

**KOMANDE MOHEGHAN VAKERY, NEMLIN RERIK ANBTIUBE, DJIKEZON GUEL  
MARTIN, NIOULLE FRANK OLIVER, JUNIOR NIOULLE, OURROGBO EDWARD ET AL.,  
APPELLANTS VERSUS HIS HONOR, NELSON B. CHINNEH, STIPENDIARY MAGISTRATE  
MONROVIA CITY COURT AND THE REPUBLIC OF LIBERIA, APPELLEE**

**LRSC 15  
APPEAL**

HEARD: December 2, 2014 DECIDED: February 19, 2015

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT.

The certified records transmitted to this Court revealed that during the August Term of the First Judicial Circuit, A.D 2011, eight (8) Ivoirians, the appellants herein, along with nineteen (19) Liberians were indicted by the Republic of Liberia, the appellee herein, for the crimes of mercenarism, murder, rape, arson, and theft of property.

On February 29, 2012, the Government of the Ivory Coast by a note verbal, requested the Liberian Government for the extradition of the eight (8) Ivorian nationals to stand trial in that country for the same crimes for which they were indicted by the Republic of Liberia. On December 19, 2012, the appellee petitioned the Monrovia City Magisterial Court to order the extradition of the appellants to the Ivory Coast on grounds that the appellants were allegedly involved in subversive activities in the Ivory Coast leading to the murder of seven (7) United Nations Peace Keepers. The appellee informed the court that its petition for extradition was in consonance with a 1973 Extradition Treaty between the Governments of Liberia and the Ivory Coast, coupled with the note verbal requesting the extradition of the appellants.

Thereafter, His Honour Nelson B. Chinneh, Stipendiary Magistrate of the Monrovia City Court ordered a formal writ of arrest issued against the appellants, which writ was accordingly issued, served and returned served thus bringing the appellants under the jurisdiction of the court.

On January 24, 2013, the appellants filed their returns stating among other things that they were refugees who are entitled to political asylum and that the offense for which they were being charged by the Ivorian Government was a political offense for which the petition for extradition should not be granted. On February 7, 2013, hearing was commenced by Stipendiary Magistrate Chinneh and the appellee produced two witnesses in persons of Cllr. Micah Wilkins Wright, then Solicitor General of the Republic of Liberia and Officer Alfred Quiah of the Liberian National Police. Counsellor Wright testified to the request by the Ivorian Government through the Ministry of Foreign Affairs for the extradition of the eight Ivoirians via a formal diplomatic note; that a writ of arrest issued by the Ivorian Government was attached to the diplomatic note specifically naming and accusing the appellants of committing criminal offenses in the Ivory Coast. The witness also testified to the existence of an extradition treaty executed by the Governments of Liberia and Ivory Coast on August 24, 1972, and ratified by the Liberian Legislature on January 18, 1973.

The petitioner's second witness, Officer Alfred Quiah of the Liberian National Police identified the appellants as those that were arrested at the Liberian-Ivorian border, investigated, charged and forwarded to the court.

On February 21, 2013, after the appellee had rested with the production of evidence, the appellants made a five (5) count submission on the records of court, requesting the dismissal of the appellee's petition for extradition on two grounds. The first was that Article 6(a) of the 1973 Extradition Treaty forbids the extradition of a person if there is a criminal proceeding pending in the requested State against the person for the same offense they are sought to be extradited. The second ground was that the offense for which the appellants were being extradited was political in nature and that they being refugees could not be involuntarily repatriated under international law. The appellee resisted the appellant's submission on grounds that Article 6(a) was inapplicable as the appellants had only been indicted but not arraigned and that no trial had commenced against them. The appellee also contended that the offense committed by the appellee is not a subject of the extradition proceedings and as such only the requesting country could delve into the merits of the offense charged.

On February 25, 2013, Magistrate Chinneh, having attended to the submission and the resistance thereto, rendered his ruling dismissing the appellee's petition for extradition. Below is an excerpt of Magistrate Chinneh's ruling which we deemed germane to the issue in these appeal proceedings:

"According to authority, for an extradition to lie, a requisition for surrender of a fugitive shall be made to the Minister of Foreign Affairs by some persons recognized by him as a Diplomatic Representative of the requesting Foreign State. The requisition shall be in writing and shall be accompanied by documents authenticated by proper authority in the requesting state showing that the fugitive is substantially charged with having committed an extraditable offense. See section 8.5 1LCLR, title 2. The statute further provides that in order for Liberia to honour said requisition from the requesting state for the extradition of a fugitive for an extraditable offense there must be an existing extradition agreement with the requesting state.

Perusal of the case file revealed that the documents offered into evidence by the petitioner met all of the above stated statutory requirements. The records showed that there is an extradition treaty executed by and between the Governments of Liberia and the Ivory Coast on August 24, 1972 and duly ratified on January 18, 1973 and that relying upon said agreement of extradition the Government of the Ivory Coast thru its authority requested the Government of Liberia to arrest and turn over the respondents herein, who according to the attached international warrant of arrest are accused of committing criminal offenses in the Ivory Coast and needed to face criminal prosecution.

Further review of the records, revealed that the offenses for which the respondents are accused of are all extraditable offenses. They are purely criminal in nature and not political as the crime of murder, theft of property, rape and arson are criminal offenses in both requesting state and requested state.

This court is of the mind that the issue of an on-going proceeding before a court in Liberia charging the respondents herein with the same offenses for which they are sought to be extradited is the sole determiner as to whether or not an extradition can be granted in this case.

According to article 6(a) of the extradition treaty it is provided that "extradition shall not be granted if the competent authority of the requested state is proceeding against the person sought for in respect of the offense

or offenses for which extradition is requested." At present the Government of Liberia has drawn up an indictment and has secured the issuance of writ of arrest from the First Judicial Circuit Court, charging the respondents with the same offenses for which they are sought to be extradited.

The petitioner contends that the presentment of an indictment without proceeding further to have the respondents arraigned does not commence trial. The petitioner maintained that in order for trial to commence the case must be called and defendants made to plead to the writ. The petitioner therefore contended that article 6 (a) relied upon by the respondents in making their submission is not applicable.

Are proceedings and trial the same? This court thinks not. Proceedings according to the Black's Law Dictionary ninth edition, is the regular and orderly progression of a law suit, including all acts and events between the time of commencement and the entry of judgment while trial is a formal judicial examination of evidence and determination of legal claim in an adversary proceeding. Trial is one of the events in a proceeding where evidence are produced and examined.

Under our law, criminal proceedings can commenced with the presentment of an indictment against the defendants as it was done in the case of the respondents. Therefore, this court does not agree with the petitioner's contention that Article 6(a) of the treaty is not applicable in this case. The fact that trial has not commenced does not mean that the Government of Liberia is not proceeding against the respondents. Respondents' contention is therefore sustained.

Extradition cannot lie in the face of pending proceedings against the respondents herein in the First Judicial Circuit, Criminal Court "A" for the same criminal offenses for which they are being sought to be extradited.

Further to the above, the statute controlling extradition proceedings section 8.2, sub-paragraph 2, 1 LCLR, title 2, specifically provides that if any provisions of the law is inconsistent with the terms of the applicable extradition arrangement, the extradition treaty shall prevail. This court says that even though all of the statutory requirements provided for under the statute controlling are met by the petitioner, but because the treaty provision, Article 6(a) provides otherwise, extradition in this case cannot lie.

Wherefore and in view of the foregoing, it is the holding of this court that the petitioner's petition for the extradition of the within named respondents be and same is hereby denied. The said case is hereby ordered dismissed. And it is hereby so ordered."

We are in agreement with the Magistrate's ruling dismissing the extradition petition as a review of the records show that indeed the writ upon which the appellants were arrested and brought before the Magisterial Court, carried the same charges, found in the indictment before the criminal courts. The Supreme Court has held thus:

"where there is another action pending between the same parties for the same cause in a court in the Republic of Liberia, the subsequent suit between the same parties for the identical cause must be abated for want of jurisdiction". *Harding v. Harding* 32 LLR, 582, 587 (1985).

Also,

"whenever a want of jurisdiction is suggested, by the court's examination of the case or otherwise, it is the duty of the court to consider it, for if the court is without jurisdiction it is powerless to act in the case". *Firestone v.*

Kollie 41LLR 65, 78 (2002).

Further, the pertinent provision of the 1973 Extradition Treaty between the Republic of Liberia and Republic of La Cote D'Ivoire at Article 6(a), provides as follows:

"Extradition shall not be granted

a) if the competent authorities of the requested State are proceeding against the person sought for in respect of the offense or offenses for which extradition is requested".

We therefore hold that the magistrate's ruling of February 25, 2013 was proper.

The records show that the appellee excepted to the aforementioned February 25, 2013 ruling of Magistrate Chinneh, but did not pursue any further procedural step; but on February 26, 2013, the appellee entered nolle prosequi in respect of all proceedings against the appellants in the Republic of Liberia.

On April 18, 2013, the appellee again petitioned the Monrovia City Magisterial Court to order the extradition of the appellants. On the same date a writ of arrest was issued against the appellants served and returned served thus placing the appellants under the jurisdiction of the court. On May 2, 2013, the appellants formally appeared and moved the magisterial court to dismiss the appellee's petition evoking the principle of res judicata, indicating that the new petition for extradition before the court had been previously settled and disposed of on February 25, 2013, the date of the magistrate's ruling on the appellants' motion to dismiss the appellee's first petition. The appellee resisted the submission on grounds that the doctrine of res judicata was inapplicable since the first petition for extradition was never decided on its merits.

On May 7, 2013, Stipendiary Magistrate Chineh rendered his ruling in which he confirmed the principle of lis pendis enounced in his previous ruling of February 25, 2013 and sustained the appellee's resistance. Below is the quoted ruling of the Stipendiary Magistrate:

"On April 18, 2013, a writ of arrest was issued out of this court served and returns served on the respondents herein based on a petition filed with this court by the Government of Liberia represented by the Ministry of Justice, seeking the extradition to the Ivory Coast eight (8) Ivoirian nationals, who were accused of committing numerous criminal offenses in their mother land and fled to Liberia. Upon appearance on May 2, 2013, the respondents filed a seven count motion to dismiss the petitioner's petition substantially contending that the doctrine of res judicata bar the state from reinstating this extradition proceeding, because said matter was earlier decided by this court sometime in February this year. The respondents counsel also contended that the crimes against the respondents were all political crimes. Respondents therefore prayed court to dismiss the proceedings as the state is barred from returning to court on the same matter.

The petitioner in resisting movant/respondents' motion contended among many issues, that the doctrine of res judicata which is the sole reliance of the moving party could not lie, because the first extradition proceedings instituted against the respondents was never decided on its merits. The judgment reached by the court was interlocutory and not final as maintained by the moving party. The motion made by the respondents, which formed the basis of the court's finding at that time was based on the doctrine of lis pendis; this goes to say that

the said respondents were contending that there were other proceedings in another court of law in this land against the same respondents, who were being accused and were being processed in these extradition proceedings. The respondents specifically contended that the eight (8) Ivoirian nationals along with their other Liberian counterparts were facing criminal prosecution before criminal court "A", and the statute or treaty relied upon by the petitioner to proceed against them was supportive of said legal doctrine of *lis pendis* and as such, this court should refuse jurisdiction.

Having listened to the arguments pro and con, this court considering the contentions of the parties says that it does not agree with the moving party that *res judicata* will lie. The court says that it is in agreement with the petitioner that in order for *res judicata* to lie, the case in point referenced by the moving party must have been decided on its merits and that the judgment reached by the court must be final. In the instant case reference of this motion, the respondents earlier moved this court to dismiss petitioner's petition for reasons that there was an on-going proceeding in another court in this Republic against the respondents herein for the same crimes for which they were being sought to be extradited. The respondents' contention was found to be supported by the treaty, a binding legal arrangement between the Government of Ivory Coast and the Government of Liberia, which treaty was noted to have long since been ratified thus giving it a legal force. The respondents at that time specifically cited this court to article 6(a) of said treaty as well as section 11.2 and section 16.7 of our Civil Procedure Laws and Criminal Procedure Laws respectively.

One question that is required is whether or not the motion made by the movant in that proceeding referenced in this motion was a pretrial motion or a typical motion during trial. This court says that under our practice the motion raising jurisdictional issue is a pretrial motion. Section 11.2 sub-paragraph l(D) of our Civil Procedure Law, which set the basis for a dismissal of a proceeding on ground that there is another action pending between the same parties for the same cause in a court in the Republic of Liberia, is known throughout this jurisdiction to be a pretrial motion. One would wonder as to why said motion being a pretrial motion was allowed by this court in the middle of trial. The answer is simple, this proceeding is a special proceeding that borders on the right of people whose liberty is at stake. The treaty provision which forms the basis of respondents' earlier application being visible or known to the parties as well as the court only after it was pleaded by the petitioner. And so, it became clear to the court in the interest of transparent justice and fair play that we allow the respondents to raise their legal issue of law as they did.

This court is also aware and knowledgeable of the statute controlling extradition proceedings specifically section 8.2(2) of our Criminal Procedure Law provides that if any provision of our criminal statute controlling extradition proceedings is inconsistent with the terms of the treaty relied upon by the parties, the treaty prevails.

Wherefore and in view of the foregoing, it is the holding of this court that movants' motion to dismiss should be and the same is hereby denied. Trial is hereby ruled to be proceeded with. **AND IT IS HEREBY SO ORDERED."**

The appellants excepted to this ruling and on May 15, 2013, filed a fifteen (15) count summary proceedings before Judge Blamo Dixon, Resident Judge presiding over the May Term 2013 of Criminal Court "A", stating among other things, that Magistrate Chinneh erroneously denied their motion to dismiss the second extradition petition of April 18, 2013. The appellants contended that the doctrine of *res judicata* was a bar to the second extradition

proceedings hence, the magistrate erred when he sustained the appellee's resistance. On May 22, 2013, the appellee filed its returns primarily maintaining its previous contention that the principle of res judicata was inapplicable to the second extradition proceedings since the first extradition proceeding was not heard on its merits and that the appellants' petition for summary proceedings should be dismissed.

On May 27, 2013, Judge Dixon rendered his ruling in which he upheld the appellee's returns and dismissed the petition for summary proceedings. Excerpt of the ruling which reads thus:

"The doctrine of res judicata cannot hold and lie in the instant case, res judicata can only be properly invoked and applied where there has been a determination of the matter on the merits; that there is an existing final judgment rendered upon the merits of a cause by a court of competent jurisdiction and is conclusive as to the rights, questions and facts in issue as to the parties." *Maryland Wood Processing Industries v. American Insurance Management, INC.*, 41LLR, pages 327-328, Syl. 6 & 7 (2003). The Black's Law Dictionary, Ninth Edition, defines "merit as the elements or grounds of a claim or defense; the substantive considerations to be taken into account in deciding a case, as opposed to extraneous or technical points, especially of procedure or trial on the merits.

The Supreme Court of Liberia opines: "where a present case and a previous case are distinguishable, the principle of res judicata is inapplicable." *Harding v. Harding*, 32LLR, page 582, Syl. 1(1985)

There are several remedies available to the petitioners. The petitioners have the right to request the Stipendiary Magistrate of the Monrovia City Court, His Honor Nelson B. Chinneh, who alone conducted the first preliminary extradition hearing to recuse himself from the conduct of the second preliminary extradition hearing. The said petitioners also have the right to ask for change of venue for the hearing to be conducted in another magisterial area in Montserrado County.

In the mind of the court, the state had cured all of the defects that were associated with the first petition for extradition proceedings filed against the petitioners. Thus, the second preliminary extradition hearing cannot be abated by the Criminal Court "B", in the wake of the extradition treaty existing between the Government of the Republic of Liberia and the Government of the Republic of Ivory Coast, the diplomatic note requesting the extradition of the eight petitioners, the true and correct identification of the fugitives and applicability of Chapter Eight of the Criminal Procedure Law, Liberian Code of Law Revised, Volume One.

Wherefore and in view of the foregoing and the Laws controlling, it is the considered opinion of the Criminal Court "B" that the petitioners' petition for summary proceedings filed against the respondent Magistrate is hereby denied and dismissed. The resistance thereto is hereby sustained and upheld. The respondent Magistrate is hereby ordered to conduct a de novo preliminary extradition hearing along with his two Associates sitting as a tribunal with any two of the Magistrate constituting a Quorum. The clerk of court is hereby ordered to send a mandate to the court below to give full force and effect to the court's final judgment. And it is hereby so ordered."

It is this ruling that the appellants excepted to, announced and perfected an appeal to this Court en bane principally contending that the doctrine of res judicata is a bar to the appellee's second extradition proceedings. This contention is the foundation of the appellants' ten (10) count bill of exceptions which we quote hereunder, to wit:

1. "That Your Honour erred when you ruled that the doctrine of res judicata cannot lie in the instant case because the first extradition filed by the 2nd respondent requested state/Republic of Liberia, was different from the second petition for extradition when in fact the records of this case clearly show that the first petition filed by the 2nd respondent against the petitioners herein was an extradition based on the request of the Government of the Ivory Coast for crimes of rape, mercenarism, murder, theft of property, illegal possession of weapons and the second petition for extradition filed against the same respondent by the 2nd respondent was based on the same allegation as was contained in the first petition for extradition. The records of this case speak for itself particularly the first and the second petition for extradition filed before the Monrovia City Court.
2. That Your Honour committed a reversible error when you ignored the admission made by the 2nd respondent the requested state thru its prosecuting attorneys, thru the Ministry of Justice during argument that while it is true that the judgment of the 1st respondent was on both the motion filed by the petitioners and the petition for extradition itself was a mistake, for the magistrate to have said so in his judgment. This was an admission by the 2nd respondent that the judgment was on the merit of the petition for extradition. Your Honour should have ruled based on said admission that res judicata was a proper bar in the filing of the second extradition against the same respondents on the same subject matter, in the same court.
3. That Your Honour was in error when you denied petitioners' petition for summary proceedings against the within named respondents on a sole issue of law res judicata.
4. That Your Honour committed reversible error when you refused to consider the first ruling of the first respondent as final and conclusive which barred the filing of the second extradition proceedings on the ground of res judicata.
5. That Your Honour was in error when you held that petitioners' petition was the outgrowth of two motions to dismiss; the first of which was granted and the second denied by the respondent magistrate. An initial petition for extradition proceedings and an indictment of alleged multiple charges levied against the eight (8) petitioners and others to include mercenarism, murder, arson, rape, theft of property and criminal conspiracy.
6. That Your Honour committed reversible error when you refused to consider that the 1st respondent ruling was on a consolidated motion to dismiss and the petition of extradition and full trial was conducted by production of oral and documentary evidence and said ruling was on the merit on the petition of extradition
7. That notwithstanding the finality of the first judgment of the 1st respondent, your honour committed a reversible error when you denied petitioners' petition and held that the doctrine of res judicata will not lie or obtained.
8. That Your Honor was in reversible error when you opined in your final judgment that what obtained that necessitated the dismissal of the first petition for extradition proceedings filed by the state against the same respondents does not exist again because the state had nolle prosequi all charges against the respondents.
9. Your Honour committed a reversible error when you ignored the bone of contention squarely laid before you by both the petitioners and respondent in these proceedings which is the finality of the judgment on the merit in the first extradition proceedings which bars the second filing of the petition for extradition between the same respondents, on the same subject matter in the same court, rather you, dwell on procedural matters that are

immaterial and irrelevant to the petition for summary proceedings.

10. That Your Honour committed serious reversible error when you adjudged that the doctrine of res judicata cannot hold and lie in the instant case. "Res judicata can only be properly invoked and applied where there has been a determination of the matter on the merits; that there is an existing final judgment rendered upon the merits of a cause by a court of competent jurisdiction and is conclusive as to the rights, questions and facts in issue as to the parties notwithstanding the fact the 1st respondent final judgment in the first extradition proceedings was on the merit thru the consolidation of the motion to dismiss and petition itself."

During arguments of these appeal proceedings, the appellants contended that the judgment rendered on February 25, 2013 by Magistrate Chinneh in the first extradition proceedings, was conclusive as to the rights, questions and facts in issue to the parties and as such the appellee is barred under the doctrine of res judicata to re-litigate a second petition for extradition.

The appellee in response to this issue, counter argued that the doctrine of res judicata is inapplicable since the first extradition proceedings were not decided on the merits but rather on jurisdictional ground.

Having perused the certified records, the briefs of both parties and listened to arguments pro and con, this Court finds one issue determinative of this appeal, which is whether or not the judgment of February 25, 2013 by Magistrate Chinneh dismissing the appellee's first petition for extradition was on the merits of the case and conclusive as to the rights of the parties to which the doctrine of res judicata will be applicable.

A judgment is on the merits when it amounts to a decision as to the respective rights and liabilities of the parties, based on the ultimate fact or state of facts disclosed by the pleadings or evidence, or both, and upon which the right of recovery depends, irrespective of formal, technical or dilatory objections or contentions. If the case is brought to an issue, heard upon evidence submitted pro and con, and decided by the verdict of a jury or the findings of a court, the judgment rendered is upon the merits. *Liberia Trading Corporation v. Abi-Jaoudi* 14LLR 43, 50-51 (1960).

As to the principle of res judicata, this Court speaking through Mr. Justice Pierre defined res judicata as "a principle of law which forbids re-litigation of issues in a case involving the same parties and the same subject matter where said case has once before been judicially determined." *Kiazolu-Wahab v. Sonni et al.*, 16LLR 73, 74(1964). The Court also held thus:

"the doctrine of res judicata is a rule of law founded on the soundest consideration of public policy. It means that if an action be brought, and the merits of the question to be discussed between the parties, and a final judgment to be obtained by either party, the parties are concluded, and cannot again canvass the same question in another action. It is founded upon two maxims of the law, one of which is that 'a man should not be twice vexed for the same cause'; and the other 'it is for the public good that there be an end of litigation.'" *Id.* 75

In the *Kiazolu-Wahab* case the petitioner, *Kiazolu-Wahab* filed a bill in equity to have the terms of a lease agreement between her and the respondents, *Sonni et al.*, restructured. Pleadings having rested, the trial court during the disposition of law issues dismissed the petitioner's petition on grounds that a married woman could



not sue in her own name without joining her husband. The petitioner appealed to the Supreme Court but later withdrew the appeal. Subsequently she filed a new petition in the trial court which was resisted by the respondents on grounds that under the doctrine of res judicata, the petitioner having once withdrawn her appeal from the ruling dismissing her first petition, and paid costs thereof, could not again file the same case. The trial court sustained the respondents' resistance and dismissed the new petition.

On appeal the Supreme Court reversed the judgment of the trial court and held that the withdrawal of the petitioner's appeal was neither in violation of any law nor strange to our practice, because the said ruling of the trial court had not traversed or determine the issues in the case; nor was there any law which forbids another filing of the case in order that the issues might be finally determined. The Court held that since judgment had not been rendered on the merits of the case which will effectively conclude the respective rights of the parties the doctrine of res judicata was inapplicable.

In regards to the present case before us, it can be recalled that the appellee's first extradition proceedings filed on December 19, 2012 against the eight appellants was denied by Magistrate Chinneh on jurisdictional grounds. The Magistrate's ruling was based on Article 6(a) of the treaty and the doctrine of lis pendis and not on the merits of the extradition proceedings contemplated by our criminal statute.

Under our Criminal Procedure Law, the following constitute the merits of an extradition proceeding:

- a) "The person arrested is the fugitive charged with having committed the extraditable offense, and
- b) The offense charged is an extraditable offense, and
- c) The offense charged is not a political offense, if such defense has been urged by the fugitive." Criminal Procedure Law Rev Code. 2:8.8.

A review of the records revealed that all these elements quoted supra were not passed on by the Magistrate before dismissing the first extradition proceeding and that the said dismissal prevented the Magistrate from delving into the merits of the case.

The Supreme Court has held:

"res judicata will bar a subsequent hearing when and where the matter in issue has been passed upon and a judgment rendered thereon by a court of competent authority. But where pleas in bar prevent a review of the merits of the subject matter in the case, res judicata will not lie." *Liberia Trading Corporation v. Abi-Jaoudi* 14LLR 43, 50 (1960).

The Court also held:

"a judgment dismissing a suit on account of any technical defect, irregularity, or informality is not on the merits and is therefore no bar to subsequent actions. This rule applies, for example, to the failure of the plaintiff to perform any facts, or comply with any conditions, preliminary to his rights to institute the action, and it also applies to any irregularity in bringing the suit, or any technical objection occurring in the course of the proceeding." *Id.* 52.

In numerous cases on the subject matter of res judicata the Supreme Court held:

"a judgment which adjudicates every essential proposition that culminates to the final conclusion of a case is essential to the doctrine of res judicata." *Karpeh v. Fisher* 23LLR 91, 94 (1974), *Kontar v. Mouwaffak* 17LLR 259(1966). *Liberia Trading Corporation v. Hall* 21LLR 543, 550 (1972); *Kiazolu v. Pearson* 35LLR 550, 558 (1988); *Monrovia Breweries v. Karpeh* 37LLR 288, 300 (1993); *Reynolds v. Garfuah*, 41LLR 362,369(2003).

We therefore hold that given the principle of lis pendis, the requisite provision of the 1973 Extradition Treaty quoted herein and absent the elements espoused in the Criminal Procedure Law Rev Code 2:8.8, the Magistrate's ruling of February 25, 2013 was not on the merits of the case; neither did it conclude the rights, questions and facts in issue of the extradition proceedings thus the doctrine of res judicata must crumble.

WHEREFORE AND IN VIEW of the foregoing, the judgment of Criminal Court "A" affirming the Magistrate's ruling is hereby confirmed. This case is remanded to the Monrovia City Magisterial Court to resume jurisdiction over the petition for extradition and proceed with the hearing. Costs disallowed. AND IT IS SO ORDERED.