by movant dismissible. That as to count five of movant's motion, respondent denies over charging the movant as to do so would amount to respondent functioning beyond the law that brought the respondent into being as a Ministry and the respondent challenge the movant to prove that it was over charged by the respondent. Five,that as to count six of the motion, respondent says that movant having violated the rules by refusing to submit the work plan demonstrates that the respondent needed to be careful enough to deal with the movant. Six,as to counts 8, 10,21, 12, of the motion, respondent says further that it could not have dealt with movant that was violation of the law. That because as to count thirteen of the movant's motion, respondent says that assuming without admitting that the request of the movant was honored or *not,* same could not help the movant because movant was time bound. Therefore, said count should, be dismissed. That as to the entire motion, respondent denies that the cancellation was done in violation of any law or statute. That the entire movant's motion along with the petition for declaratory judgment is a fit subject for dismissal in that same is time barred. As the entire motion petitioner submitted his request for hearing after thirty days upon termination of movant's license by the Ministry in contravention of the regulations of 2010,of the Ministry of Lands, Mines and Energy. For such fatal defect, the respondent says the motion should be denied that also as to the entire proceedings same should be denied and dismissed, because the petitioner/movant has failed, refused and grossly neglected to take advantage of the available local remedy, thus bypassing the arbitration provisions made and provided for in the agreement

between the movant/petitioner and the respondent in these proceedings and fled to this honorable court which the respondent think is not proper and that said error can only be cured by setting these proceedings aside and the respondent so pray. That further, to the above, our practice and tradition is where the local remedy is available and that same is not executed by parties thereto, the appropriate tribunal mining claims, same being Liberty Gold and G-10, as is indicated by the records in these belt administrative or not cannot assume jurisdiction over such matter. That been the case in these proceedings made this motion and the petitioner dismissible and the respondent so pray. Respondent denies all issues both of law and facts that are not specifically traversed in this resistance. Wherefore and in view of the above, respondent most respectfully request Your Honor to deny, dismiss and set aside the movant's motion along with the entire proceedings and order and or rule that the movant/petitioner go back and exhaust all the available legal remedy to movant/petitioner and that Your Honor should also grant to respondent all that is legal before the law. And humbly submit."

Following the submission by counsel for appellant and the denial by the court of the request of counsel for the appellant for postponement of the hearing, the court proceeded to entertain arguments from the parties. Thereafter, on March 17, 2011,the court handed down its ruling on the motion for summary judgment. The ruling, necessitating a strong challenge and point of contention by the appellant, reads as follows:

"THE COURT: This motion for summary judgment grew out of a petition for declaratory judgment filed on October 25th,2010 against the Ministry of Lands,Mines, and Energy.The petitioner alleged among other things that it is a registered business entity in the Republic of Liberia and was granted a license to operate under the laws of Liberia. Petitioner alleged that the concession agreement between the both parties was also signed since 2004. Petitioner also says that notwithstanding the existence of the agreement, the respondent herein terminated itsagreement. The petitioner basically contended in the petition that following the receipt of the notice of termination of the agreement, it has written the respondent requesting for a hearing, which hearing was denied the petitioner, contrary to the mining laws of Liberia, the agreement as well as the regulations promulgated by the respondent on November 3, 2010, the respondent filed a return basically contending that the petitioner only paid for Liberty Gold and Diamond Mining Company and G-10 Exploration, but failed to pay for the other three companies; namely: Magma Mineral Resources Inc., Crayston Development Inc. and T-Rex Resources Inc. Respondent says among other things that a meeting, or a series of meetings were held following the notice of termination which was attended by the legal counsel of the petitioner. However, the respondent failed to attach any exhibits in terms of the minutes, findings, observations and conclusions of any of the series of meetings allegedly held by the respondent. Respondent also contended that the petitioner failed to file or submit before the respondent a work plan and budget. It is against this background that respondent issued the notice of termination.

The petitioner filed the motion for summary judgment contending basically that all the averments including the payment of fees which were ignored by the respondent were never denied. That the notice of termination was received by the petitioner but the

respondent without a hearing terminated the contract and awarded the concession contract to another company especially the main portion of the property in Bellefanai. The petitioner also alleged that the law governing the regulation governing the agreement provides that upon the receipt of the notice it had sixty days within which to consult with the government and cure the default. Notwithstanding, the provision of this law, the respondent awarded the contract to a third party to the detriment of the petitioner. The respondent in the resistance on the minutes basically contended that the respondent did not file a work plan or a budget before the respondent. Respondent also contended that the petitioner request for a hearing was filed beyond the statutory period of thirty days and therefore time bar. These are the basic contentions of the respondent as defense or resistance to the motion for summary judgment.

We will now peruse, interpret and construe the various regulations or laws governing in this case. The agreement, meaning the mineral exploration agreement between the Republic of Liberia and Liberty Gold and Diamond Mining Company clearly provided in section 23.3 " Opportunity to Cure". The provisions of this agreement provides that upon the receipt of notice from the government to the operator, petitioner herein had sixty days within which to consult the government of Liberia to cure the default. As to the contention of the respondent that the petitioner did not exhaust all the local remedy, and that the matter should have been submitted to arbitration. Sections 23.4 and 24.1clearly provides for arbitration proceeding regarding event of default. This Court says the relevant provision specifically of chapter 24, section 24.1clearly provides that the dispute regarding the agreement, its formation, validity, Interpretation, performance, termination or enforceability or breach of the agreement shall be referred to arbitration. The latter part of section 24.1provides; quote "Either of the parties to such dispute may institute arbitration proceedings by giving notice to the other party and notice to the Secretary General of the centre including in each of its statement of the issues in dispute." This court says it is not only the petitioner under this agreement that can submit this matter to arbitration. The respondent equally is obliged to submit this matter to arbitration with respect to the performance and enforceability or breach of the agreement since indeed the respondent alleged in its letter of August 10, 2010 that the respondent breach the agreement. Either party means, either the Republic of Liberia or the respondent can submit this matter to arbitration. This court also says it is the law, practice and procedure in this jurisdiction that agreement for arbitration cannot oust the court of competent jurisdiction of Its jurisdiction. The contention of respondent is not sustained.

Section 17.2 of the regulation governing exploration under a mineral exploration license of the Republic of Liberia prepared by the Ministry of Lands, Mines and Energy, March 2010 provides for termination by the Minister. This section authorizes the Minister of Lands, Mines and Energy to notify any operator for a default in the performance of the concession agreement. The provision also says that the termination can only be effective two months after the termination notice is sent to the operator. The section also says that the operator has thirty days within which to file a notice for hearing. This court says the records in this case clearly shows that the petitioner indeed and in truth requested for notice of hearing

September 21, 2010, beyond the period of thirty days. 17.2 of the regulation give the petitioner however, sixty days to cure the default. The records before this court shows clearly that the notice of termination was dated the 10th of August 2010 and the subsequent contract with the third party was dated the 13th of August 2010; that is to say three days after the notice of termination was given to the petitioner. This court says it is unthinkable for the Ministry of Lands, Mines and Energy who regulating the concession agreements for mineral exploration in our country to violate its own rules and regulations in this case. This court says it sees no wisdom when a party is given thirty days to respond requesting for a notice of hearing and three days after the notice the property of the petitioner was transferred to another third party. This court says the action of the Ministry of Lands, Mines and Energy was intended to divest the respondent from having a hearing. In other words, what will be the essence of the hearing if the property for which the notice of request could have been submitted to the respondent was already given or transferred to a third party. This court says in the midst of the misconduct of the Ministry of Lands, Mines and Energy, It sees no reason why it will contend that the party did not request for hearing within thirty days when indeed and in truth the respondent party did not wait for the expiration of the thirty days before the sale. In fact, section 17.2 of the regulation of the Ministry of Lands, Mines and Energy provides that the operator had sixty days within which to cure the default which also is in consonant with section 9.15 of the Mineral Law of Liberia of 2000 which says that no agreement will be effective except within thirty days after the notice had been sent to the operator. This court says that the termination of the petitioner agreement was not effective at the time the contract was executed between the Government of Liberia and the third party, meaning it was still in full force within the meaning of the provision of the Law and section 17.2. That is to say, prior to the expiration of sixty days as provided for by 17.2, the Ministry of Lands, Mines and Energy did not have the authority to transfer the property of the petitioner to a third party. Section 18.2 of the regulation governing hearing and appeal which is the crust of this matter because it is constitutional issue with regards to due process of law. Respondent contended that there was no hearing and at one time there was hearing. What is the inconsistency in the argument and contention of the respondent? If we take the argument that there was hearing or series of hearings, those hearings or a hearing should be supported by the minutes, the findings and conclusion. In the case at bar, the respondent failed to produce any documentary evidence indicating that the hearing was held and that the respondent was present. 18.2 (a) provides "Upon receipt of notice requesting the hearing, the Minister must cause a hearing to be held in compliance with the Administrative Procedural Act to commence not more than forty five days following the date of such notice. The licensee must at least be given twenty days notice of the date such hearing is scheduled to commence..." This provision of the regulation clearly shows that there must be a hearing especially with the word must, which means mandatory but not discretionary. The Minister of Lands, Mines and Energy was mandatory under the provision to have caused a hearing upon the receipt of the notice of hearing from the petitioner and make a determination thereof thereby affording the petitioner to take an appeal from the outcome of the hearing. Since there was no hearing, there should be no appeal in this case. The respondent denied the petitioner his day in

court and his right to be heard before condemned. Our constitution provides for due process of law which hears before it is condemned. This court says the failure of the petitioner to submit a notice to the respondent for a hearing within thirty days did not preclude the respondent from having the hearing into the matter as raised in the letter of the petitioner dated September 21, 2010. The petitioner was therefore denied his constitutional right of hearing and an appeal.

Respondent contended that the petitioner failed to submit a work plan or program and budget. This court says this does not preclude the respondent from having a hearing and making a determination of this matter. In fact, the alleged failure of the petitioner to submit a work plan and a budget is an issue of fact which should have been established during hearing. This court also says if one of the events of occurrence which the Minister had observed from which he had given the petitioner a notice of termination, and that the petitioner had sixty days within which to consult with the government of Liberia to cure that default. The failure of the respondent to adhere to its own regulations and its own mining law is a gross violation of the fundamental rights as well as his constitutional rights of the petitioner in this case.

This court says where there is no genuine issue of fact to warrant a trial, summary proceeding under 11.3 of our Civil Procedure Law of 1973 is the proper remedy.

Wherefore, and in view of the foregoing, the motion for summary judgment is hereby granted and that the act of the Ministry of Lands, Mines and Energy is hereby declared illegal, irregular, improper, unlawful and the termination of the movant licenses are hereby ordered reinstated forthwith with official extension for at least four years from the current date with all rights and privileges as pertaining thereto. AND IT IS HEREBY SO ORDERED."

The appellant not being present in court for the ruling, the court appointed Counsellor Sylvester Rennie to take the ruling for and on behalf of the appellant. The court appointed counsel noted exceptions to the ruling and announced, on behalf of the appellant, an appeal therefrom to the Supreme Court. These form the genesis of the case and the basis upon which this appeal is before this Honourable Court for resolution of the several issues presented by the parties. The issues are presented, firstly, in a six-count bill of exceptions filed by the appellant on the 21st Day of March, A. D. 2011; secondly, in the brief filed by the parties before this Court; and thirdly, in the argument made before this Court at the hearing of the appeal. We quote herewith the appellant's bill of exceptions, the first instrument to lay out the issues for resolution:

"AND NOW COMES, respondent in the above entitled cause of Action and, being dissatisfied with Your Honor's Final Ruling, do hereby most respectfully submit this bill

of exceptions for Your Honor's approval for Appellate review and determination, for reasons showeth to wit:

1. That Your Honor reversibly erred when you granted the petitioner/ movant's motion for summary Judgment, even though the evidence established that the petitioner/movant did violate and bypass the provisions of the Agreement that provided for arbitration.

2. Respondent submits that Your Honor further erred when you ruled that "not only the petitioner under this agreement that can submit this matter to arbitration". This is true and it therefore suggests that either party to this Agreement needed to exhaust the available local remedy, which is arbitration, before proceeding to any other judicial tribunal.

3. That Your Honor also erred when you ruled that a notice to the respondent for a hearing within thirty days did not preclude the respondent from having the hearing into the matter as raised in the petitioner/movant's letter dated September 21, 2010; when in fact the submission of said letter outside of the time allowed by law, barred the petitioner/movant from raising any issue of hearing.

4. The respondent also says that Your Honor further committed error when you ruled that the respondent's termination of the petitioner's agreement was not effective at the time the contract was executed between the Government of Liberia and the third party, meaning that the said contract was in full force consistent with section 17.2 of the regulations covering exploration under a Mineral Exploration License of 2010.

5. That Your Honor also erred when you ruled that there is no genuine issue of fact to warrant a trial, when in fact the respondent demonstrated that the conduct of the petitioner/movant occasioned the cancellation of the contract when movant failed to submit work plan for the institutions that it made payment for, and also failed to pay for the rest of the companies. For this Your Honor's judgment should be reserved.

6. That Your Honor erred when you deliberately ignored and failed to pass on the issue raised by respondent that the petitioner/movant was time barred when petitioner submitted its letter of request for hearing after the thirty days' time period provided for by the Mining Regulation of 2010.

WHEREFORE, AND IN VIEW OF THE FOREGOING, respondent prays that Your Honor will approve of this bill of exceptions so that Your Honor's Ruling and Final Judgment will be reviewed and passed upon on appellate review by the Supreme Court of the Republic of Liberia; and to further grant unto respondent such relief deem just and right in the premises."

In addition to the issues presented in the bill of exceptions, here is how the appellant couched the issues in its brief:

"1. Whether or not the lower court committed reversible error when it ruled granting appellees' motion for summary judgment in light of the many factual issues that were in dispute in the case?

2. Whether or not section 17.2 of the Regulations Governing Exploration under a Mineral Exploration License (2010) was misinterpreted by the court, thereby setting the basis for the erroneous entry of judgment against the appellant?

3. Whether or not the lower court properly exercised jurisdiction over the subject matter of the dispute arising over the Mineral Exploration Agreements in light of the provision arbitration clause contained in the Agreements?

The appellees, for their part, set out four issues which they said grew out of the facts narrated herein and which needed resolution by the Court. They set out the issues in this manner:

"1. Whether or not the appellees' licenses were terminated consistent with law?

2. Whether an executive agency's power to take punitive action against a company licensed to do business under its authority may be exercised without due process?

3. Whether the notice of termination of the mining contract was properly served in keeping with law?

4. Whether or not the jurisdiction of a lower court to handle a dispute growing out of contract that calls for arbitration may be raised by a party after such party has submitted to the jurisdiction of the said court?

The several issues presented by the parties can be collapsed into three issues that require determination by this Court. Although not stated as the first issue requiring our determination, this Court is of the opinion that the issue of the jurisdiction of the lower court to entertain the motion for summary judgment, and for that matter the petition for declaratory judgment out of which the motion grew, is the first issue which must be disposed of, because this Court can make no determination of any other issues in the case if the trial court was without jurisdiction to hear or entertain the case in the first instance, as could render the judgment invalid. The issue relating to the jurisdiction of the trial court is captured as the third issue stated in the brief of the appellant and the fourth issue in the brief of the appellees, both of which issues were quoted above. However, for the purpose of this opinion, we state the issue thus: Whether it was appropriate for the Civil Law Court to assume jurisdiction in the case considering the fact that the parties, in their Mineral Explorations Agreements, had mandated that in the event of any dispute arising from the Agreements, the same should be settled by binding arbitration. In addressing this issue, we take note that this Court has determined on many occasions that "whenever the issue of a court's jurisdiction is raised, every other thing in the case becomes subordinated until the court has determined its jurisdiction to hear and dispose of the particular matter. [M/M Liberia Corporation v. Toweh, 30 LLR 611(1983)] This is true because if a court lacks jurisdiction to entertain a matter, whatever decision or judgment is rendered by it is a legal nullity." Scanship (LIB) Inc. v. Flomo, 41LLR 181,186 (2002);It is necessary therefore that the court should have jurisdiction over the question which its judgment assumes to remedy or relief which the judgment seeks to grant. Kamara v. Chea and Satta, 31LLR 511(1983).

Similarly, in the earlier case of Blamo v. Zulu, Toe et al., 30 LLR 586 (1983), the Supreme Court held that: "Where the court lacks jurisdiction over the subject matter, a judgment thereon is void regardless of the consent of the parties, and prohibition will lie to restrain the enforcement of a void judgment where no other remedy is available." ld., at 597. The Court, citing 49 C.J.S., Judgments, § 19 as authority, further opined: "It is therefore necessary to the validity of a judgment that the court should have jurisdiction over the question which its judgment assumes to decide, and jurisdiction to render a judgment for the particular remedy or relief which that judgment undertakes to grant." ld. See also the litany of cases, viz: Tompo et al. v. Republic, 13 LLR 207 (1858).

The appellees would have this court not deal with the issue of the jurisdiction of the lower court over the matter because the issue was not raised at the onset by the appellant when the petition for declaratory judgment was served on the appellant. Instead, the appellees aver, the appellant did not raised the issue until after the appellees had filed a motion for summary judgment. We do not believe that that there is any legal basis for the contention and therefore refuse to decline dealing with the issue of the lower court's jurisdiction raised by the appellant. This is what our Civil Procedure Law says on the issue of jurisdiction:

"At the time of service of his responsive pleading, a party may move for judgment dismissing one or more claims for relief asserted against him in a complaint or counterclaim on any of the following grounds:

(a) That the court has not jurisdiction of the subject matter of the action;

(b)That the court has not jurisdiction of the person;

(c) That the court has not jurisdiction of a thing involved in the action;

(d)That there is another action pending between the same parties for the same cause of action in the Republic of Liberia; and

(e) That the party asserting the claim has not legal capacity to sue Section 11.2(6)

A party waives any defense enumerated in paragraph 1 of this section which he does not present either by motion as hereinbefore provided or in his answer or reply, except that lack of jurisdiction over the subject matter is not so waived; but no defense is waived because another defense is asserted in the same motion or in the responsive pleading."

Applying the quoted section to this case, the appellant chose not to raise any jurisdictional issue until the summary judgment hearing growing out of the petition for declaratory judgment. The appellees assert that the appellant should have raised the issue at the stage when it was responding to the petition for declaratory judgment, and not wait until it had been served with the motion for summary judgment.

The appellees view the delay by the appellant in raising the issue of the jurisdiction of the court as a waiver of the right to raise the issue. However, the statute makes it very

clear that a challenge to the jurisdiction of the court over the subject matter is never waived. Moreover, the Supreme Court has held that as a challenge to the jurisdiction of a court over the subject matter of the litigation is not waivable, it can be raised at any stage, even up to final judgment in the Supreme Court. See Barwror and Flomo v. Barchue and Flomo, 40 LLR 288, 293 (2000). See also Civil Procedure Law, Rev. Code 1:11.2(1)(b) and 11.2(6). We note that the challenge of the appellant to the jurisdiction of the trial court was to the subject matter in litigation and hence the challenge could properly and legally be raised after the filing of the motion for summary judgment, or for that matter at any subsequent time, including for the first time at the level of the Supreme Court. Lamco J. V. Operating Company v. Verdier, 26 LLR 445 (1978); Dwanyen et al. v. Republic, 34 LLR 354 (1987). We therefore reject the contention of the appellees in that regard.

The question then is whether in the instant case, the trial court was precluded from hearing the case because the parties, under the Mineral Explorations Agreements, had agreed to submit their disputes to arbitration.

In setting forth the above contention, the appellant seems to believe that the facts in the instant case parallels with what transpired in UPA Import Corp. v. Citizens of Bokumu District, Supreme Court Opinion, March Term, 2005. In UPA Import Corp., the citizens of Bokumu District entered into a Forest Management Agreement with UPA Import Corp., clause nine of which expressed, "In the event of dispute, either party will be given 90 days' notice to the other party of his intention to nullify the contract. In this period, effort should be made to correct or solve the problem. In the event the dispute is not resolved a Board of Arbitrators comprising of five (5) persons will be set up, comprising of two representatives from each parties and chairman selected by both parties, die decision from the board shall be final."

A dispute regarding the corporation's failure to pay the annual royalty and the rental fee eventually arose between the two parties. Rather than abide by the procedure set in the clause 9, the Bokumu District people invoked clause 10, which covered the grounds on which the agreement could be cancelled. In ruling against the premature cancellation of the contract, this Court said: "If the contract on which the cause of action is based provides either expressly or by implication for a submission to arbitration as a condition precedent thereto, such steps must be taken before an action can be maintained on a contract ... a contract provision making arbitration of any and all differences arising out of a contract a condition precedent to the initiation of the suit will be enforceable." This Court has repeatedly affirmed this principle in recent cases. See Emirates Trading Agency Company v. Global Africa Import & Export Company, 42 LLR 204 (2004), wherein this Court stated: "Where parties to a contract agree to submit any dispute arising out of the contract to arbitration as a means of settling their dispute, our courts will enforce such provisions of the contract"; Karen Maritime Limited v. Omar International, Inc., 42 LLR 216 (2004), "The public policy of Liberia favors arbitration … A court may compel a party to arbitrate if he/she has agreed but refuses to do so."; See also Chicri Brothers v. Isuzu Motors Overseas Distribution Corporation, 40 LLR

128 (2000). These cases buttress section 64.1 of the Civil Procedure Law, which proclaims that: "A written agreement to submit to arbitration any controversy existing at the time of the making of the agreement or any controversy thereafter arising is valid, enforceable without regard to the justiciable character of the controversy and irrevocable except upon such grounds as exist for the revocation of any contract".

The appellant therefore seeks to make the case that in the event a contracting party eschews arbitration for judicial action, section 64.2 accordingly authorizes the court to oblige the party to partake in the arbitration process. The appellant therefore asserts that the appellees were obligated to first arbitrate their disagreement with the appellant rather than initially pursuing the case in the Civil Law Court because of the arbitration clause contained in their agreement. We gain the impression from the appellant that its position is based on the idea that the sanctity of contractual terms do not allow for any contracting party to act in variance to a contract's dictates and that the stipulations in the contract are to be strictly adhered to. The provision of the Agreements specifically referenced by the appellant in support of the contention that the trial court lacked jurisdiction reads thus: "Any dispute between the Government and the Operator arising out of, in relation to or in connection with this Agreement of formation, or the validity...shall be exclusively and finally settled by binding arbitration." It is because of this quoted provision that the appellant contends that section 64.1 of the Civil Procedure Law, quoted above, is applicable and precludes the trial court from assuming jurisdiction, and hence that the case instituted by the appellees should have been dismissed.

Further, the appellant referred us to the recent case, Chicri Brothers v. Isuzu Motors Overseas Distribution Corporation, 40 LLR 128 (2000), wherein this Court, after quoting Section 64.1of the Civil Procedure Law and referencing the constitutional provision that "the legislature cannot make laws impairing that obligation of contracts", elaborated further in these words: "Chapter 64,section 64.1, of the Civil Procedure law is in harmony and consistent with the common law authorities that general arbitration statutes are not illegal or unconstitutional per se. The language and intent of section 64.1 and 64.3 of our Civil Procedure Law is clear, simple and unambiguous. It expressly and specifically validates the arbitration provisions of a contract, whether it is justiciable in nature or not. Furthermore, section 64.3 stipulates that the method and procedure agreed to by the parties in the agreement '...shall be followed'". ld., at 136. Accordingly, the Court stated that it was subscribing to the holding enunciated in the case Sherman v. Republic that "courts cannot enforce a contract in a manner otherwise than expressed therein." Sherman v. Republic, 1 LLR 145, 154, 155 (1881).

We affirm the position taken by the Court in the Chicri Brothers, Inc. case, and reiterate that the principle stated therein not only conforms to the tenet and intent of Article 25 of the 1986 Constitution which states that "Obligation of contract shall be guaranteed by the Republic and no laws shall be passed which shall impair this right." LIB. CONST., ART. 25 (1986), but is in accord with section 64.1 of the Civil procedure. We take due note that the framers of the Constitution recognized that contractual terms are

so sacrosanct that they bestowed constitutional protection upon them. This means that no matter one's status, even with all the powers the Government of Liberia possesses, a person's negotiated rights cannot be tampered with by any branch of the Government. Thus, as held by this Court in the Chicri Brothers, Inc. case, section 64.1 of the Civil Procedure Law, which provides that a written agreement to submit to arbitration a controversy arising from the agreement is valid and enforceable, notwithstanding the fact that that law was enacted prior to the coming into force of the 1986 Constitution; and, not being in contravention of the Constitution, the said law is deemed to be viewed in furtherance of the constitutional provision prohibiting the impairment of contracts by the Government. Of course, given that no constitutional right is absolute, this protection only applies to legally valid contracts because, while it is in the Government's interest to ensure that contracts are afforded security, as a matter of public policy, it should not and does not protect invalid contracts, such as agreements to break the law, agreements involving minors and agreements with unconscionable provisions.

But while we accept the general principle stated in the Chicri Brothers, Inc. that an arbitration clause in a contract is valid and enforceable and that accordingly the parties to the contract are bound to submit their dispute to arbitration and to no other forum, and that such view is in conformity with Article 25 of the Constitution, we hold the opinion also that the application of the principle must be viewed in the context of the facts presented in a particular case. Thus, while we acknowledge and accept the basic principle enunciated in Chicri Brothers, Inc., we note that there is a marked difference in the facts and circumstances of that case from those of the instant case, and which, in our view, warrants or necessitates taking reference to 64.2 of the Civil Procedure Law. In the Chicri Brothers, Inc. case, where there existed a non-exclusive dealership agreement between the appellant and the appellees, the appellant sued for damages on the grounds that one of the appellees, in violation of their agreement, had also entered Into a non-exclusive agreement with another entity, and that as a result of the said action or violation the appellant had suffered damages and injuries. The appellees in that case raised the defense that the trial court lacked jurisdiction over the matter since clauses six and seven of the agreement between the appellant and the appellees, which the appellees were supposed to have violated, provided that any dispute arising under the agreement should be submitted to arbitration in Tokyo, Japan, and that such dispute would be governed by the law of Japan. The trial court in that case agreed with the contention of the appellees and dismissed the case. The Supreme Court sustained the trial court's position and affirmed the dismissal of the action. The Court relied on section 64.1 of the Civil Procedure Law and Article 25 of the Constitution in holding that the trial court had ruled correctly in dismissing the plaintiff's action, stating that the appellant should seek redress by way of arbitration and that the arbitration proceedings would be governed by Japanese Law, as provided in the agreement between the parties.

Yet, we note that the issue in the Chicri Brothers, Inc. case centered on the violation of the agreement, which continued to exist, as opposed to an agreement which, in the instant case, is supposed to have been terminated by the appellant and regarding which

we believe the appellant had acted in manner that was tantamount to a waiver of the arbitration provision in the agreement. We have reached this conclusion both from the facts culled from the records in the instant case and from the provisions of section 64.2 of the Civil Procedure Law.

The situation in the present case, as gathered from the records, is that the appellant had accused the appellees of committing acts of default, some of which were tantamount to defrauding the Government in respect of taxes and fees due the Government. The appellant also accused the appellees of failing to submit work plans as provided for in the agreement. All of these acts, omissions and defaults, the appellant stated, were in violation of the agreements concluded between the appellant and the appellees and justified the appellant terminating the agreements. The appellees had denied committing any acts of fraud, of which it was accused by the Government; they stated that not only had they paid the taxes and fees due, but also that even where fees were to be paid, and request had been made to the Ministry of Lands, Mines and Energy for the issuance of the necessary authorization for such taxes and fees to be paid to the Ministry of Finance, the Ministry of Lands, Mines and Energy had failed and refused to issue the requested authorization for the payments to be made. The appellees also responded that the failure to submit work plans did not constitute grounds for termination of the agreements. It seems clear to us that these were matters of dispute that warranted arbitration. But neither the appellant nor the appellees requested arbitration. Instead, the Ministry of Lands, Mines and Energy informed the appellees by letters that on account of the several alleged violations, it had terminated the agreements. The appellees questioned the right of the appellant to terminate the agreements without first according it a hearing. The appellant counters that claim by asserting that the appellees had a period of thirty days within which to challenge the termination and that their failure to avail themselves of that opportunity was tantamount to a waiver of the right to a hearing or to assert a defense of a denial of due process of law.

We shall deal with those contentions later in this opinion, but for now we continue to focus on the jurisdictional issue raised by the appellant. As stated earlier, the query is whether the trial court had jurisdiction to hear the matter in the face of the arbitration clause in the Agreements. The trial court had said that it had such jurisdiction; the appellant contends that it did not and it relied on section 64.1 in asserting the contention. However, we noted that we believe that while the Constitution protected the sanctity of contracts and section 64.1 set up a mechanism for ensuring the protection of the sanctity of contracts, other provisions of the Civil Procedure Law, which we do not believe to be violative of the Constitution or any other law, also sets instances in which one may waive the right. We reference specifically section 64.2 of the Civil Procedure Law. The section state, at sub-section 2:

"Proceedings to stay arbitration; grounds, form of hearing, time limitations: On application the court may stay an arbitration proceeding commenced or threatened on a showing by an applicant adversely affected thereby that:

(a) There is no agreement as described in section 64.1; or

(b) He is not a party to the agreement; or

(c) The controversy is not referable to arbitration; or

(d) The adverse party is not a party to the agreement; or

(e) The right to proceed to arbitration has been waived by the adverse party; or

(f) The agreement had been revoked by either party."

Although the quoted section requires that an application be filed with the court if one desires to assert a defense against arbitration, our attention is drawn to the fact that the essence of the provision, and specifically sub-sections (c),(e) and (f),is to set forth the grounds on which a party can avoid submission of a matter to arbitration notwithstanding that an agreement may provide that a dispute between the parties is to be submitted to arbitration. These sub- sections capture the spirit of the recognized common law doctrine of estoppel by election. According to the 9th Edition of the acclaimed Black's Law Dictionary, estoppel by election is "the intentional exercise of a choice between inconsistent alternatives that bars the person making the choice from the benefits of the one not selected." The invocation of this legal principle generates the following questions, germane to determining whether the lower court had jurisdiction over the declaratory judgment and consequently the ancillary summary judgment proceedings: (a) Under the facts of the case, was the controversy no longer referable to arbitration? (b) Did the appellant waive the right to proceed to arbitration, thereby precluding the applicability of the arbitration clause of the agreements? And (c) Did the appellant's decision to revoke the agreement preclude the appellant from subsequently benefitting from the arbitration proceedings? We answer in the affirmative to all of the queries posed because "the conscience of the court is repelled by the assertion of rights inconsistent with a litigant's past conduct ... [t]his principle operates to preclude one who prevents a thing from being done from availing himself to the nonperformance which he himself has occasioned." 28 AM. JUR. 20. (2000), Estoppel and Waiver §71. Accordingly, in respect of our affirmative response, we hold that the lower court did have jurisdiction to entertain the suit for declaratory judgment, that the appellant had waived and revoked the right to invoke arbitration at the stage at which it sought to invoked the clause. Therefore, the lower court was properly clothed with the authority to entertain the declaratory judgment suit and the ancillary summary judgment suit.

We opine, in respect of the above, upon belief that the appellees were defrauding the Government, that they had failed to pay taxes and fees as prescribed by the agreement, and that they had failed to comply with the precondition of the agreements by not submitting work plans, or that they had committed other violations of the agreements, the proper and appropriate course should have been for the appellant to request arbitration, especially in the face of the disclaimer of violations by the appellees or the advancing of excuses as to why compliance was made difficult or impossible by the appellant. We note that while the appellees had challenged and had attempted to refute the appellant's claims or allegations, the belief of

the appellant as to the violations presented good and sufficient cause for concern by the appellant. The records reveal, for example, that the appellees had adopted and proceeded by a payment process that completely deviated from the normal payment process previously pursued. The official documents in the file show that in previous times the Ministry of Lands, Mines and Energy issued letters of authorization to the Commissioner of Internal Revenues at the Ministry of Finance to have the appellees deposit into the Government revenues amounts due under the Mineral Exploration Licenses. Later, however, rather than payments being made to the Ministry of Finance as was previously done or to the Central Bank or another bank designated by the Government as a place where payment of such fees could legally be made, the appellees alleged that they made payments to certain personnel of the Ministry of Lands, Mines and Energy who were not legally authorized to receive any payment for or on behalf of the Government of Liberia but who signed for, received such payments, and issued receipts purporting to evidence that payments were made. The process was not only strange but provided doubts as to whether such payments were ever made; and if they were made, the legal procedure was not followed. Moreover, we find no indications (official documents) in the records to show that the Government received such payments allegedly made to personnel of the Ministry of Lands, Mines and Energy or indicating the reasons that motivated the shift in the mode of payment. The Government claims that the alleged payments were never deposited into the government revenues.

Clearly there was a dispute generated from the positions of the contending parties that provided the basis and condition to warrant a request for arbitration before the Government proceeded to take the unilateral action that it took, and by which action it not only effectively waived the right to arbitrate the matter but also removed the matter completely from the realm of arbitration since, as of the termination of the agreements, it destroyed the very instruments which provided for arbitration. That cannot be a defense and we refuse to accept the contention that the appellees should have asked for arbitration and that their failure to seek arbitration precluded them from seeking legal redress in the courts.

Further, and of greater concern to us, is the claim by the appellees that the pursuit of the course adopted by the appellant deprived the appellees of the opportunity for a due process of law hearing which would have given them the opportunity to refute the allegations made by the appellant, if they had evidence to the contrary; it would have given them the opportunity to provide the reasons for the change in the mode of payment; it would have accorded them the opportunity to put forth arguments and have the arbitrators decided whether their failure to submit work plans constituted a sufficient reason to justify a termination of the contracts or whether another penalty should be Imposed. All of these due process of law opportunities, provided for in the Constitution and in the statutory laws and decisions of the Supreme Court, were lost when the appellant chose not to pursue the arbitration or judicial course, but instead, to unilaterally terminate the agreements. We therefore hold that under the circumstances the appellant's termination of the agreements was no longer a subject matter that was referable to arbitration. With the termination by the appellant, the net effect of which was a denial of due process of law, the matter became a proper and appropriate subject for intervention and resolution by the courts.

In any event, the Civil Procedure Law and the doctrine of estoppel by election, acceptable in this jurisdiction, are clear on the issue that if the appellant rather than seeking arbitration, chooses to terminate the agreements, an act equivalent to revoking the agreements, such action by the appellant removed the dispute from the ambit of arbitration, thereby vesting In the court the authority to hear and determine whether the termination of the agreements was in compliance with the law, especially the constitutional due process of law provision. This conclusion is clearly In accord with the constitutional provision governing the sanctity of contract, the statutory provisions governing arbitration clauses in contracts, and the opinion of this Court In the Chicri Brothers, Inc. case.

In holding as we do, we should make it clear that we do not subscribe to all that the trial judge said in ruling that the court had jurisdiction over the declaratory judgment petition and the motion for summary judgment. We note specifically that the appellees, in response to the challenge posed by the appellant, asked the trial court not to even entertain the jurisdictional issue raised by the appellant because the appellant had failed to raise the issue when first responding to the petition for declaratory judgment, but had chosen instead to raise the issue only after the appellees had moved the trial court for summary judgment. The appellant, for its part, insisted that it has the right to raise the issue since the issue related to the subject matter jurisdiction of the court and, under our law, subject matter jurisdiction could be raise at any point, even including at the level of the Supreme Court.

We agree with the appellant that the Supreme Court has made pronouncements in manifold cases that a challenge to the subject matter jurisdiction of a court can be raised at any stage of the proceedings, including before the Supreme Court. Scanship (Liberia) lnc./LMSC v. Flomo, 41 LL 181 (2001). However, Judge Gbeneweleh, when addressing the issue, seemed not to fully appreciate or comprehend the provisions of Chapter 64 of the Civil Procedure Law or the more recent decisions of the Supreme Court which cover arbitration. The judge apparently relied on Grant v. Foreign Bank Mission, 10 LLR 209 (1949), Insurance Co. of North America v Bhatti & Sons Inc. et al., 35 LLR 191(1988) and Meridien Bank v. Andrews et al., 40 LLR 111 (1990) which both espoused the idea that arbitration clauses cannot oust the court of jurisdiction, when in fact the most recent cases on this issue have declared that party litigants are obligated to have previously arbitrated the dispute if they have agreed to do so in their contract. The law has evolved beyond those earlier decisions, especially in light of the fact that the statute now specifically recognizes the rights of the parties to resort to arbitration and the Supreme Court has said that the statute is enforceable and binding on the parties and that the courts have an obligation to uphold the statute, not seeing the statute as ousting the courts of their jurisdiction but rather aiding the jurisdiction of the courts.

This brings us to the next issue, which is whether the trial court acted within the pale of the law in granting of the motion for summary judgment is supported by law. We hold that the court acted properly, legally, correctly and within the law in granting the motion for summary judgment, and hence we are inclined to and do hereby affirm the said ruling. In rationalizing our affirmance of the trial court's ruling we take resort to Section 11.3, sub-section 3, of the Civil Procedure Law, which governs summary judgment. The sub-section states: "The Court shall grant summary judgment If it is satisfied that there is no genuine issue as to any material

fact and that the party in whose favor judgment is granted is entitled to it as a matter of law." [Emphasis ours] The appellant contends that because there were numerous factual issues in controversy and in dispute between the parties, and given that the law governing summary judgment requires that there should be no genuine issue as to any material fact, the judge could not legally grant the motion for summary judgment. We do not dispute that there are many factual issues presented in the case, and ordinarily the argument would be persuasive if we were to address the factual merits of the case. But we know that the factual allegations exchanged between the parties require the taking of evidence to substantiate the various claims. The Supreme Court has decided on numerous occasions that mere allegations are not proof. Kamara et al. v. Heirs of Essel, Opinion of the Supreme Court, March Term, 2012; Pentee v. Tulay, 40 LLR 207 (2000) The allegations must be substantiated by the presentation of evidence. Knuckles v. Liberian Trading and Development Bank, 40 LLR 511 (2001); Salala Rubber v. Garlawulo, 39 LLR 609 (1999);Morgan v. Barclay, 42 LLR 259 (2004). Equally, the Supreme Court has determined that it is without the authority to take evidence, and hence we cannot make a determination of the various factual allegations exchanged between the parties. Bah and A. Bah Business v. Henries et al., 41

LLR 87 (2001); The Intestate Estate of the late Chief Murphy-Vey John et al. v. The Intestate Estate of the late Bendu Kaidii and Greaves, 41LLR 277 (2001). That is why we determined that because the case presented a number of factual issues were in dispute the appellant should have resorted to arbitration rather than the unilateral action of terminating the agreements; that the action taken by the appellant was tantamount to a waiver to submit the dispute or controversy to arbitration; that its action removed the dispute from the realm of arbitration to the level befitting of judicial intervention; and that the petition for declaratory judgment, being a judicial intervention, was proper and appropriate. Accordingly, we hold that under the circumstances of the case, as revealed by the records, the trial court did have the jurisdictional authority to decide on the core legal issues of due process, exclusive of the several factual issues presented, and to make a determination as whether the action by the appellant in terminating the Agreements without giving the appellees the opportunity for a hearing was indeed a violation of the appellees' due process of law right guaranteed by the Constitution.

Having thus determined that the trial court had the jurisdictional authority under the facts presented in the case to decide whether the appellant had violated the appellees' due process of law right, the next issue which must claim our attention and which therefore must be addressed is whether the trial court correctly determined that the appellees' due process of law right had been violated by the manner in which the Government's terminated the Agreements it had with the appellees.

The appellees argue that the Agreements with the Government were terminated by the Government predicated upon certain allegations made by the Government of violations said to have been committed by the appellees, firstly, in regard to the Agreements and, secondly, in regard to the Mineral and Mining Law and the Mining Regulations. The appellees assert that they had denied the allegations made by the Government and that they had instead accused authorities at the Ministry of Lands, Mines and Energy of ulterior motives in seeking to have the Government disengaged from or terminate the Agreements. In the face of this

dispute, the appellees aver, the Government should have requested arbitration as specified in the Agreements, rather than resorting to a unilateral cancellation.

The Government does not deny that a hearing was not had before the Agreements were terminated, but it argues that the appellees had waived the right to a hearing since they had failed to take advantage of the provision of the Mining Regulation to challenge the action or decision of the Government within thirty days of the notice of the decision to terminate. The letter challenging the termination, the Government says, was written in September 2010, several months after the termination of the Agreements. The Government therefore asserts that the trial court therefore was in error in ruling that the appellees were denied their due process of law right since they were not accorded the opportunity to be heard before the Mineral Exploration Agreements were terminated. We hold that the trial court was correct in ruling as it did and that the appellees were indeed denied the right of due process of law. Accordingly, and without going into other matters mentioned in the trial court's ruling, we affirm the said ruling.

In affirming the ruling of the lower court, let us take recourse, firstly, to the Liberian Constitution. The Liberian Constitution, at Article 20(a) states that: "No person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in this Constitution and in accordance with due process of law." [Emphasis ours] We should note, however that although the Constitution, whose provision we have herein quoted, only came into effect in 1986, the concept of due process of law embedded therein is as old as the Nation. The 1847 Constitution which came into force at the birth of the nation in that year contained a similar though less elaborate provision guaranteeing the right to due process. At Article 1, section it stated: "No person shall be deprived of life, liberty, property or privilege, but by judgment of his peers, or the law of the land." See Liberian Codes Revised, 1 LCLR 64 (2003);Charles Henry Huberich," The Political and Legislative History of Liberia", Vol. II, 854 (1947).

The essence of the quoted provision was eloquently explained and elaborated upon by Chief Justice Louis Arthur Grimes in the monumental case of Wolo v. Wolo, decided by the Supreme Court at its November Term, 1936. Speaking for the Court, and referencing 6 R.C.L., section 442,as an authoritative source, The Chief said of due process of law that: "The essential elements of due process of law are notice, and an opportunity to be heard and to defend in an orderly proceeding adapted to the nature of the case. In fact one of the most famous and in fact the most often quoted definition of due process of law is that of Daniel Webster in his argument in the Dartmouth College case, in which he declared that by due process of law was meant 'a law which hears before it condemns; which proceeds upon enquiry, and renders judgment only after trial'. Somewhat similar is the rule as old as the law that no one shall be personally bound until he has had his day in court, by which is meant, until he has been duly cited to appear, and has been afforded the opportunity to be heard. Judgment without such citation and opportunity wants all of the attributes of a judicial determination; it is a judicial usurpation and oppression and can never be upheld where justice is fairly administered. 6 R.C.L. 'Constitutional Law',§ 442." Wolo v. Wolo, 5 LLR 423,428-29 (1937).

The Supreme Court has, without a single deviation, adhered to that constitutional pronouncement and the interpretation articulated by Mr. Chief Justice Grimes in the Wolo case. See Howard v. Republic, 8 LLR 135 (1943); Ayad v. Dennis, 23 LLR 165 (1974);Doe v. Sinkor Bakery, 25 LLR 292 (1976);Wonkifong Household, Inc. v. Mamalu, 32 LLR 545 (1985);Ross Mines Ltd/American-Liberia United, Inc. v. Kelleh and Williams, 41LLR 165 (2002); United Logging Company v. Mathies and George, 41LLR 395 (2003); Kruah and Solo v. Weah, 42 LLR 148 (2004);Sackie v. Kaba and Gbargbea, 42 LLR 421(2004).

Clearly, under the quoted provision of the 1847 and 1986 Constitutions, quoted above, and the Opinions of the Supreme Court, referenced above, sustaining the principle of due process of law, the appellees were entitled to a hearing before they could be deprived of any rights held by them, whether they related to the Mineral and Mining Exploration Agreements, the licenses held thereunder, or any other rights. The question then is whether there was such deprivation of the right as the appellees alleged in the petition for declaratory judgment and in the ancillary motion for summary judgment. The appellant's position is that the right was in fact extended but that the appellees chose not to take advantage of it by not contesting the termination, thereby waiving any right to make the claim that they were denied of the right.

In determining the issue,we take note of two important facts.The first is that the appellant does not deny that there was never a hearing prior to its termination of the Mineral Exploration Agreements with the appellees or the revocation of the licenses held by the appellees thereunder. Instead, the defense raised by the appellant to the allegations made by the appellees is that the appellees had a period of thirty days within which to request a hearing and that the failure to take advantage of that opportunity was a waiver of the right. This Court has opined in a number of cases that where allegations are made, such as was made by the appellees, that require direct rebuttal or denial and there is a failure to rebut or deny, the allegations will be deemed as admitted and to be true. Civil Procedure Law, Rev. Code 1:9.8(3);Tucker v. Brownell, 24 LLR 333 (1975);Inter-Con Security Systems v. Miah and Yarpawulo, 38 LLR 633 (1998) Since the appellant does not deny that no hearing was held but asserts only that the appellees had waived their right to a hearing, we deemed the lack of a denial of the allegations to be an admission of the allegations made by the appellees and that indeed no hearing was accorded them prior to the appellant's termination of the Agreements held with them and consequently the revocation by the appellant of the licenses held by the appellees.

This requires then that we turn our attention to the sole defense asserted by the appellant to the appellees claim of a denial of due process,that defense being that the appellees were provided the opportunity under the Mining Regulations but that they chose to waive the right by not taking advantage of the right to challenge the termination. Specifically, the appellant cites us to section 17.2 of the Mining Regulations on Exploration to support their defense that the appellees were given the opportunity of a hearing but that they refused or failed to take advantage of the said opportunity by not contesting the termination within thirty days of the date of the termination. The same as we have done

in many prior opinions, and as required by our Civil Procedure Law to take judicial notice of the laws of Liberia, including regulations issued by agencies of the government and which have the force of law, we take judicial notice of the Mineral and Mining Regulations issued by the Ministry of Lands, Mines and Energy. See Civil Procedure Law, Rev. Code 25.1.

Section 17.2 of those Regulations states: "The Minister gives notice of termination (a "Termination Notice) at any time that a license Termination Event has occurred and is continuing, setting forth In such notice a summary in reasonable detail of the facts relied upon to establish the occurrence and continuation of a License Termination Event. Such notice must include a statement of the right of the Licensee to request a hearing to be held to contest the assertion that a License Termination Event has occurred. Pursuant to Section 9.15 of the Mining Law a termination under this Section is effective two months after the Termination notice is sent to the Licensee, subject to automatic stay during the pendency of any hearing or judicial appeal referred to below in Section 18. If the Minister does not receive a request for a hearing under Section 18 within 30 days of the date on which the licensee received the notice of termination, the licensee will be deemed to have waived Its right to such hearing, and the license in question will then terminate at noon on the date provided in the preceding sentence; otherwise termination is stayed until the conclusion of the hearing and any subsequent judicial appeal".

In respect of the said Regulations, the appellant, believing that its defense to the due process denial allegations is strengthened by section 17.2, quoted above, has asked us to focus more specifically on two key portions of the section. The first portion which the appellants has asked us to focus is the portion which states that any person whose mining rights are terminated has the right to request a hearing within thirty days of the notice of termination to contest the Minister's claim that a License Termination Event has occurred. We have taken note of the said portion as requested.

The second part of the Regulations which the appellant has called upon us to focus on is the portion which states that "if the Minister does not receive a request for a hearing under Section 18 within 30 days of the date on which the licensee received the notice of termination, the licensee will be deemed to have waived its right to such hearing, and the license in question will then terminate at noon on the date provided in the preceding sentence; otherwise termination is stayed until the conclusion of the hearing and any subsequent judicial appeal". We have also taken note of the said portion.

On the strength of the two portions which we have taken note of, the appellant makes the argument that the provisions therein clearly show that the appellees were provided the opportunity for the exercise of the right to a due process challenge of its action and to a hearing that would have frozen the action of the appellant and even accorded the right of appeal up to the Supreme Court, but that the appellees failed to avail themselves of the opportunity within the time allowed by the Regulations, a failure the appellant says that was tantamount to a waiver of the right or opportunity to a due process of law hearing.

We do not deny that the Mineral and Mining Regulations are subject to the Administrative Procedure Act, Section 82.7 of the Executive Law and that even if in a roundabout and

after thought manner, the Regulations provide an avenue for a subsequent challenge and thus for a belated due process of law hearing after the commission of the act. Our law, however, does not allow for an assumption of guilt before a hearing is held. The law clearly presumes innocence until a hearing is had and the contrary is proved to be the case. It is a law which hears before it condemns. It stipulates that no person shall be deprived of any right, whether with regard to freedom, to property, to privilege or any other right, except by the judgment of his or her peers, after a trial held in consonant with the principle of due process of law.

Notwithstanding the guarantees stated above, granted both by the Constitution and the statutory laws of Liberia, and continuously subscribed to by the Supreme Court, the Government, appellant in this case, advances the theory, as stated in the Regulations, that a party may effectively be adjudged guilty of an offense without a hearing and that he or she may, under that presumption of guilt, be deprived of property or privilege; and that if the party believes himself or herself to be innocent, or has been wrongfully deprived of a right or privilege, he may then challenge the deprivation to prove his or her innocence. This is clearly in contravention of the Constitution and statutory laws of Liberia, and the fact that the Regulations afford an avenue for subsequent challenge does not thereby cure the unconstitutionality of the specific provision in question. We therefore herewith declare that the portion of the Regulations which vests in the Ministry of Lands, Mines and Energy the power to cancel a license without affording the licensee the opportunity for a hearing before such cancellation is unconstitutional and illegal, and as such is void. The Ministry must develop appropriate provisions to deal with violations by licensees of the license agreements under which they operate without violation of their rights or the law.

We reject in like manner the interpretation which the Government seeks to give to Section 17.2 of the Regulations, especially in the face of the facts presented in the instant case. The Government asserts that, notwithstanding the fact that the Minister of Lands, Mines and Energy did not inform the licensees of the right to challenge or appeal unilateral action taken by the Minister, they waived the right by not appealing therefrom or challenging the same. We are prompted to ask the question as to how there can be a waiver of aright which the party was never informed of, which information the Regulations mandated the Minister to convey to the affected licensee? We ask further the motive of the Minister in not including the right of challenge in the letter of termination of the licenses of the licensees. But more importantly, this Court has said repeatedly that when interpreting an instrument, the document should be reviewed and interpreted in its total and holistic context, reflective of both the intent and the spirit of the instrument and the framers. The Liberia Institute of Certified Public Accountants of Liberia v. The Ministry of Finance et al., 38 LLR 657 (1998). We do not see this approach being advocated by the appellant from the argument advanced by its counsel. We do not believe that the framers of the Regulations, even if they be the members of the Ministry in question, did not intend that the Ministry should be the beneficiary of its own act of default or negligence, and that other parties should suffer the consequences of such default or negligence by the Minister.

We therefore cannot interpret section 17.2, as the Government would have us do, by focusing only on certain of the components of the section and completely ignoring other components which are tied to the components we are called upon to focus on or which may even be preconditions to the application of such components we are told we should focus on. This, in our opinion, would be interpreting the Regulations completely out of context. We believe that such interpretation which ignores key components of the instrument that reflect the true intent and spirit of the Regulations, even as much as the Regulations themselves have difficulties, could have grave implications for the due process clause in the Constitution, subscribed to by the Supreme Court from its very inception. The law was never intended to operate in that manner and any action which seeks to have the law operate in such manner cannot be sanctioned. And this is of particular concern in the face of the further allegations made by the appellees that the Government, prior to the expiration of the period allowed for challenge, had proceeded to transfer or convey to a third party the property taken from the appellees.

We must therefore take further recourse to the section we have been asked to interpret to determine whether the appellees waived their right to a due process of law hearing. We note and take full cognizance that as a precondition to the licensee asserting a challenge to the termination of a Mineral Exploration Agreement, and thus the deprivation of a property right by the Government, the letter of the Minister of Lands, Mines and Energy informing the licensee of the termination must also inform the licensee that he/she/it has the right to contest the termination. It is this critical information that forms the basis and the trigger for the exercise of the challenge to the action of the Government. The Regulations make it mandatory that this information of the right to contest is communicated to the licensee in the letter of termination. The Minister does not have the discretion of deciding whether to include the information in the letter of termination or not. The Regulations state that the Minister "must" include the information· in the letter of termination that the licensee has a period of thirty days within which to contest the action of the Government. This is what the Regulations state in that regard: "Such notice [referring to the notice of termination] must include a statement of the right of the Licensee to request a hearing to be held to contest the assertion that a License Termination Event has occurred. [Emphasis ours]

Our interpretation of the portion of the Regulations quoted above, done with the other noticed components of the Regulations, is that the Minister does not have a choice, and that all other provisions that follow become operational and enforceable only if the mandatory portion is met by the Minister. The quoted portion recognizes the need for notice, a critical component of the due process of law mandate of the Constitution. It recognizes also that a person cannot waive what has not been extended to him. Hence, if notice is not given to the person that he or she has the right to contest the action, it cannot be said that he or she waives the right to challenge and to a hearing because he or she did not mount the contest or challenge within the time stipulated in the Regulations. This would be tantamount to having a wrongdoer benefit from his wrongdoing. The right to the protection and preservation of property and the

attending right to due process are too critical to be dispensed with under such frivolous, baseless and inapplicable technicality.

In light of the pronouncement made above, the question now is whether the mandatory provision of section 17.2 was met by the Minister by its inclusion in the notice in the termination letter. Here is how one of the form termination letters reads:

"Monday, March 8, 2010

Mr. Len Lindstrom
President and CEO
T-Rex Resources Inc.
Monrovia, Liberia

Re: Termination of Mineral Exploration Agreement by the Government of Liberia.

Dear Sir:

We present our compliments and wish to refer you to our letter of January 25, 2010 (Re: Notice of Termination of Mineral Exploration Agreement by Government of Liberia) informing you of your company's arrears with the Government of Liberia in the tune of US$44,594.75 (Forty-Four Thousand, Five Hundred and Ninety-Four United States Dollars and Seventy-Five Cents) representing outstanding payments for Mineral Exploration License and Surface Rental Fees for tax period Oct. '09-0ct.'10.

You were to remit into the Government of Liberia revenue the amount of US$44,594.75 within thirty days of the date of issuance of said notice ,i.e. January 25,2010.As of today's date you have not done so.

Hence, in keeping with section 9.9 of the new Minerals and Mining Law of 2000 and section 27.2(a) of your Mineral Development Agreement which states that "the Government shall have the right to terminate this agreement...where the operator shall fail to make payments described in this agreement on the due payment date, and such default is not cured within thirty (30) days after notice by the Government (or within such longer period as may be specified in said notice)",we wish to inform you that your Mineral Exploration Agreement with the Government of Liberia has been terminated and that the properties of this license (Grand Kru and Nimba East) have reverted to the Government of Liberia.

The cancellation of your Mineral Exploration Agreement takes effect as of April 2 6 , 2010 in, keeping with section 9.16 of the new Minerals and Mining Law of 2000.

Kind regards.

Very truly yours,

E.C.B.Jones, Jr.
ACTING MINISTER"

Our careful inspection of the above quoted letter and the other letters of termination, of the exact same form and content, sent to the appellees reveal that nowhere in said letters is the mandatory imposition of section 17.2 of the Regulations stated. Nowhere in any of those letters does the Acting Minister of Lands, Mines and Energy inform the licensees, the appellees, that they have the right to contest the termination of the Mineral Exploration Agreements or the licenses held by them within thirty days of the date of the letter of termination. The net effect of this omission is that none of the appellees were notified that they had the right to contest the termination. Our law is clear on the issue. It is only upon such notice that the appellees would have been informed of the right to contest. Notice is a key component of our jurisprudence and it was not for the appellant to dispense with the critical requirement. METCO v. Chase Manhattan Bank, 34 LLR 419 (1987); Wolo v. Wolo, 5 LLR 423 (1937); Krauh v. Weah, 42 LLR 148 (2004). Hence, the appellant cannot make the argument that the appellees waived their right to contest the termination or to a hearing on the termination because they failed to contest the termination within thirty days of the date of the notice of termination.

Therefore, in light of the above, we reject the contention of the appellant that the appellees were accorded the due process of law opportunity provided by the Constitution and the several provisions of our statutes, as well as the Regulations, but chose to waive the right or the opportunity. Accordingly, we hold that as no right to a hearing was accorded to the appellees and no right of due process was waived by them, the trial judge was correct in holding that the appellees were denied of their right to due process of law and that by that denial the action of the appellant was rendered null and void, and of no legal effect. The said act by the appellant in terminating the Mineral Exploration Agreements and the licenses held by the appellees is hereby reversed and the rights and licenses held by the appellees reinstated to last for the remaining period granted to them. Any Agreements concluded between the Government and any other appellant are rendered null and void and also of not legal effect. Such third party must cease any and all activities being carried out under any Agreements concluded with the Government granting them rights of exploration in areas over which such rights had been granted to the appellees.

In holding as we have, we further opine that the said holding renders irrelevant and moot the further argument of the appellant that the trial judge erred when, in interpreting section 17.2 of the Regulations, he ruled that the appellees were entitled to sixty days within which to cure the defects complained of by the appellant or that the judge erred in ruling that "the failure of the petitioners to submit a notice to the respondent for a hearing within thirty days did not preclude the respondent from having the hearing into the matter as raised in the letter of the petitioner dated September 21,2010."

We emphasize also that our holding herein does not preclude the Government from taking appropriate legal action against the appellees for any violations of the Agreements, including actions to recover any amounts due, any redress to any defaults, to prosecute for any fraud allegedly committed by the appellees and any other persons associated with such alleged fraud,

as well to seek cancellation of any of such Agreements as the Government holds with the appellees on account of such violations.

The Clerk of this Court is hereby ordered to send a mandate to the lower court to resume jurisdiction over the case and to enforce the judgment of this Court in accordance with law. Costs of these proceedings are disallowed. And it is hereby so ordered.

Counsellor Betty Lamin-Blamo, Solicitor General of Liberia, appeared for the appellants. Counsellors Tiawan S. Gonglo, Samuel W. Nyazeeguo and Momolu G. Kandakai appeared for the appellee.