The Interstate Estate of the late **Shad Kaydea**, represented by its Administratrix, **Anna Kaydea**; its Widow, Heirs and Distributes, APPELLANT Versus The **Turay** Family, represented by its authorized Representative, **Siaka Turay**, of the City of Monrovia, Liberia, RESPONDENT

LRSC 37

APPEAL

HEARD: October 21, 2014 DECIDED: August 13, 2015

MR. JUSTICE BANKS delivered the Opinion of the Court.

Aminata and Sons, a duly registered Liberian corporation that at the relevant time engaged in the importation, distribution and sale of petroleum products, was co-owned, in respect to its shares, by the appellant decedent and the appellee, with the appellant decedent owning sixty percent of the shares and the appellee retaining forty percent. In 2009, following the death of the appellant decedent, the parties, the Intestate Estate of the late Shad Kaydea and the Turay Family, the claimed owners of the shares of Aminata and Sons, Inc., entered into an agreement which the parties thereto stated was for the purpose of re-organizing the corporation, a process that, under the terms of the agreement, involved the distribution of the assets and the assumption of the liabilities of the corporation between the owners. In the agreement, the appellant, the Intestate Estate of the late Shad Kaydea, agreed to transfer to the appellee, The Turay Family, the appellant's sixty percent ownership stake in the corporation as well as certain of the assets of the corporation in exchange for the transfer, also of several of the corporation's assets, to the appellant.

The agreement for the re-allocation of the corporation's shares and assets was labeled as an "Agreement of Reorganization by Distribution of Assets" and was signed by Siaka Turay, as the Authorized Representative of the Turay Family, and Anna Kaydea, as the administratrix of the Intestate Estate of the late Shad Kadyea, and Abraham Kaydea, as the authorized representative of the Kaydea Estate. At Section 2.2 of the Agreement, the parties recognized that although there was no audit to determine the complete inventory of all the assets owned by the corporation and that the assets listed in the Agreement may not be the entire assets owned by the corporation as at the time of the execution of the agreement, they nevertheless agreed that the assets listed in the Agreement constituted the assets of the corporation and that the said assets would be distributed between them as stipulated in the Agreement; however, with the proviso that in the event there was subsequent discovery of other assets said to be owned by the corporation but which were not listed in the Agreement, the newly discovered assets would be divided between the parties, with the appellant receiving sixty percent and the appellee receiving forty percent.

The current petition for declaratory judgment grows out of issues arising from the Agreement mentioned above, including whether allegations made by the petitioner/appellant of entitlement to certain proceeds, funds, and assets (including receivables to the value of almost ninety thousand gallons of fuel which would due to or which are said to have subsequently accrued to the corporation following the execution of the Agreement, but which were not listed in the Agreement, as well as whether certain

payments for the purchase of certain products of the corporation by the appellant should be refunded on account of assertions by the appellant that the products involved were in fact covered by the Agreement under new discover of assets which thereby entitled the appellant to 60% of the value. These and other accusations formed the basis for the petitioner's assertion in the petition that as per Section 2.2 of the contract, it was entitled to sixty percent not only of the value of the accounts receivables said to have been discovered subsequent to the execution of the Agreement but also to the same percentage of the petroleum products and other assets said to have been uncovered after the execution of the Agreement. In order that the background to the petition and to the dispute is fully grasped, and the demands of the petitioner accorded their deserving appreciation, we herewith quote verbatim the fourteen-count petition:

"Petitioner in the above-entitled cause of action petitions this Honorable Court in form and manner as follows, to wit:

1. That petitioner and respondent established a corporation known and referred to as "Aminata & Sons Inc." in which petitioner and respondent became sixty percent (60%) and forty percent (40%) shareholders, respectively. The said Corporation was, and is still engaged in the importation, sale, and distribution of petroleum products in the Liberian market.

2. That on November 9, 2009, petitioner and respondent executed an Agreement of Reorganization by Distribution of Assets, pursuant to which the assets and liabilities of Aminata & Sons Inc. were distributed between petitioner and respondent, and petitioner thereupon transferred, have, surrendered, and relinquished its sixty percent (60%) interest in Aminata & Sons Inc. to respondent. According, and consistent with the herein-mentioned Agreement, respondent was allowed, given, and permitted to exclusively manage, own, and use the name of the Corporation (Aminata & Sons Inc.) as well as the goodwill thereof in perpetuity. Attached hereto and marked as petitioner's Exhibit "P/1" is a copy of the referenced Agreement of Reorganization by Distribution of Assets, to form a cogent; integral part of petitioner's petition.

3.That the Agreement (petitioner's Exhibit "P/1 hereto), at Subparagraph 2.2 recognizes the possibility that one or more assets of Aminata & Sons Inc. may not be on the Schedule of Assets prepared on the basis of trust and good faith, and without prior audit. So, the petitioner and respondent agreed that in the event any asset not listed, described, or divided is discovered, such asset shall be distributed between the petitioner and respondent in the ratio of 3:2 (three to two). Attached hereto and marked as petitioner's Exhibit "P/2" is the Schedule of Assets, which was annexed to the said Agreement of Reorganization by Distribution of Assets, to form a cogent and integral part of petitioner's petition.

4. That the Agreement (petitioner's Exhibit "P/1" hereto), at Sub-paragraphs 3.1, 3.2 and 3.3, provides that settlement of all liabilities of Aminata & Sons Inc., as detailed in the Schedule of Liability (Annexure II thereto, was the responsibility and account of respondent, except for three (3) liabilities to Bawa, Srimex, and Total Liberia Inc. In the amounts of US$83,173.50 (United States Dollars Eighty-Three Thousand One Hundred Seventy Three 50/100), US$302,426.35 (United States Dollars Three Hundred Two Thousand Four Hundred Twenty-Six 35/100),and US$383,850.00 (United States Dollars

Three Hundred Eighty-Three Thousand Eight Hundred Fifty),respectively. Your Honor is requested to take judicial notice of petitioner's Exhibit "P/1", specifically Sub-paragraphs 3.1, 3.2 and 3.3 thereof. In substantiation of the averment contained herein. Attached hereto and marked as Exhibit "P/3" is a copy of the Schedule of Liabilities, Annexure II attached to the Agreement referred to herein, to form a cogent and integral part of petitioner's petition.

5. That prior to the execution of the Agreement (petitioner's Exhibit "P/1" hereto), Aminata & Sons Inc. had a Tripartite Agreement with the Liberia Petroleum Refining Company, Novel, the supplier of Aminata & Sons, pursuant to which Novel was required to supply Aminata & Sons petroleum products for storage at the Liberia Petroleum Refining Company's storage terminal, and from where Aminata & Sons drew down on said petroleum products.

6. That at the time of the execution of the Agreement (petitioner's Exhibit "P/1" hereto), Aminata & Sons Inc.'s total liability to Novel, the supplier, was US$2,685,924.05 (United States Dollars Two Million Six Hundred Eighty-Five Thousand Nine Hundred Twenty-Four 05/100).The Liberia Petroleum Refining company also had in its storage tanks for Aminata & Sons Inc. 12,443 (twelve thousand four hundred forty-three) gallons of PMS. This quantity of PMS was never listed as asset of Aminata & Sons at the time of the execution of the Agreement (Petitioner's Exhibit "P/1" hereto). Petitioner submits that consistent with Petitioner's Exhibit "P/1", it is entitled to sixty percent (60%) of the 12,443 (twelve thousand four hundred forty-three) gallons of PMS or the monetary value thereof at the prevailing market rate. Attached hereto and marked as Petitioner's Exhibit "P/4" is the referenced email and the Liberia Petroleum Refining Company's Stock Report of November 9, 2009, in substantiation of the averment contained herein.

7. Petitioner submits and says that sometime in 2009, but prior to the execution of Petitioner's Exhibit "P/1" hereto, Aminata & Sons Inc. loaned 77,000 (seventy-seven thousand) gallons of Automotive Gas Oil (AGO) to Srimex Inc. This quantity of product was incorporated in Aminata & Sons' liability to Novel, which liability was assumed by Respondent as per the Agreement (Petitioner's Exhibit "P/1" hereto). Accordingly, said 77,000 (seventy-seven thousand) gallons of AGO was an asset of Aminata & Sons at the time of the execution of the herein-mentioned Agreement, which should have been on the Schedule of Assets; or upon its subsequent delivery, divided in the ratio of 3:2 (two to three) between Petitioner and Respondent. This means that when Srimex returned the 77,000 gallons of AGO mentioned herein, Petitioner should have received 46,200 (forty-six thousand two hundred) gallons thereof; instead, Petitioner was made to pay US$120,000.00 (United States Dollars One Hundred Twenty Thousand) for same. Petitioner submits that consistent with the Agreement (Petitioner's Exhibit "P/1" hereto), It is entitled to the refund from respondent of said amount of US$120,000.00 (United States Dollars One Hundred Twenty-Thousand), representing its share of the 77,000 (seventy-seven thousand) gallons of AGO referred to herein. Petitioner therefore prays Your Honor to so rule and declare.

8. Petitioner submits and says that at the time of the execution of petitioner's Exhibit "P/1" hereto,

Aminata & Sons had a claim of US$400,000.00 (United States Dollars Four Hundred Thousand) pending with the Liberia Petroleum Refining Company, as a result of overnight drafts of petroleum products, loading differences, leakages in holes and pipes, theft, etc. while Aminata & Sons' petroleum products were in storage at the Liberia Petroleum Refining Company's storage tank. Petitioner submits that the Liberia Petroleum Refining Company evaluated this claim and paid US$336,000.00 (United States Dollars Three Hundred Thirty-Six Thousand) on December 2, 2009, to Aminata & Sons. Petitioner says that this amount was an asset to Aminata & Sons prior to, and at the time of the execution of the Agreement (Petitioner's Exhibit "P/1" hereto). Accordingly, Petitioner was entitled to sixty percent (60%) of the amount of US$336,000.00, which is equivalent to US$201,600.00 (United States Dollars Two Hundred One Thousand Six Hundred). On the contrary, said amount was received by the Respondent who, without reporting to Petitioner, proceeded to credit and use the entire amount paid to offset Aminata & Sons' liability of US$ 250,000.000 (United States Dollars Two Hundred Fifty Thousand) to the Liberia Petroleum Refining Company that had already been assumed as an obligation of Respondent, as per petitioner's Exhibit "P/1" hereto. Attached hereto and marked as Petitioner's Exhibit "P/5" is a copy of Aminata & Sons Inc.'s Statement of Account with the Liberia Petroleum Refining Company, in substantiation of the averment contained herein, Your Honor will observe, from said Statement of Account, that upon the application of the US$336,000.00 (United States Dollars Three Hundred Thirty-Six Thousand) against Aminata & Sons' liability to the Liberia Petroleum Refining Company, the Liberia Petroleum Refining Company became liable or had an account balance of US$86,195.23 (United States Dollars Eighty-Six Thousand One Hundred Ninety-Five 23/100). Petitioner submits that it is entitled to sixty percent (60%) of said amount of US$336,000.00 (United States Dollars Three Hundred Thirty-Six Thousand),representing payment made to Aminata & Sons by the Liberia Petroleum Refining Company for claim of losses sustained by Aminata & Sons while its petroleum products were in the Liberia Petroleum Refining Company's storage tank and which amount was an asset of Aminata & Sons prior to, and at the time of the execution of the Agreement (petitioner's Exhibit "P/1" hereto). Accordingly, Petitioner prays Your Honor to declare and rule that Petitioner is entitled to sixty percent (60%) of said amount of US$336,000.00 (United States Dollars Three Hundred Thirty-Six Thousand), which is equivalent to US$201,600.00 (United States Dollars Two Hundred One Thousand Six Hundred).

9. Petitioner submits that the supplier, Novel, took on Insurance coverage for ship to shore losses of petroleum products for and on behalf of Aminata & Sons. Prior to, and at the time of the execution of Petitioner's Exhibit "P/1", Aminata & Sons had a claim of US$132,000.00 (United States Dollars One Hundred Thirty-Two Thousand) for said losses, and that said amount was credited to Aminata & Sons' account subsequent to the execution of the Agreement (Petitioner's Exhibit "P/1). Accordingly, same is an asset of Aminata & Sons, and Petitioner is entitled to sixty percent (60%) of said amount of US$132,000.00 (United States Dollars One Hundred Thirty-Two Thousand, which amounts to US$79,200.00 (United States Dollars Seventy Nine Thousand Two Hundred). And Petitioner prays Your

Honor to so rule and declare.

10. That Aminata & Sons' indebtedness to the Liberia Petroleum Refining Company prior to the necessary adjustments of Aminata & Sons' claim for loss of petroleum products against the Liberia Petroleum Refining Company as at November 9, 2009, was stated at US$321,485 (United States Dollars Three Hundred Twenty-one Thousand Four Hundred Eighty Five); whereas, Aminata and Sons' indebtedness to the Liberia Petroleum Refining Company, prior to the execution of the herein-mentioned Agreement (Petitioner's Exhibit "P/1"), pending the acceptance of Aminata & Sons' loss-petroleum product claim against the Liberia Petroleum Refining Company, was US$250,156.00 (United States Dollars Two Hundred Fifty Thousand One Hundred Fifty-Six). Accordingly, there was an overstatement of Aminata & Sons' liability to the Liberia Petroleum Refining Company in the amount of US$71,329.00 (United States Dollars Seventy-one Thousand Three Hundred Twenty-Nine).Petitioner submits that consistent and in keeping with the Agreement of Reorganization by Distribution of Assets, it is entitled to sixty percent (60%)of the overstated liability of Aminata & Sons to the Liberia Petroleum Refining Company in the amount of US$71,239.00 (United States Dollars Seventy-One Thousand Two Hundred Thirty-Nine), which equals to US$42,743.40 (United States Dollars Forty Two Thousand Seven Hundred Forty Three 40/100).

11. That Duraplast, the office of the Vice President of the Republic of Liberia, and Ecobank Liberia Limited were all indebted to Aminata & Sons as per the list of receivables of Aminata & Sons at the execution of the Agreement of Reorganization by Distribution of Assets in the amounts of US$3,100.00 (United States Dollars Three Thousand One Hundred); US$11,729.00 (United States Dollars Eleven Thousand Seven Hundred Twenty-Nine), and US$21,000.00 (United States Dollars Twenty One Thousand) for petroleum products supplied and for rental payment for Western Union outlets, respectively. Subsequent to the execution of the said Agreement of Reorganization by Distribution of Assets, Duraplast and the office of the Vice President, through the Central Bank of Liberia, made payment to Aminata a sons by check Nos. 1.64554, dated December 5, 2009, and 0075270, dated December 4,2009, respectively, while Ecobank Liberia Limited also credited Aminata & Sons' account with itself on January 10,2010, in the amounts of US$3,100.00 (United States Dollars Three Thousand One Hundred), US$117, 29.00 (United States Dollars Eleven Thousand Seven Hundred Twenty Nine), and US$21,000.00 (United States Dollars Twenty One Thousand), aggregating US$35,829.00 (United States Dollars Thirty-Five Thousand Eight Hundred Twenty-Nine).Petitioner submits that consistent and in keeping with the Agreement (Petitioner's Exhibit "P/1" hereto), Petitioner is entitled to sixty percent (60%) of the amount of US$35,829.00 (United States Dollars Thirty-Five Thousand Eight Hundred Twenty-Nine),which equals US$21,497.40 (United States Dollars Twenty-One Thousand Four Hundred Ninety-Seven 40/100).

12. Petitioner submits and says that in keeping with the Agreement (petitioner's Exhibit "P/1" hereto), Petitioner undertook to settle and/or underwrite Aminata & Sons' total liability to Total Liberia Inc. in the amount of US$383,850.00 (United States Dollars Three Hundred Eighty-Three

Thousand Eight Hundred Fifty). Petitioner says that subsequent to the execution of the herein-mentioned Agreement, it was discovered that Aminata a Sons' indebtedness or liability to Total Liberia Inc. was US$483,083.77 and not US$383,850.00, as reported by Respondent. Accordingly, Total Liberia Inc. refused to sign any agreement with Petitioner and/or its corporation to assume Aminata & Sons' liability to Total Liberia in an amount less than US$483,083.77. Petitioner accordingly advised Respondent of the position of Total Liberia Inc., and also stressed the fact that its (Petitioner's) obligation under the Agreement was for no more than US$385,850.00 (United States Dollars Three Hundred Eighty-Five Thousand Eight Hundred Fifty), with respondent obliged to settle any mount in excess of US$383,850.00 (United States Dollars Three Hundred Eighty-Three Thousand Eight Hundred Fifty). The respondent acknowledged its obligation to pay the portion of Aminita & Sons' liability to Total Liberia Inc. In excess of US$383,850.00 (United States Dollars Three Hundred Eight-Three Thousand Eight Hundred Fifty), but requested that petitioner accept responsibility for the entire amount, with the understanding that the respondent would pay the difference to the Petitioner. Hence, petitioner's solely-owned corporation entered a Novation Agreement, pursuant to the Agreement (Petitioner's Exhibit "P/1" hereto) for said amount of US$483,083.77 (United States Dollars Four Hundred Eight-Three Thousand Eight-Three 77/100). Petitioner submits and says that in keeping with the Agreement (Petitioner Exhibit "P/1"), Respondent is liable to Petitioner in the amount of US$99,233.77, same being the difference between the amounts of US$383,850.00 (which Petitioner assumed the obligation to pay) and the actual indebtedness of Aminata & Sons to Total Liberia Inc. in the amount of US$483,083.77 (United States Dollars Four Hundred Eighty Three Thousand Eighty-Three 77/100). Attached hereto and marked as petitioner's Exhibit "P/6" is a copy of the referenced Novation Agreement, in substantiation of the averment contained herein.

13. Based upon the averments contained in Counts One (1) through twelve (12) above, and in keeping with the Agreement (Petitioner's Exhibit "P/1" hereto), Petitioner has filed this petition for Your Honor to declare its rights to the following:

(i) The US$12,443 (United States Dollars Twelve Thousand Four Hundred Forty-Three) gallons of PMS, which was in stock at LPRC at the time of the execution of the Agreement (petitioner's Exhibit "P/1" hereto.

(ii) The 77,000 (seventy-seven thousand) gallons of petroleum product loaned to Srimex prior to the execution of the Agreement (Petitioner's Exhibit "P/1" hereto) and subsequently returned to the execution of said Agreement.

(iii) Aminata & Sons' claim of US$400,000.00 (United States Dollars Four Hundred Thousand) from the Liberia Petroleum Refining Company for which US$336,000.00 (United States Dollars Three Hundred Thirty-Six Thousand) was accepted and subsequently credit to the account of Aminata & Sons and applied against an obligation assumed and devolved on the Respondent pursuant to and In keeping with the Agreement (Petitioner's Exhibit "P/1" hereto).

(iv) Aminata & Sons' claim against the supplier, Novel, under the Insurance coverage for ship-

to-shore losses of petroleum products imported into Liberia for Aminata & Sons.

(v) The overstatement of Aminata & Sons' liability to the Liberia Petroleum Refining Company in the amount of US$71,329 (United States Dollar Seventy One Thousand Three Hundred Twenty-Nine).

(vi) Payment made by Duraplast, office of the Vice President of Liberia, and Ecobank Liberia Limited, which were included in Aminata & Sons receivables, listing at the execution of the Agreement (Petitioner's Exhibit "P/1" hereto) in the aggregate amount of US$35,829.00 (United States Dollars Thirty-Five Thousand Eight Hundred Twenty-Nine).

(vii) The US$99,233.77 (United States Dollars Ninety-Nine Thousand Two Hundred Thirty-Three 77/100), same being the difference between the amounts of US$383,850.00 (United States Dollars Three Hundred Eighty-Three Thousand Eight Hundred Fifty), which Petitioner undertook to pay as per Petitioner's Exhibit "P/1" hereto, and US$483,083.77 (United States Dollars Four Hundred Eighty-Three Thousand Eighty-Three 77/100), Aminata & Sons' actual indebtedness to Total Liberia lnc.

Wherefore, and in view of the foregoing, petitioner prays Your Honor to rule and declare in keeping with the Agreement (Petitioner's Exhibit "P/1"), that the Petitioner has the right, and is therefore entitled to the following:

(i) Sixty percent (60%) of the 12,443 gallons of PMS, which was in stock at the Liberia Petroleum Refining Company at the time of the execution of the Agreement (Petitioner's Exhibit "P/1"), which is equal to 7,466 gallons of PMS, or its monetary which at the prevailing market rate.

(ii) Sixty percent of 77,000 gallons of petroleum product loaned to Srimex prior to the execution of the Agreement (Petitioner's Exhibit P/1"), and subsequently returned to Aminata & Sons Inc., which is equal to 46,200 or its monetary value at the prevailing market rate.

(iii) Sixty percent of US$336,000.00, representing claim paid by the Liberia Petroleum Refining Company as a result of overright drafts of petroleum products, loading, differences, leakages in pipes and holes, theft, etc, which is equal to US$201,600.00.

(iv) Sixty percent of US$132,000.00, representing claims paid by Novel, under the Insurance coverage for ship-to-shore losses of petroleum products imported into Liberia for Aminata & Sons Inc., which is equal to US$79,200.00.

(v) Sixty percent of US$71,239.00, representing overstated Aminata & Sons' liability to the Liberia Petroleum Refining Company, which equals to US$42,743.40.

(vi) Sixty percent of US$35,829, representing payment made by Duraplast, office of the Vice President of the Republic of Liberia and Ecobank Liberia Limited, which equals to US$21,497.40.

(vii) US$99,233.77, representing the difference between the amounts of US$383,850, which Petitioner undertook to pay as per Petitioner's Exhibit "P/1" hereto, and US$486,083,77, Aminata & Sons actual liability to Liberia Inc.

(viii) Grant unto Petitioner any other and further relief as Your Honor may deem just, legal and equitable

in the premises.

The appellee, respondent in the proceedings in the lower court, in responding to the petition, filed returns thereto, challenging the jurisdiction of the court over its person and arguing substantively relative to the merits of the petition that although Section 2.2 of the Agreement stated that any uncovered assets should be shared between the parties, the section did not contemplate, and should not therefore be interpreted to include, accounts receivables because they were fully covered by Section 2.9,which stated that "[t]he parties agree that the outstanding receivables of the Corporation, as of the date of this Agreement, have been mutually distributed by the parties; the acceptance, equity and completion of the distribution are hereby mutually acknowledged and affirmed by the parties hereto." The appellee also disputed the value of the accounts receivables, recited by the appellant in the petition. Because we believe that the returns, as did the petition, raised Issues germane to the determination of the case, both in light of the ruling made by the trial judge and the arguments made before this Court, we herewith set forth specifically and verbatim the entire thirty-eight (38) counts of the returns, as follows:

"Respondent in the above entitled petition denies the factual and legal sufficiency of the petition and respectfully requests Your Honor to have the same denied and dismissed forthwith; and for reasons, showeth the following to wit:

1. Respondent says that as to the entire petition, the same must be dismissed because the writ of summons commencing the Petition, and which is intended to bring the Respondent under the jurisdiction of this Honorable Court is incurably defective, and was improperly served upon the respondent as such, the said writ of summons must be stricken as a matter of law, for this Honorable Court is without authority to exercise jurisdiction over the Respondent.

2. Respondent says, as to the entire petition and further to count one (1) above, the Honorable Supreme Court of Liberia has held in a long line of decisions that: "where statutory regulations governing service of summons are not substantially complied with, the court has no jurisdiction over the person improperly served and, in furtherance thereof, a defendant who has not been summoned at least fifteen (15) days prior to the first day of the term of court to which the writ of summons is made returnable, has not been legally summoned and is not required to answer the complaint." Moddermann v. Roberts, 1LLR217, (1888); Yangah v. Melton, 12LLR128, text @ pp.130-131, (1954); Kamara v. Kamara, 20LLR115 (1970).

3. Respondent submits that the Petitioner has venued its Petition in the September 2010 Term of this Honorable Court; made the writ of summons commencing the Petition returnable on the 9th day of October 2010, some nineteen (19) days after the opening of the September 2010 Term of court, which writ of summons was improperly served on the Respondent on September 30, 2010, some ten (10) days after the opening of this Honorable Court. Respondent respectfully requests Your Honor to take judicial notice of a copy of the writ of summons hereto attached and marked as exhibit "R/1" to form a cogent part of these returns.

4. Further to counts 1(one) thru 3 (three) above, Respondent says that the writ of summons not having

been served on it at least fifteen (15) days before September 20, 2010, the date on which this Honorable Court opened for its September 2010 Term, the said writ is nothing but legal nullity.

5. Respondent says that the entire Petition must be dismissed because Anna Kaydea, the purported administratrix of the Intestate Estate of the Late Shad Kaydea has shown no legal capacity in herself to properly bring this or any other suit on behalf of the Intestate Estate.

6. Further to count five (5) above, Respondent contends that under the law, the authority to act for an Intestate Estate is only exercisable by one duly qualified and legally appointed to carry out functions prescribed by the Probate Court. Respondent submits that in order for Anna Kaydea to have the legal capacity to maintain this suit on behalf of the Intestate Estate, she must have proffered to the petition, some form of legal authority, probably in the nature of a valid Letters of Administration property issued to her by the Probate Court. In the absence of that, she cannot assume the authority to act for the Intestate Estate as the exercise of all such authorities must be clearly and specifically authorized by law. Respondent respectfully requests Your Honor to take judicial notice of the entire petition.

7. Respondent says although it has been named as the party respondent in this petition, a review of the all of the averments in the petition dearly and manifestly shows that all of the claims being asserted by petitioner grew either from the operational activities of Aminata & Sons Inc., before the reorganization or thereafter. Respondent respectfully requests Your Honor to take judicial notice of the entire petition starting with count one (1) up to and including the prayers.

8. Further to count seven (7) above, respondent contends that under the law, it is not the caption or in this case, the mere naming of parties which is controlling, but rather the averments in the complaint that determine the form of action. Mathies & Fima Capital Corp. Ltd. v. Alpha lnt'l investment. Ltd. 40LLR570, (2001).It is clear that, although the petition named the Turay Family as the purported party respondent, yet, from the averments and prayers in the petition, the claims asserted obviously emanate from the corporate activities of Aminata a Sons, Inc. either before or after its reorganization.

9. Respondent says while it was a shareholder of Aminata a Sons Inc. before its reorganization and is now one of the shareholders of Aminata & Sons Inc., after the reorganization; and is a party to the reorganization Agreement, petitioner's exhibit "P/1", Aminata a Sons Inc. as a corporate entity is distinct ,separate and different from respondent, a mere shareholder.

10. Consequently, respondent contends that the petition brought against it must be dismissed because under the Business Association law of Liberia, it cannot be held liable for any alleged liabilities and or actions of Aminata &Sons Inc., whether before or after the reorganization.

11. Respondent contends that naming the Turay Family, shareholder of Aminata & Sons Inc., as a party-respondent to defend alleged actions of, and claims against Aminata & Sons Inc., a corporate entity, renders the entire petition dismissible, for the law in this jurisdiction is: naming a shareholder, member, director, officer or employee of the corporation as a party to a suit in Liberia to represent the corporation is subject to a MOTI0N TO DISMISS if such party is the sole party to sue or defend, or subject to a motion for misjoinder if such party is joined with another party who is a proper party and

has been joined only to represent the corporation. Republic of Liberia v. The Leadership of the Nat'l Bar Assoc. of Liberia, 40 LLR 652, citing the Association Law, Rev. Code § 5:2.5. Respondent submits that it has improperly been made the sole party to defend this petition, and in keeping with the controlling law, the entire petition is therefore subject to dismissal and respondent so prays.

12. Because as to counts one (1) and two (2), of the petition, respondent says they present no traversable Issues except that the Agreement, petitioner's exhibit P/1, was executed on December 4, 2009 and not November 9, 2009. Respondent requests Your Honor to take judicial notice of petitioner's own exhibit P/1 to the petition.

13. As to count three (3) of the petition, respondent says that while subparagraph 2.2 of the Agreement, petitioner's exhibit P/1, recognizes the possibility and NOT the probability that both petitioner and respondent might have omitted the inclusion of one or more assets of Aminata & Sons Inc. on the Schedule of Assets, and that upon a future discovery of such assets, same should be reported for distribution between the parties, this subparagraph did not contemplate account receivables of Aminata & Sons Inc.

14. Further to count 13 above, although receivables, among others, are considered an asset within the assets delineation of sub-paragraph 2.1of the Agreement, petitioner's exhibit P/1, respondent says all receivable assets were completely divided between, and accepted by the parties, the equity and completion of distribution of which was mutually acknowledged and affirmed by the parties, thereby foreclosing any claims or potential claim relative to receivable assets between petitioner and Respondent. Respondent respectfully requests Your Honor to take judicial notice of sub-paragraph 2.9 of the Agreement.

15. Further to count 14 (fourteen) above, respondent says in view of subparagraph 2.9 of the Agreement, the assets to which Subparagraph 2.2 referred; upon which petitioner has based its unsupported claims, are those delineated in subparagraph 2.1 of the Agreement with the EXCEPTION of receivables. In other words, the assets contemplated by subparagraph 2.2 are limited to the followings: (a) filing stations, (b) vehicles, (c) office equipment and furniture; (d) license for the Importation of petroleum products, and (e) Goodwill, as per the Schedule of Asset.

16. As to count four (4) of the petition, respondent says that the averments therein present essentially no traversable issue Except that Aminata & Sons Inc.'s liability to Total Liberia was inadvertently understated by the Account department at Aminata by USD$99,233.77. This difference was brought to petitioner's attention by Total Liberia subsequent to the execution of the reorganization Agreement.

17. Further to count sixteen (16) above, respondent says that by a subsequent verbal understanding between the parties, petitioner, the majority shareholder of Aminata & Sons before the reorganization, agreed to underwrite the difference of USD$99,233.77, (United States ninety-nine thousand, two hundred, thirty three dollars and seventy seven cents) thereby bringing its total payment to Total Liberia to USD$483,083.77 (United States Four Hundred Eighty Three Thousand, Eighty Three Dollar and Seventy Seven Cents). Petitioner thereupon voluntarily executed a Novation

Agreement with Total Liberia under which it agreed to make full payment to Total Liberia. Your Honor is requested to take judicial notice of petitioner's exhibit P/6 to its petition wherein it undertook to make full settlement of Aminata & Sons Inc. full liability to Total Liberia.

18. Respondent says there is absolutely nothing in petitioner's exhibit P/6 or anywhere else to suggest that the Turay Family, a mere shareholder of Aminata & Sons Inc. undertook to reimburse the petitioner for its payment to Total Liberia. Respondent says petitioner voluntarily agreed to make the payment not by mistake, but because it was fully aware that as 60% owner of Aminata & Sons, it was required by law to underwrite 60% of the liabilities of the corporation, something which it did not do even with the Total Liberia payment. Respondent requests Your Honor to take judicial notice of the fact that Aminata's total liabilities at the time of the reorganization was In excess of USD$4m out of which the petitioner as majority shareholder only' paid the negligible amount of under USD$1m including the payment to Total Liberia.

19. As to count five (5) of the petition, respondent concedes that it is aware that Aminata & Sons Inc. is a party to a Tripartite Agreement with LPRC and Novel, but title to the petroleum products supplied by Novel under the Agreement doesn't exist in Aminata, but remains in Novel with Aminata drawing down only quantity it pays for. Attached hereto and marked as exhibit R/2 is a copy the agreed upon Methodology for the release of petroleum products supplied by Novel in the name of Aminata; and signed by Novel, Aminata & Sons Inc., ACE and LPRC.

20. Under the Agreement, and for tax purposes, Novel will supply products in the name of Aminata & Sons Inc. with title remaining in Novel and passing to Aminata & Sons Inc. only when payment for the product has been made fully by Aminata, whereupon Novel will issue a release in favor of Aminata for the quantity paid for. Respondent says that the petitioner herein, as Chairman of the Board of Directors of Aminata, is fully aware of this arrangement. Your Honor is particularly requested to take judicial notice of subparagraph 3.1 of respondent's exhibit R/2.

21. As to all other counts of the petition commencing with count six (6) up to and including the prayers, respondent says that all the allegations contained in the preceding paragraphs of these returns are re-alleged and incorporated herein as if fully set out.

22. Because as to count six (6) through count fourteen (14) and the prayers of the petition, respondent says that subparagraph 2.2 of the Agreement, petitioner's exhibit P/1, contemplates and refers to corporate assets, the existence of which might not have been known to petitioner and respondent, which if subsequently discovered should be divided. Respondent submits that the subparagraph did not refer to purported assets, the existence of which was known to both or either of the parties.

23. Respondent says that the existence of all the purported assets being claimed by the petitioner were known to the petitioner before and or at the time of the execution of the reorganization Agreement and as such, it was incumbent upon the petitioner to have brought such information to the attention of the relevant committee, but petitioner's failure to have done so was not only a demonstration of bad faith on its part, but a strong Indication that petitioner knew very well from the

outset that what it now calls assets were not so considered before and at the time of the execution of the reorganization Agreement. Respondent requests Your Honor to take judicial notice of counts six (6) through fourteen (14) of the petition wherein petitioner prefixed all its allegations by the phrase "prior to the execution of the Agreement i.e. petitioner's exhibit P/1 or at the time of the execution of the Agreement." Respondent submits that the prefix used by petitioner throughout its petition clearly suggest that it was aware of the existence of the ported assets it now calms at the time or before the execution of the Agreement.

24. As majority shareholder and Chairman of the Board of Director of Aminata & Sons then, the petitioner did not only have the right to inspect the books of the corporation at any time it desired, but could access any and all information it wanted at any time. Under the circumstances, respondent as a mere minority shareholder was under no legal obligation to do for petitioner that which petitioner could do best for itself.

25. Specifically as to count six (6) of the petition, respondent denies that at the time of the execution of the Agreement, petitioner's exhibit P/1, Aminata & Sons Inc.'s total liability to Novel was USD$ 2,685.924.05 (United States two million, six hundred eighty five thousand, nine hundred twenty four dollars and five cents). Respondent submits that as at November 30, 2009, three (3) days to the execution of the Agreement, petitioner's exhibit P/1, Aminata & Sons Inc.'s total exposures to Novel was USD$1,251,123.32 (United States One Million Two Hundred Fifty One Thousand, One Hundred Twenty -Three Dollars and Thirty -Two Cents).

26. Further to count six (6) of the petition and count twenty-five (25) of these returns, respondent says that petitioner's own exhibit P/4 to the petition will show: that Aminata & Sons Inc. owed Novel USD$ 2,665,817.53 (United States Two Million Six Hundred Sixty-Five Thousand, Eight Hundred Ninety Seventeen Dollars and Fifty Three Cents) which amount included the unpaid cost of 1,116.89 and 913.24 metric tons of Mogas and Gasoll respectfully; the USDS$400,000.00 (United States Four-Hundred Thousand Dollars) claims Aminata & Sons Inc. filed on behalf of Novel against LPRC, which the Petitioner is erroneously claiming as an asset in count eight (8) of its petition; and the USD$ 132,200.19 (United States One Hundred Thirty Two Thousand, Two Hundred and Nineteen Cents) Insurance that Novel procured against ship to shore losses, (payment of the proceeds of which is pending) which petitioner is also erroneously claim as an asset in count nine (9) of its petition.

27. Still further to count six (6) of the petition and counts twenty-five (25) and twenty-Six (26) of these returns, respondent says that when the amounts of USD$1,382,574.02 representing cost of the 1,116.89 and 913.24 metric tons of Mogas and Gasoll respectively; USD$400,000.00 claims Aminata & Sons filed on behalf of Novel against LPRC; and the pending USD$131,200.19 insurance proceeds are together deducted from Aminata & Sons Inc.'s total exposure to Novel in the amount of USD$2,665,897.53, Aminata's outstanding exposure to Novel will be about USD$751,125, which amount, when added to the USD$500,000.00 guarantee issued to Novel by Ecobank on behalf of Aminata and Sons Inc., will amount to USD$1,251,123.32 and not USD$2,685,924.05 as erroneously represented by the

petitioner. Respondent respectfully requests Your Honor to take Judicial notice of the petitioner's own exhibit P/4 to the petition.

28. Respondent says that petitioner's alleged claims as per counts six (6), eight (8), nine (9) along with all other claims contained in the petition were considered, distributed and assumed by the parties to the Agreement, petitioner's exhibit P/1 and that petitioner's petition is nothing but an attempt to improperly resurrect a completely settled matter. Respondent says that in petitioner's desperate and bad faith attempt to resurrect fully settled matter, it deliberately and consciously annexed to its petition a false statement of liabilities as exhibit P/3. Respondent says the correct, true and updated statement of liabilities for Aminata & Sons Inc. as at November 30, 2009 is hereto attached and marked as exhibit R/3.

29. Further still, respondent says petitioner is fully aware of the facts stated in all of the above paragraphs of these returns. Respondent submits that among the evidence of petitioner's awareness is its own exhibit P/4 to the petition. Respondent therefore prays that the entire petition be dismissed.

30. Still further to count six (6) of the petition, respondent says as far as the records of the corporation can show, Aminata & Sons Inc. had a negative balance of 220 gallons rather than 12443 gallons of PMS as is being falsely alleged by the petitioner. While it is true that the records might have reflected that Aminata had 12,443 gallons of PMS in LPRC tanks under its name, title to such product was in Novel as per the Tripartite Agreement, respondent Exhibit R/2. Subsequently, Aminata decided to substitute AGO for PMS and was accordingly permitted to take 12663 gallons of AGO from LPRC. When LPRC deducted the 12443 gallons of PMS from the 12663 gallons of AGO taken by Aminata, Aminata owed LPRC a balance of 220 gallons. Your Honor is requested to take judicial notice of petitioner's own exhibit P/4 which clearly reflects the negative balance.

31. Specifically as to count 7 of the petition, respondent says that the 77,000 gallons of product loaned to SRIMEX was not an asset to Aminata, because, once again, as per the Tripartite Agreement, title to the products, though stored under Aminata's name in LPRC tanks, was in Novel, the supplier. Novel as the legal owner of the products authorized Aminata to transfer the product to SRIMEX which was done. Aminata did not own the product because it had not paid for it. Subsequently, when the product was returned by SRIMEX, it was the petitioner who suggested that Aminata should purchase it since the price was good.

32. As its share of the purchase price, the petitioner contributed an amount of USD$120,541.20 for 46,500 gallons of AGO. The president of Aminata & Sons was later authorized by the petitioner through Mr. Varney T. Sherman to transfer petitioner's 46,500 gallons to United Petroleum instead of Liberia Petroleum Company. The letter of authorization also acknowledged that the issue of the 77,000 gallons of Ago was by that transfer conclusively settled between Aminata and LPRC. Attached hereto and marked as exhibit R/4 is the letter of authority from petitioner's representative to Aminata & Sons Inc. Respondent therefore prays that count 7 and the entire petition should be dismissed.

33. Specifically as to count 8 of the petition, respondent denies that the USD$400,000.00 (United States

four hundred thousand Dollars) claim against LPRC out of which USD$336,000 was paid, was for the account of Aminata and therefore an asset thereof. Respondent says the claim was filed on behalf of the supplier, Novel and not Aminata, and this, the petitioner is fully aware. Respondent gives notice that at trial, assuming there is one; respondent will produce evidence in substantiation of the averment herein made.

34. As to count nine (9) of the petition, respondent says the ship-to-shore Insurance is always for the benefit of the supplier and not the customer, such as Aminata & Sons Inc. At trial, if any, respondent will produce evidence to prove the averment herein made. Furthermore, respondent says the proceeds of the insurance is pending payment to Novel.

35. As to count ten (10) of the petition, respondent says the USD 71,329.00 (United States Seventy One Thousand, Three Hundred Twenty Nine Dollars) alleged overstatement of liability to LPRC is not an asset to Aminata & Sons Inc. Respondent says the schedule of liabilities was prepared by the Account Department of Aminata & Sons Inc. before the reorganization. Both petitioner and respondent had unrestricted access to the books of the corporation. Errors, if any committed by the account staff of the corporation cannot be attributed to the Turay family, especially so when such errors do not in any way directly benefits the family. Count ten (10) along with the entire petition must be dismissed.

36. As to count eleven (11) specifically, respondent re-alleged the averments contained in counts thirteen (13), fourteen (14) and fifteen (15) of these returns.

37. As to counts twelve (12) to fourteen (14) of the petition, respondent reaffirms, counts thirteen (13),fourteen (14), fifteen (15), sixteen (16), seventeen (17) and eighteen (18).

38. Respondent denies all and singular allegations of facts and law contained in the petition that have not been made a subject of specific traverse in these returns.

Wherefore, and in view of the foregoing respondent respectfully prays that Your Honor will deny and dismissed the entire petition and grant unto respondent all and any further relief deemed by Your Honor Just, equitable and legal as in keeping with Law and rule all cost of these proceeding against the petitioner."

In addition to the returns quoted above, the appellee/respondent, believing that there were sufficient legal basis for the dismissal of the petition, filed, on October 8, 2011, simultaneously with the returns, a motion to dismiss the petition, as it was authorized to do under Section 11.2 of the Civil Procedure Law. The thirteen-count motion to dismiss, which centered primarily on issues concerning improper service, the appellant's standing, and the appellee not being the appropriate respondent, read as follows:

Now comes movant in the above entitled cause of action and respectfully moves Your Honor to dismiss the petitioner's petition for declaratory Judgment; and showeth the following factual and legal reasons therefor:

1. Movant says it has been named as a party respondent in a petition for declaratory judgment filed in this Honorable Court by the respondent in this motion. Movant respectfully requests Your Honor to take judicial notice of the records of the said Petition.

2. Movant says it was a minority shareholder in Aminata & Sons Inc., a Liberia corporation organized and existing under the laws of Liberia in which corporation, the respondent herein was the majority shareholder. Movant respectfully requests Your Honor to take Judicial notice of the respondent's petition for declaratory judgment, more specifically, counts one (1) and two (2) thereof.

3. Movant says sometime in December 2009, movant and respondent, in their respective capacities as shareholders of Aminata & Sons Inc, executed an Agreement of Reorganization by Distribution of Assets of the corporation. Movant submits that under the Agreement of Reorganization, and for due considerations, Movant was granted the right to own and use the name of the corporation, as well as the GOODWILL appertaining thereto in perpetuity. Movant respectfully requests Your Honor to take judicial notice of respondent's petition for declaratory Judgment, particularly count two (2) thereof as well as respondent's Exhibit P/1 to its petition.

4. Movant says at all times before and after the reorganization of Aminata & Sons Inc., it has been a shareholder of the corporation; and that under the law, Aminata & Sons Inc., as a corporate entity is distinct, different and separate from movant as a shareholder.

5. Movant says that although the respondent has named it as a party respondent in the main petition for declaratory Judgment, all of the claims respondent assert In Its petition directly Involved and grew out of the operational activities of Aminata & Sons Inc. either before or after the reorganization.

6. Movant says the respondent has dearly and without any doubts stated that it is entitled to its share of certain assets of Aminata & Sons Inc. as in keeping with the Reorganization Agreement; and that this Honorable court should declare respondent's rights to those assets. Movant says the alleged assets being claimed by the respondent do not belong to the Turay Family as Shareholder of Aminata & Sons Inc.

7. Further to count six (6) hereof, Movant says that clearly, the respondent's claim is against Aminata & Sons Inc., notwithstanding the fact that movant, in its capacity as a shareholder of Aminata & Son Inc., is a signatory to the Agreement of Reorganization. Movant submits that naming it in the caption of the petition as a party respondent doesn't change the fact that the claims are against Aminata & Sons Inc, for the law is: "it is not the title or caption of an action which is controlling, but rather the averments in the complaint that determines the form of action." Mathies v. Alpha lnt' Investment, Ltd., 40 LLR 561, (2001).

8. Movant contends that naming the Turay Family as a party respondent while at the same time asserting all of the claims against Aminata & Sons Inc., is contrary to the law controlling and such legal blunder subjects the entire petition to a motion to dismiss. Respondent submits that as a shareholder, it should not have been named as a party to defend the action against Aminata & Sons Inc.

9. The law in this Jurisdiction is “the corporation is a proper defendant in a suit to assert a legal right against the corporation; and the naming of a shareholder, member, director, officer or employee of the corporation as a party to a suit in Liberia to represent the corporation is subject to a motion to dismiss, if such party is the sole party to defend, or subject to a motion for misjoinder if such party

is joined with another party who is a proper party and has been Joined only to represent the corporation." Business Association Law §2.5, pp. 219-220, Republic v. The Leadership of the Liberian National Bar Association, 40 LLR 652 (2001).

10. Movant says it is a shareholder of Aminata & Sons Inc. against whom this suit has been brought to represent Aminata & Sons Inc.; and it is the sole party to defend the suit. Movant submits therefore that the entire Petition be dismissed.

11. Movant says that the writ of summons Intended to bring it under the Jurisdiction of this Honorable court was improperly served upon it ten days after the opening of this Honorable Court in gross violation of the long line of decisions of the Honorable Supreme Court of Liberia. Attached hereto as Exhibit "M/1" is a copy of the writ of summons.

12. Movant submits that in order to have it legally placed under the jurisdiction of this court, it must have been summoned at least fifteen (15) days before September 20, 2010, the opening date of the September 2010 Term of Court. Modckrmann v. Roberts, 1LLR 217 (1888); Yangah v.Melton. 12 LLR 130, (1954); Kamara v. Kamara, 20 LLR 115 (1970).

13. Movant says that Anna Kaydea has shown no legal capacity in herself to bring this suit" on behalf of the Intestate Estate of the late Shad Kaydea, and for such omission, the petition must be dismissed.

WHEREFORE, and in view of the foregoing movant respectfully requests Your Honor to enter a ruling dismissing the entire petition, and grant unto movant all and any further relief deemed by Your Honor just, equitable and legal as in keeping with law.

The appellant, upon receipt of the appellee's returns and the motion to dismiss, filed, on October 15, 2010, a reply to the returns and a resistance to the motion. Again, as we consideration that the reply and resistance are germane to our consideration of the issues argued before us, under the rubric of proper and appropriate exceptions taken by the parties as the issues unfolded in the trial court, we quote both the reply and the resistance to the motion to dismiss, filed by the appellant. Quoting firstly the reply, this is what the sixteen-count documents stated:

Petitioner in the above-entitled cause of action denies the legal and factual sufficiency of Respondent's Returns, and prays Your Honor to deny and dismiss same for the following legal and factual reasons, to wit:

1. That as to counts one (1) through Four (4) of the returns, petitioner says that Section 43.1 of the Civil Procedure Law provides that courts of record within their respective jurisdictions shall have the right to declare rights, status, and other legal relations, whether or not further relief is or could be claimed. Also, Section 43.2 of the Civil Procedure Law provides that any person Interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract (emphasis ours), or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status or other legal relations thereunder. It is on the basis of the laws cited herein that the petition for declaratory Judgment was

filed by petitioner against the respondent herein.

2. That also as to count one (1) above, petitioner says that a petition for declaratory judgment is a special proceeding, and accordingly is governed by Chapter 16 of the Civil Procedure Law. Section 61.2 of the Civil Procedure Law provides that the party commencing a special proceeding shall be styled the "petitioner", and any adverse party the "respondent". Also, Section 16.3 of the Civil Procedure Law provides that a special proceeding, as in the instant case, is commenced by filing a petition with the clerk and issuance of a citation. Further, Section 16.4(1) of the Civil Procedure Law provides that a citation shall specify the time and place of the hearing on a petition, shall specify the supporting affidavit, if any, accompanying the petition, and shall direct that the respondent shall appear and file a return. Section 16.4(2) of the Civil Procedure Law further provides that a citation shall be served in the same manner as a summons in an action. The petition and affidavit specified in the citation shall be served therewith on any adverse party at any time specified by the judge before the time at which the petition is noticed to be heard. Additionally, Section 16.4(3) of the Civil Procedure Law provides that the court may grant an order to show cause to be served in lieu of citation at a time and in a manner specified in the order. The petition and supporting affidavit shall be served with the order to show cause.

3. Further to counts one (1) and two (2) above, petitioner says that it filed its petition with the clerk of court, pursuant to which the court ordered the clerk to issue a writ of summons to be served on the respondent. Consistent with the order of the judge, the clerk of court issued the writ of summons and same was served on the respondent, consistent and in keeping with the order of the trial judge. Accordingly, respondent was properly served and brought under the Jurisdiction of this Honorable Court, and this court therefore properly acquired jurisdiction over the respondent.

4. That also traversing counts one (1) through Four (4) of the returns, special proceedings are governed by Chapter 16 of the Civil Procedure Law and not Chapter 3 of the Civil Procedure Law. Special proceedings can be field in and out of term, and therefore Chapter 3 of the Civil Procedure Law is not applicable in special proceedings, but rather Chapter 16 of the Civil Procedure Law. Commencing an action, consistent with Chapter 3 of the Civil Procedure Law, requires a written direction, which must be filed by the plaintiff along with the complaint fifteen days prior to formal opening date of a succeeding term, and the clerk of court shall issue a writ of summons based upon the written directions of the plaintiff. But in special proceedings, the petitioner files a petition and the Judge orders the issuance of a citation/summons thereupon. Accordingly, special proceedings are commenced differently from that of an action in general. Hence, petitioner confirms count three (3) above, and incorporates said count into, this count of the reply, in traversal of counts one (1) through four (4) of the returns.

5.That as to counts five (5) and six (6) of the petition, petitioner says that the Agreement of Reorganization by Distribution of Assets, subject of the petition for declaratory judgment, was signed by Anna Kaydea, as administratrix, and Abraham Kaydea, authorized representative for and on behalf of the Intestate Estate of the late Shad Kaydea. The respondent did not challenge the capacity of Anna

Kaydea, as Administratrix, of the Intestate Estate of the late Shad Kaydea at the time the said Anna Kaydea and her son, Abraham Kaydea, signed the herein-mentioned Agreement for and on behalf of the Intestate Estate of Shad Kaydea. Surprisingly, respondent has now elected to challenge the capacity of Anna Kaydea to sue in respect of the same and identical Agreement which she and her son executed for and on behalf of the Intestate Estate of Shad Kaydea with the Respondent. Under our law, the respondent is barred and estopped from challenging the legal capacity of Anna Kaydea to represent the Intestate Estate of the late Shad Kaydea, it having transacted with Anna Kaydea as administratrix of the Intestate Estate of the late Shad Kaydea without objection. Accordingly, counts five (5) and six (6) of the returns should be denied and dismissed.

6. That as to counts seven through eleven (11) of the returns, petitioner says that the instant petition is a petition for declaratory judgment, for which this court has been called upon to declare petitioner's rights and claim to certain assets of Aminata & Sons, pursuant to and in keeping with the Agreement (petitioner's Exhibit P/1" to the petition). Accordingly, the proper parties in any suit in respect of referenced Agreement are the executing parties i.e. the Intestate Estate of Shad Kaydea and the Turay Family. Hence, the law cited by respondent in counts eight (8) and eleven (11) of its returns are not applicable to the instant case, and therefore counts seven (7) through eleven (11) of the returns should be denied and dismissed.

7. That as to count twelve (12) of the returns, petitioner confirms counts one (1) and two (2) of the petition, and Incorporates said counts into this count of the reply, in traversal of count twelve (12) of the returns.

8. That as to count thirteen (13) of the returns, petitioner says that paragraph 2.2 of the Agreement (petitioner's Exhibit "P/1" to the petition), contemplated and took into consideration all assets, including receivables, of Aminata & Sons. Petitioner says that receivables are assets of a corporation, and therefore respondent who operated and managed Aminata & Sons prior to the execution of petitioner's Exhibit "P/1" was under duty to have disclosed all receivables of Aminata & Sons. Consequently, respondent's failure to have done so is an act of bad faith, deceit, and fraud.

9. That also as to count eight (8) above, petitioner says that respondent's averment that Paragraph 2.2 of the Agreement (petitioner's Exhibit "P/1") did not contemplate accounts receivable of Aminata & Sons is an admission that respondent did not report all the assets of Aminata & Sons as it was required to do. Under our law, all admissions made by a party or his agent, acting within the scope of his authority, is admissible against such party. Respondent haven admitted its failure to report all receivables of Aminata & Sons, as it was required and expected to do, the instant petition should be granted as a matter of law.

10. That as to count fourteen (14) of the returns, petitioner confirms and affirms counts eight (8) and Nine (9) above, and Incorporates said counts into this count of the reply, in traversal of count fourteen (14) of the returns. Accordingly, petitioner denies the averment contained in count fourteen (14) of the returns, and says that under our law, fraud vitiates all transactions. Hence, respondent's allegation that

all receivable assets of Aminata & Sons were completely divided and accepted by the parties, thereby foreclosing any claim or potential claim relative to receivable assets between petitioner and respondent, has no basis in law or facts. Hence, count fourteen (14) of the returns should therefore be denied and dismissed.

11. That also traversing count fourteen (14) of the returns, petitioner says that in count thirteen (13) of the returns, respondent averred that Subparagraph 2.2 of the Agreement (Exhibit "P/1" attached to the petition) did not contemplate receivables of Aminata & Sons Inc., and at the same time averred in count fourteen (14) of the returns that all the receivable assets of Aminata & Sons Inc. were completely distributed, acknowledged and confirmed by the parties. Petitioner submits that it is inconsistent and incompatible for respondent to aver in one count that the Agreement did not contemplate receivable assets and maintain in another count that all the receivable assets were completely distributed. For this inconsistency and contradiction, counts thirteen (13) and fourteen (14) of the returns should be denied and dismissed.

12. That as to count fifteen (15) of the returns, petitioner denies the averment contained therein, confirms and affirms, counts Nine (9) through eleven (11) above, and incorporates said counts into this count of the reply, in traversal of count fifteen (15) of the returns.

13. That as to counts sixteen {16), seventeen (17) and eighteen (18) of the returns, petitioner confirms and affirms count four (4) of the petition, and incorporates said count into this count of the reply, in traversal of counts sixteen (16), seventeen (17) and eighteen (18) of the returns and denies the averment contained in count eighteen (18) of the returns.

14. That as to count nineteen (19) and twenty (20) of the returns, petitioner confirms and affirms count five (5) of the petition, and incorporates said count into this count of the reply, in traversal of counts nineteen (19) and twenty (20) of the returns.

15. That as to count twenty-one (21) through thirty-seven (37) of the returns, petitioner confirms and affirms counts six through fourteen of the petition and counts eight (8) through eleven (11) above, and incorporates said counts into this count of the reply, in traversal of said counts twenty-one (21) through thirty-seven of the returns.

16. Petitioner denies all and singular the allegations of both law and facts contained in respondent's returns and not specifically traversed in this reply.

Wherefore and in view of the foregoing, petitioner prays Your Honor to deny and dismiss respondent's returns in its entirety, grant petitioner's prayer as contained in the petition declaratory judgment, grant unto petitioner any other and further relief as Your Honor may deem legal and equitable in the premises."

As for and in regard to the resistance to the motion to dismiss the petition, wherein the petitioner strenuously contended that it had complied with the statute, that the appellee was the appropriate party against whom to file the petition for declaratory judgment, that the appellant was properly served the precept Issued by the court, and that the appellant had the capacity to file the instant claim, and

believing that that justice is served by a full exposure of the contentions raised in the resistance, we quote the entire eleven-count instrument, as follows:

Respondent in the above-entitled cause of action denies the legal and factual sufficiency of movant's motion, and prays Your Honor to deny and dismiss same for the following legal and factual reasons, to wit:

1. That as to counts one through four (4) of the motion, respondent says that same presents no traversable issue, and therefore need not be traversed.

2. That as to count five of the motion, respondent denies the averment contained therein, and says that the claims, subject to the petition for declaratory Judgment, grew out of or emanated from the Agreement (Exhibit "P/1" attached to the petition), and not the operational activities of Aminata & Sons, as averred by movant in count five of the motion.

3. That as to count six of the motion, respondent says that the assets, subject of the petition for declaratory Judgment, and consistent with the Agreement (Exhibit "P/1" attached to the petition) belongs to both movant and respondent, and should therefore be divided consistent and in keeping with the Agreement (Exhibit "P/1" attached to the petition).

4. That as to Counts Seven (7), Eight (8), Nine (9) and Ten (10) of the motion. Respondent says that the petition for declaratory judgment is filed for this Honorable Court to declare respondent's rights and claim to certain assets of Aminata & Sons, pursuant to and in keeping with the Agreement (Exhibit "P/1" attached to the petition). Accordingly, the proper parties in any suit in respect of the referenced Agreements are the executing parties - i.e. the Intestate Estate of Shad Kaydea and the Turay Family, respondent and movant, respectively, herein. Hence, the laws cited by movant in counts seven (7) and Nine (9) of the motion are not applicable to the instant case.

5. That as to counts eleven (11) and twelve (12) of the motion, respondent says that Section 43.1 of the Civil Procedure Law provides that courts of record within their respective Jurisdictions shall have the right to declare rights, status, and other legal relations, whether or not further relief is or could be claimed. Also, Section 43.2 of the Civil Procedure Law provides that any person Interested under a deed, will, written contract, or other writing constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract (emphasis ours), or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status or other legal relations thereunder. It is on the basis of the laws cited herein that the petition for declaratory Judgment was filed by respondent against the movant herein.

6. Also as to count five (5) above, respondent says that a petition for declaratory judgment is a special proceeding, and accordingly is governed by Chapter 16 of the Civil Procedural law Section 61.2 of the Civil Procedural Law provides that the party commencing a special proceeding shall be styled the "petitioner", and any adverse party the respondent". Also, Section 16.3 of the Civil Procedural Law provides that a special proceeding, as in the instant ease, is commenced by filing a petition with the clerk

and issuance of a citation. Further, Section 16.4 (1) of the Civil Procedural Law provides that a citation shall specify the time and place of the hearing on a petition, shell specify the supporting affidavit, if any, accompanying the petition, and shall direct that the respondent shall appear and file a return. Section 16.4(2)of the Civil Procedure Law further provides that citation shall be served in the same manner as summons in an action. The petition and affidavit specified in the citation shall be served therewith on any adverse party at any time specified by the Judge before the time at which the petition is noticed to be heard. Additionally, Section 16.4 (3) of the Civil Procedure Law provides that the court may grant an order to show cause to be served in lieu of citation at a time and in a manner specified in the order. The petition and supporting affidavit shall be served with the order to show cause.

7. Further to counts five (5) and six (6) above, respondent says that It med its petition with the clerk of court, pursuant to which the court ordered the clerk to issue a writ of summons to be served on the respondent. Consistent with the order of the judge, the clerk of court issued the writ of summons and same was served on the movant, consistent and in keeping with the order of the trial Judge. Accordingly, movant was properly served and brought under the jurisdiction of this Honorable Court; and this court therefore properly acquired Jurisdiction over the respondent.

8. That also as to counts five (5) through seven (7) above, respondent says that special proceedings are covered by Chapter 16 of the Civil Procedure Law and not Chapter 3 of the Civil Procedure Law. Special proceeding can be filed in and out of term, and therefore Chapter 3 of the Civil Procedure Law is not applicable in special proceeding, but neither Chapter 16 of the Civil Procedure Law. Commencing an action, consistent with Chapter 3 of the Civil Procedure Law, requires a written direction, which must be filed by the plaintiff along with the complaint fifteen days prior to formal opening date of a succeeding term, and the clerk of court shall issue a writ of summons based upon the written directions of the plaintiff. But in special proceeding, the petitioner files a petition and the Judge orders the issuance of a citation/summons thereupon. Accordingly, special proceeding are commenced differently from that of an action In general. Hence, Respondent confirms count five (5) through seven (7) above, and incorporates said count into this count of the resistance, in traversal of counts seven (7) through ten (10) of the motion.

9. That as to counts eleven (11) and twelve (13) of the motion, respondent confirms counts five through eight above, and incorporates said counts Into this count of the resistance, in traversal of counts eleven and twelve of the motion.

10. That as to count thirteen (13) of the motion, respondent says that the Agreement of Reorganization by Distribution of Assets, subject of the petition for declaratory judgment, was signed by Anna Kaydea, as administratrix, and Abraham Kaydea, authorized representative for and on behalf of the Intestate Estate of the late Shad Kaydea. The respondent did not challenge the capacity of Anna Kaydea, as administratrix, of the Intestate Estate of the late Shad Kaydea at the time the said Anna Kaydea and her son, Abraham Kaydea, signed the herein-mentioned Agreement for and on behalf of the Intestate Estate of Shad Kaydea. Surprisingly, Movant has now elected to challenge the capacity of Anna Kaydea

to sue in respect of the same and identical Agreement which she and her son executed for and on behalf of the Intestate Estate of Shad Kaydea with the movant. Under our law, the movant is barred and estopped from challenging the legal capacity of Anna Kaydea to represent the Intestate Estate of the late Shad Kaydea, it having transacted with Anna Kaydea as administratrix of the Intestate Estate of the late Shad Kaydea without objection. Accordingly, count thirteen (13) of the motion should be denied and dismissed.

11. Respondent denies all and singular the allegations of both law and fact contained in movant's Motion and not specifically traversed in this resistance.

Wherefore and in view of the foregoing, respondent prays Your Honor to deny and dismiss movant's motion to dismiss; and grant unto respondent any other and further relief as Your Honor may deem just, legal, and equitable in the premises.

The parties having thus rested pleadings, the lower court, presided over by His Honour Yussif D. Kaba, the Resident Circuit Judge for the Sixth Judicial Circuit, assigned the case for hearing on the motion to dismiss, as indeed he was obligated to do under the law. Jawhary v. Watts et al., 42 LLR 474 (2005);Tuckle v. Wright et al., 37 LLR 829 (1995); Insurance Co. of Africa v.Gipll, 32 LLR 330 (1984). A hearing was had on the motion on December 16, 2010,and three weeks thereafter, on January 7, 2011,upon assignment duly issued and served, the court ruled on the motion to dismiss, denying the same and ordering that the case be proceeded with. As the parties have laid a great deal of emphasis on the ruling made by the judge on the motion to dismiss and the ruling made by him in subsequently disposing of the law issues, making it important that the full context of the ruling Is understood and the rationale provided by the judge for the denial of the motion effusively absorbed, we deem it befitting to reproduce the ruling in its entirety. Accordingly, we quote the ruling verbatim, as follows:

"Along with his resistance in the main suit, which is the petition for declaratory Judgment the movant herein who is the respondent in the said main suit filed with this court this 13 counts motion to dismiss in which the said movant prayed this Court to dismiss this petition in its entirety and has reason there for substantially averred that the said movant is the wrong party against whom this action was Instituted since a perusal of the averments In the petition shows that the proper party ought to have been Aminata and Son, which is a corporate entity existing under the law of Liberia and which is separate and distinct from the movant herein. Therefore, according to the movant, the said movant cannot be held for the asset and or liability of the said corporate entity. More beside the movant that they were not properly brought under the Jurisdiction of the court in that it is a requirement of the law that a writ of summons in an action to be able to bring a party under the jurisdiction of the court must be served on that party at least 15 days before the commencement of the term of court in which it is venued. This not having been done in this matter, the movant is of the strong opinion that this court has not acquired properly jurisdiction over his person.

The respondent after filing his reply to the movant's resistance to the application for declaratory judgment simultaneously filed a resistance to the motion to dismiss containing 11 counts. Substantially,

the respondent contends that the action, the subject of the motion, was filed in pursuant to an agreement that was entered into by and between the said respondent herein and the movant; and therefore the movant is the proper party in the petition. More beside, the respondent argued that a petition for declaratory judgment being a special proceeding is not governed by the straight rule as applicable to an action in this jurisdiction. Therefore, the respondent prayed this court to order deny and dismiss the motion to dismiss and proceed with the hearing of this matter.

During argument, the movant strenuously attempted to impress upon the mind of this court that special proceedings are provided for by law and declaratory judgment is not one of such action provided for as special proceedings. Therefore, according to the movant, this action is like any action provided for by law and therefore it should be governed by the law of pleading provided for by our procedural statute.

To do justice to the motion and the resistance the court shall consider two issues: 1.the first issue is whether or not the movant herein is the wrong party respondent in the petition for declaratory judgment and therefore this court should proceed to dismiss the action; 2. whether or not a petition for declaratory judgment is not a special proceeding and therefore the failure of the respondent herein to institute this action and have the movant served with the summon at least 15 days before the commencement of the term in which it is venued is a ground to order this matter dismiss for lack of jurisdiction over the person of the respondent. The court shall proceed to address these issues in the order in which they are presented.

Relative to the first issue, this court takes judicial notice of the petition. Substantially, the petition alleged that the movant and the respondent were originally shareholders of the Aminata and Son Corporation; that the an agreement of reorganization by distribution of assets by and between Turay Family and the Intestate Estate of the Late Shad Kaydea was consummated by the parties; that a term of this agreement provides that if in the event an asset of Aminata and Son is discovered, which was not distributed in keeping with the term of the reorganization agreement, then and in that case that asset was to be brought to be shared by the parties in the ratio of two-third for the respondent and one-third for the movant; that several assets were discovered by the respondent of the Aminata and Son Corporation, which were not distributed by the reorganization agreement entered into by and between the movant and the respondent herein. The respondent is therefore applying to the court to declare the right of the respondent with respect to those properties, which according to the respondent were not a part of the distribution agreed upon by the parties in the agreement for reorganization and distribution

of assets between the Turay Family and the Intestate Estate of the late Shad Kaydea.

Looking at this factual scenario can it be said that the Turay Family is not the proper party respondent against respondent herein was the majority shareholder in the said corporation and the movant was the minority shareholder; that as the outcome of discussion held by and between the movant and the respondent an agreement known and styled as whom the petition was to be filed against? The Court

says that for one, Aminata and Son was not a party to the agreement of reorganization and distribution of the assets between the Turay Family and the Intestate Estate of the Late Shad Kaydea. The petition for declaratory judgment is filed pursuant to the term and condition of the agreement of reorganization and distribution of the assets between these two parties. Therefore the court does not see how the Turay Family can object to a petition filed against them for a matter growing out of the agreement entered into by and between the said Turay Family and the respondent herein when in fact the Turay Family is not challenging the authenticity of this agreement. It is the law that one cannot repudiate his own action. The Turay Family having entered this agreement with the Intestate Estate of the Shad Kaydea Family and the said agreement being binding upon them, issues arising under the term and condition of that agreement must be between the Turay Family and the Intestate Estate of the Late Shad Kaydea. Relative to the second issue, this court takes judicial notice of chapter 16, which provides for special proceeding. The court agrees with the movant that a petition for declaratory judgment is not listed as one of those special proceedings provided for under chapter 16 of our procedural code. The court also takes judicial notice of the case cited by the movant herein as found in 37 LLR on page 271.The court says that in the case referred to by the movant, the Supreme Court in passing acknowledged that summary proceeding to recover possession of real property was not a special proceeding as contemplated by Chapter 16 of our Procedure Code. More specifically, the point that the court was making was that the time frame granted to the respondent in that action from the filing of their responsive pleading was not consistent with the tradition and practice in our jurisdiction. The Court opined that summary proceeding to recover possession of real property is normally under our practice granted the 10 days provided for the filing of responsive pleadings; that it was only in the issue of habeas corpus when courts normally require time less than 10 days for the filing of responsive pleadings.

The court however did not declare that summary proceeding is not a special proceeding and this is even more evidence by the fact that in the statute providing for summary proceeding to recover possession of real property, it is provided that summary proceeding is a special proceeding. The statute which is Section 62.21provides that where title is not in issue, a special proceeding shall be instituted to recover possession of real property. Certainly, the clear language of this statute cannot be varied by any other interpretation. More beside special proceedings are common law proceedings and our receptive statute incorporated the common law as part of our law. A petition for declaratory judgment is certainly one of those special proceedings that are provided for by our statute; and therefore to have this petition to be governed by the rules governing action will certainly be defeating the legislative Intent. This court therefore holds that a petition for declaratory Judgment is a special proceeding in this jurisdiction and it's not governed by the 15 days rules for the issuance of writ of summons in such action.

WHEREFORE AND IN VIEW OF THE FOREGOING it is the considered ruling of this court that the movants' motion to dismiss be and the same is hereby denied and this matter ordered proceeded

with In keeping with law. AND IT IS SO ORDERED.'"

Before proceeding further with the narration of the facts in the case and to the appeal to the Supreme Court, we would like to highlight what we receive as the critical points in the judge's ruling for denial of the motion to dismiss. Firstly, the judge concluded that there were only two issues at hand:(a) whether or not the appellant was the appropriate party respondent and (b) whether or not the appellant was properly brought under the jurisdiction of the court. On the first issue, the judge concluded," the court does not see how the Turay Family can object to a petition filed against them for a matter growing out the agreement entered into by and between the said Turay Family and the respondent herein when in fact the Turay Family is not challenging the authenticity of this agreement. It is the law that one cannot repudiate his own action. The Turay Family having entered this agreement with the Intestate Estate of the Shad Kaydea Family and the said agreement being binding upon them, issues arising under the term and condition of that agreement must be between the Turay Family and the Intestate Estate of the late Shad Kaydea." With regard to the second issue, the judge decided that petitions for declaratory judgment are special proceedings and consequently are not governed by the rule that requires the service of the writ of summons at least fifteen days prior to the term of court in which the matter is venued. He therefore ruled that it was acceptable for the appellee to have been served the writ of summons within the same term of court in which the petition for declaratory judgment was venued.

In consonance with the ruling denying the motion to dismiss the petition for declaratory judgment, the trial judge later assigned the case for hearing of the law issues, slated for January 20, 2011, at the hour of 9:00 a.m. Notwithstanding the disposition of the motion to dismiss and receipt of the notice of assignment for hearing of the law issues on January 20, 2011,the appellant, on January 19, 2011, three months and six days after the formal resting of the initial pleadings, twelve days after the ruling on the motion to dismiss, and one day before the assigned date for the hearing for the disposition of the law issues raised in the initial pleadings, withdrew its reply and replaced same with an amended reply. In order that there is an informed appreciation of the premise of the ruling subsequently made by the trial judge in disposition of the law issues in the case and the dismissal of the petition is adequately contextualized, it is important that we capture the full essence of the amended reply. We therefore quote, for the benefit of this Opinion, the eighteen (18) count amended reply.

"Petitioner in the above-entitled cause of action denies the legal and factual sufficiency of respondent's returns, and prays Your Honor to deny and dismiss same for the following legal and factual reasons, to wit:

1. That as to counts one (1) through four (4) of the returns, petitioner says that Section 43.1 of the Civil Procedure Law provides that courts of record within their respective jurisdictions shall have the right to declare rights, status, and other legal relations, whether or not further relief is or could be claimed. Also, Section 43.2 of the Civil Procedure Law provides that any person interested under a deed, will, written

contract, or other writing constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract (emphasis ours), or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status or other legal relations thereunder. It is on the basis of the laws cited herein that the Petition for Declaratory Judgment was filed by petitioner against the respondent herein.

2. That also as to Count One (1) above, Petitioner says that a Petition for Declaratory Judgment is a special proceeding, and accordingly is governed by Chapter 16 of the Civil Procedure Law. Section 61.2 of the Civil Procedure Law provides that the party commencing a special proceeding shall be styled the "petitioner, and any adverse party the "respondent". Also, Section 1.6.3 of the Civil Procedure Law provides that a special proceeding, as in the instant case, is commenced by filing a petition with the clerk and issuance of a citation. Further, Section 16.4(1.) of the Civil Procedure Law provides that a citation shall specify the time and place of the hearing on a petition, shall specify the supporting affidavit, if any, accompanying the petition, and shall direct that the respondent shall appear and file a return. Section 1.6.4(2) of the Civil Procedure Law further provides that a citation shall be served in the same manner as a summons in an action. The petition and affidavit specified in the citation shall be served therewith on any adverse party at any time specified by the Judge before the time at which the petition is noticed to be heard. Additionally, Section 1.6.4(3) of the Civil Procedure Law provides that the court may grant an order to show cause to be served in lieu of citation at time and in manner specified in the order. The petition and supporting affidavit shall be served with the order to show cause.

3.Further to counts one (1) and Two (2) above, Petitioner says that it filed its Petition with the Clerk of Court, pursuant to which the Court ordered the Clerk to issue a Writ of summons to be served on the Respondent. Consistent with the order of the Judge, the Clerk of Court issued the Writ of Summons and same was served on the Respondent, consistent and in keeping with the order of the Trial Judge. Accordingly, Respondent was properly served and brought under the jurisdiction of this Honorable Court; and this Court therefore properly acquired jurisdiction over the Respondent.

4.That also traversing counts one (1) through four (4) of the returns, special proceeding are governed by Chapter 16 of the Civil Procedure Law and not Chapter 3 of the Civil Procedure Law. Special proceeding can be filed in and out of term, and therefore Chapter 3 of the Civil Procedure Law is not applicable in special proceeding, but rather Chapter 16 of the Civil Procedure Law. Commencing an action, consistent with Chapter 3 of the Civil Procedure Law, requires a written direction, which must be filed by the plaintiff along with the complaint fifteen days prior to formal opening date of a succeeding term, and the clerk of court shall issue a writ of summons based upon the written directions of the plaintiff. But in special proceeding, the petitioner flies a petition and the Judge orders the issuance of a citation/summons thereupon. Accordingly, special proceedings are commenced differently from that of an action in general. Hence, petitioner confirms count three (3) above, and incorporates

said count into, this count of the reply, in traversal of counts one (1) through four (4) of the returns.

5.That as to counts five (5) and Six (6) of the petition, petitioner says that the Agreement of Reorganization by Distribution of Assets, subject of the Petition for Declaratory Judgment, was signed by Anna Kaydea, as Administratrix, and Abaham Kaydea, authorized representative for and on behalf of the Intestate Estate of the late Shad Kaydea. The Respondent did not challenged the capacity of Anna Kaydea, its Administratrix, of the Intestate Estate of the late Shad Kaydea at the time the said Anna Kaydea and her son, Abraham Kaydea, signed the herein-mentioned Agreement for and on behalf of the Intestate Estate of Shad Kaydea. Surprisingly Respondent has now elected to challenge the capacity of Anna Kaydea to sue in respect of the same and identical Agreement which she and her son executed for and on behalf of the Intestate Estate of Shad Kaydea with the Respondent. Under our law, the Respondent is barred and estopped from challenging the legal capacity of Anna Kaydea to represent the Intestate Estate of the late Shad Kaydea, it having transacted with Anna Kaydea as Administratrix of the Intestate Estate of the late Shad Kaydea without objection. Accordingly, Counts Five (5) and Six (6) of the Returns should be denied and dismissed.

6.That as to counts seven through eleven (11) of the returns, petitioner says that the instant petition is a petition for declaratory judgment, for which this court has been called upon to declared petitioner's rights and claim to certain assets of Aminata & Sons, pursuant to and in keeping with the Agreement (Petitioner's Exhibit P/1" to the petition). Accordingly, the proper parties in any suit in respect of referenced Agreement are the executing parties i.e. the Intestate Estate of Shad Kaydea and the Tulay Family. Hence, the law cited by respondent in counts eight (8) and eleven (11) of its returns are not applicable to the instant case, and therefore counts Seven (7) through Eleven (11) of the returns should be denied and dismissed.

7.That as to count twelve (12) of the returns, petitioner confirms counts one (1) and two (2) of the petition, and Incorporates said counts into this count of the reply, in traversal of count twelve (12) of the returns.

8.That as to count thirteen (13) of the returns, petitioner says that paragraph 2.2 of the Agreement (petitioner's Exhibit "P/1" to the petition), contemplated and took into consideration all assets, including receivables, of Aminata & Sons. Petitioner says that receivables are assets of a corporation, and therefore respondent who operated and managed Aminata & Sons prior to the execution of petitioner's Exhibit "P/1" was under duty to have disclosed all receivables of Aminata & Sons. Consequently, respondent's failure to have done so is an act of bad faith, deceit, and fraud.

9.That also as to count eight (8) above, petitioner says that respondent's averment that paragraph 2.2 of the Agreement (petitioner's Exhibit "P/1") did not contemplate accounts receivable of Aminata & Sons is an admission that respondent did not report all the assets of Aminata & Sons as it was required to do. Under our law, all admissions made by a party or his agent, actions within the scope of his authority, is admissible against such party. Respondent having admitted its failure to report all receivables of Aminata & Sons, as it was required and expected to do, the instant petition should be

granted as a matter of law.

10.That as to count fourteen (14) of the returns, petitioner confirms and affirms counts Eight (8) and Nine (9) above, and incorporated said counts into this count of the reply, in traversal of count fourteen (14) of the returns. Accordingly, petitioner denies the averment contained in count fourteen (14) of the returns, and says that under our law, fraud vitiates all transactions. Hence, respondent's allegations that all receivable assets of Aminata & Sons were completely divided and accepted by the parties, thereby foreclosing any claim or potential claim relative to receivable assets between petitioner and respondent, has no basis in law or facts. Hence, count fourteen (14) of the returns should therefore be denied and dismissed.

11.That also traversing count fourteen (14) of the returns, petitioner says that in count thirteen (13) of the returns, respondent averred that sub-paragraph 2.2 of the Agreement (Exhibit "P/1" attached to the petition) did not contemplate receivables of Aminata & Sons Inc., and at the same time averred in count fourteen (14) of the returns that all the receivable assets of Aminata & Sons Inc. were completely distributed, acknowledged and confirmed by the parties. Petitioner submits that it is inconsistent and incompatible for respondent to aver in one count that the Agreement did not contemplate receivable assets and maintain in another count that all the receivable assets were completely distributed. For this inconsistency and contradiction, counts thirteen (13) and fourteen (14) of the returns should be denied and dismissed.

12.That as to count fifteen (15) of the returns, petitioner denies the averment contained therein, confirms and affirms, counts nine (9) through eleven (11) above, and incorporates said counts into this count of the reply, in traversal of count fifteen (15) of the returns.

13. That as to counts sixteen (16),seventeen (17) and eighteen (18) of the returns, petitioner confirms and affirms count four (4) of the petition, and incorporates said count into this count of the reply, in traversal of Counts Sixteen (16),seventeen (17) and eighteen (18) of the returns, and denies the averment contained in count eighteen (18) of the returns.

14. That as to count nineteen (19) and twenty (20) of the returns, petitioner confirms and affirms count five (5) of the petition, and incorporates said count into this count of the reply, in traversal of counts nineteen (19) and twenty (20) of the return .

15. That as to count fourteen (14) above, petitioner submits that the sale contract by and between Novel Commodity S.A. and Aminata & Sons is hereto attached as petitioner's Exhibit "P/7",in substantiation of the averment contained herein. Hence, counts nineteen (19) and twenty (20) of the returns should be denied and dismissed.

16. That as to counts twenty-one (21) through thirty-seven (37) of the returns, petitioner confirms and affirms counts six through fourteen of the petition and counts eight (8) through eleven (11) above, and incorporates said counts into this count of the reply, in traversal of said counts twenty-one (21) through thirty-seven of the returns.

17. That also to count sixteen (16) above, petitioner attaches hereto and marked in bulk as petitioner's

Exhibit "P/8" copies of Novel's Statement of Account with Aminata & Sons as prepared by Aminata & Sons, an email sent to Siaka Turay of Aminata & Sons by Oliver Matile of Novel and emails exchanged between Aminata & Sons and Novel, in substantiation of the averments contained in count twelve (12) of the petition. Hence, counts twenty-one (21) through thirty-seven (37) of the returns should be denied and dismissed.

18. Petitioner denies all and singular the allegations of both law and facts contained in respondent's returns and not specifically traversed in this Amended reply.

Wherefore and in view of the foregoing, petitioner prays Your Honor to deny and dismiss respondent's returns in its entirety, grant petitioner's prayer as contained in the petition for declaratory judgment, grant unto petitioner any other and further relief as Your Honor may deem legal and equitable in the premises."

We note here that while the action by the appellant in withdrawing the reply and filing an amended reply one day before the scheduled hearing on the disposition of the law issues may not have been in strict harmony with the holding of the Supreme Court in the case Liberia Agricultural Co. v. Mathies et al., 38 LLR 354 (1997), wherein the Court opined that "an amendment which is made after the issuance and service of a notice of assignment has the potential to unreasonably delay the trial or hearing" ,yet ,because the appellee elected to not challenge the timing of the withdrawal of the reply and the filing of an amended reply, even though the appellant's action technically did not conform to the spirit of Section 9.10 of the Civil Procedure Law, which prohibits amendments that unreasonably delay proceedings In the lower court, this Court does not view the action of the appellant as warranting the attention of this Court.

Accordingly, we return to the narration of the facts, which shows that following the filing of the amended reply, the case was again assigned for the disposition of law issues. Arguments having been entertained by the court on the laws issues, the trial judge, His Honour Yusslf D. Kaba, on February 2, 2011, proceeded to rule thereon, dismissing the petition for declaratory judgment. As with other important documents narrated herein before this Court believes that the ruling of the trial judge on the law issues, and particularly dismissing the petition for declaratory judgment, warrants the attention of the Court. That attention necessitates that we reflect the ruling in its entirety, which we do herewith, as follows:

"Pursuant to an Agreement of Reorganization by Distribution of Assets, the Petitioner herein, heretofore, a majority shareholder of Aminata & Sons, Inc., a corporation organized, existing and operating under the laws of Liberia, relinquished, gave, surrendered, and transferred its 60% shares to the Respondent, a minority shareholder of the corporation.

Subparagraph 2.2 of the agreement provides in its entirety as follow "the parties hereby acknowledge the possibility that one or more assets of the corporation may not be on the schedule of assets prepared on the basis of trust and good faith and without prior audit. The parties therefore agree that in the event an asset not listed, described or divided herein is discovered, such asset shall be distributed between the

Kaydea Estate and the Turay Family in the ratio of 3:2.

Relying on the above cited subparagraph of the agreement, Petitioner filed a fourteen (14) counts Petition for Declaratory Judgment praying this Court to declare its right to what it considered as certain assets of the corporation which were not listed on the schedule of assets for distribution between the parties.

Specifically, in counts six (6) through fourteen (14) of the Petition, Petitioner alleged inter alia that it is entitled to 60% or the whole of each of the following assets of the corporation which were not listed on the schedule of asset at the time of the execution of the agreement: (a) 12,443 gallons of PMS; (b) 77,000 gallons of AGO loaned by the corporation and subsequently returned; (c) an amount of QSD$336,000,00 paid to the Corporation against a claim of USD$400,000.00 filed against the Liberia Petroleum Company (LPRC); (d) the corporation's insurance claim for ship-to shore losses against the supplier, Novel; (e) a QSD$71,329.00 overstatement of the corporation's liability to the LPRC; (f) USD$35,829.00 representing receivables in favor of the corporation, and (g) an amount of USD$99,233.771 representing the difference between USD$383,850.00 the Petitioner undertook to pay on behalf of the corporation and the amount of USD$483,083.77 it actually paid to Total on behalf of the corporation.

In counts one (1) through four (4) of the Returns, Respondent contended that although the Petitioner venue its petition for the September, 2010 Term of this court, the Writ of Summons commencing the petition was improperly served on it nineteen days after the opening of the September Term of court rather than at least fifteen days before the opening of court. Respondent argued that this court couldn't exercise Jurisdiction over it on the strength of the improperly served Writ of Summons.

In counts five (5) and six (6) of the returns, respondent argued for the dismissal of the petition on ground that Anna Kaydea lacked the legal capacity to bring the petition on behalf of the Petitioner, she having not shown any authority in the nature of a Letters of Administration from the Probate Court empowering her to act for the estate.

In counts seven (7) through eleven (11) of the returns, respondent contends that although it has been named as the party respondent In the Petition, It Is clear from a review of the Petition that Petitioner's claims be actually against the Corporation, of which respondent is a shareholder, and accordingly, distinct, separate and different from the corporation. Respondent argued that the Petition should be dismissed because under the Business Association Law, a shareholder cannot be named as the sole party to sue or defend the corporation.

Respondent, in counts thirteen (13) and fourteen (14) of the returns, acknowledged that although receivables are assets, subparagraph 2.2 of the agreement did not contemplate receivables of the corporation In the face of subparagraph 2.9 of the agreement. For purposes of this ruling on law issues and in addition to subparagraph 2.2 quoted herein above, the court deems it proper to quote in its entirety, subparagraph 2.9 of the agreement as follow: "The parties agree that the outstanding receivables of the corporation as of the date of this Agreement have been mutually distributed by the

parties; the acceptance, equity and completion of the distribution are hereby mutually acknowledged and affirmed by the parties."

The petitioner filed a reply which it subsequently withdrew and in its place, filed an eighteen (18) counts amended reply. Traversing counts one (1) through four (4) of the returns, petitioner, among others, argued in counts one (1) through four (4) of the amended returns to the petition for declaratory judgment is a special proceedings governed by Chapter 16 and not Chapter 3 of the procedural code in this country. As a special proceeding, petitioner argued, the Petition for Declaratory Judgment is commenced by the issuance of a citation, in and out of term time, and is not therefore subject to the rules applicable to action in general. Petitioner therefore argued that the writ of summons was properly served. Traversing counts seven (7) through eleven (11) of the returns, petitioner, in count six (6) of the amended reply, admits that its petition for declaratory judgment was brought so as to have its rights and claim declared to certain assets of the corporation in keeping with the agreement; further arguing in essence that, respondent as an executing party to the Agreement, is the proper party respondent. Petitioner did not however deny that the Respondent is a shareholder of the corporation. From the pleadings and the oral arguments of the parties, this Court has identified four law issues determinative of the petition.

(1) Whether this court lacks jurisdiction over respondent because the writ of summons was improperly served upon it?

(2) Whether Anna Kaydea, the administratrix of petitioner lacks the legal capacity to bring this petition on behalf of the petitioner?

(3) Whether the respondent, as Shareholder, may be sued in its individual capacity to solely defend against the declaration of Petitioner's right, if any, to assets belonging to the corporation?

(4) In the face of sub-paragraph 2.9 of the agreement, are the assets being claimed by petitioner within the contemplation of sub-paragraph 2.2 of the agreement?

This court will proceed to address the above issues in the order in which they are presented, and in so doing, the court answers the first question of Law presented by the petition in the negative. The court notes that under the law, practice and procedures in this jurisdiction, a defendant who has not been summoned at least fifteen days prior to the first day of the term of court to which the writ is made returnable, has not been legally summoned and is not required to answer the complaint. However, the court agrees with the Petitioner that this rule doesn't apply to special proceedings as in the instant case. The court says, petition for declaratory judgment as here, is a special proceeding governed by Chapter 16 of the procedural code and is not subject to the rules applicable to an ordinary action.

The second legal issue presented herein must also be answered in the negative. In a proper case, Anna Kaydea would not be allowed to bring a suit of this nature on behalf of petitioner, an Interstate Estate, without proper legal authorization such as a duly Issued Letters of Administration from the Monthly and Probate Court. In this case however, respondent is estopped from attacking Anna Kaydea's legal capacity to bring this petition on behalf of Petitioner, because the respondent had earlier voluntarily

entered into an agreement with the petitioner represented by Anna Kaydea as administratrix. See petitioner's exhibit P/1. Respondent having recognized Anna Kaydea as an administratrix and therefore, the legal representative of petitioner Intestate Estate, cannot now be permitted to disavow same simply because its interest has changed.

The court will answer the third question in the negative. A corporation is a legal entity, considered in law as a fictional person distinct from Its shareholders or members, and with separate rights and liabilities. The corporation is a proper plaintiff in a suit to assert a legal right of the corporation and a proper defendant in a suit to assert a legal right against the corporation. The Association Law, Rev. Code §5:2.5. Under the practice in this jurisdiction, a shareholder, member, director, officer or an employee of a corporation cannot be named as a party to a suit in Liberia to represent the corporation, if such party is the sole party to sue or defend. Republic of Liberia v. The Leadership of the National Bar Association of Liberia, 40 LLR 652. In count one (1) of the Petition, Petitioner acknowledged, among others, that Respondent is a shareholder of the corporation. Furthermore, Respondent averred in count nine (9) of the Returns that it is a Shareholder of the corporation and as such, distinct and separate from the corporation. In traversing this count, Petitioner, in count six (6) of its amended reply, did not deny that Respondent is a shareholder. Under the circumstances, respondent's assertion that it is a shareholder of the corporation is deemed admitted by petitioner.

The court notes that the Turay Family is the sole party respondent named in the petition, but the subjects for the declaration of rights being sought by the petitioner constitute assets belonging to the corporation. See count six (6) of the petitioner's amended reply. During oral argument on the law issues, respondent argued that the petition should be dismissed because the respondent as a shareholder is distinct and separate from the corporation, and therefore, cannot be held to defend the liabilities and or obligations of the corporation. In countering this argument, the petitioner again did not deny that respondent is a shareholder of the corporation, but maintained only that the Respondent is to be sued because respondent is an executing party to the agreement. The court in agreeing with the respondent, says that it is not only that the within named respondent, as a shareholder of the corporation, cannot be sued to solely defend the corporation's obligations and or operations, but declaring petitioner's rights to the assets of the corporation without making the corporation a party, will be tantamount to deciding the property rights of the corporation without giving it a day in court, an act which is clearly inconsistent with the law, practice and procedures in this jurisdiction. Title 5, Associations Law, Rev. Code §2.6; The United Methodist Church & Consolidated African Trading Corporation v. Cooper et al., 40 LLR 449 (2001).

This court holds that respondent as a shareholder cannot be held to solely defend petitioner's claims and rights against assets of the corporation.

The decision this court reached today is buttressed by the fact that any declarations of rights entered in favor of the petitioner against assets of the corporation, will probably not terminate the controversy and remove the uncertainty giving rise to this petition, for the corporation not having been made a party

to this petition, to defend its property interest, may more likely challenge any such decision. It is provided that the court may refuse to render or enter a declaratory judgment where such judgment, if rendered, would not terminate the uncertainty or controversy giving rise to the proceeding. 1LCLR § 43.5; Gbartoe at al. v. Doe, 41LLR 117,123 (2002).

The court, in exercising its sound discretion, hereby refuses to enter any declaratory in this matter because, doing so, will probably not terminate the controversy and clear the uncertainty. This court having refused Jurisdiction over this matter on the ground that any decision entered, rendered or reached by the Court herein will not terminate the uncertainty or controversy giving rise to the proceeding, the court will therefore not bother to answer issue number 4.

WHEREFORE, and In view of the foregoing laws and facts, the petition for declaratory judgment is ordered and the same is hereby dismissed. Costs of this proceeding are disallowed. Matter suspended.

We take note, at this point, of the fact that while the trial judge, in disposing of the motion to dismiss, held that the appellee, being a party to the agreement that begot the petition, was the appropriate party against whom the action should be filed, he seemed to have reversed himself In his ruling on the laws issues, only twenty-six days after his ruling on the motion to dismiss, holding in the latter ruling on the law issues that it is not only that the within named respondent, as a shareholder of the corporation, cannot be sued to solely defend the corporation's obligations and or operations, but declaring petitioner's rights to the assets of the corporation without making the corporation a party, will be tantamount to deciding the property rights of the corporation without giving It a day in court. This Court holds that respondent as a shareholder cannot be held to solely defend petitioner's claims and rights against assets of the corporation."

This Court will not speculate what may have transpired between the ruling on the motion to dismiss the petition and the ruling on the law issues that led Judge Kaba to flip flop or have a change of mind. We know that there are instances when even the Supreme Court had determined to reverse a stance taken in a previous case and to even recall a principle a number of cases previously decided. However, for the most part this Court has openly spoken to the reason for the change and for the new position, rather than pretending that the previous stance of the Court did not exist. But whatever the reasons were for the action of Judge Kaba, this Court finds the change of heart to be particularly troublesome as the court has seen no factual or legal basis for the Judge's change of position.

In any event, the appellant, believing that the trial judge had erred in ruling as he did in dismissing the petition, excepted to the said ruling and announced an appeal therefrom to this Court. As a further step in perfecting the appeal, the appellant, on February 9, 2011, filed a five count bill of exceptions, duly approved by the trial judge. As the bill of exception reflects specifically the actions and decision of the trial judge with which the appellant has taken issue and which the appellant believes sufficiently important to claim the attention of this Court, herewith quote the bill of exceptions, as follows:

"Petitioner/appellant having excepted to Your Honor's Final Judgment of February 2, 2011, a copy of which was delivered to petitioner/appellant on February 8,2011,and announced an appeal

therefrom, now presents this bill of exception for Your Honor's approval, as follows:

1. That Your Honor in disposing of the motion to dismiss the petition for declaratory judgment, ruled that "For one Aminata & Sons was not a party to the agreement of reorganization and distribution of the assets between the Turay Family and the Intestate Estate of the late Shad Kaydee. The petition for declaratory judgment is filed pursuant to the terms and conditions of the reorganization and distribution of the assets between these two parties. Therefore, the court does not see how the Turay Family can object to a petition filed against them for a matter growing out of the Agreement entered into by and between the said Turay Family and the petitioner herein when in fact the Turay Family is not challenging the authenticity of this Agreement. It is the law that one cannot repudiate his own action. The Turay Family having entered this agreement with the Intestate Estate of the late Shad Kaydee Family and the said Agreement being binding upon them, issues arising under the terms and conditions of that Agreement must be between the Turay Family and the Intestate Estate of the late Shad Kaydea."

Notwithstanding this ruling, Your Honor, in disposition of the law issues, ruled that a corporation is a legal entity considered in law as a fictional person distinct from its shareholders and members and with separate rights and liabilities. The corporation is a proper plaintiff in a suit to assert a legal right of the corporation and a proper defendant in a suit to assert a legal right against the corporation. The Associations Law, Revised Code, Section 5:2.5.Under the practice in this jurisdiction, a shareholder, member, director, officer or an employee of a corporation cannot be named as a party to a suit in Liberia to represent the corporation, if such party is the sole party to sue or defend. The court noted that the Turay Family is the sole party respondent named in the petition but the subject for the declaration of rights belong sought by the petitioner constitutes assets belonging to the corporation.

This court holds that respondent as a shareholder cannot be held to solely defend petitioner's claims and rights against assets of the corporation. Accordingly, Your Honor denied and dismissed petitioner's petition on the disposition of Law issues. Petitioner submits that Your Honor's ruling on the motion to dismiss and the disposition of Law issues are contradictory and inconsistent, and violate the principles of stare decisis, for which erroneous and prejudicial ruling petitioner excepts.

2. That under our law, procedure and practice hoary with age in this jurisdiction, an agreement binds and is enforceable against the parties thereto. Accordingly, the Turay Family and the Kaydea Family, originally shareholders of Aminata & Sons, having decided to divide the assets and liabilities of Aminata pursuant to which an agreement was executed, said agreement is binding and enforceable against the Turay Family and the Kaydea Family. Hence, Your Honor erred when Your Honor dismissed petitioner's petition on the disposition of law issues, for which error of Your Honor petitioner excepts.

3. That under the Business Associations Law, the assets of a corporation can only be sold, conveyed or distributed by an agreement, consent, and approval of the shareholders. Accordingly, the shareholders of Aminata & Sons having agreed on the mode of distribution of the assets and liabilities

of said Aminata & Sons, said agreement is binding and enforceable against said shareholders i.e. the Turay Family and the Intestate Estate of the late Shad Kaydea - and that the only parties to matters arising out of the implementation of said agreement are the parties thereto. Accordingly, Your Honor erred when Your Honor denied and dismissed petitioner's petition on grounds that Aminata & Sons should have been a party defendant in the suit; for which error of Your Honor, petitioner excepts.

4. That under the Constitution of the Republic of Liberia, it is provided that no law shall be made to impair the obligation under contracts. Your Honor's ruling dismissing petitioner's petition for declaratory judgment in respect of a contract executed by and between petitioner and respondent, denying and dismissing petitioner's petition, denies petitioner's constitutional right to the enforcement of its contract with respondent; for which petitioner excepts.

5. That the statute provides five grounds for which an action can be dismissed and that the reasons stated in Your Honor's ruling on the disposition of law issues for dismissing petitioner's petition do not contain any of the statutory grounds for which an action can be dismissed; and that the dismissal of action was an abuse of Your Honor's discretionary power.

WHEREFORE and in view of the foregoing, petitioner/appellant submits this bill of exceptions for Your Honor's approval, in fulfillment of the second jurisdiction step In the perfection of Its appeal."

From our review of the pleadings exchanged between the parties, the rulings made by the trial judge, the bill of exceptions filed by the appellant, the briefs filed by the parties before this Court, and the arguments advanced by the counsels for the parties herein, we have determined that the following two issues merit the attention of this Court.

1. Whether the Reorganization Agreement executed between the parties and calling for the distribution of assets of the corporation between the parties is enforceable against the appellee?

2. Whether the appellant's petition for declaratory judgment would terminate the controversy that gave rise to the petition?

As indicated from the facts narrated above, the core of this case is rooted in the distribution of certain corporate property and the assumption of certain corporate liabilities by the shareholders of the corporation in exchange for its assets. In order to make a determination of the conditions under which the property of a corporation may be distributed, such as occurred in the instant Case and is the subject of the dispute herein, we must take recourse to the laws governing corporations formed and existing under the laws of Liberia. In that regard, the appellee correctly stated in its returns the basic principles under which corporations are formed under the laws of Liberia and under which they exist and operate, a position endorsed by the judge in his ruling on the law issues. Section 2.5 of the Associations Law, Title 5 of the Liberian Code of Laws Revised, sets the premise for all corporate actions, especially as relate to corporate transactions and suits In respect of corporate activities or property. The section states: A corporation is a legal entity, considered in law as a fictional person distinct from its shareholders or

members, and with separate rights and liabilities. Under this theory, a corporation, as a distinct legal entity, is a proper plaintiff in a suit to assert a legal right of the corporation and a proper defendant in a suit commenced against it. Accordingly, the naming of a shareholder, member, director, officer or employee of the corporation as a party to a suit in Liberia to represent the corporation is subject to a motion to dismiss if such party is the sole party to sue or defend, or subject to a motion for misjoinder if such party is joined with another party who is a proper party and has been joined only to represent the corporation. Associations Law, Rev. Code 5:2.5 and 2.6. This Court does not dispute that this is the governing law, and acknowledges that it has adhered to the principle enunciated therein for as long as the law and its predecessor laws have existed. See Ramatrielle, S. A. v. Metzger et al., 38 LLR 336 (1997).

Indeed, this Court has recognized that by virtue of the fact and the law that a corporation is a separate and distinct entity, it is given a separate existence from its incorporators and its shareholders, either within a definite circumscribed period or date or in perpetuity; that in accord with the principle, the shareholders, directors and officers are insulated from all repercussions of the business and other activities of the corporation; and that given that factor, based on the principle of a separate corporate existence of the corporation, the incorporators, shareholders, directors, officers and investors cannot be held liable, by virtue of their legally prescribed association with or connection to the corporation for obligations incurred by the corporate entity and in like manner the corporation cannot be held liable for the obligations incurred by its incorporators, shareholders, directors, officers or Investors except as provided by law and except under circumstances where the corporation has agreed to become responsible for such obligations or there is no distinction between it and the persons mentioned herein. The Liquidated Bank of Liberia and Pupo v. Morgan, 30 LLR 628 (1982); this was the premise upon which the parties to the instant suit, or their predecessor or decedent, must have formed Aminata and Sons, Inc.

Further contextualizing the pleadings and the facts in the case, at least insofar as is necessary to determine whether the trial judge acted properly in dismissing the petition for declaratory judgment, and which is not in dispute although neither the articles of incorporation of the corporation nor the share certificates of the shareholders were exhibited with the pleadings, is that the petitioner's decedent, Shad Kaydea, held sixty (60%) percent of the authorized share of the corporations, while the respondent, the Turay Family, held the remaining forty (40%) percent of the authorized shares. We should state also that a further difficulty is created by the fact that it is unclear whether the "Turay Family" was incorporated as a corporate body or is merely referred to as a conglomerate of members of a particular with no recognized legal existence. For our limited purpose, what is important is that both parties recognized that the "Turay Family", whoever the members are or what is the quantity of that membership is, or what authority any particular person was given to represent the Family, held forty (40%) percent of the corporation's shares. But whatever is the legal status of the Turay Family, not a matter for the attention of this Court as it was not raised as an issue, the reality is that the parties

acknowledged that the late Shad Kaydea, by virtue of his sixty (60%) percent ownership of the shares of Aminata and Sons, Inc., was the majority shareholder of the said corporation, and that as such upon his death, his Intestate Estate became, in his stead, the majority shareholder of the corporation.

A second point of importance that must be recognized in disposing of the issues stated above is that Aminata and Sons, Inc., both at the time of its formation and at the time of the purported reorganization and distribution of assets was, and even to date, remains a closed corporation, meaning that it was only opened to family ownership of two, as opposed to public ownership. This point is important because certain concepts, formalities and procedures which apply to publicly held corporations are dispensed with in the case of closed corporations.

The third point, recognized by the parties and therefore not a subject of dispute, is that while the late Shad Kaydea was the majority shareholder (60%) of the Aminata and Sons, Inc., the corporation was being managed apparently or presumably with the permission of the majority shareholder, by the authorized representative of the minority shareholder (40%), Mr. Siaka A. Turay. This was the state of affairs that existed at the time of the death of the late Shad Kaydea and which the members of his family, entitled to inherit his estate, met the corporation and under which they concluded the reorganization and distribution Agreement in 2009.

It was within the context of above regurgitated state of affairs that we commence a review, firstly, of the emboldened actions taken by the parties in executing the reorganization and distribution agreement, and secondly, finalizing the claims asserted by the petitioner In the petition for declaratory judgment. This brings us to determining the first issue presented, that is, whether the Reorganization and Distribution Agreement executed between the parties calling for the transfer by the appellant of its entire shareholding in Aminata and Sons, Inc., and the distribution of assets and liabilities of the corporation between and amongst the parties is a proper subject for a petition for declaratory judgment and enforceable against the appellee. The trial judge, His Honour Yussif D. Kaba, In disposing of the law issues, in contradiction to what he had ruled in deciding on and denying the motion to dismiss, held that because the corporation was not made a party to the suit, the action was not maintainable and that as the petition related to assets and actions of the corporation, the action was not maintainable against the appellee since the appellee was the wrong party, even though the action was based on an Agreement executed between the appellant and the appellee. As such, he said, the petition was dismissible and he so ruled.

Without exploring possible reasons for the judge's reversal of his initial or earlier ruling in the motion to dismiss wherein he denied the motion, and his subsequent ruling in disposing of the law issues, wherein he granted the appellee prayer and dismissed the petition for declaratory judgment, we believe that confusion may have been generated by the very nature of the Agreement for reorganization and distribution of the assets of the corporation, owned by the two parties to the corporation. In the first place, the Agreement completely ignored the very essence of the corporate framework. As stated before, under the Associations Law, a corporation is a separate and distinct legal entity, completely divorced

from its owners. It has a life of its own and although it is managed by natural persons, the law requires that it should be managed and its activities conducted in such a manner that its separate life and identity are maintained. Part of that recognition requirement is that the shares issued by the corporation to shareholders and held by the shareholders, where there is admission that the shares have been paid for, are separate and distinct from the assets of the corporation unless by agreement or other legal undertaking the shares are structured in such manner that they are made or regarded as part of the corporation's assets, with the corporation exercising all of the rights associated with the ownership. The Agreement ignored these basic features of the corporate framework.

Firstly, under the corporate framework recognized in this jurisdiction, a corporation is not reorganized merely by virtue of the fact that the shares change hands between or amongst the shareholders. The transfer of shares can be accomplished or achieved simply by the one party executing an instrument transferring his/her shares transfer to another party, the issuance of new share certificate(s) to the effect and the transfer being reflected on the books and records of the corporation and/or by the issuance of new share certificates to the new owner(s) of the shares. And unless other actions are taken that affect the inner structure of the corporation, its basic frame, its activities, a redirection of its powers, functions and directions and/or a reclassification of its shares and other corporate features, the transfer alone cannot be and does not constitute a reorganization of the corporation. Thus, the corporation, Aminata and Sons, Inc. could be deemed to have been reorganized merely because one of its two shareholders transferred its shares in the corporation to the other existing shareholder.

A reorganization of a corporation under Liberian law comes about by a re-design of the corporation structure In terms of a change in the number of its shares or change in the classes of shares and the powers associated therewith, the result of Insolvency or bankruptcy, merger or consolidation, etc., none of which occurred in the instant case. The parties therefore were in legal error in treating the transfer by the appellant of shares held in Aminata and Sons, Inc. as a reorganization of the corporation, especially as no action was taken, as required by law, for a reorganization of the corporation to be deemed to have legally occurred and the process for such reorganization of the corporation was never followed, especially as regards the procedure and requisite authorization within the corporation by persons clothed with the authority to effect such authorization, such as the board of directors. Moreover, because a reorganization of a corporation affects not only the shareholders but the corporation itself, approval would have had to be given within the corporate structure as authorized by the Associations Law, which means that the corporation itself would have had to be involved in the process. We do not see from the records that any of these occurred.

We therefore must examine the other element of the Agreement, which is the distribution of the assets and liabilities of the corporation, actions that were tantamount to the reorganization of the corporation by the process of the sale and/or disposition of the corporation's assets outside the ordinary course of the corporation's business. In order to answer this query, it is prudent to refer to Section 10.6 of the Associations Law because it establishes the standard and procedure for the doling out corporate assets.

This is what section 10.6 says: §10.6. Sale, lease, exchange or other disposition of assets, 1. Method of authorizing (a) sale, lease, exchange or other disposition of all or substantially all the assets of a corporation, if not made in the usual or regular course of the business actually conducted by such corporation, shall be authorized only In accordance with the following procedure: The board shall approve the proposed sale, lease, exchange or other disposition and direct its submission to a vote of the shareholders. (b) Notice of meeting shall be given to each shareholder of record, whether or not entitled to vote. (c) At such meeting the shareholders may authorize such sale, lease, exchange or other disposition and may fix or may authorize the board to fix any or all terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require the affirmative vote of the holders of two-thirds of the shares of the corporation entitled to vote thereon unless any class of shares is entitled to vote thereon as a class, in which event such authorization shall require the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote as a class thereon and of the total shares entitled to vote thereon.

2. Mortgage or pledge of corporate property. The board may authorize any mortgage or pledge of, or the creation of a security interest in, all or any part of the corporate property, or any interest therein, wherever situated. Unless the Articles of Incorporation provide otherwise, no vote or consent of shareholders shall be required to authorize such action by the board."

In order for the apportionment of corporate assets to fall within the purview of Section 10.6, as stated in sub-section 1, it has to concern the "sale, lease, exchange or other disposition of all or substantially all the assets of a corporation." To determine what the Legislature specifically meant when it crafted the "all or substantially all" standard, the Court must first revert to the statute's legislative history but since those records were more than likely destroyed In the series of civil conflicts that beset the nation in the intervening years since the statute was passed, and since, after a review of Liberia's corporate law jurisprudence did not produce a definition for "all or substantially all" in the context of the disposal of corporate assets, we are impelled to consult the common law of the United States of America, through the employment of Section 40 of the General Construction Law, regularly referred to as the Reception Statute, in order to determine what exactly constitutes "all or substantially all". According to 16 Am Jur 2d, Corporations, Section 2286, "in determining whether a particular sale or other disposition is of all or substantially all of the corporate assets, the test is the nature of the transaction rather than the amount of property Involved." so the question for this Court to answer is whether the nature of the transaction between the appellant and the appellee can be construed as involving "all or substantially all" of Aminata and Sons' assets, thereby bringing within the scope of Section 10.6's control?

The answer to the foregoing question is yes. The properties that were involved In the deal included, (1) filling stations owned and operated by the Corporation on premises that the Corporation either owner or leased; (2) vehicles; (3) office equipment and furniture; (4) accounts receivable; and (5) license to import petroleum. With specific attention to the Corporation's filling stations, Section 2.3 of

the agreement between the parties divided them in the following manner:

For the Kaydea Estate:

Vamoma House;(2) OAC;(3) UN Drive;(4) Lynch Street;(5) Buchanan Street; (6) NPA; (7) 12 Street;(8) Sanniquelle,Nimba County;(9) VK;(10) Bomi;(11) Abou Qultaeh; (12) Bussay Quarters;(13) Old Road; (14) Lakpassee;(15) the tank farm in Greenville, Sino County; (16) Zwedru, Grand Gedeh County and (17) the gas station on Benson Street for ONLY one year of use beginning as of the date of this Agreement.

For the Turay Family;

Aminata House on Mechlln Street; (2) 17th Street;(3) 9 Street;(4) Benson Street after the first year of use by the Kaydea Estate;(5) VP Road;(6) Kakata; (7) Chocolate City;(8) Ganta City, Nimba County and (9) Tweh Farm.

The character of the arrangement between the appellant and the appellee represented a fundamental change in where and how Aminata and Sons, Inc. would be able to conduct its business in the future which reflects the intents of the parties since, at the time of the transaction, the appellant and appellee were the only two holders of shares in the corporation and, according to the agreement's second recital, they "agreed between themselves to re-organize the corporation on the basis of either the (Turay) Family or (Kaydea) Estate relinquishing and transferring" not only all Its equity interests to the other shareholder but also, as mutually agreed, the distribution amongst themselves of all of the corporation's assets and assumption to assume, also as agreed, proportions of the liabilities of the corporation. The quantitative and qualitative value of the properties and resources affected by the agreement were sufficiently vital to the operation of Aminata and Sons, Inc. that the assets were "all or substantially all" of the corporation's assets.

A second factor which is critical in determining whether the disposition of corporate assets falls under the statute is ascertaining if the sale, lease or disposition is in the usual or regular course of business, that is, is the transaction is in the line of the corporation's business. In the instant case, it is clear that the disposition agreed to by the parties to the Agreement was not in the usual or regular course of the business of the corporation. The corporation was not in the business of selling gas stations, apartment buildings, vehicles and others of its assets which it needed for its operations, and hence, the distribution was not in the usual or regular course of its business. The above being the case, the parties, in transferring the ownership of the assets, should have followed the procedure stipulated in Section 10.6 for the disposition of corporate assets. A board approval should have been secured, which was not done; a shareholders meeting should have been held and approval given by two-thirds of the shares entitled to vote thereon, which was not done. At least the parties exhibited no evidence that these procedures and requirements were followed. Instead, the parties chose to enter into an agreement wherein they combined the transfer of shares held by one of them in exchange for certain assets owned by the corporation and assumption of certain liabilities of the corporation, assets which clearly did not conform to the dictates of the law. The reason why the law first requires a board approval then a

ratification of the approval by a vote of the shareholders entitled to vote thereon, and the ratification must be by two-thirds of the holders of the shares, is to protect the interest of the shareholders since such a transaction is a fundamental change to the corporation, which is not a business activity that occurs during the normal or regular course of business. Perhaps because they were the only two shareholders of the total authorized shares of the corporation, and the corporation thereby being a closed one with no shares owned by the public in general, the parties may have felt that they could adequately protect their interest via a contract rather than a board approval followed by a shareholders vote. But whether or not that is the case, this Court holds that a corporation's shareholders cannot elect to opt out of the mandatory procedural steps contained in Section 10.6; any disposition of "all or substantially all" of a corporation's assets must strictly comply with Section 10.6 or run the risk of being deemed an unlawful disposition of corporate assets.

This misstep in pursuing the transfer of the assets of the corporation was exacerbated by the complete disregard for the corporation, the legal owner of the assets, and not making it a party to the agreement, at least to the extent that the agreement is endorsed or approved by the corporation. The Honorable Supreme Court has proclaimed that "The assets of a corporation are the property of the corporation and not the personal property of any of the shareholders or members of the board of directors. It is only the proceeds from the shares held by shareholders that shall become personal property of the individual shareholders." Halder v Nazem et al., 37 LLR 466,(1994). In view of the fact that the property distributed under the agreement was for neither the appellant nor the appellee, but rather Aminata and Sons, Inc., the appellant and appellee effectively agreed to distribute the property of a third party without the third party's consent, which was clearly against the law. Indeed, it is because of this very violation of the law by the parties, firstly by not conforming to the requirements of Section 10.6 and then choosing not to make the owner of the assets a party to the agreement in which its assets were drew up, that the appellee is attempting to use as a shield to prevent it from being held responsible for the contractual obligations it voluntarily assented to, and even motivated to assert in its returns that the petitioner/appellee had sued the wrong party since the claims were basically against the assets, and acts or actions of the corporation and that it, the appellee, had failed to join the corporation as a party, thereby rendering the petition dismissible.

Thus, the appellee has argued that the proper party against whom the petition for declaratory judgment should have been filed is Aminata and Sons, Inc. since the appellant's grievances concern rights to the corporation's property and, as a mere shareholder, it, the appellee that is, cannot be held liable for corporate actions or inactions. In support of this contention, the appellee cites the Associations Law, which, at Section 2.6, states, "Unless otherwise provided by law, the directors, officers and shareholders of a foreign or domestic corporation shall not be liable for corporate debts and obligations." The appellee additionally refers to Section 2.5 of the Associations Law which declares that, "A corporation is a legal entity, considered in law as a fictional person distinct from its shareholders or members, and with separate rights and liabilities. The corporation is a proper plaintiff in a suit to

assert a legal right of the corporation and a proper defendant in a suit to assert a legal right against the corporation; and the naming of a shareholder, member, director, officer or employee of the corporation as a party to a suit in Liberia to represent the corporation is subject to a motion to dismiss if such party is the sole party to sue or defend, or subject to a motion for misjoinder if such party is joined with another party who is a proper party and has been joined only to represent the corporation." The principles contained in Section 2.5 have been consistently reaffirmed by this Court. See National/Iron Ore Company et al. v. Yancy et al., 39 LLR 126 (1998); Republic v. The Leadership of the Liberian National Bar Association, 40 LLR 635 (2001); Bhatti v. First United American Bank, 40 LLR 3 (2000). And we shall once again reiterate that a shareholder is indeed a separate and distinct legal person from the corporation in which the shares are owned and, consequently, is, generally, not liable for the corporation's activities but although the appellee has greatly relied on that legal rule, it is not exactly applicable to the facts at hand.

In this case, the appellant is not attempting to hold the appellee liable for any activities or obligations that were undertaken by Aminata and Sons, Inc.; rather, the appellant is simply attempting to get the appellee, as a party to the distribution of assets agreement, to uphold its promises contained therein, given that the appellee had benefitted and continues to benefit and enjoy rewards from the contract. There is no corporate action for which the appellant wants the appellee to be held accountable. It was not Aminata and Sons that assured the appellant that the filling stations, vehicle, office equipment, etc. would be distributed between the parties; that was an assurance given by the appellee. It was not Aminata and Sons that promised that, "in the event an asset not listed, described or divided herein is discovered, such asset shall be distributed between the Kaydea Estate and the Turay Family in the ratio of 3:2."; this is a vow that was given by the appellee when Siaka Turay, as the authorized representative of the Turay Family, penned his signature to the contract. If Siaka Turay had signed the contract as an authorized representative of Aminata and Sons, Inc., then and only then, could the appellee argue that the appellant is wrongly aiming to have it answer for the corporation's actions.

Being as it is that the contract pertained to the disbursement of Aminata and Sons, Inc.'s corporate assets and Aminata and Sons, Inc. was not a contractual party, the fact that the appellee is contending that, since the assets were corporate and not personal property, the appellant should have filed the action against Aminata and Sons, Inc. is an acknowledgment by the appellee that the contract is illegal. Why else would the appellee argue that although it signed the contract, the terms of the contract should not be enforced against it? As a matter of fact, in its amended brief filed before this Court, the appellee averred, "the assets being sought by the appellant belong to the corporation, and as a mere shareholder, it cannot legally convey assets of the corporation. Appellee submits that any contract it might have executed in which it undertook to do is illegal and unenforceable because same is violative of the law on the separation of a corporation from its owners." Unfortunately for the appellee, this Court, from its establishment, has recurrently sustained the

common law principle of estoppel by contract, which, according to the 9th Edition of the Black's Law Dictionary, is defined as, a bar that prevents a person from denying a term, fact, or performance arising from a contract that the person has entered into." In West v. Dunbar, 1 LLR 313, 314-315 (1897), edified that, The great principle [of estoppel] founded in justice is not confined to the common law, but by the fathers of our country it is emphatically carried and incorporated into our statute law, only in different words. Liberia Statutes, Bk. i, page 24, section 13, read thus: 'No action can grow out of an immoral or illegal contract; which may be justly interpreted to mean that no one shall be benefited by his own illegal acts. Again, the maxim, 'No one shall take advantage of his own wrongs,' and further, 'Whatever has been said by a party himself is evidence against him.'" Thus, as the Court's holding illuminates, a party can be estopped from pursuing a legal course of action that grows out of both legal and illegal contracts. The Court expounded on that legal principle when, in Cooper-Daniels et al. v. Buccimazza Industrial Works Corp., 33 LLR 557, 563 (1985), it said, "Agreements are binding and one who is voluntarily a party thereto for some consideration, however small or violative of the law, cannot impeach his own deeds by raising the issue of its illegality after enjoying said consideration. This Court so held in the case of West v. Dunbar, when it said that a party who makes an illegal contract will not be allowed to take advantage of his own wrongs by showing the illegality of the same; nor can he seek relief at law or in equity, either to enforce or annul his illegal act. This, the doctrine of estoppel will not permit." See also LAMCO J.V. Operating Co. v. Azzam et al., 31LLR 649 (1983); CRS v. Natt et al., 42 LLR 400 (2005); Harris v. Mercy Corps (Liberia), decided on December 21, 2006; Norwegian Refugee Council v. Bana et al., decided on December 18, 2008;Tolbert et al. v. CEMENCO et al. decided on January 22, 2010. Also according to 28 AM. JUR 20, Estoppel and Waiver, Section 65, "Such estoppel operates to prevent the party thus benefited from questioning the validity and effectiveness of the matter or transaction insofar as it imposes a liability or restriction upon him, or, in other words, it precludes one who accepts the benefits from repudiating the accompanying or resulting obligation."

In the present case, the appellee, as consideration for yielding a significant amount of the corporation's assets to the appellant, an act which by its very nature was illegal in the ordinary corporate world, received by way of a transfer from the appellant's its entire sixty percent majority stake in Aminata and Son, Inc. which resulted in the appellee becoming the sole owner and shareholder of the corporation. But more than that, under the agreement, the appellant also yielded to the appellee a significant amount of the corporation's assets, also an act that was illegal, but which assets the appellee reserved to keep within the corporation as part of the assets of the corporation wherein the appellee was now the sole owner and shareholder, knowing that by the action of the parties the appellee stood to be the lone beneficiary of the use and operation of those assets, including the goodwill of the corporation. Having received those benefits under the contract, the appellee is now of the mindset that its commitment, under Section 2.2, to share any unearthed assets with the appellant at a rate of sixty percent for the appellant and forty percent for the appellee, is not enforceable against it. The appellee

suggests that the appellant should pursue the corporation but how can the appellant go after Aminata and Sons, Inc. to protect its contractual rights when Aminata and Sons, Inc. did not enter into a contract with the appellant; no person, legal or natural, is answerable to the terms, promises or obligations of a contract to which he, she or it was not a party. Weasua Air Transport v. Woewiyu, 40 LLR 225 (2000). The appellant wants this Court to sanction its evasion of its contractual duties by characterizing itself as a mere shareholder of a corporation as opposed to a party to a contract, which is the most relevant fact under these circumstances. It is a general tenet that, "Courts are required, except under stringent circumstances, to enforce contracts and not to aid parties to escape the performance of their obligations. It is a good doctrine, accepted by majority of writers, that the primary duty of courts is to enforce contracts, not to abrogate them." Scat et al. v Ricketts, 28 LLR 263,270 (1979). In that vein, notwithstanding the contract's illegality, we hold that the appellant, having benefited therefrom, by its assumption of a majority, indeed exclusive shareholder, as well as other assets of the corporation, is bound by its terms and is therefore estopped from challenging the contract's enforceability. Condoning such challenge would be tantamount to unjustly enriching the appellant, to the detriment and injury of the appellee.

Although we have held that the appellant can hold the appellee responsible for the appellee's alleged noncompliance with the contractual terms by filing a petition for declaratory judgment, this Court must discern whether the petition, as filed with the appellee being the sole respondent, would bring a finality to the issues or controversies that induced the appellant to institute the proceedings, which is a requirement under Section 43.5 of the Civil Procedure law. The appellant is asking the Civil law Court to declare who, between the appellant and the appellee, has the right to certain properties that, as has been established, is owned by Aminata and Sons, Inc. If the judge were to have proceeded to hear the case and rule for either the appellant or appellee, that would not have precluded Aminata and Sons, Inc. from filing a subsequent action to protect its property rights. This was one of the rationales the judge relied on in dismissing the appellant's petition. In his ruling he wrote: "Declaring petitioner's rights to the assets of the corporation without making the corporation a party will be tantamount to deciding the property rights of the corporation without giving it a day in court". Considering that the judge believed Aminata and Sons, Inc. to be a necessary party to the action, coupled with the appellant's failure to make the corporation a co-respondent as well as the corporation's failure to intervene, he should have exercised his power to sua sponte join the corporation, for It would inequitably suffer harm as a result of an ensuing judgment between the appellant and the appellee. See Civil Procedure Law Sections 5.51 and 5.54. See also Insurance Company of North America v. Bhatti & Sons et al., 35 LLR 191 (1988); Badio et al v. Cole-Lartson et al., 33 LLR 125 (1985); Nouredine et al. v. Johnson, 30 LLR 575 (1983); UMARCO v. AMS et al. 25 LLR 267 (1976). With the corporation as a party, while the appellant and the appellee argue about how the pertinent clauses of the contract should be interpreted, it would then have the opportunity to protect its property interest against both the appellant and the appellee, which would not only be

limited to the assets at issue in the petition but also all of the assets that were covered by the reorganization agreement since they were all the corporation's property, by challenging the fundamental legality of the reorganization agreement. The appellee, in its amended brief, asserts that, "under the circumstances, the illegal part of the contract has to be severed from the legal part; and the legal part enforced." What the appellee fails to appreciate is that the statement would have severe repercussions. It would mean, firstly, that every asset transfer made under the Agreement would have to be cancelled and the assets would have to be returned to the corporation. Under the law, the shareholders do not ordinarily have a first preference to the assets of the corporation. The corporation would not be Intervening only to contest the demand of the appellant, but also to have the entire Agreement cancelled. It would mean also that the parties would have to account for all profits and other benefits that accrued to them as a result of the assets transfer, and those would have to be returned to the corporation. It would also entail that the consideration for the transfer (I.e. the share transfer) would have to be nullified.

But even more troubling Is the fact that much of the corporation's assets that were transferred were subsequently conveyed to or bough by third parties for due consideration or perhaps for little or no consideration, depending upon the relationship which any of the parties had with such third parties. The third parties may also have conveyed or sold the assets to other parties. How could those assets be returned to the corporation? What would be the mechanism employed to determine the value of the assets? The problems would just be too enormous to comprehend. And all of this occurred simply because the shareholders determine to disregard the law and the concept of a corporate entity as a distinct legal entity.

In addition, the corporation would have to again assume responsibility for all of the obligations which the parties had undertaken to underwrite with the corporation's creditors. There would be enormous effects on third parties that have dealt with the corporation and the parties, relying on the legitimacy and legality of the Agreement. Indeed, the situation has reached the point where, in our opinion, it is almost impossible to unravel. Certainly, an attempt to unravel what has been done could severely impact negatively not only on the parties, but also on the corporation and on third parties, to the extent that many of the third parties transactions and contracts could be jeopardized ,reviewed with negative impacts, cancelled or otherwise declared illegal, and some of such parties could even be plunged into chaos, bankruptcy, insolvency and the like, with ripple effects on the general economic situation In the country oil sector, all as part of the process of restoring the status quo ante.

The further reality is that in entering into the Agreement and acting thereupon as they did, the appellant and appellee effectively destroyed the concept of the corporation as a separate and independent legal person, divorced from its shareholders or owners. By virtue of the conveyances and transfers that were made of the corporation's assets and other valuables under the Agreement, the corporation could never be restored to what it was prior to the Agreement, no matter what actions this Court directs the parties

take in that regard. What the appellee falls to realize also is that Aminata and Sons, Inc. could legitimately contend that the agreement is inherently unlawful and, therefore, each and every conveyance of its property under the agreement to either the appellant or the appellee is void ab initio. It would also mean that as the transfer by the appellant of Its sixty percent majority holdings in Aminata and Sons, Inc. to the appellee, done in exchange for the consideration of the transfer to the appellant of certain of the assets of Aminata and sons, Inc. would also be illegal, and hence, the appellee would not be entitled to the sixty percent shares transferred to it by the appellant. That would mean the parties would have to revert to status quo ante to the point in time prior to the execution of the contract, which would mean that all of the assets would once again be owned by Aminata and Sons, Inc. with the appellant again owning sixty percent share Interest and the appellee forty percent share Interest in Aminata and Sons, Inc.

Further, while this Court concedes that Aminata and Sons, Inc., as the holder of title to the assets that the Agreement distributed, did have the right, as a matter of equity, to Intervene or to be joined as a party to the petition for declaratory judgment to protect its property Interests, yet, the matter would have been made even more complicated by virtue of the fact that (a) Aminata and Sons, Inc. would have been represented by the very representative who Is respondent In the case and against whom the petition was filed; that the representative of the appellee is holding the management position to represent the corporation by virtue of the fact that the appellant transferred its sixty percent interest to the appellee and that it is on account of that transfer that such representation could be made for and on behalf of the corporation; and (c) that the transfer of the sixty percent shares by the appellant to the appellee, for the purpose of the consideration given, would have been illegal under the law. But all of these can be explored in the course of the proceedings, including any justification for the actions of the parties on account of the fact that the corporation is a close corporation and that there is no evidence of any other party not of the agreement being injured as a result of the agreement.

It is important therefore that we reiterate that while we would ordinarily declare the agreement illegal and therefore not enforceable if an innocent third party who had dealt with the corporation and was affected by the agreement was involved, thereby rendering the agreement unenforceable as against such third party, we do not believe that the appellee can enjoy such status because of the principle of estoppel, as we have said.

Thus, despite being In concurrence with the judge that Aminata and Sons, Inc. should have been a party to the proceedings, and that ordinarily not being named a party to the proceedings, any judgment arising out of the petition for declaratory judgment would not ultimately quiet the pertinent issues in the case, we do not agree with his decision to dismiss the petition on that account because of the current configuration of Aminata and Sons, Inc and the relationship which it has to the appellee as the sole shareholder and manager. The prudent action which the judge should have taken, as provided for by law, under the circumstances, would have been for himself to sua sponte join the corporation. But, as Indicated before, this would have exacerbated the problems, not cure them. And there could

be untold damage to innocent third parties. Indeed, under the circumstances of this case and the behavior of the parties in dealing with the corporation's assets as if they were the private properties of the parties, the Court would be justified in ordering the dissolution of the corporation. But again, that action would reverberate and severely injure innocent third parties who have dealt with and continue to deal with the corporation and the parties to these proceedings, both before and after the distribution of the corporation's assets under the openly illegal Agreement executed by the parties. We shall therefore refrain from pursuing such a course, as much as it is justified, and instead preserve the corporation's life as was the intent and contemplation of the Associations Law. But in doing so we must insist that except for the unsatisfied portion of the Agreement, the corporation hereafter be operated as a separate and distinct entity, as mandated by the law; otherwise dissolution would become a distinct option.

Hence, consistent with the power of the Supreme Court to affirm, reverse, or modify the ruling or judgment of a subordinate court, Reynolds lnt'l Export Inc. v. United Africa Co. Ltd., 30 LLR 135 (1982); Euedlne v. Sambola, 35 LLR 239 (1988);Bong Mining Company v. Bah, 35 LLR 513 (1988);Johnson-Maxwell v. Mitchell and Bishop, 35 LLR 609 (1988),and in view of all the foregoing, and for the reasons we have stated hereinbefore, including that the appellee should not be allowed to benefit from its misconduct to the detriment, that they not be allowed to unjustly enrich themselves at the expense of the other party to the Agreement, that as a result of the transfer of the shares by the petitioner to the appellee/respondent, the corporation has become almost undistinguishable from the respondent/appellee, and to prevent inequity being brought upon the other party to the Agreement, the judgment of Judge Kaba dismissing the petition is reversed.

We note that the decision made herein is premised firstly on a matter of law as relates to the corporate concept of a corporation as an distinct and independent entity, and secondly, on information contained in the pleadings of the parties and the briefs filed before the Court wherein the parties are in unison as to the existence of certain undisputed facts which the Court is thereby authorized by law to take judicial cognizance of. Accordingly, we hold further that as we have decided that paragraph 2.2 of the Agreement supersedes paragraph 2.9, the respondent is obligated, under the former clause, to give to the petitioner sixty (60%) percent of all of the receivables and other assets of Aminata and Sons, Inc. discovered from the date of the execution of the Agreement but not stated in the Agreement or the annex to the Agreement or which may hereafter be discovered, as provided for In paragraph 2.2. In addition, and as a matter of equity, this Court also holds that in the event any liabilities of the corporation are discovered to have existed prior to the execution of the Agreement but not stated in the Agreement and which the parties may not have known as at that time, should similarly be absorbed by the both parties in the same percentage proportion of 60% to 40% as in the case of receivable and other assets. The lower court is instructed to give full effect to the provision and ensure that the appellant/petitioner receive the percentage stated in the Agreement.

The Clerk of this Court is hereby ordered to send a Mandate to the lower court ordering the judge

presiding therein to resume jurisdiction over the case to give priority to closing of the matter consistent with the Opinion. And it is hereby so ordered. Appeal granted judgment reversed with modification. Counsellor J. Johnny Momo of Sherman and Sherman Inc. appeared for the appellant. Counsellors Stephen B. Dunbar of the Dunbar and Dunbar Law Offices, Emmanuel B. James and Rosemarie B. James of the International Group of Legal Advocates and Consultants appeared for the Appellee.