

**IN THE HONOURABLE SUPREME COURT OF REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A. D. 2013**

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.....CHIEF JUSTICE, a.i.
BEFORE HIS HONOR: KABINEH M. JA'NEH.....ASSOCIATE JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLLIE.....ASSOCIATE JUSTICE
BEFORE HIS HONOUR: PHILIP A. Z. BANKS, III.....ASSOCIATE JUSTICE

The Republic of Liberia, represented by and thru)
the Minister of JusticeINFORMANT)
)
Versus) **BILL OF INFORMATION**
Valentine Ayika, a Nigerian National of the City of)
Monrovia.....RESPONDENT)
)
GROWING OUT OF THE CASE)
)
Valentine Ayika, by and thru his Counsel of the)
City of Monrovia.....PLAINTIFF-IN-ERROR)
)
Versus) **PETITION FOR A**
) **WRIT OF ERROR**
His Honor Yussif D. Kaba and the Government of)
the Republic of Liberia by and thru the Ministry)
of Justice represented by and thru the Honorable)
Minister of Justice, the Central Bank, by and thru)
its Executive Governor, Mills Jones, also of the City)
of Monrovia, LiberiaDEFENDANTS-IN-ERROR)

Heard: April 9, 2013

Decided: July 15, 2013

Counsellor J. Daku Mulbah, County Attorney for Montserrado County, Ministry of Justice, and Counsellor M. Wilkins Wright, Special Consultant to the Ministry of Justice, in association with Counsellors Emmanuel B. James and Rosemarie B. James of the International Group of Legal Advocates and Consultants appeared for the informant. Counsellor Theophilus C. Gould of Kemp and Associates, Inc. and Counsellor T. Dempster Brown of the Center for the Protection of Human Rights appeared for the respondent.

MR. CHIEF JUSTICE KORKPOR delivered the opinion of the Court.

On February 4, A. D. 2013, the Republic of Liberia, informant, filed a ten-count bill of information before the Supreme Court alleging that Mr. Valentine Ayika, the respondent, committed acts which infringed upon the authority of the

Supreme Court and sought to interfere with and oust the Court of jurisdiction conferred on it by the Constitution of Liberia. We quote the bill of information:

“AND NOW COMES the Republic of Liberia, informant in the above entitled bill of information, and begs leave of the Honorable the Supreme Court of Liberia to bring to the attention of the said Court the acts of the respondent herein, in seeking to deprive and oust the Court of a matter pending before the Court, and praying that the respondent be cited in contempt of the Court, and for reasons showeth the following, to wit:

1. Informant says that it is defendant-in-error to a petition for a writ of error filed on May 20, 2009 before this Honourable Court by respondent Valentine Ayika, a Nigerian national, growing out of the seizure and confiscation of a large amount of US Dollars smuggled into Liberia, in violation of the several criminal, revenue, customs and immigration and nationality laws of the country, the said confiscation having been done on the orders of the Circuit Court for the First Judicial Circuit, Montserrado County. Informant says that the said petition is still pending before this Honourable Court undetermined. There was no challenge to and have never been any challenge to the jurisdiction of this Honourable Court by any of the parties to the writ of error proceedings, filed before this Honourable Court. Informant respectfully requests this Honorable Court to take judicial notice of its records in the mentioned proceedings.

2. Informant says that notwithstanding the pendency of the petition for the issuance of the writ of error, the respondent, on April 8, 2011, filed an application in the Community Court of Justice of the Economic Community of West African States (ECOWAS), alleging that his human rights had been violated by the Government of Liberia's seizure and the judicial confiscation of the US\$508,200.00 which he had taped on his body, and which he had smuggled into the country, by-passing the Liberian authorities by deliberately failing and refusing to declare to the appropriate government authorities and personnel at the Roberts International Airport, upon entering Liberia and disembarking from the

said Airport, all done in conscious, willful, and intentional violation of the several laws of Liberia. Informant says that in the application to the ECOWAS Community Court, respondent Valentine Ayika requested the ECOWAS Court to order the return to him of the money which he had smuggled into Liberia, taped to his body, with accrued interest, being fully aware that the matter of the funds and the events that led to the seizure of the funds, as well as the legality of the Liberian judicial confiscation of the funds, were the subject of review before the Honourable Supreme Court of Liberia. Informant submits further that respondent Ayika acknowledged in his application that the matter involving the incident and the seizure and confiscation of the amount by the Liberian authority and First Judicial Circuit Court, Montserrado County, was still pending before the Honourable Supreme Court of Liberia, to which his local counsel, on his instructions and behalf, had taken the matter. A copy of the petition for writ of error filed by co-respondent Ayika with the ECOWAS Community Court and respondent's returns is hereto attached and marked as informant's Exhibit I/1 in bulk to form part of this information.

3. The Republic of Liberia, informant herein, respondent in the proceedings before the ECOWAS Community Court, responding to the respondent Ayika's application before that Court, filed an answer and a verified motion to dismiss the application, raising a number of defenses, including (a) that the applicant/plaintiff therein was time barred by ECOWAS Supplementary Protocol A/SP.1/01/05, upon which the applicant had relied to commence the action against the Republic of Liberia, as Article 9(3) provided that any action by or against a Community institution or any member state of the Community is statute barred after three (3) years from the date when the right of action arose; (b) that the identical matter, involving the same subject, the same issues, and the same parties, was pending before the Honourable Supreme Court of Liberia undetermined, the said matter before the Liberian Supreme Court having been commenced by the very applicant who had filed the claim before the ECOWAS Court; (c) that the matter before the Liberian

Supreme Court had not been withdrawn and, hence, that respondent Ayika could not file an action before the ECOWAS Community Court pertaining to the same subject matter, involving the same parties and seeking the same remedy, in support of which the informant/respondent Government of Liberia exhibited a Clerk's Certificate from the Clerk of the Liberian Supreme Court; (d) that the ECOWAS Community Court was without the authority to deprive the Liberian Supreme Court of the constitutional prerogatives and authority in disposing of matters pending before the Supreme Court; and (e) that not only could the matter not be removed from the Liberian Supreme Court as such removal would be against the Liberian Constitution, and an infringement on the constitutional prerogatives of the Liberian Supreme Court, but also that respondent Ayika had not exhausted the full administrative and other remedies before resorting to the Community Court for redress.

4. Notwithstanding these facts, which the respondent herein sought to controvert by impugning the integrity and dignity of the Liberian Supreme Court, in asserting that the Liberian Supreme Court was incapable of and could not accord him justice, and that therefore it should be deprived of its jurisdiction by the ECOWAS Community Court, the Community Court of Justice dismissed the motion, holding that it had powers that superseded those of the Liberian Supreme Court; that it, the ECOWAS Community Court, had the authority to divest the Liberian Supreme Court of its constitutional powers as the final arbiter of disputes, even in respect of matters already pending before the Supreme Court, as was the case; and that it was accordingly divesting and depriving the Liberian Supreme Court of its constitutional authority and assuming jurisdiction over the matter, to the detriment of the Liberian Constitution and the Liberian Supreme Court. A copy of the motion to dismiss, respondent's return and the ruling on the motion to dismiss is hereto attached and marked as informant's Exhibit 1/2 in bulk to form part of this bill of information.

5. The case having been heard on April 25, 2012, the ECOWAS Community Court, on June 8, 2012, entered a final ruling in which it reiterated that it

had taken jurisdiction of the matter, that its authority superseded the constitutional authority conferred on the Liberian Supreme Court, that it was therefore depriving the Liberian Supreme Court of its constitutional authority, that by virtue of the authority which it believed it had over the Liberian Supreme Court, it was accordingly ordering the Republic of Liberia to return the amount of US\$508,200.00 to the plaintiff less 25% of the said amount, as per the country's laws, even though the Liberian Supreme Court remained possessed of jurisdiction over the matter and had not passed thereon. The Republic of Liberia was also ordered to restore the plaintiff's passport to him, seized at the time of his arrest and sanctioned by the Circuit Court by virtue of the confiscation order.

6. That based on newly discovered evidence that Liberia had not ratified the ECOWAS Treaty establishing the ECOWAS Community Court of Justice, informant filed an application with the ECOWAS Court for review of its final ruling handed down June 8, 2012 as can be more fully seen from a copy of informant's application for review of the ECOWAS Court judgment marked Exhibits 1/3. Informant says that this assertion, made in the appeal application, was in addition to other assertions made therein that the ECOWAS Community Court was without authority to deprive the Liberian Supreme Court of its jurisdiction over the case, that the ECOWAS Court's action was in violation of and an infringement of the Constitution, and that even had the treaty establishing the ECOWAS Community Court been ratified by the Liberian Legislature, it would still have been unconstitutional as the Legislature could not approve of any treaty that was in violation of the Liberian Constitution. Copy of Exhibit 1/3 is herewith again referred to and this Court is respectfully requested to take judicial notice thereof.

7. Informant says and submits that the ECOWAS Supplementary Protocol A/SP.1/01/05 amending Protocol A/P1/7/91 relating to the establishment, functioning and jurisdictional authority of the Community Court of Justice of ECOWAS, does not confer jurisdiction on the ECOWAS Community Court to entertain a matter brought against the Republic of

Liberia as a member state when the National Legislature of the Republic of Liberia has not ratified the said protocol, as mandatorily required by the Constitution of the Republic of Liberia, for the said protocol to be legal, binding and enforceable against the Republic of Liberia.

8. Informant also says and submits that the ECOWAS Community Court of Justice is not vested with the authority, under the ECOWAS Protocol and Rules, to deprive the Liberian Supreme Court of jurisdiction of a matter pending before the Supreme Court, in contravention of the Constitution of Liberia which prohibits the Legislature of Liberia from passing any law or ratifying any treaty or international agreement that would deprive the Supreme Court of Liberia of the authority granted it under the Constitution. Stated another way, the Community Court does not have the authority to remove from the Liberian Supreme Court a matter pending before the Supreme Court for disposition, and which the Supreme Court has not acted upon and which has not been withdrawn by the parties. Informant submits that such attempted action by the ECOWAS Community Court, done at the instance and persistence of the respondent herein, is contemptuous to this Honourable Court, and the respondent should therefore be held in contempt of this Honourable Court and the attempted action by the ECOWAS Community Court declared unconstitutional and null and void ab initio, the authority for such declaration being Article 2 of the Liberian Constitution.

9. Informant also says and submits that the ECOWAS Community Court of Justice does not have the legal authority to legislate Liberian Law, or to set itself up as a Liberian Legislature, or to provide for action by Liberian authority that is utterly in contravention of the Liberian Constitution, statutes and the rules and regulations of the Republic of Liberia. In other words, the ECOWAS Community Court is without the authority to direct the imposition of a penalty that is contrary to the Liberian Law or that is in contravention of the Liberian Law. Such infringement upon the Liberian law by the ECOWAS Community Court, which action is contrary to acts legally promulgated and actions legally taken there under, under

authority granted by the Liberian Constitution, must be declared by this Court to be in violation of the Liberian Constitution, as this Court has the constitutional authority to do, and therefore that the action by the ECOWAS Community Court is clearly *void ab initio*.

10. That the conduct of the respondent in taking a matter pending before the Honorable Supreme Court of Liberia to an international forum is contemptuous and is designed to belittle the dignity and the integrity of the Supreme Court of Liberia and to bring it into disrepute, for which action informant prays this Honorable Court to hold respondent in contempt.

WHEFORE AND IN VIEW OF THE FOREGOING, informant, Republic of Liberia most respectfully prays Your Honors and this Honorable Court to:

1. Cite the respondent to show cause why he should not be held in contempt of the Honorable Supreme Court of Liberia for taking a matter pending before the Honorable Supreme Court of Liberia to an international forum while the matter remained pending before the Liberian Supreme Court; and, following a hearing, to have him held in contempt, with the imposition of a penalty deemed appropriate by this Honorable Court.
2. Declare that once the Liberia Supreme Court had become seized with jurisdiction over a matter, the matter could not be removed or appealed to any other forum, national or international, unless the matter is specifically withdrawn from the Court; that since no such withdrawal was effected by the respondent and no such approval was granted by the Supreme Court of the Republic of Liberia, the Community Court's acceptance of the suit filed by the respondent, on the insistence of the respondent, based on the same claim and between the same parties and the same subject matter, remained pending before the Supreme Court of Liberia, the respondent's action is contemptuous of the Honorable Supreme Court of Liberia, and the act of the ECOWAS Community Court is

in contravention of the Liberian Constitution, and therefore unconstitutional and void ab initio.

3. Declare that the ECOWAS Treaty for the establishment of the Community Court executed or signed by the [Chairman] of the National Transitional Government of Liberia does not have any force of law, not having been ratified by the Liberian Legislature, and as such is not binding on the Republic and does not create any legally enforceable obligations or responsibilities on or for the Republic of Liberia.

Given the constitutional implications of the allegations raised in the bill of information, this Court ordered the issuance of a writ for service by the Marshal of the Supreme Court on the respondent, Valentine Ayika.

The writ was duly served, as indicated by the Marshal's, returns, on both the local lawyer representing the respondent in the prohibition proceedings before this Court out of which the bill of information grows, as well as the lawyer acting for the respondent in the proceedings being had before the ECOWAS Community Court.

In response to the allegations contained in the bill of information, the local counsels representing the respondent filed the following returns on behalf of the respondent:

"Respondent in the above entitled cause of action prays Court to dismiss the entire bill of information of the informants for the following legal and factual reasons to wit:

1. Because respondent submits and says that it is true that the respondent herein filed a petition for the issuance of the alternative writ of error before this court and same was issued by the Justice in Chambers.

2. And also because respondent contends and says that because the respondent's petition raised the constitutional issue of due process, therefore same was transferred to the full bench.

3. Further [to the] above, respondent submits and contends that when the case was called for hearing the defendant-in-error, by and through her Legal counsel, requested this Honorable Court for out of court settlement, [to] which request the respondent/plaintiff interposed no objection and negotiations started between plaintiff-in-error now respondent herein and the Informant.

4. Respondent says that while the negotiation was going on between the informant and the respondent, respondent Valentine Ayika, instituted another action before the ECOWAS Court without the knowledge of its local counsels in Liberia.

5. And also because respondent's counsels say that apparently because of the delay in the payment of the respondent's money he went to another court while the case is still pending before the highest Court of the Republic of Liberia out of ignorance of the law which undermines the integrity of this court.

6. Because respondent contends further and says that he prays this Honourable Court to tamper mercy with Justice so that the respondent cannot be held in contempt.

7. Further [to the] above, respondent contends and says that the informant should not have subjected herself to the Jurisdiction of the ECOWAS Court voluntarily, and therefore, the surrendering of the informant, under the jurisdiction of the ECOWAS Court is an indication that it is the informant who aided and abetted the respondent herein to undermine the integrity of this Honorable the Supreme Court of the Republic of Liberia.

8. Because respondent says further that he disagreed with court (6) of the informant's bill of information in which she contended that she has newly discovered evidence which shows that Liberia has not ratified the treaty that established the ECOWAS COURT.

9. Respondent wonders when the informant came to know that Liberia did not sign the treaty of the ECOWAS Court, this argument of the informant is not tenable in law; therefore the informant should be held in contempt of court for appearing before the ECOWAS Court, knowing that the case is pending before the highest court of the land.

10. Further [to the] above, respondent says that since during the first day of appearance before this Bench the informant prayed for out of court settlement which is alternative dispute resolution of the matter, the informant should be made to continue with the negotiation and make the settlement.

WHEREFORE, AND IN VIEW OF THE FOREGOING respondent prays court to [tamper] justice with mercy not to hold the respondent in contempt. Respondent further prays Court to hold the informant in contempt by surrendering the sovereignty of this Court to the ECOWAS Court, and cause the informant to retribute the amount of \$508,200 USD and that the informant be made to deduct 25% of the amount as in keeping with the Liberian Law.

Respectfully submitted:

Respondent

by and through his Legal Counsels:

Counsellor Theophilus Gould

Kemp & Associates"

The foregoing lays the basis for the present proceedings before us, but we believe that it is important that we verify the allegations made by the informant concerning the pendency of an action before this Court undecided, involving the same parties and the same subject matter.

Our review of the records reveals that on May 11, 2009 the respondent, Valentine Ayika filed a writ of mandamus to compel the Minister of Justice and the Central Bank of Liberia to produce the amount seized and confiscated from him. We quote the petition for mandamus:

"AND NOW COMES PETITIONER in the above entitled Cause of Action and most respectfully prays Court for the issuance of the Alternative writ of Mandamus on the Respondents herein for the following legal and factual reasons showeth, to wit:

1. And because the respondents herein are public officials upon whom the National Legislature imposed specific statutory responsibilities to perform. These responsibilities include: the protection of the rights of the citizens and foreign residents; the protection of all monies deposited at the Central Bank to include: private and Government Revenues, therefore the respondents are amenable to private individuals and the Republic of Liberia in the performance of their official duties, therefore, petitioner says that individual [who considers] himself injured by the act of these public officials has a right to resort to the law for remedy.

2. Further [to the] above, petitioner says and contends that he is a reputable businessman whose business is captioned "CAPTINO, INC." duly organized and registered under the laws of the Republic of Liberia in 2005, therefore, the Respondents are obligated under the laws of the Republic of Liberia to protect the Petitioner's economic rights and his-business establishment in Liberia as in keeping with their statutory responsibilities imposed upon them by the National Legislature, therefore, the respondents are amenable to the laws of Liberia since their acts and conducts injured the petitioner, therefore, Mandamus will lie against the respondents.

3. Petitioner further says that because of his interest is in Liberia to continue his business, he arrived in Liberia on the 10th day of September

A.D. 2006 at 7:00 p.m. and while boarding a taxi cab, five (5) men from the DEA arrested the petitioner and the petitioner brought out the amount of US\$508, 200.00 that he had in his possession. The DEA Officers attempted to escape with the money, but the petitioner resisted therefore, he was taken to the Central Police Headquarters and the money was taken to the Central Bank of Liberia to ascertain whether the money was a counterfeit, and after testing the money, the Central Bank said that it was a genuine money, therefore the petitioner was given a receipt by and through the Liberia National Police indicating that the money was not a counterfeit, and that the money is being safe-kept by the Co-respondent Central Bank, while the investigation continues. See Exhibit "P/1".

4. And also because petitioner further contends and says that investigation by the Criminal Investigation Division of the Liberia National Police revealed that the petitioner was cleared of all charges of money laundering, drugs trafficking, and that there was no evidence of Criminal Act on the part of the petitioner that was associated with the US\$508,200.00.

5. Petitioner further says that the CID Investigative Report was submitted to Col. Gayflor Y. Tarpeh, Deputy Inspector General of the Liberia National Police for onward transmission to the Inspector-General of the Liberia National Police, Exhibit "P/2" to form cogent part of the petitioner's petition.

6. And also because petitioner contends further and says that upon receipt of the Investigative Report by the Inspector-General of the Police, same was transmitted to the Co-respondent Cllr. Philip Banks, Minister of Justice and Attorney-General of the Republic of Liberia informing him that the petitioner was not engaged in money laundering scheme, and that there was no evidence of drug trafficking or any form of criminal activities associated with the US\$508,200.00 [therefore] they recommended the release of the petitioner's money.

7. Petitioner also says that predicated upon the recommendation of the Investigative Team submitted to the Co-Respondent, Cllr. Philip Banks Attorney-General of Liberia, he wrote Co-respondent Central Bank to release the amount [to] the petitioner because he was cleared of the charges of money laundering counterfeiting, and there was no evidence of criminal activities surrounding, the US\$508,200.00 on the part of petitioner. Co-respondent Minister of Justice also said in his communication dated January 23, A.D. 2009 to Co-respondent Central Bank that the Bank should deduct 25% from the amount as in keeping with the Bank's Regulations. See Exhibit "P/3" in bulk.

8. And also because petitioner says further and contends that the respondents in acting in the ordinary course of their duty imposed upon them as officers of the law, despite of their own admission [by] documentations that they seized the petitioner's US\$508,200.00 and have same under their custody after petitioner was cleared of counterfeiting, money laundering and drug trafficking by state security, therefore, the respondents are amenable to mandamus proceeding to compel them to produce the petitioner's money because they were acting in their official capacity when the amount was seized by the respondents.

9. Petitioner contends and avers that upon the arrest of the petitioner by state security for money laundering counterfeiting and drug trafficking, the Federal Republic of Nigeria by and through their Attorney-General, Chief Bayor Ojo, (SAN) wrote the Liberian Government to immediately release the amount, subject of the investigation to the Nigerian Government, including all relevant documents relative to the case for possible prosecution if need be for possible prosecution of the petitioner in Nigeria. See Exhibit "P/4" to form a cogent part of the petitioner's petition, but the respondents ignored the request and still have the amount in their possession; therefore, Mandamus will lie against the respondents.

10. Petitioner says that in order to be released from the custody of the Police, his Legal Counsel, Sherman and Sherman, Inc., procured a bail for the petitioner and he was released from further detention.

11. Petitioner says further that on the 23rd day of September, A.D. 2006, he was deported under the color of darkness by the Liberian Government after he was cleared of money laundering, drug trafficking and counterfeiting by state security.

12. And also because petitioner says that after he was deported, the respondents filed an application before Criminal Assizes "C", with His Honour Yussif D. Kaba, presiding for the confiscation of the petitioner's US\$508,200.00 and same was granted.

13. Petitioner says that in the Ruling of His Honour Yussif D. Kaba, he ruled that the US\$508, 200.00 should be deposited in the Government coffer with an Order to the Sheriff of the Court. See Exhibits "P/1, 11 "P/2" "P/3".

14. Petitioner says that after the issuance of the Court Order for the confiscation of the petitioner's money to be placed in the Government's coffer through the Ministry of Finance, the respondents withdrew the (US\$508, 200.00) without the authorization of the National Legislature and disbursed the amount in contravention of the Liberian Constitution which states: "No money shall be withdrawn from the Treasury except in consequence of appropriations made by the Legislative Enactment. See the Liberian Constitution, Section 34(ii), page 17.

15. And also because petitioner contends and says that the Order of the Court to deposit the petitioner's money in the Government's coffer, through the Ministry of Finance, never gave the respondents any authority to withdraw the amount from the Government's coffer without the authority of the National Legislature nor the petitioner, therefore, the

respondents are amenable to the Mandamus Proceedings to produce the money to be turned over to the petitioner.

16. Petitioner contends further that the confiscation of the petitioner's money was done when the respondents were performing their official duties as in keeping with their statutory responsibilities, and therefore, they are amenable to the laws of the land.

17. Petitioner says and avers that the order of the Court to deposit the petitioner's money in the Government's coffer was meant for safe keeping since the charge of money laundering was still pending against the petitioner before the Monrovia City Court, See Exhibit "P/4" to form a cogent part of the petitioner's petition.

18. Petitioner further contends that the respondents are amenable to Mandamus Proceedings in that they were performing their official duties when the US\$508,200.00 was seized by the respondents and they were ordered by the Court to deposit the amount for safe-keeping, therefore, the usage of the money injured the petitioner's economic rights, especially when the respondents were never authorized to use same, therefore Mandamus Proceedings would lie against the respondents to compel them to produce the US\$508,200.00.

19. Further above, petitioner contends and avers that Mandamus is a high prerogative writ which is issued from a superior court of jurisdiction and is directed to a private or municipal party or its executive officer or to an inferior court, commanding the performance of a particular act therein specified and belonging to his or their public official or ministerial duty or rights or privileges or which he has been illegally deprived of.

20. And also because petitioner says further that the Supreme Court of the Republic of Liberia said in the case "JAMES S. WILES, Appellant, versus C.L. Simpson, Secretary of State of the Republic of Liberia, 8LLR, Page 364, Text at 370 paragraph (4) When the Legislature proceeds to impose on

that officer other duties, when he is directed peremptorily to perform certain acts; when the rights of individuals are dependent on the performance of those acts, that officer is an officer of the law; he is amenable to the laws for his conduct, and cannot at his discretion sport away the vested rights of others.

21. The respondents are public officials who are given specific duties by statute, although the respondents are agents of the President, but the specific duties assigned to them to protect the property and rights of the citizens and foreign residents as well as aliens coming into Liberia to serve as custodian of all monies collected and deposited with the Co-respondent, Governor of the Central Bank, including private deposits of individuals and therefore they are officers of the law and amenable to a Mandamus Proceedings in the breach of their official duties.

22. Petitioner also says that the confiscation of the petitioner's money of US\$508,200.00 and its transfer to the Central Bank of Liberia for safe-keeping was their official duty performed. But the illegal withdrawal of the amount without an authorization from the National Legislature is a gross violation of Article 34(ii) of the Liberian Constitution.

23. Petitioner further contends that the amount in question is not for the Liberian Government, but it is for the petitioner as he is awaiting the money, therefore the respondents must be compelled to produce the amount in question because they were not authorized to disburse same by court, the Legislature and or the petitioner.

24. Further above, the Supreme Court went further to say in the Wiles vs. C.L. Simpson: "where a specific duty is assigned by law and individuals rights depend upon the performance of that duty, it seems equally clear, that the individual who considers himself injured has a right to resort to the laws for remedy" therefore petitioner says that mandamus would lie against the respondents to produce the petitioner's money.

WHEREFORE, and in view of the foregoing, petitioner prays this Honourable Court and Your Honour to order the appearance of the respondents through the issuance of the writ to compel the respondents to produce the amount of US\$508,200.00 belonging, to the petitioner. Petitioner further prays Court to grant unto him any and all further relief the court may deem necessary and equitable.

Respectfully submitted:

PETITIONER

By and thru his Legal Counsels:

CENTER FOR THE PROTECTION OF HUMAN RIGHTS:

T. Dempster Brown

COUNSELLOR-AT-LAW & HUMAN RIGHTS LAWYER

Dated this 11th day of May, A. D. 2009

\$5.00 Revenue stamps affixed on the original copy.”

The records further reveal that the Justice in Chambers, upon receipt of the petition for the issuance of the writ of mandamus, cited the parties to a conference on May 20, 2009. On the same day of the conference, the respondent herein, Mr. Valentine Ayika, filed with the Clerk of the Supreme Court a Notice of Withdrawal of the petition for the writ of mandamus with reservation to re-file. However, rather than filing an amended petition for the writ of mandamus, filed a new petition, this time a writ of error. In the new petition for writ of error, the trial court judge who had ordered the confiscation of the funds of Mr. Ayika was made a party to the proceedings, the same as the Republic of Liberia and the Central Bank of Liberia.

We quote the petition for writ of error:

“PLAINTIFF-IN-ERROR petitions Your Honor for the following reasons to wit:

1. That as per the records in the First Judicial Circuit, Criminal Assizes "C", Montserrado County, Co-defendant-in-error, the Republic of Liberia filed an application for a Confiscation Order against plaintiff-in-error which

application was never served on the plaintiff-In-error. Your Honor is respectfully requested to take judicial notice of the application, specifically count (2) thereof and the Returns to the notice of assignment hereto attached and marked Exhibit "P/1 in bulk" to form a cogent part of petitioner's petition.

2. Further to Count (1) above, plaintiff-in-error says that upon the filing of the application, no writ was issued and returned served, yet, a notice of assignment was ordered issued and returned to the effect that: " ...the defendant nor his Counsel could be found to be served with the within notice of assignment up to present.." Your Honor this is more than clear that the lower court had no jurisdiction over the person of the defendant, plaintiff-in-error now before Your Honor and therefore he could not have been present to respond and subsequently announce an appeal to the Honorable Supreme Court. Your Honor is respectfully requested to take judicial notice of the records in these proceedings.

3. That despite the failure to order the issuance of a writ to bring the plaintiff-in-error/defendant under the jurisdiction of the court, and without the issuance and service of the requisite notice of assignment, co-defendant-in-error, His Honor Kaba granted the application of the co-defendant-in-error, Republic of Liberia, for a judgment by default thereby ordering the confiscation of the plaintiff-in-error/defendant's property, (money) with instructions that it be kept in Government's coffers, meaning with co-defendant-in-error, Central Bank of Liberia. Your Honor is respectfully requested to take judicial notice of the ruling hereto attached and marked Exhibit "P/2 in bulk".

4. That up to and including the filing of this petition, the said judgment has not been enforced. plaintiff-in-error submits that the letters of the Attorney General to the Governor of the Central Bank point to the fact that the property of the plaintiff-in-error should be delivered to him predicated upon the Investigative Report which delivery has not been made or while on the other hand, according to the revocation letter, the

investigation continues. Your Honor is respectfully requested to take judicial notice of a copy each of the various communications hereto attached and marked Exhibit "P/3 in bulk to form a cogent part of petitioner's petition.

5. That this petition is not filed for the mere purpose of harassment or delay.

6. That plaintiff-in-error says that he did not have his day in court and therefore could not have appealed and neither did His Honor co-defendant Judge Yussif Kaba appoint a Counsel to take the ruling as required by law.

7. That co-defendant Judge Kaba in his ruling relied upon Part IV, Section 15.119 Confiscation Orders. Plaintiff-in-error submits that this provision, sub-section (2) provides the circumstances under which confiscation order may be made as follows: (a) The offender is found guilty of any offence to which this part applies; and (b) it is satisfied that: (i) the offender has benefited from the offense or from that offense taken together with some other offenses of which he is convicted in the same proceedings or which the court takes into consideration in determining his sentence; and (ii) his benefit is at least the minimum amount. Plaintiff-in-error says that he has neither been tried or at least indicted and hence could not have been tried and convicted. The ruling of co-defendant Kaba is erroneous and has no basis in the very law he relied upon.

8. That the co-defendant-in-error, Judge Kaba did commit serious errors as evidenced by the Certificate from two counselors of the Honorable Supreme Court hereto attached and marked as Exhibit "P/4" to form cogent part of this petition.

9. That plaintiff-in-error has paid the accrued cost as evidenced by a copy of the receipt from the sheriff hereto attached and marked as Exhibit "PI/5" to form a cogent part of this petition.

10. That the acts of the defendants-in-error is a violation of the 1986 constitution of the Republic of Liberia in that they are illegally depriving the plaintiff-in-error of his property without due process. Your Honor is respectfully requested to take judicial notice of Article 20 of the 1986 Constitution of the Republic of Liberia.

11. That the judgment out of which these proceedings grow was entered on the 30th day of November, 2006, and the petitioner had no reason to know until the Press Conference held by the Honorable Minister of Justice following the exchange of communications. Your Honor is respectfully requested to take judicial notice of the date of the subject judgment as well as the historical facts relative the various press conferences.

WHEREFORE AND IN VIEW OF THE FOREGOING, PLAINTIFF-IN-ERROR PRAYS that Your Honor will cite the defendants-in-error with an order in said citation requiring the Clerk to issue the Alternative Writ of Error directing co-defendant Judge Kaba to set aside his erroneous ruling and following the hearing order the issuance of the Pre-emptory Writ of Error, ordering the co-respondent Judge Kaba to resume jurisdiction, order plaintiff-in-error money returned to him, cause the plaintiff-in-error/defendant below, to be served a Writ thereby bringing him under the jurisdiction of the Court thereby giving him due process and thereafter grant unto the plaintiff-in-error any and all further relief as Your Honors may deem just legal and necessary.

Respectfully submitted, the above named
Plaintiff-In-Error

By and thru her Counsels

KEMP & ASSOCIATES Legal Consultancy
Chambers, Inc. and the Center for the
Protection of Human Rights.

COUNSELLORS & ATTORNEYS-AT-LAW

Dated this __ day of May, A. D. 2009."

The Justice in Chambers, upon receipt of the new petition ordered the Clerk of the Supreme Court to cite the parties to a conference on June 4, 2009. The conference was apparently not held on that date, because the records show that on June 4, 2009, a new order was given scheduling the conference for June 10, 2009. Following the conference, the Justice determined that the alternative writ of error prayed for by Mr. Ayika should be issued. Accordingly, on June 24, 2009, the alternative writ was issued and served on the respondents named in the petition. They are: His Honour Yussif D. Kaba, First judicial Circuit, Criminal Court "C" Montserrado County; the Government of the Republic of Liberia, by and thru the Ministry of Justice; and the Central Bank of Liberia, represented by its Executive Governor.

The respondents, in obedience to the orders contained in the writ that he file returns to the petition on or before July 6, 2009, filed with the Clerk of this Court, on the said date of July 6, 2009, two separate returns, one by the Republic of Liberia and the co-respondent judge, and the other by the Central Bank of Liberia.

We quote, firstly, the returns filed by the Republic of Liberia and the co-respondent Judge:

"The defendants-in-error in the above entitled cause respectfully pray this Honourable Court to deny the petition for writ of error filed by the plaintiff-in-error and request the Honourable Court to deny and dismiss the said petition and for reasons showeth the following, to wit:

1. Defendants-in-error say that as to the entire petition, the same is not properly before the Honourable Court, having failed to meet the conditions laid down by the Civil Procedure Law for the entertainment and hearing of petitions for writs of error by the Honourable Supreme Court of Liberia. Defendants-in-error say that whilst it is true that Sub-Chapter B of Chapter 16 of the Civil Procedure Law of Liberia, at Section 16.21, confers upon the Honourable Supreme Court of Liberia the right and the jurisdiction to hear and entertain petitions for writs of error,

Section 16.24 sets out the conditions upon which the said jurisdiction is acquired by the Honourable Supreme Court; and that a failure by the plaintiff-in-error to meet the said conditions deprived the Supreme Court of the right to entertain and hear the petition for writ of error. Thus, defendants-in-error say that while Section 16.21, at sub-section 4, states that "A writ of error is a writ by which the Supreme Court calls up for review a judgment of an inferior court from which an appeal was not announced on rendition of judgment", at Section 16.24, the law requires that in order for the Supreme Court to entertain the petition, the following conditions must obtain: (1) that "a party against whom a judgment has been taken, who has for good reason failed to make a timely announcement of the taking of an appeal from such judgment, may within six months after rendition file with the Clerk of the Supreme Court an application for leave for a review by the Supreme Court by writ of error; and (2) that the petition sets for an "allegation that execution of the judgment has not been completed". Defendants-in-error say that not only was the petition filed without the time prescribed, which effectively barred the filing of the said petition and its entertainment or a hearing thereon by the Honourable Supreme Court, but also the judgment out of which the petition is filed has long since been executed, the funds having been confiscated, ordered turned over to the Government of Liberia, thru the Ministry of Finance, which was done, and fully utilized by the Government of Liberia to undertake security operations. Defendants-in-error say that under the circumstances, the petition for a writ of error will not lie, and hence they pray this Honourable Court to deny and dismiss the same. Defendants-in-error request the Court to take judicial notice of the various newspapers stories and accounts.

2. Defendants-in-error say further that the Honourable Supreme Court has clearly made the pronouncement that in order for any Liberian lawyer or legal counsel to represent a party who is not resident or domicile in Liberia, the party must provide written authorization to the lawyer or counsel to represent his interest. In the instant case, for purposes of these court proceedings, the lawyers purporting to represent the plaintiff-

in-error should have exhibited an instrument of authorization that they have been clothed by the plaintiff-in-error with the authority to represent him in court proceedings, in the absence of which they have no such authority and cannot therefore claim to represent him in these proceedings. Accordingly, defendants-in-error pray for the dismissal of the petition and, in the absence of an instrument vesting legal authority, there is no standing by the counsel to bring these proceedings. Defendants-in-error say that this is particularly the case since, although the funds were seized from the plaintiff-in-error and he was charged with money laundering, and is without the bailiwick of Liberia, counsel is not seeking his trial of the charge of money laundering but the return of the money to him, through them, the counsels, even in the face of the order of confiscation by the trial court. Defendants-in-error say that in the absence of an instrument of authorization from the plaintiff-in-error although the counsel had stated on the airwaves that the plaintiff-in-error was sending an instrument of authorization, no such instrument is exhibited with the petition, creating suspicion that no such authorization has been given or exists. Hence, defendants-in-error pray for the dismissal of the petition.

3. Defendants-in-error say further to the above that the petition for the writ of error will not lie as the plaintiff-in-error has given no tangible reasons as to why he had not sought the writ within the period of six months after the judgment of the trial court. Defendants-in-error say that it is a fallacy set forth by the plaintiff-in-error that he was unaware of the confiscation order of the trial court until the press conference held by the Minister of Justice in the course of 2009. Defendants-in-error say that the funds (US\$508,200) were seized from the plaintiff-in-error by the Government of Liberia as far back as September 2006 when the plaintiff-in-error attempted to smuggle the said amount of money into Liberia, when he failed to make a declaration to the customs and immigration officers at the Roberts International Airport, when he concealed the said amount of money upon his person and left the Airport, and when it was only upon being arrested after leaving the Airport that the amount was

found on his person and he was taken into custody and the amount seized and delivered to the Central Bank for the purpose of determining whether the amount of money was counterfeit or not. Defendants-in-error say that throughout this period the plaintiff-in-error knew that the Government of Liberia had seized the funds, yet he made no enquiries and did nothing relative to the seizure. Indeed, had the plaintiff-in-error believed that the amount seized from him was done illegally, he would have sought legal action and not wait for more than two years. But also importantly to waiver, it showed a lack of due diligence by the persons purporting to represent him in these proceedings. The allegations of lack of knowledge that the funds had been confiscated are therefore baseless and should be dismissed.

4. Defendants-in-error say that as to Count One of the petition, they do not deny that following the discovery in September 2006 of the amount of US\$508,200.00 on the person of the plaintiff-in-error, immediately following his exit from the Roberts International Airport where he had just arrived from Nigeria, and which precipitated his arrest for money laundering because of his failure to declare to customs and immigration the said amount which he was bringing into the country for dubious and devious reasons, (perhaps even the damage to or destruction of the country or components thereof) otherwise he would have made a declaration of the amount as required by law, the co-defendant-in-error, Government of Liberia, represented by the Ministry of Justice, did subsequently, by Application dated October 12, 2006, request Criminal Court "C" to confiscate the funds seized from the plaintiff-in-error. Defendants-in-error says that as shown from the exhibits of plaintiff-in-error who even to filing of these Returns continues to keep himself out of Liberia for fear that he will be tried for money laundering as charged, the Government of Liberia was justified in filing application with Criminal Court "C" which has jurisdiction over such matter, to order the confiscation of the funds seized from the body of the plaintiff-in-error upon his entering Liberia without making a declaration but seeking to secretly bring said funds into the country for apparently devious reasons

intended to be detrimental to the Country. Count One therefore not presenting any triable issues as to the filing of the application, same should be denied and dismissed.

5. Defendants-in-error say further that as to counts two and three of the petition, if plaintiff-in-error, who had perpetrated a criminal act (money laundering) upon the Republic of Liberia, felt that the trial court did not possess jurisdiction over his person because service of the summons was not made upon him, given that he feared returning to Liberia as he would have been arrested again and tried for the offence of money laundering, he should have, within the period specified by the law, filed application/petition for a writ of error, if he felt that a writ of error was the appropriate course to pursue. He cannot, more than two years after the occurrence of the event of which he complained, when he had the opportunity to challenge but did not, seek to have our Honorable Supreme Court violate the laws of Liberia, especially the laws which in the first instance conferred jurisdiction on the Court and clearly states the conditions under which such jurisdiction could or should be exercised. Defendants-in-error say that in the absence of such plaintiff-in-error's compliance with the law, he cannot seek to have the Supreme Court violate such law in order to correct what he claims was a wrong perpetrated upon him; for as stated in the legal parlance, he who comes to court must come with clean hands. He must have brought the current action within the time prescribed by law; otherwise he is time barred and the Supreme Court cannot on its own extend such time, the failure of which to exercise due diligence was clearly within the purview of the plaintiff-in-error. His failure to make any enquiries relative to the amount until almost three years after the incident clearly legally works against him. Hence, defendants-in-error request Court to deny the petition and dismiss same.

6. Defendants-in-error say that further to the above, this Honourable Court has held on numerous occasions that the Supreme Court does not legislate; that is a constitutional prerogative for the Legislature. Hence,

unless the law is unconstitutional, it is binding and cannot be changed or violated by the Supreme Court, as the plaintiff-in-error is asking the Honourable Court to do, and to thereby change the law enacted by the Legislature which conferred jurisdiction on the Supreme Court over proceedings for writ of error.

7. Defendants-in-error say that as to count four of the petition, contrary to what the plaintiff-in-error has said, the ruling of the trial court has been enforced since, based on the orders of the trial court the funds were turned over to the Government of Liberia, through the Ministry of Finance, and was applied by the Government to security operations following the entry of the said order. Defendants-in-error say that the fact that the Minister of Justice had communicated with the Governor of the Central Bank to release the funds to the plaintiff-in-error did not in any way mean that the order had not been enforced, especially where the said request was withdrawn within twenty-four hours. Defendants-in-error say that in addition to the reasons stated in the letter of withdrawal of the initial letter to the Governor of the Central Bank, the Minister of Justice clearly stated on many occasions, including to the press, that he did not have the authority to write the letter since such a letter would have contravened the orders of the court and for which he could have been held in contempt of court. It was therefore proper, given the order of the court and the Government's action consistent with the order, to have the funds taken by the Government and applied to the security of the country. The fact that these events (the seizure, confiscation and utilization of the illegal funds) occurred long before the incumbent Minister of Justice assumed office attest the fact that the petition for the writ of error is time barred. Defendants-in-error therefore pray for the denial and dismissal of the petition.

8. Defendants-in-error say that count five of the petition presents no triable issue.

9. Defendants-in-error say that as to count six of the petition, the law clearly provides the procedure, the mechanism and the time within which one who claims that he was denied his day in court should follow. In the instant case, the plaintiff-in-error has failed to follow the prescription of the statute and therefore cannot seek to have the Honourable Supreme Court violate the laws of the nation in order that he may claim the right, which he alleges were denied him. Defendants-in-error say that the fact that plaintiff-in-error failed to file the petition within six months, even after he had written the Central Bank to reclaim the funds on the matter, not to speak of the fact that he had waited for almost three years before filing the petition for a writ of error, provide sufficient reasons for the denial of the petition; and to do otherwise would set a most dangerous precedence and would mean that any person can now wait for any period, as much as twenty, thirty or forty years, and still be able to file a petition for a writ of error, a factor which the Supreme Court has frowned upon on numerous occasions, and especially as the Court has said that it is not in the business of legislating. Hence, defendants-in-error pray that the petition be denied and dismissed.

10. Defendants-in-error say that as to counts seven and eight of the petition, the fact that the trial judge is alleged to have erred, an allegation which we do not subscribe to and which has no merits, does not excuse the plaintiff-in-error for not filing the petition within the time period prescribed by law. Defendants-in-error pray therefore that as the petition is filed without the time prescribed by law, same should be denied and dismissed.

11. Defendant in-error say that as to count nine, same presents no triable issue.

12. Defendant-in-error say that as to count ten of the petition, they deny that the defendants-in-error violated any of the provisions of the Constitution, as in the provision is interpreted in the jurisdiction (the United States) from whence Liberia borrowed same. Defendants-in-error

say that in the said jurisdiction, funds seized for drug trafficking and money laundering are treated in the same fashion and these have not been considered as any violation of the due process clause or a denial of a day in court.

13. Defendants-in-error say that as to count eleven of the petition, they deny that the plaintiff-in-error was not knowledgeable of the fact that the funds which he had tried to bring into the country illegally had been confiscated. But even assuming arguendo, which the defendants-in-error do not admit, there was no actual knowledge, the plaintiff-in-error clearly failed to exercise due diligence to see that he was in knowledge of the funds he claimed to be his and which he had tried to smuggle into the country and indulge in money laundering, given that the funds were seized directly from him.

14. Defendants-in-error say further that this Honorable Court should deny the plaintiff-in-error's request, as contained in the prayer, to have the funds returned to him, even in the light not only of the violation of our Penal Law but also a violation of our Central Bank Act and Regulations which vests in the Central Bank of Liberia the right to seize not less than 25% of fund not declared, and which means that up to 100% can be seized.

WHEREFORE and in view of the foregoing, defendants-in-error pray for the denial and dismissal of the petition for the writ of error and the dismissal of the alternative writ issued; and that Your Honour will grant unto defendants-in-error such other and further relief as law and justice dictate.

As for the Central Bank of Liberia (CBL), it filed the following returns to the petition for the writ of error:

"1. As to count one (1) of the petition, co-defendant-in-error CBL says that it was not it that filed the application for the confiscation of the money in question or any other money, neither was it a party, as it was not made a party, to the application nor did it have knowledge of same, neither did it participate in the proceeding for the confiscation of the money. It does not therefore know much about the proceeding to traverse the allegation of said count one (1), the assignment about it or the returns concerning the service.

2. As to count two (2) of the petition, and further to count one (1) of these returns, co-defendant-in-error CBL says and reiterates that it was not a party to the proceeding for the confiscation, it did not participate in same, neither was it informed of the application, or about the hearing and therefore does not have knowledge to traverse as to whether or not the writ was issued and served or not, assignment was issued and served or not. It only sees copies of the precepts, except the confiscation order requiring to transfer the money.

3. That as to count three (3), and further to count one (1), two (2), and three (3) of the petition, co-defendant-in-error CBL says, that it is not privileged by participation to the proceeding for the confiscation and therefore is not the proper person to traverse the allegation about the specifics of the said proceeding, not having sufficient knowledge.

4. And also as to count three (3) of the petition, the confiscation order is clear on its face that the money must be confiscated and must be forwarded to the Ministry of Finance. The relevant portion of the confiscation order is here below quoted for easy reference: "You are hereby commanded to confiscate the sum of Five Hundred and Eight

Thousand Two Hundred United States Dollars (US\$508,200.00) which was found in the possession of the defendant in the above captioned case and deposited at the Central Bank of Liberia (CBL) thru the Ministry of Justice/Liberia National Police and have it forwarded to the Ministry of Finance forthwith."

5. Also as to count three (3) of the petition, the CBL wishes to note however the phrase injected"With, instruction that it be kept in Government coffers of the GOL is the plaintiff-in-Error own insertion. Even if it were there, coffers of the GOL refer to the Treasury of the Government. The Treasury of the Government is the place where public revenues are collected and kept and the funds are disbursed to defray the expenses of the Government. It is the Department of Government that is charged with the receipt, custody and disbursement of public revenue of funds. The CBL is not charged with the receipts and disbursement of the revenue or funds of the Republic of Liberia.

6. Also as to count three (3), of the petition, and reading from the order of the court, it is clear that the money referred to had become money of the Government of Liberia pursuant to the confiscation order because confiscation means to seize and forfeit to the public treasury. Accordingly, the CBL had no control over the money when it had become Government money. The Government, exercising its ownership of the money, withdrew same from the account.

7. As to count four (4) of the petition, co-defendant-in-error CBL says that the judgment was enforced by the transfer of the money to the Ministry of Finance into an account created by the Government of Liberia for that purpose, as Your Honor will see in the signature cards of January 24, 2007 and deposit slip which is hereto attached along with other documents, the reading of which will show Your Honor that the signature card was made on January 24, 2007 and deposit effecting the transfer made on January 17, 2007. The amount indicated on the deposit slip shows the balance against subtraction of \$24,000.00 taken by the Government

before the final deposit. Some copies of the letters concerning the earlier taking are attached as Exhibit co-defendant-in-error-1 in bulk.

8. Also as to count four (4) of the petition, the letters referred to by the Plaintiff from the Ministry of Justice, as well as the Minister's news conference, did nothing to change what had happened with the transfer of the money in compliance with the order since 2006. At most the letter by the Minister and his news conference represent slip or absence of the mind to recollect what had happened. Investigation could not be continuing subsequent to a court order that has long been complied with.

9. As to count five (5) of the petition, Co-defendant-in-error CBL says same is contrary to what this petition is doing because the petition is clearly harassment given that it had been over 2 years since the order of the Court was made and even complied with.

Particularly as to the CBL, this is harassment due to the fact that CBL did not file the action, did not participate in the proceeding; it simply obeyed the Court order and complied. CBL should not have been named Co-defendant-in-error because even if CBL had the money which it does not have anymore, the plaintiff could obtain garnishment if it succeeded against the Criminal Court and the Government.

10. As to count 6 of the petition, the Co-defendant-in-error CBL reiterates and says that same is not applicable to it and it cannot traverse it because it knows nothing about the proceeding for the confiscation and therefore has nothing to do with the plaintiff-in-error having or not having day in Court as CBL did not file the application and it was not party to it and did not participate in the Court proceeding.

11. As to count 7 of the petition, Co-defendant-in-error CBL says it is not the proper person to traverse it as to whether or not plaintiff-in-error was tried, not tried, convicted, etc. cannot say why the law applied.

12. As to count 8 Co-defendant CBL says that it does not have sufficient information to, was not a party to confiscation proceedings.

13. As to count nine (9) of the petition, Co-defendant-in-error CBL is of no importance because it can neither prove nor disprove or give to factual or legal weight to the concern.

14. As to count ten (10) of the petition, Co-defendant-in-error CBL says that it is in no way depriving plaintiff of his property. Co-defendant-in-error CBL says that it neither seized nor confiscated the money. It therefore submits that the allegation in said count 10 of not having due process and being deprived of the money is not applicable to it.

15. As to count eleven (11) of the petition, co-defendant-in-error CBL says that the pleading by the plaintiff-in-error attempting to request, or requesting, dispensation is untenable, given the long time it had taken since the rendition of the judgment and the statutory period within which to file petition under claim and allegation of not having had day in court. The statutes make no exception about the period six months within which to file petition after rendition of judgment.

As to the prayer of the petition, Co-defendant-in-error CBL wishes to observe that same is contradictory within itself; for while it is requesting an order to bring plaintiff-in-error under the jurisdiction of the Criminal Court for trial pertaining to the money suspected of being laundered, it is requesting the return of the money to the plaintiff-in-error without such trial. For this defect, the prayer is untenable and should not be entertained.

Co-defendant-in-error CBL denies all the allegations and facts and laws contained in the petition which had not been made subject of special traverse in these returns.

WHEREFORE AND IN VIEW OF THE ABOVE, Co-defendant-in-error CBL request Your Honor to deny and dismiss the petition as to the said defendant-in-error CBL and to discharge it from these proceedings and grant unto it any and all relief as applicable.

Respectfully submitted

By and thru its Legal Counsel

Isaac E. Wonasue

COUNSELOR-AT-LAW

Dated this day of July, 2009.”

With the filing of the petition for the issuance of the alternative writ of error, the issuance of the alternative writ of error by the Supreme Court, the service of the alternative writ on the respondents, including the Government of Liberia, and the filing by the respondents of returns to the petition as ordered by the Supreme Court, the Supreme Court acquired full jurisdiction of the subject matter of the petition and of the parties to the proceedings. This is the background to the events from whence the respondent, Valentine Ayika, decided to proceed to the ECOWAS Community Court of Justice.

The informant, the Republic of Liberia, attached to the bill of information a number of documents, which include (a) the application made by respondent Valentine Ayika to the ECOWAS Court requesting that Court to entertain and decide the same matter which he had brought to the Supreme Court of Liberia for review and determination (b) the response of the Republic of Liberia and a motion to dismiss the matter on a number of grounds, including calling the attention of the ECOWAS Court that the identical matter was pending before the Supreme Court of Liberia, therefore, the ECOWAS Court could not legally divest the Liberian Supreme Court of the jurisdiction which it had, at the instance of Mr. Valentine Ayika, acquired over the subject matter and the parties; (c) the ruling of the ECOWAS Court on the motion, in which that Court

denied the motion and held that it did have the authority to divest the Liberian Supreme Court of jurisdiction over the matter of which the Liberian Supreme Court was already seized; and (d) the Final Ruling of the ECOWAS Court reiterating its authority to divest the Liberian Supreme Court of jurisdiction over matter, and holding that because Mr. Ayika could not obtain justice before the Liberian Supreme Court, it was awarding judgment in his favour requiring the Government of Liberia to return to Mr. Ayika the US\$508,200.00 which the First Judicial Circuit, Montserrado County had ordered confiscated pending the final determination of the charges levied against Mr. Ayika, which was the subject of a petition for the writ of error still pending before the Supreme Court of Liberia.

We do not herein go into the merits or demerits of the charges against Mr. Ayika; that is, the subject matter of the petition for the writ of error pending before this Court. What is before us is a bill of information, an offshoot of the writ of error filed by Mr. Ayika. The determination of a bill of information does not require that we delve into the criminal charges in the parent suit. Thus, in deciding this bill of information, we will limit ourselves to issues raised in the bill of information and the returns filed by counsel for Mr. Ayinka.

It is worth noting that in the returns filed by counsels for Mr. Ayika, they admit that Mr. Ayika could not legally remove the matter pending before the Liberian Supreme Court to any other court, local or international, without first withdrawing the matter from the Liberian Supreme Court. They nevertheless contend that the matter was compromised by the Liberian Government's appearance before the ECOWAS Court, an act they say was tantamount to surrendering the sovereignty of Liberia and the Liberian Supreme Court to the ECOWAS Court. In short, the essence of the respondent's returns is that the Liberian Government should not have made an appearance before the ECOWAS Court.

There is no dispute that the Liberian Government had the option to appear or not appear before the ECOWAS Court. We recognize also, however, that the ECOWAS Court was duty bound to take due note of the Liberian Constitution, for it was that very Constitution which the ECOWAS Court professed to be

interpreting in holding the Liberian Government liable to Mr. Ayika, equating provisions of the Liberian Constitution to obligation owed to certain international instruments.

From our review of the entire records before us, and taking judicial notice of all the public records pertaining to the events and the rulings made, we will consider four issues for the determination of this case.

- 1) Did Mr. Valentine Ayika commit an act of contempt against the Supreme Court of Liberia by filing before the ECOWAS Community Court of Justice an application for that Court to review a matter pending before the Supreme Court of Liberia for disposition in which the Supreme Court had properly and legally acquired jurisdiction of both the subject matter and the parties?
- 2) Is the ECOWAS Court vested with the authority to divest the Supreme Court of Liberia of jurisdiction of a case pending before the Supreme Court of Liberia?
- 3) Is the ECOWAS Protocol relied upon by the ECOWAS Court as a basis for divesting the Supreme Court of Liberia of jurisdiction binding on the Republic of Liberia in the face of the lack of ratification of the said ECOWAS Protocol by the Liberian Legislature?
- 4) Even if the Liberian Legislature had ratified the ECOWAS Protocol, could any aspect of that protocol divest the Supreme Court of Liberia of jurisdiction of a case pending before the Supreme Court of Liberia?

In regard to the first issue, concerning whether Mr. Valentine Ayika committed an act of contempt against the Supreme Court of Liberia when he elected to file before the ECOWAS Community Court of Justice an application for that Court to review a matter already pending before the Supreme Court of Liberia, we hold that Mr. Valentine Ayika committed an act of contempt against the Supreme Court of Liberia when he elected to file before the ECOWAS Community Court of

Justice an application identical to the one which he had filed before the Supreme Court of Liberia which is still pending disposition by the Supreme Court of Liberia. It is settled law in this jurisdiction that no party to an action pending before the Liberian Court may file the identical matter before another court involving the same subject matter and the same parties.

In the case before us, the removal of the case takes on added magnitude and dimension because it not only seeks to remove a proceeding pending before one court to another court, which act by itself is unlawful, but it seeks to have a foreign court divest the Liberian Supreme Court of jurisdiction constitutionally vested in it. We must say with clarity that no individual, not even the President or the Legislature, has the authority to surrender the powers of the Liberian Supreme Court to any court of another jurisdiction, whether the action is pursuant to an existing law or by the voluntary submission of a party; and where the action is by the voluntary act of another party, the action constitutes a contempt of the Supreme Court. The action by Mr. Ayika, seeking to have the ECOWAS Court of Justice make a declaration or pronouncement in a matter that is pending before the Liberian Supreme Court is an infringement on the authority, the powers, the integrity and the prerogatives of the Supreme Court of Liberia, especially where in doing so, the respondent sets up as the reason for his action that he cannot get justice before the Liberian Supreme Court. Such assertion not only impugns the image and integrity of the Supreme Court of Liberia, but is false and disingenuous, designed to cast aspersion on this Court. The act of Mr. Ayika, the respondent, clearly amounts to contempt of this Court.

The records of this Court, which we have purposely quoted in detail above, show that although the decision of the First Judicial Circuit, Montserrado County, confiscating money from Mr. Ayika was made in November, 2006, the respondent, Mr. Ayika, did not seek redress from the Supreme Court until 2009, a period of about three years following the incident of which he complained. More than that, shortly after he filed a petition for the issuance of the writ of Mandamus with the Justice in Chambers, the Justice in Chambers cited the parties to a conference. On the same day and date that the conference was to be held for the Justice to make a preliminary examination into the petition for

the writ of Mandamus, he withdrew the petition for the writ of mandamus with reservation to refile. On the same day and date also, he filed a new petition, not in the nature of the one that was withdrawn and not seeking the same remedy as the withdrawn petition. He filed a petition for a writ of error. The filing of a new petition for a writ of error meant that the original petition for a writ of mandamus could not be entertained and the conference scheduled by the Justice could also not be held.

Notwithstanding, the Justice cited the parties to another conference to examine the new petition and to provide a basis for determining whether the alternative writ prayed for in the new petition should be granted. The records also reveal that following the conference, the Justice, being satisfied that a sufficient basis was presented for a full investigation of the allegations made by the petitioner in the writ of error, ordered the issuance of the alternative writ of error. The writ of error ordered issued by the Justice in Chambers required the respondents named in the writ to file returns to the writ within ten days of the issuance of the writ, in conformity with Liberian law. The respondents, the Government of the Republic of Liberia, the trial judge, and the Central Bank of Liberia, complied with the order contained in the writ, and filed returns within statutory time. Shortly thereafter, the matter was forwarded to the Full Bench for a hearing and determination of the issues raised in the petition for a writ of error and the returns thereto.

Yet, Mr. Ayika , the respondent in the bill of information, instead of pursuing his interest in the petition for writ of error which he had filed and which is still pending before this Court, decided to proceed to the ECOWAS Community Court of Justice, where he filed an application requesting that Court to divest the Liberian Supreme Court of jurisdiction of the matter involving events that occurred exclusively within Liberia, which involved almost exclusively Liberian parties and officials. We hold that by the filing of the petition for the writ of error and by the issuance and service of the alternative on the respondents and their responses to the writ and the petition, this Court had acquired jurisdiction of the matter and the parties. We further hold that the action of the respondent in these information proceedings by removing the matter pending

before this Supreme Court to the ECOWAS Community Court, in an attempt to deprive the Liberian Supreme Court of its constitutional jurisdiction of the matter, is unlawful, void ab initio and of no legal effect.

We address next, the second issue, whether the ECOWAS Community Court of Justice has the authority to divest the Liberian Supreme Court of jurisdiction of a matter over which the Liberian Supreme Court is already seized. The Liberian Constitution (1986) is quite clear on the issue. Firstly, it states that the Constitution is the Supreme Law of Liberia; everything else, whether an act of the Legislature, an Executive Order of the President, a treaty, an international agreement, a protocol, or any other instrument or action is subordinate to the Constitution. And where any of those instruments or acts or actions contravenes any provisions of the Constitution, such acts and actions are unconstitutional and can be so declared by the Liberian Supreme Court, which is vested with the constitutional authority to make such declaration. LIB. CONST (1986), ART 2. We now make such a declaration in the instant case, holding that under the Liberian Constitution no foreign court, whether purporting to operate under a treaty arrangement, a protocol or otherwise, can be vested with the authority to deprive the Liberian Supreme Court of any of the powers granted to it by the Liberian Constitution; hence, the ECOWAS Court is without the authority, even under the protocol relied upon, to remove from the Liberian Supreme Court any matter pending before the Liberian Supreme Court awaiting determination by the Liberian Supreme Court.

The Liberian Constitution, at Art. 65, vests in the Liberian Supreme Court the authority as the sole final arbiter of any dispute arising in Liberia over which the Liberian Supreme Court has legally acquired jurisdiction. No Court, wherever situated and however created, or existing under any international agreement or protocol, can divest the Liberian Supreme Court of that jurisdiction, and any such agreement which seeks such is unconstitutional, unenforceable, ineffective and not binding on the Republic of Liberia to the extent of the inconsistencies. The only way such authority could be so vested in another court is to have an amendment made to the Liberian Constitution. No such amendment has ever

been made to the Liberian Constitution that vests such authority in a foreign court to deprive the Liberian Supreme Court of jurisdiction acquired in a matter.

The third issue poses the query as to whether the Protocol establishing the ECOWAS Community Court of Justice is binding on the Republic of Liberia in the absence of legislative ratification? We note that in count #6 of its bill of information under review, the Republic of Liberia averred that based on newly discovered fact that the Legislature of Liberia had not ratified the ECOWAS Protocol establishing the ECOWAS Community Court of Justice, it filed an application with the said ECOWAS Court for a review of that Court's decision made on June 5, 2012 against the Republic of Liberia. It has come to our attention, and it is public information of which we take due judicial notice, that the ECOWAS Court entered ruling on July 2, 2013 denying the application not to bind Liberia by the decision of the ECOWAS Court who's Protocol has not been ratified by the Legislature of Liberia.

The ECOWAS Court gave reasons for its decision as follows:

- i. "The issue of non-ratification of the Protocol is not a new fact, it was all the time known to the Ministry of Foreign Affairs of the Applicant and for that matter the Applicant;
- ii. failure to discover that fact was due to the counsel's negligence in not conducting proper and due inquiries before and during the hearing on the status of ratification of the protocols by the Applicant;
- iii. the 1991 Protocol as a well as the 2005 Supplementary protocol have both been in force since they were signed, albeit provisionally, and are binding on the Applicant under Article 25(2) of the Vienna Convention on the Law of Treaties of 1969 since they have not taken steps to remove."

We are taken aback by the decision of the ECOWAS Court, to say the least. Article 34(f) of the Liberian Constitution states in clear terms that all treaties, protocols, conventions and such other international agreements negotiated or signed onto by the Liberian President shall, before they become legally binding

on the Republic, be ratified by the Liberian Legislature. As long as the Liberian Legislature has not ratified the treaty, agreement or protocol, it is not binding on the Republic, and no appearance by the Republic of Liberia, whether challenging the international court's authority on that ground or not, can subject the Republic of Liberia to the jurisdiction of that court in the absence of the legislative action required by the Constitution.

Under Liberian law, a court has an obligation to determine whether it has jurisdiction over a matter, even if the parties do not raise the issue; for if the court lacks jurisdiction over a matter or the parties, any judgment handed down by that court is void *ab initio*. The same principle applies to an international forum such as the ECOWAS Community Court of Justice. This means that The ECOWAS Court on its own has the duty to take judicial notice of its instruments of ratification of member states to determine if it can exercise jurisdiction over member states, even if the parties do not raise the issue. This is a universally recognized and accepted principle and the ECOWAS Court is not precluded from adhering to this principle. And where, as in the instant case, the evidence is so clear that the Court lacks jurisdiction to entertain or proceed with a case, it must and is obligated to decline jurisdiction. The ECOWAS Community Court could not acquire jurisdiction over Liberia when the Protocol which vests such jurisdiction is subject to ratification of the Liberian nation state and that ratification has not been done by the Liberian Legislature.

Concerning the last issue – whether the ECOWAS Court could divest the Supreme Court of Liberia of jurisdiction it had acquired of the matter and the parties even if the Liberian Legislature had ratified the ECOWAS Protocol establishing the ECOWAS Court, we hold that even if the Liberian Legislature had ratified the Protocol establishing the ECOWAS Court, that ratification would be a violation of the provisions of the Liberian Constitution. The Constitution of Liberia is clear, the Legislature cannot ratify a protocol which would deprive the Liberian Supreme Court of any authority granted it by the Constitution.

Article 66 of the Constitution clearly states that the Legislature shall make no laws (including treaties and protocols) which would have the effect of depriving the Supreme Court of Liberia of authority any powers granted the Supreme Court of Liberia by the Constitution of Liberia..

Wherefore, and in view of the foregoing, it is adjudged as follows:

- a) That the act of Valentine Ayika, the respondent, in filing in the ECOWAS Community Court of Justice an application to remove from the Liberia Supreme Court a matter of which the Liberian Supreme Court had assumed and acquired jurisdiction, the intent being to divest the Liberian Supreme Court of authority conferred on it by the Liberian Constitution for reason set by the respondent, that he cannot get justice before the Liberian Supreme Court impugns the image and integrity of the Supreme Court of Liberia. Such act is unlawful, contemptuous, and void *ab initio* with no legal and binding effect on the Supreme Court of Liberia. Although Valentine Ayika, the respondent, is guilty of contempt for his action, this Court has decided not to impose a penalty for contempt on him.
- b) That no foreign court has the authority to divest the Liberian Supreme Court of jurisdiction vested in it by the Constitution of Liberia; any decision of such foreign court is unconstitutional and null and void *ab initio*, and is not binding on the Supreme Court of Liberia;
- c) That as the Protocol upon which the ECOWAS Court relies for jurisdiction has not been ratified by the Liberian Legislature, a requirement of the Liberian Constitution for the said Protocol to be binding on the Republic of Liberia, the said Protocol is not binding on the Republic of Liberia.
- d) That even where a protocol or any instrument is ratified by the Liberian Legislature, no aspect of it can divest the Supreme Court of Liberia of jurisdiction conferred on it by the Constitution of Liberia, and insofar as any such provision(s) of any protocol seeks to divest the Liberian Supreme

Court of jurisdiction of a matter of which it has become seized, such provision(s) of such protocol would be unconstitutional and unenforceable. This is because Article 66 of the Liberian Constitution (1986) provides that the Legislature shall make no law to take away any of the powers conferred on the Supreme Court of Liberia by the Liberian Constitution.

Accordingly, we hold that the decision of the ECOWAS Community Court of Justice entered against the Republic of Liberia on June 5, 2012, in the Valentine Ayika case is not binding on the Republic of Liberia.

The Clerk of this Court is hereby ordered to send a mandate informing the parties to this case of this ruling and decision of this Court. The Clerk is further ordered to assign the petition for the writ of error out of which this bill of information grows for expeditious hearing and determination by this Court. And it is hereby so ordered.