

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2016

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.....CHIEF JUSTICE
 BEFORE HIS HONOR: KABINEH M. JA'NEH ASSOCIATE JUSTICE
 BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
 BEFORE HIS HONOR: PHILIP A.Z. BANKS, IIIASSOCIATE JUSTICE
 BEFORE HER HONOR: SIE-A-NYENE G. YUOHASSOCIATE JUSTICE

Ephraim O. Okoro and United Security Insurance)	
Company of Liberia, Inc. of the city of Monrovia,)	
Republic of Liberia)	APPELLANT
)	
Versus)	APPEAL
)	
Mohammed Kuyateh, Edward P. Bangali and)	
Adler A. Fleming, represented by their Administrator/trix,)	
Mrs. Cecelia Bangali and Leroy Fleming, shareholders)	
Of the United Security Insurance Company, Inc.)	
.....)	APPELLEES

GROWING OUT OF THE CASE:

Mohammed Kuyateh, Edward P. Bangali and)	
Adler E. Fleming, represented by their Administrator/trix,)	
Mrs. Cecelia Bangali and Leroy Fleming, shareholders)	
Of the United Security Insurance Company, Inc.)	PETITION FOR
.....)	PETITIONERS) DECLARATORY JUDGMENT
)	
Versus)	
)	
Ephraim O. Okoro and United Security Insurance)	
Company of Liberia, Inc. of the city of Monrovia,)	
Republic of Liberia)	RESPONDENTS

Heard: March 28, 2016

Decided: September 9, 2016

This case is before us on appeal from a judgment entered by the Sixth Judicial Circuit Court for Montserrado County in a petition for declaratory. The petition for declaratory judgment was filed on July 27, 2007, by Mohammed Kuyateh, Edward Bangali and Alder Fleming, represented by Leroy Fleming and Cecelia Bangali (appellees/petitioners), against Ephraim Okoro and the United Security Insurance Company of Liberia, Inc.,

(appellants/respondents). The appellees/petitioners alleged in their petition that they and the appellants/respondents are shareholders in the United Security Insurance Company of Liberia, Inc. (the "Company"). They also alleged that they and co-appellant/co-respondent Ephraim Okoro worked in the Company and relationships between them were very cordial until the civil war in Liberia which started in 1990; that as a result of the civil war they fled Liberia for refuge leaving co-appellant/co-respondent Ephraim Okoro in charge of the management of the Company; that when they returned to Liberia in 2006, co-appellant/co-respondent Ephraim Okoro refused to brief them on the operations of the Company, and when he was invited to a meeting of the Board of Directors, he refused to attend. They maintained that co-appellant/co-respondent Ephraim Okoro took unilateral decisions and actions in the management of the Company without the consent of the other shareholders as follows: (a) he leased the head office of the Company on Tubman Boulevard to the Environment Protection Agency (EPA) without the knowledge and consent of the appellees/petitioners; (b) he leased or encumbered other corporate properties such as the parcel of land opposite the UN Drive Supermarket; (c) he surreptitiously organized and registered two insurance companies which were housed and managed within the United Security Insurance Company's office/building and (d) he entered into a lease agreement with the General Service Agency (GSA) for the Company's property located on 5th Street, Sinkor, on account of which lease agreement he collected but failed to account for US\$129,000 representing rental proceeds under the said lease. The appellees/petitioners therefore prayed the trial court to declare that they have all rights, as shareholders, to demand accountability and that they are entitled to accrued interest, profits, commissions and dividends commencing 1989 up to June, 2007. We quote the detail and full text of the petition for declaratory judgment:

Petition for Declaratory Judgment

"And now come petitioners in the above entitled cause of action and most respectfully praying this Honorable Court for declaratory judgment showeth reasons therefore, to wit:

1. That the co-petitioner Cecelia Bangali is the legal representative of the late Edward P. Bangali, a 65,000 shareholder of the United Security Insurance Company, as will more fully appear from the Letters of Administration hereto attached as Exhibit A.
2. That both petitioners are 65,000 shareholders each in the United Security Insurance Company, the total of which is 130,000 shares, while petitioner Leroy D. Fleming has 5,000 shares as against co-respondent Ephraim Okoro's 70,000 shares, as will evidentially appear from the Articles of Incorporation hereto annexed as Exhibit B and minutes of directors' meeting marked Exhibit C.
3. That sometimes in 1990, the petitioners left the country because of the civil war thus placing co-respondent Okoro in charge of the management of the United Security Insurance Company. When petitioners returned from exile on January 12, 2006, co-respondent Okoro verbally recognized them but failed to attend a

shareholders' meeting when invited, as will evidentially appear from photocopy of said invitation and the reply thereto, marked exhibit D and E in bulk hereof.

4. Petitioners further contend that co-respondent Ephraim Okoro has unilaterally leased the head office of the insurance company located on Tubman Boulevard presently occupied by EPA without the knowledge and consent of the other shareholders or petitioners; and other corporate properties such as the parcel of land opposite the U. N. Drive Supermarket. Petitioners give notice that they shall apply for subpoena duces tecum against the lessees and lessor to produce the lease document at the trial of this case.

5. Petitioners also aver that co-respondent Okoro has surreptitiously organized and incorporated two insurance companies using proceeds of the United Security Insurance Company and these companies are housed and managed within the same United Security Insurance Company building, evidenced by the attached photo copy of the Articles of Incorporation marked exhibit F in bulk forming an integral part of this petition. Petitioners hereby give notice that at the trial of this case, they shall apply for subpoena duces tecum against co-respondent Okoro, and the Ministries of Finance and Commerce to produce all relevant and financial records of the subject companies.

6. That the US\$129,000.00 (One Hundred & Twenty Nine Thousand United States Dollars) representing proceeds from lease the agreements with the General Services Agency (GSA) executed on the 24th day of February, A D. 1998 and the 5th day of May, 1999, respectively, evidenced by the attached copies lease agreements marked Exhibit G in bulk [are yet] to be accounted for by co-respondent Okoro.

Wherefore, and in view of the foregoing, petitioners pray for a declaratory judgment against co-respondent Okoro, declaring the following:

- a. That petitioners have all rights as major shareholders in the United Security Insurance Company to demand accountability;
- b. That all acts, including the sale or lease of any portion of the properties or assets of the United Security Insurance Company without their knowledge and approbation is null and void;
- c. That petitioners are entitled to all accrued interest, profits, commission and dividends commencing from November, 1989 up to and including June, 2007;
- d. That an accountant must be appointed to calculate the accrued income of the company from 1989 up to June 2007;
- e. That under the doctrine of piercing the corporate veil, all the corporate entities formed from the proceeds of the United Security Insurance Company should revert to United Security Insurance Company since co-respondent Okoro did not have any personal asset to amass such considerable amount of money to organize and operate multi-purpose corporations; and,

f. That the sum of US\$300,000.00 (Three Hundred Thousand United States Dollars) representing policy holders' reserves which was deposited in a bank in the U.S.A. be accounted for by respondents.

And to further grant unto petitioners such relief justice and right may deem in the premises".

Along with the petition for declaratory judgment the petitioners filed a motion for receivership the full text of which we also quote:

Motion for Receivership

"Movants most respectfully praying this Honorable court for a judgment appointing receivership to administer the affairs of the United Security Insurance Company Liberia, Inc. showeth reasons therefor, to wit:

1. That movants are major shareholders and incorporators of the United Security Insurance Company Liberia Inc., which is improperly managed by Respondent.
2. That without the knowledge and approbation of Movants, Co-Respondent Okoro has unilaterally arrogated unto himself the sole right to lease the assets and/or properties of the subject company to third parties as well as transferring the assets of the subject company to other companies, namely, the United Security Life and General Insurance Liberia, Incorporated, and Crown Life Insurance, which new companies are co-existing with the United Security Insurance Company Liberia, Inc.; quite inimical to the interests of your movants.
3. That the above acts of respondents have considerably diminished the assets and economic earning power of the United Security Insurance Company Liberia, Inc.; quite to the prejudice of your movants.

Movants submit that if the United Security Insurance Company Liberia, Inc. remains under the administration of C-Respondent Okoro, he will dispose of same as evidenced by the communication hereto attached as "exhibit A" forming a cogent part of this motion.

Wherefore, and in view of the foregoing, Movants pray that this Honorable Court will appoint a receiver to manage and administer the affairs of the United Security Insurance Company Liberia, Inc., until the petition for declaratory judgment is finally determined and adjudicated and to further grant unto movants such relief justice and right may demand in the premises".

On August 8, 2007, the appellants/respondents filed returns to the petition for declaratory judgment, along with a motion to dismiss. They also filed returns to the motion for receivership all of which we quote below for the benefit of this opinion.

Returns to the Petition for Declaratory Judgment

"Respondents, in the above entitled caused of action, deny the legal and factual sufficiency of the petition [for declaratory judgment] and showeth the following to wit:

1. That as to the entire petition for declaratory judgment, respondents say that same is a fit subject for dismissal because petitioners are without capacity, or authority to institute the said action.
2. Further to count one herein above, respondents respectfully request Court to take judicial notice of the thrust of the petition, as spelled out in the averments contained in counts four, five and six of the petitioners' petition for declaratory judgment, which alleged that respondents, Ephraim Okoro and the United Security Insurance Company Liberia, Inc., have unilaterally leased the head office of the company without the knowledge and consent of the other shareholders and that co-respondent Ephraim Okoro has organized several companies using proceeds of the United Security Insurance Company Liberia, Inc.
3. Further to count two herein above, respondents say that petitioners have arrogated unto themselves the authority to recover assets of the corporation allegedly misapplied by the company's Managing Director, Co-respondent Ephraim Okoro.
4. Further to count three herein above, respondents say that our Supreme Court has long held that, "assets of a corporation are the property of the corporation and not the personal property of any of the shareholders or members of the Board of Directors." *Haider v. Her Honor Gloria M. Scott*, 37 LLR 466, (1994), Syl 1.
5. Further to count four herein above, respondents say that our Supreme Court has further held that, "a shareholder cannot sue as an individual to recover corporate assets, but must instead, if the corporation refuses to sue, bring a stockholder's suit. If the stockholder or other person has funds accruing from the sale of corporate property, another stockholder cannot recover any part thereof, without the consent of the corporation, since it belongs to the corporation and not the individual stockholder." *Haider v Her Honor Gloria M. Scott*, 37 LLR 466, (1994), Syl 2.
6. Further to count five herein above, respondents say that legal authorities have held, regarding who may enforce liability that "the corporation is the proper party to sue for wrongs to itself through the mismanagement of its affairs, official misconduct or waste of its assets by its directors or officers." *18B Am Jur section 1583*.
7. That as to counts one and two of the petition, respondents deny that the late co-petitioner Edward P. Bangali ever owned 65,000 shares of the Company. Respondents say further that the late Edward P. Bangali once owned 10,000.00 shares, and that when it was agreed at a meeting of the Board of Directors that the Sierra Leone Branch or operation of the company would be sold, co-respondent Edward P. Bangali agreed to buy the said Sierra Leone Branch or operation of the company for United States Dollars One Hundred and Twenty Thousand (US\$120,000.00); That co-respondent Edward P. Bangali, thereupon, presented his 10,000.00 shares in co-respondent United Security Insurance Company Liberia Inc., valued at United States Dollars Ten Thousand (US\$10,000.00) as down payment

against the purchase price of the United States Dollars One Hundred & Twenty Thousand (US\$120,000.00). Copy of the Minutes of the Board of Directors, at which the decision was taken, is hereto attached and marked respondents' Exhibit R/1.

8. That based on the development herein narrated above, co-petitioner, Edward P. Bangali, prior to his death, divested himself of his shares totally and has no shares in co-respondent United Security Insurance Company Liberia, Inc.

9. Further to count eight hereinabove, respondents say that co-petitioner Adler E. Fleming indeed owned 5,000 shares in co-respondent United Security Insurance Company Liberia, Inc. as can be clearly seen from the minutes of the Board of Directors' Meeting dated November 17, 1981. Copy of the said Minutes of the Board of Directors' Meeting dated November 17, 1981 is hereto attached and marked respondents' Exhibit R/2.

10. Further to count nine herein above, respondents deny that co-petitioner Mohammed Kuyateh owns 65,000 shares in Co-Respondent United Security Insurance Liberia, Inc.

11. Further to count ten hereinabove, respondents say that our corporate law is clear on the matter and it is an established principle of law that subscription for shares does not imply purchase of shares subscribed for; and that the names and number of stocks listed after each name in the articles of incorporation represent the number of stock the individual listed therein agreed to take or to subscribe for, and not stocks paid for by the individuals listed.

12, Further to count eleven herein above, respondents say regarding subscriptions for shares, it is stated that, "a subscription for shares of a corporation, to be organized shall be irrevocable for the period of six months from its date, unless otherwise provided by the terms of the subscription agreement or unless all of the subscribers consent to the revocation of such subscription." Associations Law of Liberia, Title 5 of the Liberian Code of Laws Revised (1976), section 5.3, page 24.

13. Further to count 12 herein above, respondents say that the law clearly stipulates that, "consideration for the issue of shares shall consist of money or other property, tangible or intangible, or labor or services actually received by or performed for the corporation or for its benefit or in its formation or reorganization, or a combination thereof. In the absence of fraud in the transaction, the judgment of the board or shareholders, as the case may be, as to the value of the consideration received for shares shall be exclusive." Associations Law of Liberia, Title 5 of the Liberian Code of Laws Revised (1976), section 5.4, page 25.

14. Further to count thirteen herein above, respondents say that the law also stipulates that, "the shares of a corporation shall be represented by certificates signed by the president or vice-president and the secretary or an assistant secretary or the treasurer or the assistant treasurer of the corporation, and may be sealed with the seal of the corporation, if any, or a facsimile thereof...." Associations Law of Liberia, title 5 of the Liberian code of Laws Revised (1976), section 5.8, page 27.

15. Further to count fourteen herein above, respondents say that the individuals listed in the articles of incorporation, attached to the petitioners' petition represent individuals who applied for the number of stocks listed, but not the number of stocks paid for.

16. Further to count fifteen herein above, respondents say there is a variance between the number of stocks listed in the articles of incorporation attached to petitioners' petition as Exhibit B and the Minutes of the Board of Directors' Meeting attached to petitioners' petition as Exhibit C. The Court is respectfully requested to take judicial notice of the fact that corporate minutes represent the decision of the Board of Directors and take precedence over the list of applicants or subscribers for shares as contained in the articles of incorporation.

17. Further to count sixteen herein above, respondents say that petitioners have failed to attach any shareholder's certificate(s) as evidence of their claims that they own 65,000 shares each in the Company. Under the doctrine of notice and, in conformity with the Opinion of the Supreme Court, in the case, *Walker v. Morris*, 15 LLR, (1963), syl. 4, page 424, "when a pleading refers to a written instrument, a copy of the instrument may be annexed to, and made a part of the pleading." Moreover, the burden of proof rests on the party who alleges a fact...." Civil Procedure Law, 1LCLR, sect 25.5, page 198.

18. Further to count seventeen herein above, respondents say that petitioners were under a legal obligation to attach, as exhibits, their shareholders' certificates, as the law stipulates that, "the shares of a corporation shall be represented by certificates signed by the president or vice president and the secretary or an assistant secretary or the treasurer or an assistant treasurer of the corporation and may be sealed with the seal of the corporation, if any, or a facsimile thereof...." Associations Law of Liberia, title 5 of the Liberian Code of Laws Revised (1976), section 5.8, page 27.

19. That as to count three of the petition, respondents say that the Managing Director, Co-respondent Ephraim Okoro has never refused to attend a duly called meeting of shareholders.

20. That as to count four of the petition, respondents deny that the Managing Director, Co-respondent Ephraim Okoro acted unilaterally and without the requisite authority in his administration of the affairs of the company or the properties of the company, as he is the duly appointed Managing Director and Deputy Chairman of the Board of Directors. This Court is respectfully requested to take judicial notice of the Minutes of the Board of Directors' Meeting duly convened on November 17, 1998, attached to this resistance as Exhibit R/2.

21. Further to count twenty herein above, Co-respondent Ephraim Okoro says that as Managing Director and Chief Executive Officer of the company, he is responsible for the daily administration of the affairs and properties of the company.

22. Further to count twenty one herein above, Co-respondent Ephraim Okoro respectfully requests Court to take judicial notice of Exhibit G-1 attached to petitioners' petition, same being the agreement of lease executed in 1998, and it is

clearly seen that co-petitioner Adler Fleming as then Secretary of the corporation's Board of Directors witnessed the Agreement. It, therefore, negates any suggestion that Co-Respondent Ephraim Okoro acted unilaterally in the execution of the agreement, as alleged by the petitioners.

23. That as to counts five, six and the prayer of the petition, Co-respondent Ephraim Okoro denies forming companies using the proceeds of the company or acting in any way, form and manner without the requisite authority.

24. Respondents deny all and singular the averments of facts and laws contained in petitioners' petition, and which may not have been specifically traversed in these returns.

WHEREFORE, and in view of the foregoing, respondents pray Your Honor to deny and dismiss petitioners' petition, sustain the averments and prayer of respondents' returns; and grant unto respondents any other and further relief as Your Honor may deem just, legal and equitable in the premises."

Motion to Dismiss Petition for Declaratory Judgment

"AND NOW COME MOVANTS, in the above entitled cause of action, and most respectfully pray this Honorable Court to dismiss petitioners' petition for declaratory judgment for lack of capacity to sue, and showeth following reasons, to wit:

1. That Section 11.2, 1LCLR, Civil Procedure Law, clearly stipulates that "at the time of service of his responsive pleading, a party may move for judgment dismissing one or more claims for relief asserted against him in a complaint or counterclaim on any of the following grounds: (e) that the party asserting the claim has not legal capacity to sue".
2. Consistent with the above law cited, movants say that the entire petition for declaratory judgment is a fit subject for dismissal because respondents herein/petitioners are without capacity, or authority to institute this action.
3. Further to count two (2) herein above, movants respectfully request Court to take judicial notice of the thrust of the petition[for declaratory judgment], as spelled out in the averments contained in counts four (4), five (5) and six (6) of petitioners' petition for declaratory judgment, which alleged that co-movant, Ephraim Okoro, has unilaterally leased the Head Office of the company, without the knowledge and consent of the shareholders; and that co-movant Okoro has organized several companies using proceeds of United Security Insurance Company Liberia. Inc.
4. Further to count three (3) herein above, movants say that Respondents/Petitioners have arrogated unto themselves the authority to recover assets of the Corporation allegedly squandered by co-movant, Managing Director Ephraim Okoro.

5. Further to count four (4) herein above, movants say that our Supreme Court has held that "assets of a corporation are the property of the corporation and not the personal property of any of the shareholders or members of the Board of Directors." *Haider v. Her Honor Gloria M. Scott*, 37LLR 466, (1994), syl. 1.
6. Further to count five (5) herein above, Movant say that our Supreme Court has further held that "a shareholder cannot sue as an individual to recover corporation assets, but must instead, if the corporation refuses to sue, bring a stockholder's suit. If a stockholder or other person has funds accruing from the sale of corporate property, another stockholder cannot recover any part thereof, without the consent of the corporation, since it belongs to the corporation and no the individual stockholder." *Haider Vs. Her Honor Gloria M. Scott*, 37LLR 466, (1994), syl. 2.
7. Further to count six (6) herein above, movants say that legal authorities have held, regarding who may enforce liability that "the corporation is the proper party to sue for wrongs to itself through the mismanagement of its affairs, official misconduct, or waste of its assets by its directors or officers". 18B Am Jur 2d section 1583.
8. Further to count seven (7) herein above, movants say that not only are respondents/petitioners not clothed with the legal capacity to bring this suit, as it is not a stockholder's suit, but respondents/petitioners have also sued the corporation as one of two (2) respondents listed in the petition for declaratory judgment.
9. Further to count eight (8) herein above, movants say that the petition should be dismissed in conformity with law, as petitioners have no authority to institute this action, cannot legally sue in their own names to recover assets of the corporation; and moreover, have even illegally sued the company.

WHEREFORE, AND IN VIEW OF THE FOREGOING, movants most respectfully prays this Honorable Court to dismiss the action/petition in keeping with Section 11.2(e) of our Civil Procedure Law and grant unto movants all other and further relief as Your Honor may deem fit and proper".

Resistance to Motion for Receivership

"And now comes respondents, in the above entitled cause of action, and most respectfully pray this Honorable Court to deny and dismiss movants' motion for receivership and showeth the following reasons, to wit:

1. That as to the entire motion, same is a fit subject for dismissal because it lacks any basis in the Associations Law and or the law of general application in Liberia, relative to such matters, especially as it relates to the formation, purpose, functions and management of a corporation; it having been established that the Associations Law clearly stipulates how and by whom suits may be brought to recover assets of a corporation.
2. Further to count one herein above, Respondents say that, in conformity with the Associations Law of Liberia, co-respondent United Security Insurance Company Liberia, Inc. is a corporate entity registered and doing business under the laws of the

Republic of Liberia; has the right to sue and be sued; has shareholders, has a board of directors and a management to administer the affairs of the corporation.

3. Further to count two herein above, respondents say that movants have no capacity to recover assets of the corporation in the form and manner of the suit for declaratory judgment, as our Supreme Court has held that, "a shareholder cannot sue as an individual to recover corporation's assets, but instead, if the corporation refuses to sue, bring a shareholder's suit. If a stockholder or other person has funds accruing from the sale of corporate property, another shareholder cannot recover any part thereof, without the consent of the corporation, since it belongs to the corporation and not the individual stockholder. *Haider v Her Honor Gloria M. Scott*, 37 LLR 466, (1994), Syl 2.

4. Further to count three herein above, respondents say that a derivative suit, on behalf of the corporation, is the proper form of action to be brought; and the Court is respectfully requested to take judicial notice of the fact that not only is the suit not brought on behalf of the corporation, but the corporation is being sued and named as a respondent.

5. That as to count one of the motion, respondents deny that movants are major shareholders of the corporation and/or that the corporation is being improperly managed; and, assuming without admitting that they are major shareholders and the corporation is being improperly managed, the law clearly provides for how officers of the corporation may be removed, and how improprieties in the management of a corporation may be addressed through the Board of Directors or through a derivative suit.

6. That as to count two of the motion, respondents deny the averments therein contained and say further that co-respondent Ephraim Okoro is the legitimate Managing Director of the corporation responsible for the day to day administration of the corporation and answerable to the Board of Directors; and that he executed the lease agreement in conformity with his terms of reference. This Court is respectfully requested to take judicial notice of the fact that co-petitioner Adler E. Fleming, Jr., then secretary of the Board of Directors, witnessed the agreement. Copy of the minutes of the Board of Directors' Meeting at which co-respondent Ephraim Okoro was appointed Managing Director is hereto attached and marked respondents' Exhibit M/1.

7. Further to count six herein above, respondents deny ever transferring assets and/or properties of the corporation to third party or other companies.

8. Further to count seven herein above, respondents say that the letter attached to movants' motion is self-seeking as the information contained therein was only an inquiry emanating from the Commissioner of Insurance, which inquiry has long been addressed; and that the management of the corporation never ever intended to sell or did sell the building.

9. Further to count eight herein above, respondents say that movants' prayer to appoint a receiver is at best mischievous, provocative and without any foundation in

the Associations Law and/or the general law applicable in such cases; and that movants have failed to cite any law in support of their prayer for the appointment of a receiver.

10. Respondents deny all and singular the averments of facts and law contained in Movants' Motion, which may not have been specifically traversed in this resistance.

WHEREFORE AND IN VIEW OF THE FOREGOING, respondents pray Court to deny and dismiss movants' motion and grant unto respondents any other and further relief as made and provided in such cases."

On August 20, 2007, the appellants/respondents filed a bill of information bringing to the trial court's attention that while there was still pending a motion to dismiss for lack of capacity to sue, the appellants/respondents have received an assignment to hear a motion for receivership in the same cause of action. The appellees/petitioners took the position that the motion for receivership and the motion to dismiss for lack of capacity to sue presented similar issues and hence, they should be consolidated, heard and decided. The trial judge ruled, and rightly so, that the motion to dismiss should first be proceeded with. We are in agreement with the trial judge's ruling because in this jurisdiction, as is the case in many other jurisdictions, matters bordering on the jurisdiction of the court should first be considered. No court of law can entertain a matter over which it has no jurisdiction. This Court held in the case: *Scanship(LIB) Inc. v. Flomo* [2002] LRSC 21, 41LLR 181[2002] that "whenever the issue of a court's jurisdiction is raised, everything in the case becomes subordinated until the court has determined its jurisdiction to hear and dispose of the particular matter." This Court has also held that "if a court lacks jurisdiction to entertain a matter, whatever decision or judgment it renders is a legal nullity." *Scanship(LIB) Inc. v. Flomo* [2002] LRSC 21, 41LLR 181[2002]; *Ministry of Lands, Mines and Energy v. Liberty Gold and Diamond Company et' al* [2014] LSRC 5 (January 10, 2014).

On September 18, 2007, the trial judge ruled denying the motion to dismiss the petition for declaratory judgment. He held:

"...It is the considered ruling of this court that indeed and fact the respondents, petitioners in the main suit, have the legal capacity to institute these proceedings for the purpose of declaring their rights, their status, and the relationship to the movants' corporation and therefore the motion to dismiss is hereby denied and dismissed."

To this ruling the appellants/respondents took exception and gave notice that they would take advantage of the law controlling. Accordingly, they fled to the Chambers Justice on a petition for the writ of certiorari. On October 12, 2007, the Clerk of the Supreme Court, by order of our Colleague, Mr. Justice Justice Kabineh M. Ja'Neh, then presiding in Chambers, cited the parties to a conference. It appears, however, that the Chambers Justice declined to order the issuance of the writ of certiorari prayed for, as the records before us do not show that he ordered the issuance of the writ or sent any instruction to the lower court concerning the appellants/respondents' petition for the writ of certiorari.

In the interim, a regular notice of assignment was issued out of the trial court for the hearing of the petition for declaratory judgment. But at the call of the case the appellants/respondents informed the trial court that a motion for receivership which had been argued pro et con was still pending undecided before that court. They therefore prayed that the said motion be ruled upon before the hearing of the petition for declaratory judgment. The application was resisted by the appellees/petitioners, and argued by the counsels for the parties. The trial judge held that the ruling on the motion for receivership would be made at a later date. Meanwhile the judge ordered that the hearing of the petition for declaratory judgment be proceeded with. The records show that the trial judge, at a later date, ruled granting the motion for receivership and Mr. Morris Solee was appointed as the Receiver to manage the affairs of the United Security Insurance Company of Liberia, Inc. pending the outcome of the petition for declaratory judgment.

After hearing and deciding a number of other pre-trial motions and applications, hearing in the petition for declaratory judgment commenced on January 7, 2008.

Mohammed Kuyateh was the first witness who took the stand for the appellees/petitioners. In his testimony, he narrated the financial difficulties the United Security Insurance Company of Liberia, Inc. encountered following the departure in 1980 of its Managing Director, Miata E. Sherman, which led him and others to send a telex to the oversea office of the Company in Trinidad, West Indies requesting for financial assistance to settle due claims and agents' commission. In response to his request, he said, the President and Managing Director of United Security International Insurance and Re-Insurance Limited, Mr. J.V. Gonsalves, invited all of the managers of the Liberian branch of the Company to the head office in Trinidad, West Indies, for a meeting; that only he and co-appellant/co-respondent Ephraim Okoro made the trip; that upon their arrival in Trinidad, West Indies, a board of directors' meeting was held during which an amendment to the articles of incorporation of the United Security Insurance Agencies Incorporated was proposed, accepted and approved. He said the amendments were made in light of the head office's position that it could not meet the financial requirement of PRC Decree No. 82 for foreign companies to invest in Liberia. According to the witness, the board of directors then resolved that the US\$500,000.00 previously invested in the Company in Liberia be used for the sole purpose of facilitating the paid-in-capital of US500,000.00 for the domestic company; that in consideration of the board's resolution, co-appellees/co-petitioners Mohammed Kuyateh and Edward Bangali, and co-appellant/co-respondent Ephraim Okoro were made shareholders and members of the board of directors of the domestic company, United Security Insurance Company of Liberia, Inc. and were given 200,000 shares out of 500,000 shares, while the United Security International Insurance and Re-Insurance Limited retained the remainder 300,000 shares. He said that the 200,000 shares allotted to the Liberian shareholders by the head office were apportioned as follows: co-appellant/co-respondent Ephraim Okoro 70,000 shares; co-appellee/co-petitioner Mohammed Kuyateh 65,000 shares; and co-appellee/co-respondent Edward Bangali 65,000 shares. He said the

decision of the board was communicated to the Company's local lawyer, Counsellor James Bull to change the status of United Security Insurance Agencies Incorporated, to a domestic insurance company; that Counsellor James Bull then prepared the necessary legal documents and took them to the head office in Trinidad, West Indies, to be signed by Mr. J.V. Gonslaves, President and Managing Director, and Mr. J. Graham Gonslaves, Director of United Security International Insurance and Re-Insurance Limited. The witness further said that as the Company progressed in Liberia and considering the gains made in a very short period, co-appellant/co-respondent Ephraim Okoro and co-appellees/co-petitioners Mohammed Kuyateh and Edward Bangali were, in addition to the 200,000 shares, given 25,000, and 10,000 shares respectively, while co-appellee/co-petitioner Adler Fleming, Sr. was given 5,000 shares out of the 300,000 shares retained by United Security International Insurance and Re-Insurance Limited. He informed the trial court that they and the appellants/respondents, as shareholders in the Company, worked in the Company prior to the civil war in Liberia during which period the relationships between them were very cordial; that as a result of the civil war they fled the country for refuge, leaving co-appellant/co-respondent Ephraim Okoro in charge of the management of the Company. He said when they returned to Liberia, co-appellant/co-respondent Ephraim Okoro refused to brief them on the operations of the company, and when he was invited to a meeting of the board of directors, he refused to attend. He further testified that while administering the affairs of the Company, co-appellant/co-respondent Ephraim Okoro took unilateral actions and decisions in the management of the Company without the consent of the other shareholders and Board Members as follows: (a) he leased the head office of the Company on Tubman Boulevard to the Environment Protection Agency (EPA) without the knowledge and consent of the appellees/petitioners; (b) he leased or encumbered other corporate properties such as the parcel of land opposite the UN Drive Supermarket; (c) he surreptitiously organized and registered two insurance companies which were housed and managed within the United Security Insurance Company's office/building and (d) he entered into a lease agreement with the General Service Agency (GSA) for the Company's property located on 5th Street, Sinkor, on account of which lease agreement he collected but failed to account for US\$129,000 representing rental proceeds under the said lease. The appellees/petitioners therefore prayed the trial court to declare that they have all rights, as shareholders, to demand accountability and that they are entitled to accrued interest, profits, commissions and dividends commencing 1989 up to June, 2007.

The second witness who testified for the appellees/petitioners was Leroy Fleming. He testified that he knew absolutely nothing about the formation of a company named and styled "United Security Life & General Insurance Company" which was incorporated by co-appellant/co-respondent Ephraim Okoro; that his purported signature found on the articles of incorporation of that company was a subject of forgery. He also testified that he met co-appellant/co-respondent Ephraim Okoro on two occasions and inquired about his late father, Adler Fleming's shares in and benefits from the United Security Insurance Company Liberia, Inc.; that co-appellant/co-respondent Ephraim Okoro told him that his late father does not have any share or benefit in the Company. He said when he asked co-

appellant/co-respondent Ephraim Okoro about his father's earnings as Administrative Manager in the Company, he responded that he could not remember. In response to a question on the direct examination, he said that his father had 5,000 shares in the Company and in response to a question on the cross examination, he reiterated that he did not know of the existence of the articles of incorporation of United Security Life and General Insurance Limited until this case was filed in court.

With the testimony of Leroy Fleming, the appellees/petitioners rested with the production of evidence.

The appellants/respondents then took the stand and also produced two witnesses. Co-appellant/co-respondent Ephraim Okoro was the first witness who testified for the appellants/respondents. He testified that he joined the United Security Insurance Company of Liberia, Inc. in 1973 as an agency trainee and quickly rose to the position of supervisor, something which did not go down well with Miata Sherman, the then Managing Director of the Company; that because relationship between him and the General Manager of the Company was not good, he tendered in his resignation in May, 1980, but co-appellees/co-petitioners Mohammed Kuyateh and Edward Bangali asked him to stay on and they promised to ask their overall boss not to accept his resignation. He also testified that the oversea office of the Company allotted 200,000 out of the total of 500,000 shares to the Liberian Company; that 70,000 shares were given to him, while 65,000 shares were given each to co-appellees/co-petitioners Mohammed Kuyateh and Edward Bangali. He however said that the 200,000 shares given to the Liberian shareholders in the new Liberian Company, United Security Insurance Liberia Inc. were withdrawn because according to him, Mr. J. V. Gonslaves, President and Managing Director of the parent company, wanted the shares to be purchased by the Liberian Directors. He testified that the shares given to the Liberian shareholders were never paid for.

He said he returned to Monrovia in 1991 and reopened the Company; that he requested co-appellee/co-petitioner Mohammed Kuyateh to also return to Monrovia; that co-appellee/co-petitioner Mohammed Kuyateh requested for a plane ticket to return; that he sent the plane ticket to co-appellee/co-petitioner Mohammed Kuyateh's address in the United States but no one agreed to sign for and receive the plane ticket. He also said that he later learned from a gentleman called Donald Gonzales in Trinidad, West Indies, that co-appellees/co-petitioners Mohammed Kuyateh and Edward Bangali had sold their 130,000 shares in the Company to him; that Donald Gonzales tried to take over the management of the Company but he (Okoro) resisted.

The appellants/respondents' second witness was Counsellor Pearl Brown Bull who was subpoenaed to testify. She informed the trial court that co-appellee/co-petitioner Mohammed Kuyateh sold his 15,000 shares to Donald Gonzales and that co-appellee/co-respondent Edward Bangali sold his 10,000 shares back to the corporation at US\$1.00 per share as partial payment for United Security Insurance Freetown operations which the

Company had decided to sell. The witness also informed the trial court that the Liberian shareholders in United Security Insurance Company of Liberia, Inc. did not pay for the shares they subscribed for.

When the appellants/respondents rested with the production of evidence, the appellees/petitioners produced one rebuttal witness in person of B. Wilord Labor who testified that he worked with the United Security Company of Liberia Inc. and that co-appellant/correspondent Ephraim Okoro and few of his friends established and operated another insurance company called Crown Life and General Insurance Company within the same building in which the United Security Insurance Company of Liberia was also located.

On September 27, 2010, the trial court, presided by His Honor Yussif D. Kaba, after hearing arguments from the counsels representing both parties rendered final ruling granting the petition for declaratory judgment. The trial judge held that the Company was "domesticated" and shares were given to Liberian shareholders who are fully entitled to their shares. He ordered that an accounting be done to determine the resources of the Company with the view of giving the appellees/petitioners their full entitlements. We quote hereunder excerpt from the judge's final ruling:

"...But what is of importance is to have an accounting done as to the resources of the Corporation. Wherefore and in view of the foregoing, this court hereby declares the following. ...that the petitioners herein being directors who were not dismissed and [who are] substantial shareholders in the co-respondent Corporation have all rights to demand accountability of this Corporation; that all acts including the sale and or lease of any portion of the corporate property and assets which were undertaken without a board resolution contravene corporate regulation and are therefore declared null and void; that the petitioners herein being corporate officers and shareholders are entitled to all accrued interests, dividends, [and] commissions commencing as of November, 1989 up to and including the present except, those that died before that date and in that case benefits that accrued to them as a result of their active participation in the corporate affairs up to their death; that this court shall appoint a certified public accountant or an accounting firm for that matter to conduct a complete and full accounting of the affairs of this Corporation and that report there from be brought before this court to determine whether or not corporate funds were misapplied during the period under review; and that the accountant should also consider in this process the amount of US\$300,000.00, which is said to have [been reserved for policy holders] that was deposited in foreign banks. Costs of these proceedings [are] rule against the responcents and it is so ordered."

The appellants/respondents, being dissatisfied with the ruling of the trial judge, noted exception to it and announced an appeal to the Supreme Court for appellate review. The appellants/respondents filed a 9-count bill of exceptions which we quote below:

"AND NOW COME Ephraim Okoro and the United Security Insurance Company, Respondents in the above cause of Action, [begging] leave of Your Honor to approve their Bill of Exceptions to Your Honor's Final Judgment/Ruling of September 27, 2010, [in] which you granted Petitioners' Petition for Declaratory Judgment and to which Final

Judgment/Ruling, Respondents excepted and announced an appeal to the Honorable Supreme Court, and showeth the following reasons:

1. That Your Honor committed reversible error when Your Honor ignored and denied Count Four (4) of Respondents' Returns in which Respondents informed this Court that assets of a corporation are property of the corporation and not the personal property of any shareholders or member of the Board of Director.
2. That Your Honor committed reversible error, when Your Honor ignored and denied Count five (5) of Respondents' Returns in which Respondents herein informed Your Honor that a shareholders cannot sue as an individual to recover corporation assets, but must instead, if the corporation refuses to sue, bring a stockholder's suit. If a stockholder or other person has funds accruing from the sale of corporate property, another stockholder cannot recover any part thereof, without the consent of the corporation, since it belongs to the corporation and no individual stockholder.
3. That Your Honor committed reversible error when Your Honor ignored and denied Count Fourteen (14) of Respondents' Returns in which Respondents informed Your Honor that consistent with section 5.8 of the Association Laws of Liberia, the shares of a corporation shall be represented by certificates signed by the president or vice president and the secretary or an assistant or the treasurer or an assistant treasurer of the corporation and may be sealed with the seal of the corporation, if an, or a facsimile thereof.
4. That Your Honor also committed reversible error when Your Honor ruled that the Petitioners are owners of shares for which they never showed any share certificates before this Court indicating the number of shares they own.
5. That Your Honor also committed reversible error when Your Honor sustained Petitioners' objection to a question to a question asked on the Direct Examination. "Madam Witness, you told this Court in an answer to a question that J.V. Gonsalves gave Okoro 35,000 shares, Bangali 10,000 and Kuyateh 10,000 shares for their contribution of the running of the company; and were issued shares certificates. Were you to see the certificate issued to Mr. Okoro, will you recognize same?"
6. That Your Honor committed reversible error when your Honor ignored Respondents subpoena witness Cllr. Pearl Brown Bull's testimony of August 4, 2010 as found on pages 6, 7, & 8, that the 200,000 shares were mentioned in the Articles of Incorporation was only for the purpose of subscription and that they were never paid for by neither Okoro, Kuyateh nor Bangali.
7. That Your Honor also committed reversible error when Your Honor ruled that the Petitioners are owners of shares for which Petitioners never annexed any share certificate to their pleadings indicating the number of share they own in the United Security Insurance Company.
8. That Your Honor also committed reversible error when Your Honor ruled that the Petitioners are shareholders in the Co-Respondent Corporation and have all rights to demand accountability of the Corporation. That the Petitioners being Corporate

Officers and shareholders are entitled to all accrued interest, dividends, commissions, commencing as of 1989 up to and including the present without taking into consideration that Co-Petitioner Edward Bangali sold his share to the Co-Respondent Corporation in exchange for the Sierra Leone operation while Mohammed Kuyateh also mortgage his share to support the debt incurred by Edward Bangali as a result of the sale of the Sierra Leonean operation.

9. That Your Honor also committed reversible error when Your Honor denied Movants' Motion to Dismiss and ruled that the Petitioners in the main suit had the legal capacity to institute these proceedings for the purpose of declaring their rights, their status and their relationship to the Movant's Corporation. To which Ruling of Your Honor, movants' counsel excepts.

WHEREFORE AND IN VIEW OF THE FOREGOING, Respondents present their Bill of Exceptions for Your Honor's approval in Honor to have same filed and complete the final stage of the Appeal process".

Having carefully perused the pleadings, contentions and evidence presented by the parties, as well as their points of disagreement with the final ruling of the trial judge as catalogued in their bill of exceptions which we quoted above, we consider the following two issues determinative of this case:

1. Whether or not, given the facts and circumstances of this case, the appellees/petitioners are shareholders of United Security Insurance Company of Liberia, Inc.?
2. Whether or not the appellees/petitioners have legal rights to seek declaration of their rights under the Company and to ensure judicial enforcement of their rights to accounting and inspection of corporate records?

We will decide the issues in the manner in which they are presented, starting with the issue-whether or not given the facts and circumstances of this case the appellees/petitioners are shareholders of United Security Insurance Company of Liberia, Inc.? We shall take recourse to the evidence adduced by the parties at the trial in addressing this first issue.

The appellees/petitioners, in their petition, substantially alleged that they are shareholders and officials of co-respondent United Security Insurance Company Liberia, Inc. Co-appellees/co-petitioners Mohammed Kuyateh and Edward Bangali claim that they own 65,000 shares each in the Company, while co-appellee/co-petitioner Alder Fleming claims that he owns 5,000 shares. In fact, co-appellees/co-petitioners/ Mohammed Kuyateh and Edward Bangali claim that as situation improved and gains were made with the running of the Company, they were given additional shares of 10,000 each in the Company. The testimonies of the appellees/petitioners' witnesses establish that indeed, the appellees/petitioners were given shares in the Company. Even co-appellant/co-respondent Ephraim Okoro in his testimony confirmed that the appellees/petitioners were issued shares in the Company. And there is documentary evidence in support of this contention. The

Articles of Amendment to the Certificate of Incorporation of United Security Insurance Agencies Incorporated approved by the Ministry of Foreign Affairs on May 18, 1981, copy of which was introduced into evidence provides at Article I, that the name of the corporation shall be United Security Insurance Company (Liberia) Inc. At Article IX the names of shareholders of the Company are listed as: Ephraim Okoro 70,000 shares; Mohammed Kuyateh 65,000 shares; Edward Bangali 65,000 shares; and United Security International Insurance & Reinsurance Ltd. #109 Abercromby Street, Port of Spain, Trinidad, West Indies 300, 000 shares. A copy of the minutes of the board of directors meeting held at 109 Abercromby Street, Port of Spain, Trinidad at 2:00 p.m. on Tuesday November 17, 1981, was also introduced into evidence. On the issue of capital shares the minutes resolved:

"That it was agreed that the paid up capital of the Company be \$500, 000.00 comprising 500,000 shares of \$1.00 each. Since the Company is indebted to the United Security International Insurance and Reinsurance Limited for an amount of 552,000.00 it is agreed that the Company will issue 500,000 shares to USI in the settlement of this indebtedness and USI will in turn contribute 25,000 shares to Ephraim Okoro, 10,000 shares to Edward Bangali, 10,000 shares to Mohammed Kuyateh and 5,000 shares to Alder Fleming. These gentlemen will now join USI as owners of the new Company..."[Emphasis supplied]

The foregoing are corporate records, the authenticity of which were never denied. So, clearly there is no disagreement that the appellees/petitioners were issued shares in the Company. However, co-appellant/co-respondent Ephraim Okoro, while acknowledging that co-appellee/co-petitioner Alder Fleming owns 5,000 shares in the Company, denied that co-appellees/co-petitioners Mohammed Kuyateh and Edward Bangali own 65,000 shares each in the Company. According to the co-appellant/co-respondent Ephraim Okoro, co-appellees/co-petitioners Mohammed Kuyateh and Edward Bangali never paid for the shares given to them; they merely subscribed to the shares of the Company without making payments. Co-appellant/co-respondent Ephraim Okoro also argued that co-appellees/co-petitioners Mohammed Kuyateh and Edward Bangali failed to attach any shareholder's certificate(s) as evidence of their claims that they own 65,000 shares each in the Company. Under another breath, he contended that the shares issued to co-appellees/co-petitioners Mohammed Kuyateh and Edward Bangali were either sold or withdrawn without providing any evidence of sale or withdrawal. The question we ask is, on what basis does co-appellant/co-respondent Ephraim Okoro accept co-appellee/co-petitioner Alder Fleming as a bonafide shareholder and not co-appellees/co-petitioners Mohammed Kuyateh and Edward Bangali? After all, of these Liberian Directors, including co-appellant Ephraim Okoro himself, were all listed as holders of shares in the articles of incorporation of the Company. And they were all also given additional shares and made owners of the Company at the oversea office of the parent company in Trinidad, West Indies as indicated by the minutes of board meeting quoted above. Assuming without admitting that co-appellees/co-petitioners Mohammed Kuyateh and Edward Bangali did not pay for their shares and that their shares were withdrawn or were sold by them, as contended by co-appellant/co-respondent Ephraim Okoro, where is the prove that the shares were withdrawn or sold? Who are the

new shareholders of the Company to whom the shares were sold? If there are no new shareholders, and the records do not show that there are, does this mean that the Company operated with only Alder Fleming as the lone shareholder with 5,000 shares? We do not believe that such was the case. To the contrary, we believe, based on the records before us, that the appellees/petitioners and co-appellant/co-respondent Ephraim were, and are still lawful shareholders in the Company.

We agree with the appellants/respondents' contention in their returns to the petition for declaratory judgment as follows: (a) that the shares of a corporation are represented by certificates signed by the president or vice-president and the secretary or an assistant secretary or the treasurer or the assistant treasurer of the corporation, and may be sealed with the seal of the corporation, if any, or a facsimile thereof in keeping with section 5.8 of the Associations Law of Liberia; (b) that subscription for shares does not imply purchase of shares subscribed for; (c) that the names and number of stocks listed after each name in the articles of incorporation represent the number of stock the individual listed therein agreed to take or to subscribe for, and not stocks necessarily paid for by the individuals listed; and (d) that consideration for the issuance of shares shall consist of money or other property, tangible or intangible, or labor or services actually received by or performed for the corporation or for its benefit or in its formation or reorganization, or a combination thereof.

We say, however, that section 5.4(1) of the Associations Law of Liberia provides:

"Consideration for the issuance of shares shall consist of money or other property, tangible or intangible, or labor or services actually received by or performed for the corporation or for its benefit or in its formation or reorganization, or a combination thereof. In the absence of fraud in the transaction, the judgment of the board or shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive."

Consistent with 5.4 (1) of the Associations Law of Liberia quoted above, this Court has held that a stock certificate, though a clear evidence of ownership of share in a corporation, a shareholder may however prove his or her ownership of shares by evidence other than that of a stock certificate. In the case: *Hassanin v. Antoune* (decided during the October Term of this Court, February 19, 2013) Madam Justice Jamesetta H. Wolokolie, speaking for the Court, said the following:

"Corporate records and stock certificates provide a sound evidentiary foundation for a judicial finding as to ownership of stock. In this case, a stock certificate though a clear and convincing evidence of ownership of share in the Marish Corporation, a shareholder may however prove his or her ownership of shares by evidence other than that of a certificate. For example, the act and conduct of the parties may constitute sufficient evidence of a person's status as a shareholder or as a member of a corporation."

In the case before us the parties are not in dispute that they all worked for the Company prior to the Liberian civil war, providing invaluable services which led to significant progress and gains made by the Company. As stated in section 5.4(1) of the Associations Law of Liberia "consideration for the issuance of shares shall consist of money or other property, tangible or intangible, or labor or services actually received by or performed for the corporation or for its benefit or in its formation or reorganization, or a combination thereof. In the absence of fraud in the transaction, the judgment of the board or shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive."

It is not unreasonable for us to believe that it was in recognition of the invaluable services the Liberian directors performed for the corporation or for its benefits in its formation or organization that led to progress and gains made in the Company that prompted the parent company Trinidad, West Indies to have issued additional shares to them. These shares, we do not agree, constitute shares merely subscribed to and not paid for by the appellees/petitioners, as argued by the appellants/respondents.

Moreover, the law does contemplate that anyone listed in an authentic corporate document as a shareholder can be divested of his/her share merely because the shares have not been paid for or the share certificates were not issued, absent certain procedures as laid down in the Associations Law of Liberia.

Section 5.3(3) provides:

"Time of payment calls: Unless otherwise provided in the subscription agreement, subscription for shares, whether made before or after the organization of a corporation, shall be paid in full at such time, or in such installments and at such times, as shall be determined by the board of directors. Any call made by the board of directors for payment on subscription shall be uniform as to all shares of the class or as to all shares of the same series, as the case may be."

Section 5.3(4) of the Associations Law of Liberia provides:

"Default in payment penalties: In case of default in the payment of any installment or call when such payment is due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation. The bylaws may prescribe a penalty for failure to pay installments or calls that may become due, but no penalty working a forfeiture of a subscription, or of the amount paid thereon, shall be declared as against any subscriber unless the amount due thereon shall remain unpaid for a period of thirty days after written demand has been made therefor. If mailed, such written demand shall be deemed to be made when sent by registered mail addressed to the subscriber at his last post office address known to the corporation. In the event of the sale of any shares by reason of any forfeiture, the excess of proceeds realized over the amount due and unpaid on such shares shall be paid to the delinquent subscriber or to his legal representative. If no prospective

purchaser offers a cash price sufficient to pay the full balance owed by the delinquent subscriber plus the expenses incidental to such sale, the shares subscribed for shall be cancelled and restored to the status of authorized but unissued shares and all previous payments thereon shall be forfeited to the corporation and transferred to surplus."

Having alleged that co-appellees/co-petitioners Mohammed Kuyateh and Edward Bangali did not pay for shares in the Company and that they were mere subscribers to the shares and that the shares were therefore withdrawn, co-appellant/co-respondent Ephraim Okoro did not show that the above quoted procedures laid down in the Associations Law were followed. That is – the Company made written demand for the payment of the shares; the subscribers to the shares actually received the written demands; the shares were not paid for after 30 days of the written demands; and that the Company proceeded to collect the amount due from the subscribers to the shares in the same manner as any debt due the Company. The Associations Law is emphatic, it says that "no penalty working a forfeiture of a subscription, or of the amount paid thereon, shall be declared as against any subscriber unless the amount due thereon shall remain unpaid for a period of thirty days after written demand has been made therefor." In this case, there is no showing that any written demands were made on co-appellees/co-petitioners Mohammed Kuyateh and Edward Bangali.

Further, the appellants/respondents in this case are estopped from challenging the shareholders status of appellees/petitioners when in fact the appellants/respondents (a) admitted that shares were allotted to the appellees/petitioners (b) relied on the shareholders status of the appellees/petitioners to obtain license to operate as a domestic company; and (c) co-appellant/co-respondent Ephraim Okoro himself produced no shares certificate to substantiate his shareholding. It is not disputed that co-appellant/co-respondent Ephraim Okoro asserted that he is a shareholder of the Company, but failed to show that he paid for his shares. Obviously, this establishes that the Liberian directors in the Company were issued shares, but certificates were not issued to them.

We address next, the issue- whether or not the appellees/petitioners have legal rights to seek declaration of their rights under the Company and to ensure judicial enforcement of their rights to accounting and inspection of corporate records? We hold yes.

First of all, the Associations Law of Liberia, section 8.2.1 gives shareholders of a corporation the right to inspect books and records of the corporation. It reads:

"Right Stated: Any shareholder or holder of a voting trust certificate in person or by attorney or other agent, may during the usual hours of business inspect, for a purpose reasonably related to his interest as a shareholder, or as the holder of a voting trust certificate, and make copies or extracts from the share register, books of account, and minutes of all proceedings."

Secondly, section 8.5 of the same law grants a shareholder the right to "apply to the court for an order to compel inspection" and that the court has "exclusive jurisdiction to determine whether or not the person seeking inspection is entitled to the inspection sought."

In Hassanin v. Antoune cited above, we held that "...Where a shareholder managing the corporation refuses to give access or information to a shareholder on the running of a corporation, he can sue as in this case, in an action for proper accounting."

So, while the corporation is the generally recognized as the proper party to sue for wrong committed in the administration of its affairs, the law recognizes in proper cases, claims by individual members of the corporation especially to enforce the right to inspection of corporate records or accounting as in the instant case. We hold that such application to compel the right to inspection may be sought through a petition for declaratory judgment. The purview of a petition for declaratory judgment is declaring the rights of the parties. The declaration does not and cannot involve the courts going beyond the rights so declared, but the court has the authority to state what those rights entail and how they are to be exercised by parties to the declaratory judgment proceedings. It is in this vein that we make the hereunder declarations as to how the parties, under the law, are to pursue the exercise of the rights declared.

WHEREFORE, and in view of what we have said above, we hold that the judgment of the trial court, being in conformity with the facts and applicable laws should not be disturbed. The said judgment is therefore confirmed and affirmed, however, with modifications as follows:

- (a) That the appellees/petitioners, Mohammed Kuyateh, Edward Bangali and Alder Fleming, along with co-appellant/co-respondent Ephraim Okoro are shareholders in the United Security Company of Liberia, Inc. as indicated in both the articles of incorporation of that Company and the minutes of board meeting held on November 17, 1981, in Trinidad, West Indies, by the United Security International Insurance and Reinsurance Limited, the parent company of United Security Insurance Company of Liberia, Inc.;
- (b) That as there was no showing that the shares given to co-appellees/co-petitioners Mohammed Kuyateh, Edward Bangali, Alder Fleming and co-appellant/co-respondent Ephraim Okoro were ever sold, withdrawn, or forfeited for default in payment in accordance with section 5.3(3) of the Associations Law, the appellees/petitioners and co-appellant/co-respondent Ephraim Okoro remained, for all intents and purposes, shareholders in the United Security Insurance Company Liberia, Inc.;
- (c) That by virtue of their shareholding in United Security Insurance Company of Liberia Inc., the appellees/petitioners can institute a direct suit in their own names and for their own benefits for any damages suffered directly or personally and/or for any

rights denied them, as well as in the name of the Company in a shareholder derivative action for any abuse, misconduct or misdeed perpetrated against the corporation by any shareholder, director or officer, for the benefit of the Company;

- (d) That the appellees/petitioners, being shareholders, have the right to demand accounting of any shareholder, director or officer in control of the management, operations and affairs of the Company;
- (e) That in regard to the shareholders' exercise of the foregoing rights, this Court directs that co-appellant/co-respondent Ephraim Okoro, as Managing Director/Chief Executive Officer of the Company, shall convene or cause to be convened a shareholders' meeting not later than thirty days of the date of this judgment to decide on issues concerning the management, operations and affairs or other actions affecting the Company, including the election of new directors to manage the affairs of the Company, directing the board to immediately convene a board of directors meeting and requiring the Managing Director/Chief Executive Officer to prepare a full written report to the board on the activities and conduct of the affairs of the Company under his stewardship, which report shall include an account of all assets and liabilities, receivables and expenses incurred, sales, leases, exchanges or other dispositions made by the Company, if any;
- (f) That Mr. Morris Solee, who was appointed by the trial court to act as Receiver of the Company pending the outcome of this case shall, simultaneously with the Managing Director/Chief Executive of the Company, prepare a full written report of the activities of the Company during the time of his stewardship and turn over all of the assets of the Company to include all books, records and other documents and costing, etc., to the board and new management of the Company; and
- (g) That the appellees/petitioners shall be entitled to dividends subject, however, to the provision of section 5.9 of the Associations Law which states: "A corporation may declare and pay dividends in cash, stock or other property on its outstanding shares, except when currently the corporation is insolvent or would thereby be made insolvent or when the declaration of payment would be contrary to any restrictions contained in the articles of incorporation. Dividends may be declared and paid out of surplus only; but in case there is no surplus, dividends may be declared or paid out of the net profits for the fiscal year in which the dividend is declared and for the preceding fiscal year". Accordingly, the board of directors, as legally permissible and feasible ensuring that the corporation is not impacted negatively, shall declare dividends to shareholders for such period and in such amount as the board shall deem appropriate, consistent with law, the articles of incorporation and bylaws of the Company.

The Clerk of this Court is ordered to send a mandate to the lower court to resume jurisdiction over this case and give effect to this judgment. Costs are ruled against the appellants/respondents. IT IS HEREBY SO ORDERED.

Judgment affirmed.

Counsellor Powo C. Hilton of Touch Professional Consultancy appeared for the appellants/respondents.

Counsellor T. Negbalee Warner of Heritage Partners & Associates, Inc. appeared for the appellees/petitioners.