IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A. D. 2018

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, III.............................ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH ....ASSOCIATE JUSTICE

Her Honor Eva Mappy Morgan, Chief Judge, His Honor Chan Chan A. Paegar, Associate Judge, His Honor Richard S. Klah, Associate Judge, all Judge and Associate Judges of the Commercial Court of Liberia and West Africa Telecommunications, Inc., by and thru its Authorized Representative, Giovani Nives Nives, of the City Monrovia Republic of Liberia.......APPELLANTS VERSUS Liberia Telecommunications Authority (LTA), by and through its Chairman or any of its Commissioners of the City of Monrovia, Liberia..APPELLEE	APPEAL
GROWING OUT OF THE CASE Liberia Telecommunications Authority (LTA), by and through its Chairman or any of its Commissioners of the City of Monrovia, Liberia..PETITIONER VERSUS Her Honor Eva Mappy Morgan, Chief Judge, His Honor Chan Chan A. Paegar, Associate Judge, His Honor Richard S. Klah, Associate Judge, all Judge and Associate Judges of the Commercial Court of Liberia and West Africa Telecommunications, Inc., by and thru its Authorized Representative, Giovani Nives, of the City Monrovia Republic of Liberia..............RESPONDENTS	PETITION FOR THE WRIT OF CERTIORARI
GROWING OUT OF THE CASE West African Telecommunications, Inc., by and thru its Authorized Representative, Giovani Nives, of the City of Monrovia, Liberia..PLAINTIFF VERSUS Liberia Telecommunications Authority (LTA), by and through its Chairman or any of its Commissioners of the City of Monrovia, Liberia..DEFENDANT	ACTION OF DAMAGES FOR WRONG

HEARD: March 30, 2016. DECIDED: July 18, 2018

MR. JUSTICE BANKS delivered the Opinion of the Court.

This case is before us on appeal from the ruling of our distinguished colleague, Madam Justice Sie-A-Nyene G. Yuoh, granting the peremptory writ of certiorari in favor of the Liberia Telecommunications Authority (LTA), appellee herein, and against the West African Telecommunications, Inc., the appellant.

The records certified to this Court reveal that on August 27, 2014, the appellant, West African Telecommunications Authority, filed an action of damages for wrong in the Commercial Court of Liberia against the appellee, Liberia Telecommunications Authority. Pursuant to the orders of the Chief Judge, the Clerk of the Commercial Court issued a writ of summons commanding the appellee to appear before the Commercial Court or file its answer on or before September 8, 2014, and that failure to appear or file an answer, as directed by the writ of summons, judgment by default would be entered against it. Because the writ of summons formed the crux of the petition filed before the Justice in Chambers, as noted by the Justice and with which this Court, and that it was upon the analysis and interpretation of which the Justice acted in granting the petition, we quote herewith the writ of summons verbatim, to wit:

"<u>WRIT OF SUMMONS</u>

REPUBLIC OF LIBERIA; TO: NATHANIEL GILDERSLEEVES, ESQ., ACTING SHERIFF, COMMERCIAL COURT OF LIBERIA, MONTSERRADO COUNTY OR HIS DEPUTY: GREETINGS!

YOU ARE HEREBY COMMANDED TO SUMMON LIBERIA TECOMMUNICATIONS AUTHORITY (LTA), BY AND THRU ITS CHAIRMAN OR ANY OF ITS COMMISSIONERS, OF THE CITY OF MONROVIA, LIBERIA, DEFENDANT TO APPEAR BEFORE THE COMMERCIAL COURT OF LIBERIA, TEMPLE OF JUSTICE, MONTSERRADO COUNTY, SITTING IN ITS SEPTEMBER TERM, A.D. 2014 ON THE 1ST TUESDAY IN SEPTEMBER, SAME BEING THE 2ND DAY OF SEPTEMBER, A. D. 2014, AT THE PRECISE HOUR OF TEN O'CLOCK IN THE MORNING TO ANSWER THE COMPLAINT OF THE ABOVE NAMED PLAINTIFF. THAT UPON ITS FAILURE TO APPEAR, JUDGMENT BY DEFAULT WILL BE RENDERED.

YOU ARE FURTHER COMMANDED TO NOTIFY THE SAID DEFENDANT TO FILE ITS ANSWER IN MY OFFICE ON OR BEFORE THE 8TH DAY OF SEPTEMBER, A. D. 2014.

MEANWHILE, YOU WILL RETURN THE ORIGINAL WRIT OF SUMMONS TO MY OFFICE ON/OR BEFORE THE 8TH DAY OF SEPTEMBER, A.D. 2014 WITH THE OFFICIAL RETURNS ENDORSED ON THE BACK THEREOF AS TO THE MANNER AND FOR OF ITS SERVICE.

<u>AND HAVE YOU THERE THIS WRIT OF SUMMONS.</u>

GIVEN UNDER MY HAND AND SEAL OF
COURT THIS 27TH DAY OF AUGUST, A. D. 2014.

SEAL: *Enoch S. Galawolu*
CLERK, COMMERCIAL COURT OF LIBERIA"

We see in the records also that upon being served with the writ of summons, quoted above, and in obedience to the directive stated therein, the appellee, Liberia Telecommunications Authority, on September 8, 2014, filed its Answer to the Complaint. The records further reveal that on the following day, September 9, 2014, the appellant filed a three (3) count motion to strike the appellee's answer, stating as grounds therefor that the answer was filed without the time provided by law; that as the law provides that the responsive pleading must be filed and served within ten days as of the date of receipt of the pleading to which it responds, the appellee should have filed its answer on the 6th day of September rather than on the 8th day of September, A. D. 2014; and that failure of the appellee to file its answer within the ten day period prescribed by law, being in total violation of the statute, the answer should be stricken from the records. For the purpose of capturing the full essence of the motion to strike and the basis for the decisions of the Chambers Justice, we quote herewith the full text of the motion, as follows, to wit:

"MOVANT'S MOTION

Movant in the above-entitled cause of action prays Your Honors to strike Respondent/Defendant's Answer from the record in the Action of Damages for Wrong, out of which this Motion grows, and for legal and factual reasons showeth the following, to wit:

1. That Section 9.2(3) of the Civil Procedure Law provides that service of an answer or reply shall be made within ten (10) days after the service of the pleading to which it responds. Movant/ Plaintiff submits that the Writ of Summons and Complaint in the Action of Damages for Wrong, out of which this Motion grows, were served on the Respondent/Defendant on the 27th day of August, 2014, 2012. Accordingly, Respondent/Defendant was required by law to file with this Honorable Court and serve its Answer on Movant/Plaintiff on or before, but not later than the 6th day of September, 2014.

2. That notwithstanding the averment contained in Count One (1) above, Movant/Plaintiff says that Respondent/Defendant elected to file its Answer on the 8th day of September, 2014, two (2) days after the ten (10)-day statutory period allowed for such filing and service. Movant/Plaintiff prays Your Honor to take judicial notice of the filing date indicated on Respondent/Defendant's Answer in substantiation of the averment contained herein. Attached hereto and marked in bulk as Movant/Plaintiff's Exhibit M/1" are (i) copy of a Clerk's Certificate issued by the Clerk of this Honorable Court, and (ii) a copy of the first page of defendant's answer, both

indicating that defendant's answer was filed on the 8th day of September, 2014, in substantiation of the averment contained herein.
2. Movant/plaintiff says and submits that the failure and refusal of respondent/defendant to file and serve its answer on movant/ plaintiff within the statutory period of ten (10) days is a total violation of the statute in such cases made and provided. Hence, said answer should be stricken from the record of the case file; and movant/plaintiff prays Your Honor to so rule and declare.
Wherefore and in view of the foregoing, movant/plaintiff prays Your Honor to strike respondent/defendant's answer from the record of the action of damages for wrong, out of which this motion grows, and grant unto movant/plaintiff any other and further relief as You Honor may deem just, legal and equitable in the premises."

In response to the motion to strike, the appellee, on September 18, 2014, filed a seven (7) count resistance, contending basically that it had complied with the directive contained in the writ of summons by filing its answer on September 8, 2014, the date on which the summons directed that the answer should be filed; that the law clearly empowered the lower court to state in the wit of summons the date on which a defendant should file an answer to a complaint, which the writ had done and which the appellee had complied with; that in any event, due to the Ebola crisis and the directive of the Administration of the Judiciary, all offices connected to the courts were ordered to be closed at 3:00 p.m. each day; that due to the same Ebola crisis, many employees of the Judiciary did not appear for work on Saturdays, which, as applied to the instant case, was the 6th day of September, A. D. 2014; that the Clerk of the Commercial Court confirmed the foregoing by executing an affidavit stating that in harmony with the directive and the cautionary act of employees in not appearing for work on Saturdays, he was not at work on Saturday, September 6, 2014; and that in any event the appellee was entitled to the fundamental due process of law right to be heard. Here is how the appellee couched its resistance to the motion to strike:

"RESPONDENT'S RESISTANCE

Respondent, in the above-entitled proceeding, denies the legal and factual sufficiency of Movant's Motion to Strike, and prays Your Honor to deny, overrule and dismiss said Motion, for legal and factual reasons, showeth the following, to wit:
1. That as to counts one (1), two (2) and the Prayer of the Motion, Respondents denies the averments therein contained and says further that under our law, the Writ of Summons-is what brings the Defendant under the jurisdiction of the Court.

2. Further to count one (1) herein above, Respondent says Section 3.33 of the Civil Procedure Law provides that the Summons, amongst other things, shall "..........state the time within which the defendant is required to appear and defend................"

3. Further to count two (2) herein above, Respondent says the Writ of Summon in the instant case directs the Defendant to file its Answer on or before the 8th day of September, A. D. 2014. Copy of the Writ of Summons is hereto attached and marked Respondent's Exhibit R/1.

4. Further to count three (3) herein above, Respondent says due to the ebola crisis, offices at the Temple of Justice are closed at 3:00 pm daily and judicial workers hardly come on Saturdays. Copy of Memorandum from the Personnel Director at the Temple of Justice is hereto attached and marked Respondent's Exhibit "R/2".

5. Further to count four (4) herein above, Respondent says the Clerk of the Commercial Court, under oath, confirmed that "he did not go to work on Saturday, 6 September 2014 to conduct any official clerical duty as Clerk of the Commercial Court; neither was he seen anywhere around the vicinity of the Temple of Justice Building". Copy of the Sworn Affidavit by Enoch S. Garlawolu, Clerk, Commercial Court of Liberia, is hereto attached and marked Respondent's Exhibit "R/3".

6. Further to count five (5) herein above, Respondent says the right to be heard is a fundamental right and absent a clear relinquishing of same, Courts of law and equity should not deprive a party of its day in Court. Our Supreme Court has held that technicalities which do not relate to the merits of a case will not be allowed to defeat the ends of justice. Gbae v. Geeby, 14 LLR 147 (1960).

7. Respondent denies all and singular the averments of fact and law contained in Movants' Motion and which may not have been specifically traversed in this Resistance.

WHEREFORE, and in view of the foregoing laws, facts and circumstances, Respondent prays this Honourable Court and Your Honour to overrule, set aside and quash Movants' Motion to Strike; and grant unto Respondent such other and further relief as to this Court may see in just and equitable."

In order that the allegations contained in the resistance to the motion to strike, relative to the Clerk of the Commercial Court not being present in court on September 6, 2014, the appellee attached a sworn affidavit from Mr. Enoch S. Garlawolu, Clerk of the Commercial Court. The affidavit, sworn to on September 9, 2014, read as follows:

"SWORN AFFIDAVIT BY ENOCH S. GARLAWOLU, CLERK, COMMERCIAL COURT OF LIBERIA

PERSONALLY appeared before me, a duly qualified and commissioned Justice of the Peace, in and for Montserrado County, Republic of Liberia, at my Office, in the City of Monrovia, Mr. Enoch S. Garlawolu, Clerk of the Commercial Court of Liberia, and after having been duly sworn, made Oath and sayeth, as follows:

1. *That he is currently the Clerk of the Commercial Court of Liberia.*

2. *That he did not go to work on Saturday, 6 September 2014 to conduct any official clerical duty as Clerk of the Commercial Court; neither was he seen anywhere around the vicinity of the Temple of Justice Building.*
3. *And that all and singular the foregoing fact as are set forth and contained herein are true and correct to the best of his knowledge and recollection; and as to those matter of information, he verily believes them to be true and correct."*

Also, in a presumed attempt to support the allegations set forth in the resistance, the appellee attached to the resistance a Memorandum from the Personnel Director of the Judiciary, Ms. Weyata E. Ponpon, addressed to employees of the Judiciary, wherein she informed workers of the Judiciary that as of the date of the Memorandum all functions of their offices should cease and the offices be closed at 3:00 p.m.

Further, although the petitioner did not raise or reference it as an issue which it desired the Chambers Justice to take cognizance of, and hence does not warrant this Court addressing it as an issue affecting the disposition of this case, we believe that it is important to take due note of the procedure which was adopted by the Commercial Court in dealing with both the motion to strike and other issues raised by the parties and disposed of by the said court. We refer particularly to the fact, revealed by the records of the case, that while the minutes, under the name and signature of Amos F. Gbowah, Assistant Clerk of the Commercial Court, reflect that the case was called on January 13, 2015 for a pretrial conference and hearing of motions, at which all of the Judges of the Court were present, and arguments were said to have been entertained by the Court at the conference, the minutes show only the outcome of the conference and enumerated only what was said to be the decisions taken during the conference. The Minutes are devoid of any information as to the arguments actually made by the parties, or exchanges had amongst the parties and the court, or the legal reliance given by counsel for the parties which could or may have persuaded the court or provided the basis for the court's decisions and afforded the opportunity for appellate examination of or into the reliance of the court. In the absence of these, this Court is left to speculate as to the arguments made or the reliance set forth by the parties or as to whether the Commercial Court made a determination not to address some of the contentions advanced by the parties for the consideration of that court in disposing of the motions or other matters in the case. We quote, for the benefit of our further comments in this Opinion, the referenced Minutes containing the decisions/rulings of the Commercial Court, to wit:

> *"REPUBLIC OF LIBERIA IN THE COMMERCIAL COURT OF LIBERIA, REPUBLIC OF LIBERIA, MONTSERRADO COUNTY MONTSERRADO COUNTY SITTING IN ITS JANUARY TERM, A.D. 2015.*
> *BEFORE HER HONOR....EVA MAPPY MORGAN....CHIEF JUDGE BEFORE HIS HONOR CHAN-CHAN A PAEGAR......ASSOCIATE JUDGE*
> *BEFORE HIS HONOR......RICHARD S. KLAN, SR., . ASSOCIATE JUDGE*
> *TUESDAY, 13 JANUARY A.D. 2015*
> *7TH DAY SITTING*
> *JANUARY TERM, A.D. 2015*
> *The Commercial Court of Liberia, Montserrado County, Republic of Liberia, sitting in its January Term, A.D. 2015 met this morning at the precise hour of 10:00AM for the normal transaction of business with Her Honor Eva Mappy Morgan, Resident Chief Judge, His Honor Chan-Chan A. Paegar Resident Associate Judge and Richard S. Klah, Sr., Resident Associate Judge sitting en banc. Devotion was conducted, the roll of Clerical and Ministerial Staff was called and those absent were duly noted.*
> *MR. SHERIFF, Recess hour having expired, this Court now resumes the transaction of business.*
> *THE COURT: Mr. Sheriff, Call the case. The case: West Africa Telecommunication, Inc. by and thru its authorized representatives, Giovani Nives of the City of Monrovia, Liberia, Plaintiff, versus Liberia Telecommunications Authority (LTA), by and thru its Chairman or any of its Commissioners, also of the City of Monrovia, Liberia," Defendant, Action of Damages for Wrong: Case called for Pretrial Conference/Hearing of Motions.*
> *It is so ordered.*
> *PRESENTATION:*
> *The Plaintiff is represented by Sherman and Sherman, Inc. and present in Court are Cllr. G. Moses Paegar and Cllr. J. Johnny Momoh who say they are in Court for the hearing of this matter. And submit.*
> *While the Defendant is represented by the Dean and Associates Law Offices and in association with the In-house Legal Counsel for LTA, present in Court are Cllr. F. Musa Dean, Jr., Cllr. Necular Y. Edwards and Cllr. Osborne K. Diggs, Jr. who say they are in Court for the hearing of this matter.*
> *It is so ordered.*
> *THE COURT: The Court notes the representations of the parties; the Court wishes to inform counsels they may proceed. Counsels may proceed with the hearing of the Motions filed in this matter.*
> *It so ordered.*
> *1. The Motion to justify Surety was heard and the capacity of the surety to issue bond as well as the sufficiency of the bond issued in this matter was conceded.*
> *2. Motion to vacate attachment was heard and granted.*
> *3. The motion to strike was granted, on ground that the Defendant's Answer was filed out of term and the defendant is also ruled to bare denial.*

4. The Motion for Summary Judgment was also heard and ruling reserved pending the issuance of a regular notice of assignment.
It is so ordered.
To which ruling counsels for defendant except and gives notice that they will take advantage of the statute controlling. And so submits.
THE COURT: Exception noted.
It is so ordered.
THE COURT: Mr. Clerk, is there any other matter before Court?
THE CLERK: No Your Honors.
THE COURT: Court's adjourned.
GIVEN UNDER MY HANDS AND SEALED OF COURT
ON THIS 13TH DAY OF JANUARY) A.D. 2015"

Referencing the above, we recognize that the statute creating the Commercial Court stipulates *inter alia* that the procedure in the Commercial Court shall be structured to promote the prompt determination of commercial disputes, but we are also cognizant of the further provision of the same statute which states that actions in the Commercial Court shall be commenced and regulated in the same manner as prescribed in the Civil Procedure Law for civil actions and that the procedure followed must be in keeping with law. Thus, while the Civil Procedure Law provides for the holding of a pretrial conference, and we concede that the act of the Commercial Court Judges in citing the parties to a pretrial conference, the purpose of which was to simplify or condense the issues and have the parties agree upon or admit to certain facts not in controversy, thus obviating the need to belabor the court and maximizing the time that could be spent on addressing the issues in actual dispute, as well as dispose of pending motions, etc., was in consonance with the provisions of the Commercial Court Act and the Civil Procedure Law, [see *Commercial Court Act of 2010, Article III, section (1)(2); Civil Procedure Law, Rev. Code, 1:12.],* and that as provided in section 12.5 of the Civil Procedure Law, the Commercial Court judges were vested with the authority to issue orders at the close of pretrial conferences, denying or granting a party's claim, we are of the considered opinion, in full harmony with the view expressed by the Chambers Justice, that the court's ruling on the motion to strike should have complied with the standard and form of ruling and judgment set by this Court and not simply recording such ruling on a single line in the court's Minutes, with no recital of the arguments made by the parties at the conference. This Court has opined that "every ruling/judgment rendered by a judge in the disposition of a cause of action shall be detailed, containing clear and concise summaries of the facts and the evidence of the case, the relevant law citations relied upon, and the rationale upon which the ruling is made and that final ruling/judgment shall be [a] separate and properly type-written document which shall be attached to the records of the case." This is especially the case where the appellee's resistance to the motion to strike raises other circumstances which tended to imply that the court or an officer of the court was responsible for the alleged late filing of the appellee's answer and that as far as the appellee was concerned it was acting in strict compliance with the directive of the court as couched in the writ of summons.

Hence, while we note that the affidavit from the Clerk of the Commercial Court averred that he [the Clerk] had not reported to work on the 6th day of September, 2014, this was a separate and distinct issue from the issue wherein the appellee stated that it had acted in strict compliance with the directive of the Commercial Court, via the writ of summons, which directed the appellee to file its answer on the 8th day of September, A. D. 2014, as opposed to September 6, 2014, which, under the provisions of the statute, was the last day for filing of the Answer. In the circumstances, we believe that it was important that the Commercial Court state in very certain terms reasons why it did not accept the contentions advanced by the appellee as to the reason for the filing of its answer on September 8, 2014 as opposed to September 6, 2014. There was need to explain whether the Court or the Clerk of said Court had acted in a negligent manner as would or could excuse the appellee of the late filing of the answer or whether, in spite of the said negligence by the court or the clerk, this did not excuse the appellee or relive the appellee of the responsibility to comply with the statute and to therefore exert every effort to find the clerk and file the answer on the date required by statute. This would have placed the onus on the lower court to explain why it could not excuse the appellee's late filing of its Answer or explain why the late filing of the answer was unacceptable in law and to the court. The mere statement that "[t]he motion to strike was granted, on ground that the Defendant's Answer was filed out of term and the defendant is also ruled to bare denial" is in our view insufficient to justify the action or decision of the court. We must therefore again emphasize that the decisions or rulings of the lower courts must reflect not only the arguments made by the parties, whether at a hearing or pretrial conference, as in the instant case, but the courts must set out the reasons for their decision so that a proper appellate examination can be made of the reasons and adequate disposition made as to whether the reasons stated and the rationale provided are in harmony with or can be sustained under the law. In the instant case, the responsibility is shifted to this Appellate Court to make the initial probe into whether the contentions advanced by the appellee are sustainable in law, an act which should have first been undertaken by the Commercial Court.

Howbeit, the appellee excepted to the decision of trial court granting the motion to strike and ruling the appellee to a bare denial, and on January 16, 2015 filed a eighteen (18) count petition for a writ of Certiorari before His Honor Justice Philip A. Z. Banks, III, who at the time was presiding in the Chambers of this Court. The appellee contended, amongst other things, that its right to due process of law was violated since there was no formal hearing on the motion to strike; that it complied with the writ of summons by filing its returns on September 8, 2014; that assuming that the date on said summons was an error, it exerted all efforts to file its answer on September 6, 2014, but that the clerk of the Commercial Court, not being available to perform his statutory and administrative duties, it should not be held liable for the errors of the clerk of the court. The appellee's eighteen (18) counts petition is herein quoted below to wit:

<u>"PETITIONER'S PETITION</u>

Petitioner, in the above entitled cause of Action, most respectfully prays your Honor for the issuance of the Writ of Certiorari against the Respondents, and for legal and factual reasons, showeth the following, to wit:

1. Petitioner says it is party defendant in an action of damages for wrong, filed by Co-respondent/Plaintiff West Africa Telecommunications, Inc., out of which grows this petition.

2. Further to count one (1) herein above, Petitioner says the doctrine of due process is at the core of our jurisprudence and it was defined in the case Wolo v. Wolo, 5LLR 423 (1972) to mean that "there must be a tribunal competent to pass on the subject matter, notice actual or constructive, opportunity to appear and produce evidence, to be heard in person or by counsel, or both, having been duly served with process or having otherwise submitted to the jurisdiction".

3. Further to count two (2) herein above, Petitioner says the Writ of Summons is the instrument which brings the defendant under the jurisdiction of the Court. Under our Civil Procedure Law, 1 L. C. L.

Rev., tit. 1 section 3.33 (1973), the form of the Writ of Summons is described as follows: "The summons shall be directed to the ministerial officer of the court in which the action is brought; shall state the court and names of the parties, together with their addresses if know; shall be signed by the clerk and bear the seal of the court; shall state the time within which the defendant is require to appear and defend; and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint. In a court not of record, a statement of the substance of the complaint shall be included in the summons" (emphasis supplied).

4. Petitioner says Co-respondent Liberia Telecommunications Authority filed an Action of Damages for Wrong against Petitioner, claiming the sum of US$8,640,000.00 (United States Dollars Eight Million Six Hundred Forty Thousand) as special damages and general damages in an amount to be determined by the Court.

5. Further to count four (4) herein above, Petitioner says the Writ of Summons was served on the Defendant, Liberia Telecommunications Authority ("LTA"), by and thru Hon. Henry W. Benson, Commissioner - Engineering & Technology Department of the LTA. The said writ of summons ordered and directed the defendant as follows:

> YOU ARE FURTHER COMMANDED TO NOTIFY THE SAID DEFENDANT TO FILE ITS ANSWER IN MY OFFICE ON OR BEFORE THE 8TH DAY OF SEPTEMBER, A. D. 2014.

Copy of the writ of summons is hereto attached and marked petitioner's Exhibit "P/1".

6. Petitioner says, consistent with the directive and order contained in the Writ of Summons, it filed its Answer on the 8th day of September, A. D. 2014 and served copy on the Plaintiff. Copy of the Answer, with the filing and service dates reflected on its face, is hereto attached and marked Plaintiff's Exhibit "P/2".

7. Petitioners says on the 9th day of September, A. D. 2014, Co-Respondent West Africa Telecommunications, Inc. filed a Motion to Strike Defendant/Petitioner's Answer, contending that the Writ of Summons and Complaint were served on Defendant/Petitioner on the 27th day of August, A. D. 2014 and Defendant should have filed its Answer on the 6th day of September, A. D. 2014. It is important to point out that the 6th day of September, 2014 fell on a Saturday. Copy of Co-Respondent West Africa Telecommunications, Inc. /Plaintiff s Motion to Strike is hereto attached and marked Petitioner's Exhibit "P/3".

8. Petitioner says it filed its resistance to the motion on the 18th day of September, A. D. 2014 and drew the Court's attention to the directive, instruction and order contained in the Writ of Summons to the Defendant to file its Answer on or before the 8th day of September, A. D. 2014. Copy of defendant's resistance to the motion to strike is hereto attached and marked Petitioner's Exhibit "P/4".

9. Further to count eight (8) herein above, in its resistance, defendant/petitioner further informed the court that it visited the

court on the said Saturday, September 6, 2014 on another matter, and the clerk of court was absent. Defendant/petitioner drew the attention of the court to the current ebola crisis and the fact that employees of Temple of Justice left offices early and did not come on some Saturdays. Copies of the Memorandum from the Personnel Department of the Temple of Justice and Sworn Statement from Enoch S. Garlawolu, Clerk of the Commercial Court of Liberia, were attached to Petitioner's Resistance and are hereto reattached to this Petition as Petitioner's Exhibit "P/5".

10. Petitioner says on the 13th day of January, A. D. 2015, the Chief Judge of the Commercial Court, speaking for the Court En Banc granted Co-Respondent West Africa Telecommunications, Inc.'s Motion to strike Defendant's Answer and by so doing, ordered that Defendant's Answer be stricken from the records of the Court. To which Ruling Defendant/Petitioner herein excepted and now brings this Petition before your Honour. Copy of the Minutes of Court is hereto attached and marked Petitioner's Exhibit "P/6".

11. Petitioner says it acted in obedience to the order of the Court, contained in the Writ of Summons, to file its Answer on the 8th day of September, A. D. 2014 and it did so.

12. Further to count eleven (11) herein above, Petitioner says assuming arguendo that the Clerk committed error, in a long line of cases, the Supreme Court has held that errors of court's officers are not attributable to a party. Fazzah vs. Rogers Shoe Company, by Richard Henries, Attorney-In-Fact, 12 LLR 215 (1955).

13. Further to count twelve (12) herein above, the Court held that "where an Appellant's failure to fulfill the requirements for perfecting an appeal is due to a mistake or omission by an officer of the court, the defect is not fatal to the appeal, but may be remedied by order of the L appellate court so as to promote substantial justice".

14. Further to count thirteen (13) herein above, Petitioner says similarly, the Supreme Court held in the case Williams vs. Republic of Liberia, 14 LLR 602 (1961) that "where an appellant's failure to have notice of appeal served on the appellee was caused by an error of the clerk of the trial court under exceptional circumstances over which the appellant had no possibility of control, a judgment dismissing the appeal may be reversed by the Supreme Court on re-argument".

15. Further to count fourteen (14) herein above, the Court in the same case held that "whilst maintaining and upholding the laws and rules of our courts, which have been observed in the opinion cited, supra, where substantial justice and the right to a fair, speedy and impartial trial, are by any neglect of the court or any of its officers, threatened, the court would be negligent of its sacred duty to ignore patent errors committed by it or its officers to the detriment of a party".

16. Further to count fifteen (15) herein above, Petitioner says the right to be heard is a fundamental right and absence a clear relinquishing of same, courts of law and equity should not deprive a party of its day in court. Our Supreme Court has held that *technicalities which do not relate to the merits of a case will not be allowed to defeat the ends of justice. Gbae v. Geeby, 14LLR 147 (1960).*

17. Further to count sixteen (16) of this petition, petitioner says that certiorari will lie to reverse the erroneous Ruling of the Judges.

18. Petitioner has paid accrued costs and obtained Counsellors' Certificate signed by two (2) counsellors confirming that the contentions of the petitioner are sound in law and says further that this petition has not been brought for the mere purpose of delay, but to ensure that justice is done. Copy of the receipt and the certificate, in verification of the averments herein contained above, are hereto attached and marked petitioner's Exhibit "P/7".

WHEREFORE, and in view of the foregoing, petitioner prays for the issuance of the alternative writ of certiorari against the respondents, and by so doing, ordering and commanding the respondents to cease all further proceedings, pending a formal hearing by Your Honour of the issues involved, on a date and time to your Honour's convenience; and after a hearing, petitioner prays for the issuance of the peremptory writ, to correct the prejudicial, harmful and reversible error committed by the co-respondent judges, as herein detailed above. Petitioner also prays your Honour to grant unto petitioner any other and further relief as in such cases is made and provided by law, with cost of these proceedings ruled against the respondents."

We see from the records that having received the petition, Justice Banks issued out citations for conference on the petition but could not continue with the matter as his term in Chambers came to an end with the conclusion of the October Term, A.D. 2014 of the Supreme Court. He was succeeded by Madam Justice Sie-A-Nyene G. Yuoh who, following a conference with the parties and upon determining that the petition presented issues for further review, issued the alternative writ of certiorari and ordered the appellant to file its returns on or before the 2nd day of June, A. D. 2015.

In compliance with the Chambers Justice's order, the appellant filed a twenty (20) count returns contending, amongst others things, that while the Clerk erroneously instructed the appellee to file its answer on or before September 8, 2014 the appellee was under an obligation to take cognizance of section 9.2(3) of the Civil Procedure Law which mandates the filing of a responsive pleading within ten days as of the date of the receipt of the pleading to which it is responding. Hence, they said, the appellee was required by law to file its answer on September 6, 2014, and that in any case, the appellee was accorded due process of law. We quote the appellant's twenty (20) counts resistance to wit:

RESPONDENTS' RETURNS

Respondents in the above-entitled proceedings deny the legal and factual sufficiency of petitioner's petition and pray Your Honor to deny and dismiss same for the following legal and factual reasons to wit:

I. That as to count one (1) of the petition, respondent says that same presents no traversable issue and therefore need not be traversed.

2. That as to count two (2) of the petition, respondents say that the averment contained therein defines the doctrine of due process as propounded by the Supreme Court of Liberia in the case Wolo versus Wolo, 5 LLR 423 (1972), and therefore presents no traversable issue.

3. That as to Count Three (3) of the Petition, Respondents say that the averment therein contains the quotation of Section 3.3(3) of 1 LCLR. Hence, same presents no traversable issue and therefore need not be traversed.

4. That as to count four (4) of the petition, respondents say that same presents no traversable issue and therefore need not be traversed.

5. That as to count five (5) of the petition, respondents say that while it is true the writ of summons erroneously directed petitioner to file its returns on or before the 8th day of September, 2014, respondents say that it was a clerical mistake as the writ of summons was issued on the 27th day of August, 2014. Accordingly, and consistent with Section 9.2(3) of the Civil Procedure Law, which mandates a party filing an answer or returns to do so within ten (10) days after the service of the pleading to which it is responding, respondents was required to file its answer on or before September 6, 2014.

6. That as to count six (6) of the petition, respondents say that the clerk erred when he directed petitioner to file its answer on or before the 8th day of September, 2014, as the writ of summons, which was issued on the 27th day of August, 2014, along with the complaint was served on the petitioner on the self-same 27th day of August, 2014. Consistent with Section 9.2(3) of the Civil Procedure Law, notwithstanding the erroneous directive of the clerk for the Petitioner to file its answer on or before the 8th day of September, 2014, petitioner was required and mandated by statute to file its answer on or before the 6th day of September, 2014. Petitioner not having done so, the lower court, consistent with law, correctly struck petitioner's answer from the case file in the court below.

7. That as to count seven (7) of the petition, respondents say that same presents no traversable issue and therefore need not be traversed.

8. That as to count eight (8) of the petition, respondents confirm and affirm counts five (5) and six (6) above and incorporate said counts into this count of the returns in traversal of count eight (8) of the petition.

9. That as to count nine (9) of the petition, respondents say that the statute requires and mandates a party filing an answer to do so within ten (10) days after the date of service of the precept on said party, and that the failure of the party to so file his answer, as in the instant case, warrants the court to dismiss the answer. Respondents submit that the failure and neglect of Petitioner to file its answer within ten days was not *due to force majeure. Hence, the reason stated by petitioner for its failure to file its answer within ten days after the service of the precept on it, has no basis in law and facts. Hence, count nine (9), along with the entire petition should be denied and dismissed.*

10. That as to count ten (10) of the petition, respondents say that the court below did not err when it struck petitioner's answer from the case file in the court below, which was filed beyond the ten (10)-day period allowed by statute for the filing of a responsive pleading. Hence, the ruling of the court below being consistent with law, same should be upheld by this Honorable Court; and respondents pray Your Honor to so rule and declare.

11. That as to count eleven (11.) of the petition, respondents confirm and affirm counts five (5), six (6) and ten (10) above and incorporate said counts into this count of the returns in traversal of count eleven (11) of the petition. Respondents submit and say that hád the clerk given petitioner, for example, five (5) days to file its answer, which would be violative of the statute, would the petitioner not raise the issue that it was not allowed the time required by statute for it to file an answer? Certainly, petitioner, who has raised the issue, would have filed its answer within ten days and not within five days, as the writ directed. Respondents submit that counsel for petitioner is well conversant with the law requiring the filing of an answer within ten (10) days after service of the writ of summons. So, for counsel for petitioner to argue that it did not file an answer within ten days as required by statute because the clerk had directed that the answer be filed on September 8, 2014, even though the counsel is aware that the answer should have been filed no later than September 6, 2014, is done in had faith and therefore intended to undermine the rule of law.

12. That as to count twelve (12) of the petition, respondents say that the error of the court, as in the instant case, did not prejudice the right of the petitioner. Respondents submit that upon receipt of the writ of summons, a party is mandated and required by law to file his answer within ten (10) days after service of said writ of summons; and the failure on the part of such party, as the petitioner did in this case, the answer, consistent with law, is to be stricken from the records. Accordingly, the law cited by the petitioner — i.e. Fazzah versus Rogers Shoe Company, 12 LLR 215 (1955), is not applicable to the facts and circumstances of the instant case.

13. That as to count thirteen (13) of the petition, respondents say that the law cited by petitioner in count thirteen (13) of the petition is not applicable to the facts and circumstances of this case, as the clerk did nothing to prevent the petitioner from filing and serving its answer within ten (10) days after the service of the writ of summons and the complaint on the petitioner.

14. That as to count fourteen (14) of the petition, respondents confirm and affirm count thirteen (13) above and incorporate said count into this count of the returns in traversal of count fourteen (14) of the petition. Respondents submit that the holding of the Supreme Court in the case William versus Republic of Liberia, cited by Petitioner in count fourteen (14) of the petition, is not applicable to the facts and circumstances of this case.

15. That as to count fifteen (15) of the petition, respondents say that the holding of the Supreme Court as quoted in count fifteen (15) of the petition is not applicable to the instant case, for reasons stated in several counts above — i.e. the clerk did not do anything that prevented petitioner from filing and serving its answer within ten (10) days after receipt by the petitioner of the writ of summons and the complaint.

16. That as to count sixteen (16) of the petition, respondents say that a party seeking to have its rights adjudicated by a court of competent jurisdiction must comply with all the requirements necessary for the hearing of its side of the case. The neglect of a party to comply with statutory requirements for the hearing of its side of the case will negatively impact on its case. In the instant case, the petitioner failed to comply with the statutory requirement for the filing of an answer, having been given the opportunity to do so by the service of the writ of summons and the complaint on the petitioner. Respondents submit that for a party to be heard, the party must submit itself to the jurisdiction of the court consistent and in keeping with the requirement of the law — i.e. a party who has been served with the writ of summons must file his/her answer within ten (10) days after receipt of the writ of summons and complaint; failing which, the party would be ruled to bare denial of the complaint, as in the instant case.

17. That as to count seventeen (17) of the petition, respondents say that certiorari will not lie for reasons stated in counts one (1) through sixteen (16) above, which counts respondents incorporate into this count of the returns in traversal of count seventeen (17) of the petition.

18. That as to count eighteen (18) of the petition, respondents say that payment of accrued costs and the issuance of counsellor certificate by two counsellors of the Supreme Court Bar to the effect that the petition is sound in law, are requirements of the law for the filing of a petition for the writ of certiorari. Accordingly, respondents confirm and affirm counts one (1) through seventeen (17) above and incorporate said counts into this count of the returns in traversal of count eighteen (18) of the petition.

19. That as to the prayer of the petition, respondents confirms and affirms counts one (1) through eighteen (18) of the returns in traversal of the prayer of the petition and accordingly prays Your Honor to quash the alternative writ and deny the preemptory writ.

20. Respondents deny all and singular the allegations of both law and fact contained in the petition and not specifically traversed in these returns.

Wherefore and in view of the foregoing, respondents respectfully pray Your Honor to quash the alternative writ, deny the peremptory writ, thereby denying and dismissing the petition for the writ of certiorari; and grant unto respondents any other and further relief as Your Honor may deem just, legal and equitable in the premises."

Following arguments pro and con, the Chambers Justice ruled on August 11, 2015 confirming the alternative writ of certiorari and granting the peremptory writ as prayed for by the appellee, concluding in the ruling that the appellee had complied with the directive given by the court in the writ of summons and that as the error of the court could not be attributed to the appellee, the lower court was in error in striking out the appellee's answer and ruling it to a bare denial. The Chambers Justice's ruling, being the subject of review before us, we quote the relevant part thereof:

> *"The aforementioned, which presented the facts of this case, we shall proceed to pass upon the issue:*
> *Statute provides that*
> *"certiorari is a special proceeding to review and correct decisions of officials boards, or agencies acting in a judicial capacity, or to review an intermediate or interlocutory judgment of a court." Civil Procedure Law, Rev. Code 1:16.21(1). Also, the Honorable Supreme Court has held that, "the writ of certiorari is for the purpose of correcting errors committed by a subordinate court or other body while a matter is pending, and when such errors materially prejudice or injure the rights of a party." William v. Clarke, 2 LLR 130, 132 (1913); TRADEVCO v. Mathies et al., 39 LLR 578, 585 (1999).*
> *From the foregoing statute and case law defining certiorari, we derive at one issue for final disposition of these certiorari proceedings, and that is, whether or not the Commercial Court's action in striking the petitioner's answer was within the pale of the law?*
> *The petitioner has argued that the Commercial Court inadvertently overlooked the fact that the answer was filed on September 8, 2014, which was in obedience to the writ of summons and that it was impossible to file the answer on September 6, 2014, since there was a cessation of working activities in the Judiciary on Saturdays. The petitioner cited the Supreme Court cases Fazzah v. Rogers Shoe Company, 12 LLR 215, 216 (1955) [and] Williams v. Republic 14 LLR 603, 605 (1961), and argued that the errors of the court should not be attributed to it; that is, assuming the clerk erred by inserting the wrong date.*
> *The respondent counter-argued that the petitioner, being cognizant of the Civil Procedure Law Rev Code 1:9.2(3), should have filed its answer on or before the expiration of the ten (10) days statutory period, September 6, 2014, rather than rely on the error of the clerk which did not prevent it from filing its answer within the statutory time. The respondent argued that the cases Fazzah v. Rogers Shoe Company, 12 LLR 215, 216 (1955) [and] Williams v. Republic, 14 LLR 603, 605 (1961), were inapplicable to the petitioner and that since the petitioner violated Civil Procedure Law, Rev Code 1:9.2(3), which required a responsive pleading to be filed within a period of ten (10) days, the Commercial Court was within the pale of the law to strike the petitioner's answer for late filing.*
> *As stated earlier in this ruling, the order contained in the writ of summons forms the basis for the contentions between the parties; hence, it is empirical that we examine the nature and the essence of the writ of summons vis-a-vis the duty of the party litigants and their lawyers with respect to the instructions given therein.*
> *The writ of summons, according to the Supreme Court, is an instrument used to commence a civil action or proceedings and is also a means of acquiring jurisdiction over a party and that service of process is the means*

whereby a court compels the appearance of the defendant before it or a compliance with its demands. Buchanan-Horton v. Belleh et al., 39 LLR 169 175 (1998); Pentee v. Zoe, 8 LLR 485, 497(1997).

Our Civil Procedure Law provides that:

"the summons shall be directed to the ministerial officer of the court in which the action is brought; shall state the court and the names of the parties, together with their address if known; shall be signed by the clerk and bear the seal of the court; shall state the time within which the defendant is required to appear and defend; and shall notify him that in case of his failure to do so judgment by default will be rendered against for the relief demanded in the complaint." Civil Procedure Law Rev. Code 1:3.37, id.

The Supreme Court has also held that "the writ of summons is a mandatory requirement, not discretionary and that a writ of summons must in clear terms require a person against whom an action has been commenced to appear or file his answer on a day named and answer the complaint in such action." Kesselly v. The Management of Sabena Brussels Airlines, Supreme Court Opinion, October Term, A. D. 2006.

Further, and in recent times the Supreme Court held that parties are required to proceed in strict compliance with the orders of the court. And that the court will not permit any party litigant to flout its orders with impunity as non-compliance to orders hampers the work of the court. Justice and Public Interest Consortium Africa (JUPICA) et al. v. The National Elections Commission et al., Supreme Court Opinion, October Term, A. D. 2014.

Applying these principles of laws to the facts and circumstances of the matter before us, the records attest that the writ of summons which brought the petitioner under the jurisdiction of the Commercial Court mandated that the petitioner file its returns on or before September 8, 2015. The petitioner, in compliance with the date and time stipulated in the writ of summons, filed its returns on September 8, 2015. It is this filing by the petitioner on September 8, 2015 that the respondent has sternly argued was outside of the ten days statutory period and that the petitioner knowing fully well that the deadline for filing its responsive pleading was on September 6, 2015, it should have either filed his returns on or before September 6, 2015 and not rely on the erroneous date stipulated in the summons.

This Court says that the argument of the respondent being lucid and in consonance with the requisite provisions of the Civil Procedure Law, Rev Code 1:9.2(3), we are in total agreement therewith. This Court has however opined that each case is adjudicated based on its own merits, and further, that the applicable provision of said law states that "the provision of this title, the Civil Procedure Law shall be construed to promote the just, speedy, and inexpensive determination of every action." We believe that it was in the spirit of substantive justice that the Supreme Court has been consistent in holding thus:

"no party litigant should be held answerable for the errors of the clerk of a court or the court itself and that no party may be penalized for the negligence of a judge or clerk unless it is shown that he fails to take appropriate measures to avert said error." Mensah v. LBMC, 36 LLR 879,

syl. 4 (1990); Williams vs. Republic of Liberia, 14 LLR 602, 606(1961); Fazzah vs. Rogers Shoe Company, l2 LLR 215, 216 (1955); Page v. Jackson, 2 LLR 47, Syl. 1 (1911).

More besides, it would be highly inequitable were we to ignore the date stipulated in the summons and the affidavit of the clerk of the Commercial Court, Mr. Enoch S. Garlawolu, stating that he did not work on September 6, 2014. All these species of evidence in the records collectively affirm that the act of the petitioner is one of excusable neglect. The Supreme Court has defined excusable neglect as

"a failure which the law will excuse, to take some proper step at a proper time (especially in neglecting to answer a law suit) not because of the party's own carelessness, inattention or willful disregard of the court's process but because of some unexpected or unavoidable hindrance or accident or because of reliance on the care and vigilance of the party's counsel or on a promise made by the adverse party." The Management of the Liberia Petroleum Refining Company v. Folly et al., Supreme Court Opinion, October Term, A.D. 2008.

This being said, we hold that had the Commercial Court taken judicial notice of the date stipulated in the writ of summons, coupled with the fact that the clerk of the Commercial Court was absent from the bailiwick of the court, the Commercial Court should not have stricken the petitioner answer.

WHEREFORE and in view of the foregoing the alternative writ of certiorari is hereby affirmed and the preemptory writ ordered issued. The ruling of the Commercial Court striking the petitioner's answer is hereby reversed. The Clerk of this Court is ordered to send a mandate to the Commercial Court to resume jurisdiction over this case and give effect to this ruling. AND IT HEREBY SO ORDERED. Petition granted."

In argument before this Court by counsel for the appellant, the appellant maintained the contention made in its returns to the petition for the writ of certiorari and in its brief that the statute requiring appearance or the filing of responsive pleadings is mandatory and leaves no room for compromise; that the appellee was under a legal duty to have filed its answer on or before September 6, 2014 irrespective of the error of the clerk of the Commercial Court directing the appellee to file its answer on September 8, 2014; that the appellee, having found out that the Clerk of the Commercial Court did not report to work on September 6, 2014, it should have found the assistant clerk to file its answer on that date; that the appellee simply took advantage of the clerical error on the face of the writ of summons and sought to use the error to ignore the mandatory provision of the statute regarding the filing of responsive pleadings. The appellant cited the case *Management of Liberia Petroleum Refinery Company v. Folly et al, decided by this Court during its October Term, A. D. 2008* and contended that the appellee's action was careless and constituted a willful disregard to the statutory provisions controlling the filing of responsive pleadings.

The appellee, on the other hand, reiterated its contention, contained in the petition for the writ of certiorari and resistance to the motion to strike its answer that while the directive contained in the writ of summons is mandatory and must be strictly complied with, it had indeed complied with the said directive; that the errors of a court cannot be attributed to a party litigant save in the case of carelessness, inattention or willful disregard to the law on the part of the party; and that it exerted all efforts to file its answer on the 6th day of September 2014, in spite of the alleged error by the clerk of the Commercial Court, but that it was unable to file same on that date as the error of the Commercial Court's clerk was compounded and exacerbated by the absence of the said clerk from work on that date, thereby making it impossible to have filed the answer on the said date. In a presumed attempt to support the position asserted by it, the appellee had attached to the resistance to the motion to strike a Memorandum issued by the Personnel Director of the Judiciary, Ms. Weyata E. Ponpon, addressed to employees of the Judiciary, wherein she informed employees of the Judiciary that as of the date of the Memorandum all functions of their offices should cease and the offices be closed at 3:00 p.m.

The foregoing formed the crux of the controversy placed and argued before the Justice in Chambers, and constituted the background to the ruling made by her. And it is given those facts and the laws cited by the parties that we are called upon to determine on this appeal whether the Justice in Chambers erred in ruling as she did, or stated in the alternative, whether the said ruling was consistent with the law.

Counsel for the appellee makes two points in support of the position taken by the Chambers Justice. The first, as stated before, is that the petitioner/ appellee had exerted every effort to file its answer on September 6, 2014, but that on account of the fact that the clerk of the Commercial Court was not available on that date, evidenced by the affidavit executed by him in support of the petitioner/appellee's claim regarding the late filing of the answer. The appellee also exhibited a Memorandum issued, under the signature of the Personnel Director of the Judiciary, which directed that because of the Ebola crisis, all offices of the Judiciary should close at 3:00 p.m. each day. In regard to this so-called support Memorandum, let us state at the onset of the analysis herein of the issue as to whether the Chambers Justice erred in reversing the ruling of the Commercial Court, we are in full agreement with the Chambers Justice that the exhibition of the Memorandum was totally irrelevant to the disposition of the motion to strike or of the issue presented in the petition for the writ of certiorari. It bears no relationship to and supports no rationale for the default in the filing of the answer by the petitioner/appellee. How, we are prompted to ask, does the Memorandum show or justify why the petitioner/ appellee did not file on September 6, 2014 its answer to the damages action filed against it by the respondent/appellant. Accordingly, we therefore do not intend to have that irrelevant instrument claim the attention of this Court, particularly as it formed no legal or other justification for the answer being filed two days beyond the time provided for by law for the filing of that responsive pleading. Hence, we shall refrain from quoting the said Memorandum, or according it any credence, or making any further reference to it in determining the core issue presented for disposition or regarding the position taken by the Chambers Justice and this Court.

With respect to the core issue of whether the Chambers Justice erred in reversing the ruling of the Commercial Court, this Court does not doubt, and as counsel for the respondent/appellant has argued, correctly, the statutory provisions governing the filing of responsive pleadings are mandatory; they leave no room for negotiation, compromise or expansion, except in the instance where as a matter of law the default or failure to comply with the time period set therein can be attributed to excusable neglect or where the extension of the time set by the law for filing of the responsive pleading, which is sought, is in accordance with the law. In that regard, the law is very clear and unequivocal as to when a defendant is required to file and serve an answer in response to a complaint or petition, or a plaintiff is required to file and serve a reply which is in response to an answer or returns. Civil Procedure Law, Rev. Code 1:9.2(3). The law mandates and dictates that such answer or returns must be filed and served within ten days of the receipt of the pleading to which it is responding. That ten day period, allowed by law, being mandatory, must be followed; it cannot be altered or deviated from by any court of law, including the Supreme

Court, except as provided for or allowed by law, under the rubric of the few exceptions stipulated by law, as for example by the filing of a motion for enlargement of time, using as reason therefor a factor that can legally be deemed and is accepted by the court as excusable neglect. Civil Procedure Law, Rev. Code 1:1.7(2). This is what our Civil Procedure Law, which governs the filing of pleadings, and which is applicable to the Commercial Court, the same as with respect to every other court of record, says in regard to the filing and service of a responsive pleading:

> "*§3.62. Time when appearance required.* An appearance shall be made within ten days after service of the summons or resummons.
>
> § 9.2. Service of pleadings.
> *4. Time of service of responsive pleading.* Except as provided in section 11.3(10) service of an answer or reply shall be made within ten days of service of the pleading to which it responds."

The word 'shall', as used in the statute, and interpreted by the Supreme Court, is mandatory as compared to the word 'may' which is discretionary. As such, unless exceptions are specifically created by statute or other legal allowance by the court, full compliance is expected or the pleading is subject to being stricken from the records. *Brewer v. Mathies et al., 41 LLR 229 (2002); Pioneer Construction Company v. Mappy, Supreme Court Opinion, March Term 2015.* Thus, where a party, and more precisely a defendant, fails to file an answer within ten days of receipt of a complaint or petition, and a writ of summons, the answer can, on motion from the adversary party, be stricken from the records. *Id.*, 1(2).

Further, according to the Civil Procedure Law, the calculation of the ten day period shall begin on the day following the service of the responsive pleading. Section 1.7(1) states:

> "1.7. Time.
> *1. Computation.* In computing any period of time prescribed or allowed by statute, by order or rule of court, by rule or regulation, or by executive order, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a legal holiday. When the period of time prescribed or allowed is less than ten days, intermediate Sundays and holidays shall be excluded from the computation."

From the foregoing it clear that the petitioner/appellee, having been served with the complaint and writ of summons on August 27, 2014, and August being a month with thirty-one (31) days, the petitioner/appellee was required to file its answer not later than September 6, 2014. It is this failure by the petitioner/appellee, to file and serve the answer on the mentioned date that prompted the filing by the respondent/appellant of the motion praying the Commercial Court to strike the answer, which request the Commercial Court granted without any consideration of whether there was justifiable reasons stated in the resistance that could have excused the petitioner/appellee for the late filing and service of the answer.

Without delving again into the failure of the Commercial Court to give reasons for granting of the motion to strike or rejection of the reasons given by the petitioner/appellee for the late filing of the answer, the question which this Court must now resolve is whether the default by the petition/appellee in filing the answer beyond the ten day statutory time period falls within any of the exceptions provided for by law. This Court recognizes, for example, the same as the statute that notwithstanding the mandatory nature of the statutory directive regarding the filing of responsive pleadings, a party may be excused from strict compliance with the mandatory filing provision where compliance is hindered, or made difficult or impossible by a legally acceptable intervening factor or event that is beyond the control of a party, and where there is no showing of negligence on the part of the defaulting party. Indeed, Section 1.7(2) of the Civil Procedure Law gives clear recognition to such intervening eventuality as would excuse the default by the party. And while the petitioner/ appellee did not avail itself of this legal avenue provided for by law, it is worth noting in verification of the assertion that the law does give recognition to the eventuality as is evidenced in the instant case. The Section, for example, states:

. . .

> "*Enlargement*. When under this title or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may except as otherwise provided by law, at any time in its discretion: (a) order the period enlarged if application is made before the expiration of the period originally prescribed or as extended by previous order, or (b) upon motion made after the expiration of the prescribed period permit the

act to be done when the failure to act was the result of excusable neglect." Civil Procedure Law, Rev. Code 1:1.7(2).

This Court has consistently adhered to the exceptions created by the above quoted provision of the Civil Procedure Law, recognizing that it is not the province of the courts to enact laws or to extrapolate acts passed by the Legislature but rather to only give interpretation to those laws in accordance with the spirit and intent of the laws, as expressed from the wordings and the available legislative records. *Hussenni v. Brumskine*, Supreme Court Opinion, March term, A. D. 2013. Accordingly, we reaffirm the position of this Court, as per the quoted statute and the Opinions of this Court relative thereto, that while ordinarily the filing of an answer beyond the ten day period stipulated by statute renders the pleading subject to being stricken and expungable from the records at the instance of the opposing party and the defendant ruled to a bare denial, an intervening factor, not attributable to a defendant, may excuse the defendant from the default. *Hogg Robinson and Garden Mountain Limited v. Morris et al.*, 38 LLR 73 (1995); *Kronyahn et al. v. Chico et al.*, Supreme Court Opinion, October term, A. D. 2014. That is what the above quoted statute conveys; that while the Legislature intended the filing process to be mandatory, inclusive of the time frame set for such filing, that body also recognized that there could be occasions where the time frame may or could be interfered with or hampered by external factors or be rendered impossible by factors which could prevent or make impossible the strict compliance with the law, and that in such a case a party could be excused by the court from the default or the inability to comply with the statute if the excuse finds justification under the law. This clearly was and remains the essence of the referenced Section of the Civil Procedure Law. This Court, under the law of statutory interpretation, is obligated to give continued adherence to that legislative intent. *Goffa et al. v. Goffa,* Supreme Court Opinion, March Term, A. D. 2011.

The question then, for the challenge of this Court, is do the records in the instant case show that there was such intervening factor as excused the petitioner/appellee from the strict compliance with the ten day statutory time period as the Chambers Justice believed and ruled. The Justice in Chambers ruled that the error made by the clerk of the Commercial Court in directing the appellee to file its answer on September 8, 2014, and the absence from court of the clerk of the Commercial Court on September 6, 2014, presented sufficient legal excuse, more pointedly characterized as excusable neglect, that militated against attaching a penalty to the petitioner/appellee by the striking its answer from the records, given that the acts which caused the delay in the petitioner/ appellee filing its answer on September 8, 2014 rather than on September 6, 2014, were attributed to the lower court rather than to the petitioner/appellee; that to hold otherwise would be inequitable and not in conformity with the administration of justice; and that therefore the motion to strike the answer should not have been granted by the Commercial Court.

For the reasons set out herein below, we are in agreement with and uphold the ruling of the Chambers Justice reversing the ruling of the Commercial Court. We state at the onset of this aspect of the legal analysis supportive of the position taken by the Chambers Justice that the issue presented for resolution is not novel to this jurisdiction. Indeed, this Court has historically been confronted with situations wherein parties could not perform certain acts mandated by law, not due to the negligence or error of the party but rather attributed to acts or negligence on the part of the court or officers of the court. *Mensah v. Liberia Battery Manufacturing Corporation*, 36 LLR 879 (1990). In all of such situations, this Court held that where the default or non-compliance by the parties is due to the negligence or other act of the court or officers of the court, the default or non-compliance is excusable and that the parties should therefore not be held accountable or made to suffer for the acts, errors or negligence of the court and/or its officers. *William v. Republic*, 14 LLR 602 (1961). The case of *Fazzah vs. Rogers*, decided some Sixty years ago, on August 5, 1955, is a classic reference of this Court's position in such situation. In that case, the appellees filed for the consideration of this Court an application for an order to the court below to resume jurisdiction and to enforce its judgment on grounds alleged as follows: That "four months, or one hundred twenty-three days [had] elapsed since appellant excepted to the judgment of the lower court and gave notice of appeal therefrom, within which period the records were not transmitted to this Court; which period of time far exceeds the statutory requirement in such case made and provided."

In opposing the application, the appellant submitted the following resistance: 1. That "the appellant performed in season, meaning within statutory time, all acts necessary to have been faithfully done by him, in that he filed in the court below, after recording exceptions to the judgment of the said court and appealing therefrom, a bill of exceptions duly approved by the trial judge and an appeal bond also duly approved and [which] the appellant also duly served upon the appellees a notice of appeal;" 2. That '[t]he delay in transcribing and transmitting the records to [the Supreme] Court is due to no fault of the appellant since, with the rendition of the lower court's judgment during the latter part of December, 1954, the appellant paid . . . the clerk of the court below, whose duty it was to have transcribed and transmitted the said records, the sum of forty-one dollars and fifty cents ($41.50). Acknowledgment of the same is evidenced by the following receipt...." The appellant further submitted that a certificate from the clerk of [the Supreme] Court should have been attached to the said application in verification of the allegation contained therein, and that, because of the absence of notice, the said application should not be sustained by the Court. In ruling on the matter, this Court held as follows:

> "The applicable statute provides, in part : "That no act nor omission of a Judge nor any officer of Court shall affect the validity of an appeal, but such act, mistake or negligence shall be remedied by some appropriate order of the appellate court so as to promote substantial justice." L. 1938, Ch. III, sec. 1. It is therefore our opinion that the appellees have failed to show sufficient grounds for depriving this Court of jurisdiction over the said cause or to justify the lower court in resuming jurisdiction."

Again, six years later, this Court ruled on a similar issue in the case *William v. Republic,* recorded in 14 LLR 602, decided in 1961. In that case, the appellant was convicted of grand larceny and appealed to the Supreme Court. The appeal was dismissed for failure to serve a notice of completion of appeal. A petition for re-argument was filed and approved by His Honor Dessaline T. Harris, one of the concurring Justices who had sustained a motion to dismiss the appeal filed by the appellee. The main point in issue was the absence of any indication in the records certified to the Supreme Court of the service of the notice of the completion of appeal. The appellant contended that whilst it was true that the records were deficient in respect of the returns, in that no certified copy thereof was forwarded to the Supreme Court by the clerk at the time of the transmission of the record in the case, a certificate of the court, buttressed by sworn statements of certain ministers of the gospel and leading citizens of Maryland County, declared that the original notice of completion of appeal did carry on the back thereof returns of the sheriff which showed that said notice was served on the appellee; that the clerk of court had, by his certificate, accepted responsibility for not transmitting said returns on the back of said notice when preparing the records for transmission, he being a new man in office; and that the fact that the document was two in one, namely the notice, and on the back thereof, the returns, the latter escaped his notice. The appellant/petitioner noted that certificate of the clerk and sworn statements of the ministers of the Gospel were part of the records and that their genuineness was not contested.

The Solicitor General, arguing for the appellee, strongly contested the legal sufficiency of the petition for re-argument, and advanced resistance to the petition in the following manner: (a) that the exhibits annexed to the petition, constituted new matter which, under the law, could not have been overlooked; (b) that there was absent any manifest error in the opinion of the court or the omission of any material fact or principle of law that had been overlooked or disregarded by the court; (c) that the statute cited by appellant in count "5" of this petition vesting in the Court the right to have the original record in the case sent up for inspection where it is deemed necessary so to do, was within the discretion of the Court; and (d) that since the Court had not deemed it necessary to exercise that discretion, it could not be made a ground for re-argument. The contention of the prosecution, in essence was that since the omission to transmit the returns to the notice of completion of appeal constituted a diminution of record, the procedure provided under the rules should have been followed, and that the failure on the part of the appellant to supervise the preparation of the records for transmission was a neglect from which appellant could not benefit.

> Mr. Chief Justice Wilson, speaking for a unanimous Court, said:
> "Whilst maintaining and upholding the laws and rules of our courts, which have been observed in the opinion cited *supra*, where substantial justice and the right to a fair, speedy and impartial trial, are by any neglect of the court or any of its officers, threatened, the court would be negligent of its sacred duty to ignore patent errors committed by it or its officers to the detriment of a party. Against the rule which requires litigants to supervise the preparation of record for transmission to the

Supreme Court so that no omission, errors or diminution should thereby occur, is the opinion of this Court handed down in *Page v. Jackson*, [1911] LRSC 6; 2 L.L.R. 47 (1911), Syllabus 1 is "An error committed by the clerk of the trial court in transcribing the records on appeal is not ground for the dismissal of the appeal." The peculiarity of this case, which makes it singular and exceptional, is the certificate of the clerk of the trial court which confesses the error committed by him and states that he was a new man in office and was not acquainted with the procedure of transmitting records on appeal. He stated that the statutes requiring the filing of the returns of the sheriff to the notice of the completion of the appeal had been complied with by the appellant, but having been made on the back of the said notice, he inadvertently omitted to transcribe same. We are mindful of the provisions of section 380 of the 1956 Code, especially sub-paragraph (c) which provides that an appeal from a court of record may be dismissed for failure to have notice of appeal served on appellee; and also of the opinion handed down by this Court in Syllabi 2 and 3 of Brownell v. Brownell, .5 L.L.R. 76 (1936) which read as follows: "2. It is the service of the notice of appeal which alone gives the appellate court jurisdiction over the appellee.
"3. The only legal evidence of such service is the official return of the proper ministerial officer." At the same time, we cannot overlook the opinion of this Court recorded in Page v. Jackson, quoted supra, in this opinion, declaring that an error committed by the Court or any of its officers is not ground for the dismissal of an appeal. The fact that the omission of the clerk to transcribe and certify to the returns of the sheriff to the notice of appeal, which he admits was made and duly filed in his office by the sheriff, is an error of the clerk of court over which appellant had no control.
The appellant should therefore not be denied the right of a review by this Court of his appeal because of this error. Since this Court has ever and anon held that the acts of the Court should prejudice no man, especially where due diligence has been employed by the parties in a case, as to a large extent is evident in the instant case, as verified by the clerk of Court, under seal (a fact which, because of the fault of the clerk of Court, was overlooked in passing upon the motion to dismiss the appeal), the judgment of this Court, handed down at the March, 1961, term of this Court, sustaining the motion to dismiss the appeal, is hereby reversed and the clerk of this Court is hereby ordered to send a mandate to the Court below for immediate transmission of a certified copy of said sheriff's returns to be considered along with the record in the review of said appeal."

Almost twenty nine (29) years following the *William case*, this Court addressed a similar issue in a more definite term in the case *Mensah vs. LBMC*, recorded in 36 LLR 879, decided in 1990. In that case, despite the facts which showed that the appellant was negligent in the handling of his appeal, thus resulting into the dismissal of the appeal, this Court recognized that:

> "An appellant may not be penalized for the neglect of a judge or clerk of court, provided appellant has taken appropriate legal measures to avert the dismissal of his appeal."

In all of the cases cited, the Supreme Court opined that as the failure of the appellant to meet up with the statutory requirement was due to no fault of his but occasioned by the negligence of the court or its ministerial officers, it could not attribute the act to the party and have the party suffer as a result thereof. The instant case presents similar circumstances. The writ of summons issued out of the court erroneously required the appellee to file its returns on September 8, 2014, instead of September 6, 2014. This was unmistakably an error as the statute required that in such matter the returns be filed within ten days, which meant that the returns should have been filed by September 6, 2014. This error was clearly evidenced by the writ of summons exhibited by the appellee. The writ, on its face required the respondent/appellant to file its returns on the 8th day of September, A. D. 2014, clearly without the time frame stated by the Civil procedure Law. But the writ was prepared not by the respondent, not even by the petitioner/appellee. Rather, the writ was prepared by the clerk of the Commercial Court. We do not suspect that the petitioner/ appellee inspected the writ before it was sent to the sheriff for service upon the respondent/appellant, because if it had been inspected by the petitioner/ appellee, it would have discovered the error and would have had the clerk of the court correct same. This is not an error which we attribute to the petitioner/ appellee since the responsibility for the preparation of such instrument is, under the law, exclusively the responsibility of the clerk of court.

Moreover, although the law directs that a defendant should file an answer or returns within ten days of the service of the writ of summons, it also directs that the clerk, in preparation of the writ of summons, shall inform the defendant of the day or date when the answer or returns should be filed with the court. Here is what the Supreme Court said in the more recent case of *Kesselly v. The Management of Sabena Brussels Airlines*, decided during the October Term, A. D. 2006, with regard to the writ of summons:

> "A writ of summons is directed to the sheriff or the proper officer, requiring him to notify the person named that an action has been commenced against him in the court from where the process issues, and

> that he is required to appear on a day named and answer the complaint in such action."

The Court continued:

> "The summons . . . shall be signed by the clerk and bear the seal of the court; shall state the time within which the defendant is required to appear and defend; and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint. . . ."

The Court concluded:

> "Service of the writ of summons is a mandatory requirement, not discretionary, in order for a court to acquire jurisdiction over a party." *id*

Because it is by means of the writ of summons a court acquire or exercise jurisdiction over a person or specified property; it is a means by which the court compels appearance of a defendant before it or compliance with its demands. *Buchanan-Horton v. Belleh et al., 39 LLR 169, (1998), text at 179; Pentee v. Zoe, 38 LLR 485 497 (1997).* That is why we have repeatedly said that the writ of summons is a mandatory requirement, not discretionary; that a writ of summons must in clear terms require a person against whom an action has been commenced to appear or file answer on a day named and answer the complaint in such action and that parties are required to proceed in strict compliance with the orders of the court. *Kesselly v. The Management of Sabena Brussels Airlines, Supreme Court Opinion, October Term, A. D. 2006; Justice and Public Interest Consortium of Africa (JUPICA) et al. v. The National Elections Commission, et al., Supreme Court Opinion, October Term, A. D. 2014.*

Thus, a defendant receiving a writ of summons is most likely to abide by the directive contained therein. And whilst one may argue that it would be more prudent for a defendant to follow the command of the statute as opposed to what is contained in a writ of summons which is not consistent with the statute, we do not believe that a defendant should be held to suffer in following the directive of the writ of summons which the statute also requires the party gives adherence to, that directive being one attributable solely to the clerk of court. We hold therefore that the appellee was within the pale of the law when it complied directly with the mandate of the trial court stipulated in the writ of summons.

The Justice in Chambers characterized relieving the defendant/appellee from the non-compliance of the statutory filing mandate as excusable neglect. Black's Law Dictionary definition of excusable neglect as incorporated in our case laws described the term as:

> "a failure, which the law will excuse, to take some proper step at a proper time (especially in neglecting to answer a law suit) not because of the party's own carelessness, inattention or willful disregard of the Court's process but because of some unexpected or unavoidable hindrance or accident or because of reliance on the care and vigilance of the party's counsel or on a promise made by the adverse party" *The Management of LPRC v. Folley et al., Supreme Court Opinion, October Term, A. D. 2012.*

We are in full agreement with the definition quoted above and with the action of the Chambers Justice. Further, penalizing a defendant for the error made by the clerk of court and letting the clerk of court not account would, in our view, not only be tantamount to injustice but would serve as an encouragement to the clerk of court to indulge in such negligence or error since he/she would be left with the impression that they can get away with such reckless conduct.

Moreover, the act of the lower court was tantamount to a clear refusal by that court to recognize and confront its error, made by the court, but to instead seek to shift the blame for the error on a party which had absolutely nothing to do with the error made by the court. It was the court that prepared the writ of summons; it was the court that served the writ of summons; it was the court that directed the defendant/appellee when to file its returns; and it was the very court that now decided that it would inflict a penalty on the defendant/appellee for giving obedience to the directive of the court. No court should ever feel itself too big to admit to an error made by it or its officers and it should not seek to shift the blame for such error to a third party for obedience to the order or directive of the court by imposing upon such third party a penalty for the error or negligence committed by the court to which the party did not contribute. This does not mean that a party is relieved from adhering to the command or mandate of a statute. Indeed, there have been instances when parties have challenged through the avenues provided therefor acts or directives of the court which are in clear violation of the statute. *Pioneer Construction Company v. Morgan et al.*, Supreme Court Opinion, March term, A.

D. 2015. And this Court has not hesitated in declaring the act of the lower court to be ultra vires or illegal where such acts have been in clearly violation of the statutory laws of the Land. *R. J. Reynolds International Export, Inc. v. The United Company (Liberia) Ltd.*, 30 LLR 135 (1982); *Dennis et al., v. Reed*, Supreme Court Opinion, October Term, A. D. 2012.

We therefore hold that under the circumstances presented in the instant case, where the writ of summons directed the respondent/appellee to file its returns on September 8, 2014, the appellee should have been excused from a violation of the statute in filing its returns on the date directed in the writ of summons. Accordingly, we agree with our esteemed colleague, the Justice in Chambers, that the motion to strike should have been denied by the lower court and that the ruling of the lower court should therefore be reversed.

But even if we were to hold, solely for the purpose of argument and to give the respondent/appellant the benefit of any doubt, that the defendant/ appellee should have complied with the statute rather than obey the directive of the court contained in the writ of summons, we would still hold that the lower court was in error in granting the motion to strike and thereby ruling the defendant/appellee to a bare denial. The defendant/appellee argued, both before the Justice in Chambers and the Full Bench that it could not file its answer to the complaint because on that date the clerk did not appear for work and that the Commercial Court was closed; and that its' counsel had appeared at the court on September 6, 2014 for the purpose of filing the answer but that as the clerk was not available, the filing could not be done on that date. We take judicial notice of the affidavit issued by the clerk of the Commercial Court, in support of the allegation made by the defendant/appellee that on September 6, 2014, he did not report or show up for work on that date and that in fact the court was closed on that day so that no filing could have been done on that date even though by law the filing should have been done on that date. These acts were attributed to the tension and fears that existed and other measures taken in the face of the Ebola crisis. While these acts may not have accurately reflected the directive from the hierarchy of the Judiciary, the fact remains that by the admission of the Clerk of the Commercial Court, he was not available on that date for any party to file any legal document with him. Moreover, the allegation of the court being closed on the said September 6, 2014 is neither disputed by court nor the appellant.

Given all of the above, we hold that the Justice in Chambers was not in error in concluding that under the circumstances, certiorari was the appropriate writ to correct the error of the Commercial Court. Here is how the Chambers Justice alluded to the province of the writ of certiorari:

> *"Certiorari is a special proceeding to review and correct decisions of official boards or agencies acting in a judicial capacity, or to review an intermediate or interlocutory judgment of a court." Civil Procedure Law, Rev. Code 1:16.21(1). Also, the Honorable Supreme Court has held that, "the writ of certiorari is for the purpose of correcting errors committed by a subordinate court or other body while a matter is pending, and when such errors materially prejudice or injure the rights of a party". William v. Clarke, 2 LLR 130, 132 (1913); TRADEVCO v. Mathies, et al., 39 LLR 578, 585 (1999).*

Thus, we reiterate that the Commercial Court acted in error in granting the motion to strike and that the Chambers Justice acted correctly in granting the petition for the writ of certiorari, upholding the alternative writ of certiorari, and granting the peremptory writ of certiorari. Accordingly, we confirm and affirm the ruling of the Chambers Justice, order the peremptory writ issued, dismiss the appeal and direct the Commercial Court to entertaining a hearing on the disposition of the law issues taking fully into account the all of the pleadings filed by the parties, without the motion to strike and the resistance thereto, but ensuring that the answer filed by the petitioner/ appellee is fully addressed in disposing of the said law issues.

The Clerk of this Court is hereby ordered to send a mandate to the lower court ordering the judges presiding therein to resume jurisdiction over this case and give effect to this judgment. AND IT IS HEREBY SO ORDERED.

D. 2015. And this Court has not hesitated in declaring the act of the lower court to be ultra vires or illegal where such acts have been in clearly violation of the statutory laws of the Land. R. *J. Reynolds International Export, Inc. v. The United Company (Liberia) Ltd.*, 30 LLR 135 (1982); *Dennis et al., v. Reed*, Supreme Court Opinion, October Term, A. D. 2012.

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> *a lease agreement concluded with the Government under the circumstances narrated in this case necessarily vest in it the right to challenge the Government's assertion that it did not make payment to Mr. Richards prior to any conclusion of the mentioned lease agreement between the Government and Abi Jaoudi and Azar Trading Corporation. Such contention, as raised by Co-respondent Abi Jaoudi and Azar Trading Corporation is one that is solely for the Government, and the admission by the Government that it did not make payment to Mr. Richards is not open to challenge by Co-respondent Abi Jaoudi and Azar Trading Corporation under the circumstances of the case where the Government has returned the property to the original."* Emphasis Supplied.

This takes us to the pivotal question whether the *"right of first refusal"* provision of the Liberian Constitution (1986), would properly apply to the facts and circumstances of this case. Our careful review and examination of the records leave us with no doubt that the parties to these proceedings seem to accept that the Liberian Government under the Tubman Administration in 1955 *"expropriated"* the land in dispute; that the seizure of the private property by the Tubman Administration was uncontestably in pursuance to the right granted to the State by the 1847 Constitution, as amended through 1972. Article 1, Section 13 of the 1847 Liberian Constitution expressly granting Government the power to seize private property to be used for the public, clearly prohibited the taking of private property without payment of "just compensation". This is the language of the 1847 Organic Instrument: *"Private property shall not be taken for public use without just compensation."* The constitutional language referenced herein clearly directs payment of just and fair compensation as a constitutional prerequisite for the proper and legal seizure of a private property. In other words, payment to the private owner of an amount determined to commensurate with the assessed market value of the expropriated property is mandatory. Infact such payment constitutes a constitutional requirement for a legal taking of a private property. It therefore follows that where there has been a seizure of a private property by the Liberian Government without just payment of compensation, as the Testate Estate of John H. Richards has insisted was the case, the seizure, in the eye of the law, not only would be utterly unjust but tantamount to incisive violation of constitutionally protected property rights.

But do the facts and circumstances of this case lay any basis for a rational assumption that no payment of compensation was ever made to the appellee/petitioner? Assuming that no payment of compensation was made to the property owner at the time of seizure of the property far back in 1955, one may wonder as to the legal disabilities which excusably precluded the appellee property owner from seeking legal relief for compensation, a constitutional prerequisite for proper confiscation of private property, but slept until more than twenty five (25) years later. This Court stands deeply dumbfounded why an important constitutionally protected right issue as the notorious seizure of private property by the Liberian Government allegedly without payment of just compensation would be raised by appellee and forcefully brought to the fore one quarter of a century after failure to pay and only following the military takeover in 1980!

Addressing this pivotal question of payment of just compensation for the expropriated private property, Mr. Justice Banks, III, in his Ruling observed as follows:

> *"The Minister of Justice, the only statutorily recognized person clothed with the authority to state the Government's legal position on a matter, has stated that the property was legally turned over to the petitioner by the Government of Liberia. More than that, the Minister has indicated that in the absence of any records showing that the petitioner's decedent had actually received compensation from the Government of Liberia, as required by law, the Government's taking of the property of the petitioner's decedent was in the very first instance a violation of the Constitution of Liberia and the right of the petitioner's decedent."*

Mr. Justice Banks then warned and lamented, with which we are in full agreement, that:

> *"No Liberian Government, no matter how powerful the President or the Legislature may be, has the authority to trample on the rights of citizens, guaranteed by the Constitution of Liberia; and no Liberian Government has the right or the power to act in violation and contravention of the organic law of the nation. And while the alleged or purported confiscation was done many decades ago, we should state that such act, under the Constitution, exposes the actor to the possibility of impeachment by the Legislature."*

The Chambers Justice continued:

> *"The Executive Government therefore acted within the constitutional bounds in returning the property to its original and rightful owner. Co-respondent Abi Jaoudi and Azar Trading Corporation is without the right, and cannot insist, under the circumstances, that the Government still holds title, right and possession to the property when the Government has said*

that it holds no such title, right and possession. Such a position is neither sanctioned by law nor the facts of the case.

Moreover, where the Government has stated that no payment was ever made to Mr. Richards for the property which the Government had purportedly expropriated, Co-respondent Abi Jaoudi and Azar Trading Corporation cannot insist that such payment was made, especially in light of any direct evidence showing that Mr. Richards received payment from the Government. By what parity of law, we ask, can Co-respondent Abi Jaoudi and Azar Trading Corporation challenge the Government's assertion that it did not make payment to Mr. Richards? We do believe that the fact that the co-respondent held a lease agreement concluded with the Government under the circumstances narrated in this case necessarily vest in it the right to challenge the Government's assertion that it did not make payment to Mr. Richards prior to any conclusion of the mentioned lease agreement between the Government and Abi Jaoudi and Azar Trading Corporation. Such contention, as raised by Co-respondent Abi Jaoudi and Azar Trading Corporation, is one that is solely for the Government, and the admission by the Government that it did not make payment to Mr. Richards is not open to challenge by Co-respondent Abi Jaoudi and Azar Trading Corporation under the circumstances of the case where the Government has returned the property to the original."

We are unable to agree with our Esteemed Colleague that the so-called *"admission by the Government that it did not make payment to Mr. Richards is not open to challenge...."* We take this position especially considering the peculiar situation of Appellant/Lessee Abi Jaoudi and Azar Trading Corporation whose property interests are left unattended, were the court to disallow any challenge. The Chambers Justice concluded, perhaps on the strength of the Justice Ministry's admission, that the Liberian Government did not make compensation payment for the expropriated property. The Chambers Justice principally relied on Article 1, Section 13, of the 1847 Liberian Constitution. The Liberian Constitution of 1847, the law prevailing in 1955 at the time of expropriation, was categorically prohibitive of private property seizure without just compensation. Its sacred expression is as follows: *"Private property shall not be taken for public use without just compensation."*

But the question at this juncture is whether available records support appellee's assertion that the Liberian Government infact made no compensation payment for the *"expropriated"* parcel of land? This seems not to be the case. We take note of the Justice Ministry's insistence that although President William V.S. Tubman, responding to Mr. John H. Richards' demands for compensation, "*instructed the Under Secretary of Public Works and Utilities to compensate Mr. Richards but, apparently, no payment was made then.*" One may ask as to the records forming the basis of the Minister's Opinion, and upon which Our Esteemed Colleague seems to have also relied. What were the efforts exerted by the Liberian Government in finding records to illustrate whether or not payment of compensation was made to the Richards Family? Given the position taken by the Justice Ministry, it seems that any finding of records touching on the issue of compensation payment was, at best, halfhearted. The certified records reveal that in embarking on the review, the Minister of Justice /Attorney General indicated that "[a]*ll parties, including the Government, were encouraged to present supporting documents.*" So who were those to search and bring out and present relevant records for the Ministry's review and reexamination in this "*expropriation*" saga? The General Services Agency? Or Erstwhile Treasury Department? Department of Public Works and Utilities? or which other Government Agency?

Be that as it may, this Court has found in the records before us incontrovertible evidence that the Liberian Government indeed paid compensation to the late Mr. John H. Richards for the property. This evidence consists of at least two (2) letters dated March 3, 1961 and April 12, 1961, respectively. According to these records, the all-powerful President Tubman indeed instructed officials of Public Works to make payment to the Richards. In addition, a Journal Entry was made in reference to a Claims Account which evidenced that payment was made. This is further supported by vouchers and a check made out in favour of John H. Richards and a receipt signed by the late John H. Richards. These are recorded on relevant pages of the record book of the Department of Treasury. These historic instruments demonstrate that a check was paid to the late Mr. John H. Richards in the amount of $3,368.00 (Three Thousand Three Hundred Sixty-Eight Dollars), a lot of money those days. Under Liberian Laws, any writing or recording, whether in the form of an entry in a book or otherwise, made as a memorandum or record of an act, transaction or occurrence, or event shall be admissible in evidence in proof of said act, transaction, occurrence or event, if the court finds that it was made in the regular course of any business and that it was the regular course of such business to make such memorandum or record at the time such act, transaction, occurrence, or event or within a reasonable time thereafter. Circumstances of the making of such writing or record, including lack of personal knowledge of the entrant or maker, may be shown to affect its weight but they shall not affect its admissibility. ***Civil Procedure Law, sec. 25.7(3).***

Although the evidence available in the current case does not appear to support expropriation but outright purchase, let's assume for a moment, as being claimed by the appellee/petitioner that there was a legal seizure by the Liberian Government of petitioner's private property for public purpose, payment of just compensation would have been mandatory. In order that the seizure of private property for public use to be deemed as proper, Article I section 13th of the 1847 Liberian Constitution, amended through 1972, specifically provided that *"[p]rivate property shall not be taken for public use* ***without just compensation."*** [Emphasis Supplied]. The referenced constitutional Article being the law controlling, and seemingly unable to substantiate by any evidence that this core requirement was infact satisfied by payment to the late Mrs. Mary Ann Richards for the confiscated property in 1955, the Liberian Government ordered that the appropriate payment be made. The records demonstrate that payments were made to the late John H. Richards. The records show that a check for the $3,368.00 (Three Thousand Three Hundred Sixty-Eight Dollars), at the time a lot of money, was entered payable to the late John H. Richards, as substantiated by letters dated March 3, 1961 and April 12, 1961. One of these, dated March 3, 1961, and signed by the Acting Secretary of Public Works & Utilities, is reproduced hereunder to wit:

"REPUBLIC OF LIBERIA
DEPARTMENT OF PUBLIC WORKS &UTILITIES
Ref. No. 1165-'61 March 3, 1961

The Chairman
Claims Commission
Treasury Department
Monrovia, Liberia.

Mr. Chairman:

I am herewith transmitting for your information and relevant action, copy of a self-explanatory report submitted by Mr. J. Vitters, then Acting Director, Division of Surveys, which reveals that the following acre of land belonging to Mr. John H.R. Richards was expropriated for the construction of Duncan Alley and construction of the Agricultural Building on Randall Street:

Portion	"A" 0.33 acre	– Duncan Alley
"	"B" 0.233"	- Leased to Abi Jaoudi
	0.151"	-Construction of Agricultural Building
	0. 717	

In view of the foregoing, you will please compensate Mr. Richards for the expropriation of his land. Please give this matter priority attention as the Chief Executive has directed that immediate payment be made to Mr. Richards. (See copy of letter attached).

Thanks for your usual cooperation.

Very truly yours,
Joseph W. Boayue
ACTING SECRETARYOF PUBLIC WORKS & UTILITIES

CC: Divisions of Survey
Mr. John H.R. Richards

The second letter reads thus:

"April 12, 1961

The Chairman
The Claims Commission
Treasury Department
Monrovia, Liberia.

Mr. Chairman:

Supplement to my letter no. 1165-61 of March 3, 1961, in which I recommended that compensation be made to Mr. John H. Richards for the expropriation of his property by government for the construction of Duncan Alley and the Agriculture Building on Randall Street, I wish to recommend that in addition to communication for the expropriation of his property, consideration should be given also for rental allowance for use of her property on which the building was constructed from 1956 to the present date.

Very truly yours,
Joseph W. Boayue
ACTING SECRETARY OF PUBLIC WORKS & UTILITIES

CC: Mr. John H.R. Richards

We also see in the records a Claims Account Journal Entry with heading Richards, John H. R., sheet A 697, payment 4-1001 for a total payment of $3,368.00, of which amount $2,868.00 was noted for land use for .717 acres of land expropriated for Duncan Alley and Agricultural Fair and $500.00 for land use fron 1955 to December 31, 1960. These two referenced communications, furthe demonstrate that the amount of $3,368.00 (Three Thousand Three Hundred Sixty Eight Dollars) was paid and entered on relevant pages of the record book of th Department of Treasury (predecessor to the Ministry of Finance, now Ministry o Finance and Development Planning).

Obviously, these letters as well as the entry made in the books of the Department of Treasury should have been given their appropriate weight in determining whether the late Mr. John H. Richards received payment from the Liberian Government for the property. Liberian law also provides that it shall be unnecessary to prove the execution of a document more than 30 years old which is proved to have been found in the possession of a person who may reasonably be supposed to have possession of it if it is genuine and which is attended by no circumstances tending to throw suspicion on it. *Civil Procedure Law, sec. 25.17(5).* According to the Attorney General, which observation we note with interest, *"President Tubman ordered compensation in 1961, but his instruction was never carried out."* Assuming this to be a true reflection of what actually transpired, isn't it reasonable to ask as to what the Richards Family did for decades to seek relief especially in the face of the all-powerful President Tubman's instruction to the appropriate Government authorities to make compensation payment to the Richards? And even the immediate successive administration failed or outrightly refused to obey Tubman directives? Neither have we found nor seen any records lending support to this sort of comical determination.

It is our conclusion that both the Justice Ministry's determination that there was no evidence of compensation payment to the Richards Family, upon which Our Learned Colleague seemed to have been persuaded, do not appear to this Court to be supported by the facts, circumstance and the records available; hence, said holding is reversible and therefore cannot be sustained.

The Justice Ministry also concluded, and Our Esteemed Colleague concurs, that the termination of public use of the seized property in the 1960's entitled the previous property owner to a return thereof. Not only this, the Chambers Justice invoked the sacred constitutional principle of *"right of first refusal"* to justify the

,eturn of the property. The principle of *"right of first refusal"* invoked by our Esteemed Colleague is a constitutional mandate. It directs the Liberian State that *"when property taken for public use ceases to be so used, the Republic shall accord the former owner or those entitled to the property through such owner, **the right of refusal to reacquire the property**."*[Emphasis Supplied].

We note, however, that this principle is a novel creation of the Liberian Constitution of 1986. It must be remarked here that the *"right of first refusal"* as well as the Organic Instrument in which it was couched and articulated, came into being at least three decades subsequent to the expropriation of the subject property. The Chambers Justice seems to accept that the "right of first refusal" was not provided for in the fundamental governing instrument then in vogue, the 1847 Constitution. The Chambers Justice in accepting this fact commenced by quoting Article 25 of the Liberian Constitution of 1986 as follows:

> *"....Yet, while that fact could provide a purported basis for a party to make a claim and the argument that the provisions enshrined in detail in the 1986 Constitution, quoted above, were not in the 1847 Constitution, a fact we acknowledge, we hold the view that the principles stated in the quoted provisions of the 1986 Constitution were fully applicable at the time of the existence of the 1847 Constitution, even though not set out in the details set forth in the 1986 Constitution..".* [Emphasis Supplied].

It strikes us that our Colleague will invoke Article 25 of the Liberian Constitution of 1986, decreeing the *"right of first refusal"* and determine same to be properly applicable to a matter of expropriation which took place in 1955. The 1847 Constitution, amended through 1972, not even by fleeting reference, provided for any such right to a former property owner under expropriation exercise. We have over and again researched our jurisprudence and found no law appropriating or reserving any rights of re-acquisition of property/ies confiscated for public use. Once a property was confiscated, and there being no law, constitutional or statutory, the expropriated property became Government property in *fee simple absolute;* thereafter, the Government as any other owner was not legally precluded from doing whatever it desired to do with said property. These could include and not legally limited to leasing out the property to any interested party, as the party appellant in these proceedings. Absurdity it would seem if one were to attempt at ascribing any other interpretation to a situation where the right to first refusal was not granted by law.

Further hereto, we have taken recourse to the United States jurisdiction in respect to return of an expropriated property to its former owner. We have undertaken this journey because (a) the Liberian Constitution, especially the 1847 Constitution, then in vogue, was massively influenced by that of the United States; and, (b) the General Construction Law (better known as the Reception Statute) allows this jurisdiction to take guidance on questions of first impression from precedents set by the U. S. Supreme Court, Great Britain, etc. In this particular case, the United States Constitution is aptly instructive as Article I, section 13th provision of the Liberian Constitution of 1847, appears to be almost a carbon copy of the U. S. Constitution. The Fifth Amendments to the United States Constitution provides: *"private property* [shall not] *be taken for public use without just compensation."* On the other hand, Article I, Section 13th of the erstwhile Liberian Constitution (1847) simply prohibited the taking of private property without payment of just compensation. These are the exact constitutional expression: *"Private property shall not be taken for public use without just compensation."*

It has to therefore be said that there is nothing in this language directing the return of any property to a previous owner under any conditions, including the ceasing of the public use purpose. Not surprisingly, the following questions were posed to counsel for appellant during arguments before this Court *en banc*:

Ques: *"Since the [Liberian] Government stopped using the property for what it was initially intended, why was the appellee not given the right of first refusal?"*

Ans: *The Right of First Refusal was not guaranteed in the 1847 Constitution [of Liberia]; only the 1986 Constitution so provides which provision cannot be used in this case."*

The appellee has forcefully contended that the Liberian Government, after termination of the public use purpose, has been leasing out the said property to a private business entity and unjustly receiving proceeds therefrom. Such argument is void of any legal tenability satisfactory to authorize the return of the property to the Richards Family.

Also, we have been unable to lay our hands on any law, statutory or by precedent, to warrant the application of a 1986 constitutional provision to a situation and development which took place at least thirty years precedent thereto. *Art. I, sec. 13th of the Liberian Constitution,* the provisions of the Liberian Constitution at the time in existence, reserved no right to the private owner of property confiscated by the Liberian Government for public use to reacquire the property from the Liberian Government. The absence of such reservation leaves a logical being with only one conclusion – that the Liberian Government owned the property in *fee simple absolute* and could thereafter do whatever it wanted to do with it. This is not exclusive of leasing it out. There can be no other reasonable interpretation of the Constitution before 1986. This Court cannot embark upon the path stated by our Esteemed Colleague, that the 1986 Constitution, coming into existence thirty (30) years subsequently, gives detailed interpretation to the Liberian Constitution of 1847.

Let's at this stage address the specific question of subsequent use of a condemned property by a private third party at the instance of the Liberian Government following termination of the public use purpose. This being a question of first impression, we take recourse to a common law jurisdiction as the United States of America. Two cases decided by the United States Supreme Court appear instructive in this respect: *Kelo et al. v. City of New London et al.,* 545 U.S. Supreme Court 469, June 23, 2005 and its predecessor case, *Berman et al., Executors, v. Parker et al.,* No. 22, 348 U.S. Supreme Court, November 22, 1954.

The Fifth Amendment of the United States Constitution was central in the disposition of the *Kelo* case. The United States Supreme Court referencing the rights guaranteed by said Fifth Amendment specifically the sovereign prohibition contained therein directs that no *"private property be taken for public use, without just compensation."* In this case, it was the "Taking Clause"that was at issue.

The facts in that case reveal that in February 1998, the pharmaceutical manufacturer, Pfizer, Inc., announced its intention to build a global research facility near the Fort Trumbull neighborhood in Connecticut. This announcement came in the wake of decades of economic decline. A state agency in 1990 designated the City of New London as a *"distressed municipality."* Initial approval was given by New London City Council for New London Development Corporation (NLDC) to prepare the development plan, now in issue. The facts further reveal that New London Development Corporation (NLDC) is a private nonprofit corporation established some years back with a mission to assist the city council in economic development planning. The State of Connecticut in early 1998 authorized funding (bonds) to support the NLDC's planning activities. Accordingly, NLDC continue its planning activities and held series of meetings with the residents of the neighborhood with the aim of educating them about the process. Following approval for the project, NLDC finalized an integrated development plan focusing on 90 acres of the Fort Trumbull area, which included an area comprising approximately 115 privately owned properties as well as 32 acres of land formerly occupied by the naval facilities. The NLDC development plan was intended to capitalize on the arrival of the Pfizer facility and the new businesses it intended to attract. In addition to creating new jobs, generating tax revenue and revitalizing the downtown area of New London, the plan was also designed to make the city more attractive and to create leisure and recreational opportunities on the waterfront and in the park. The City Council, in January 2000, approved the plan and NLDC was designated as the city's development agent in charge of the implementation of the project. Along these lines, the NLDC was also authorized to acquire properties by the exercise of eminent domain in the name of the City of New London. NLDC undertook this venture successfully negotiating the purchase of most of the real estates in the 90-acre area. However, NLDC's negotiation failed with the herein nine petitioners, *Kelo et al.* These petitioners owned 15 properties in Fort Trumbull- 4 in parcel three (3) of the development plan while 11 in parcel 4A. 10 of the parcels were occupied by the petitioners' family member and other five held as investment properties. Under these circumstances, the NLDC was forced to commence condemnation proceedings in November 2000. It is worthy of note that there is no allegation that any of these properties is blighted or otherwise in poor condition; rather, they were condemned only because they happened to be located in the area to be developed.

In December 2000, the petitioners brought this action against the City of New London and the NLDC in the New London Superior Court to save their homes. The core of petitioners' contention was that the Fifth Amendment prohibits the NLDC from condemning their properties for the sake of an economic development plan. The petitioners are not seeking increased compensation for their properties nor do they oppose the new development. Theirs is an objection in principle. It is the petitioners' claim that the NLDC's proposed use for their confiscated property *"is not a "public" one for purposes of the Fifth Amendment."* The petitioners infact claimed that the taking of their properties violate the "public use" restriction in the Fifth Amendment.

The Superior Court granted a permanent restraining order (1) prohibiting the taking of properties located in the area called parcel 4A (park and marina support) but (2) rejected to grant relief sought by the petitioners as to the properties located in parcel 3. Said parcel 3, according to the development plan, will contain at least 90,000 square feet of research and development office space. Both sides took flight to the State Supreme Court of Connecticut. Arguing before the State of Connecticut Supreme Court, petitioners forcefully urged the Court to declare that economic development does not qualify as a public use. They have further contended that using eminent domain for economic development impermissibly blurs the boundary between public and private takings.

But in its Opinion, Connecticut Supreme Court held all of the proposed takings of properties as valid public use under both Federal and State Constitutions; hence, the takings of the land satisfy the public use requirement of the Fifth Amendment. The case travelled to the US Supreme Court.

The United States Supreme Court, in disposing the question whether the City's development plan serves a *"public purpose under the 'public use" provision of the [United States] Constitution"*, ruled on June 23, 2005 that the "public use" provision of the "takings clause" of the Fifth Amendment of the U.S. Constitution permits the use of eminent domain for economic development purposes that provide a public benefit. The US Supreme Court affirmed the judgment of the Supreme Court of Connecticut holding that the City's disposition of petitioners' properties qualifies as a *"public use"* within the meaning of the Takings Clause.

ln other words, public use in this case was broadly interpreted to mean "public purpose," and that the Court's authority extends only to determining whether the City's proposed condemnations are for a "public use" within the meaning of the Fifth Amendment. Having so determined, the judgment entered by the Supreme Court of Connecticut was affirmed by the U.S. Supreme Court.

The case under review provides directions to our jurisdiction on a number of significant constitutional queries. Firstly, the *Kelo* case does not specifically traverse the question of right of return to former owner of confiscated property where the "declared public use purpose" ceases. However, the said case provides a broader meaning of the term "public use", thereby removing same from traditional narrow legal contemplation. By the *Kelo* Opinion, public use or purpose has been unarguably extended to include the use of a condemned property for activities which result to substantial economic benefits to the general public. In other words, it is within the meaning of public use where, as in the case at bar, the condemned property, though being used by a third private enterprise, has brought about considerable investment, public employment and their multiplying effect to the general public wellbeing. In every such case, the public use purpose never ceases in the eye of the law and therefore stands satisfied. This effectively removes the remotest possibility of the return of the condemned property to its former owner.

This Court declines to approbate retroactive application of a law to a matter which took place at least thirty (30) years earlier. We refuse to contemplate the far reaching implications of returning a confiscated property matter on account of a law coming into existence decades later. This Court refuses to thread such enigmatic and unfathomable path. We therefore hereby reverse our Esteemed Colleague and hold that the "right of first refusal" provision of the 1986 Constitution will not apply to warrant the return to a former owner of a property "expropriated" in 1955. And we so hold.

In respect of the question whether one Justice of the Supreme Court has the authority to entertain, address and pass on a constitutional question, we will rather not address this in the light of our holding in this case.

The final question the Chambers Justice sought to address was whether the Writ of Prohibition will issue to enjoin and prohibit the appellant from paying rentals under the 2001 agreement of lease to the Liberian Government, and to also enjoin the said General Services Agency from receiving any rental payments from the Appellant. In other words, whether it is the office of the writ of prohibition to divest a party litigant, in this case, the Liberian Government, of title on account of Government's alleged failure to pay compensation for expropriated property, or through the misapplication of the right to first refusal principle, Mr. Justice Banks said:

"[w]e hold that [prohibition] will lie. While prohibition has been employed primarily in matters that involved and is designed to restrain and prohibit further pursuits in judicial action or proceedings [see Civil Procedure Law, Rev. Code 1:16.21], the Supreme Court has determined that prohibition can be employed to determine the constitutionality of laws, acts or conduct of the legislative or executive branches of the Government. Republic v. The Leadership of the Liberian National Bar Association, 40 LLR 635 (2001). And while that case differs from the instant case, the principle enunciated therein and which has been consistently followed by the Supreme Court in recent times, is applicable to the instant case. Prohibition will lie to restrain the governments' encroachment on the rights of a citizen guaranteed by the Constitution, attempted to be done without any legal basis and without the color of the law. See: Kaba and McCromsy v. Township of Gardnersville et al., 39 LLR 549 (1999)."

Mr. Justice Banks then stated:

"Wherefore, and in view of the foregoing facts and circumstances enumerated above and the laws recited and relied upon, the petition for the writ of prohibition is hereby granted and the peremptory writ of prohibition ordered issued. The General Services Agency is prohibited from receiving any monies from the Abi Jaoudi and Azar Trading Corporation for any rental growing out of the illegal lease which the Corporation illegally concluded with the General Services Agency, and which property at the time had been returned to Mr. Richards; and the Abi Jaoudi and Azar Trading Corporation is similarly prohibited from paying over to the General Services Agency, purporting to be acting for the Government of Liberia or otherwise, any monies alleged to be rental growing out of the illegal lease agreement it concluded with the General Services Agency for the property previously returned to Mr. Richards by the Government of Liberia. No party or parties can benefits from their wrongful acts and conduct, whether against third parties or against each other. Such acts are barred in law and in equity. Costs are disallowed. AND IT IS HEREBY SO ORDERED."

As can be seen, the Chambers Justice not only held that prohibition will lie, but he also proceeded to enjoin the appellant from paying rentals to the Liberian Government and also the General Services Agency from receiving rentals pursuant to a 2001 agreement of lease executed between the parties (Abi Jaoudi and the GSA).

We disagree with ruling entered by the Chambers Justice which essentially extends the province of prohibition to divesting a party litigant, as the Liberian Government in the instance, of title. A title contest is a fit cause for ejectment suit, not prohibition.

Accordingly, while this Court affirms that prohibition is a special proceeding to obtain a writ ordering the named respondent to refrain from further pursuing a judicial action or proceeding specified therein (*Civil Procedure Law, Sec. 16.21(3)*), one key point has generally guided this Court in addressing the question whether or not to grant the writ of prohibition. This Court has held in numerous Opinions that the writ will not issue where other adequate remedy at law is available. In *Liberia Trading and Development Bank v. Mathies and Brasilia Travel Agency*, reported in 39 LLR 272 (1998), the Supreme Court reaffirmed this long held legal principle declaring that where there is other adequate legal remedy available to one seeking the issuance of this extraordinary writ, it shall not issue. *The Management of Catholic Relief Services v. Natt et al.*, 39 LLR 415 (1999). In these proceedings, we are reluctant to extend the province of prohibition to settlement of title dispute, especially in the matter at bar where a constitutional question was dealt with by our Distinguished Colleague single handedly.

WHEREFORE, and in view of the foregoing, the Ruling of the Chambers Justice granting the petitioner's petition and ordering the issuance of the alternative writ of prohibition, same not being supported by the facts revealed by the certified records as well as the laws applicable thereto, same is hereby quashed and the peremptory writ prayed for refused and denied. Costs are ruled against the appellee/petitioner. AND IT IS HEREBY SO ORDERED.