

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA  
SITTING IN ITS SPECIAL SESSION, 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 HER HONOR: SIE-A-NYENE G. YUOH .....ASSOCIATE JUSTICE

---

His Honor Yarmie Quiqui Gbessay, Assigned Circuit Judge, )  
Criminal Assizes "C", H. Varney G. Sherman, E.C.B. Jones, )  
Christopher Onanugua, Alex Tyler, Richard Tolbert, )  
Eugene Shannoh, Morris Saytumah & Willie Belleh, all of the ) APPEAL  
City of Monrovia, Republic of Liberia.....Appellants )  
Versus )  
Republic of Liberia .....Appellee )

**GROWING OUT OF THE CASE:** )

Republic of Liberia .....Petitioner )  
Versus )  
His Honor Yarmie Quiqui Gbessay, Assigned Circuit Judge, )  
Criminal Court "C".....1<sup>st</sup> Respondent )  
AND )

PETITION FOR THE  
WRIT OF CERTIORARI

H. Varney G. Sherman, E.C.B. Jones, Christopher Onanugua, )  
Alex Tyler, Richard Tolbert, Eugene Shannoh, )  
Morris Saytumah & Willie Belleh, all of the City of Monrovia, )  
Republic of Liberia.....2<sup>nd</sup> Respondent )

**GROWING OUT OF THE CASE:** )

Republic of Liberia .....Plaintiff )  
Versus )  
H. Varney G. Sherman, E.C.B. Jones, Christopher Onanugua, )  
Alex Tyler, Richard Tolbert, Eugene Shannoh, )  
Morris Saytumah & Willie Belleh, all of the City of Monrovia, )  
Republic of Liberia.....Defendants)

**CRIMES:**  
MONEY LAUNDERING  
CRIMINAL CONSPIRACY  
CRIMINAL SOLICITATION  
CRIMINAL FACILITATION

Heard: October 3, 2017

Delivered: August 22, 2018

**Mr. Chief Justice Korkpor delivered the Opinion of the Court**

This case is before us on appeal from a ruling entered by our retired distinguished Colleague, Mr. Justice Philip A.Z. Banks, III, in a certiorari proceedings. Here is the summary of the facts:

On May 13, 2016, Global Witness reported that certain individuals in Liberia had accepted bribe from a London based company, Sable Mining, to influence or pass an Act of the Legislature favorable to Sable Mining. Thereupon, the Government of the Republic of Liberia (respondent/appellee) set up a team of investigators to look into the Global Witness Report. Based on the report of the team of

investigators set up by the Government of Liberia, H. Varney G. Sherman, E. C. B. Jones, Christopher Onanugua, Alex Tyler, Richard Tolbert, Eugene Shannon, Morris Saytumah and Willie Belleh, (respondents/appellants), were charged and indicted for the commission of the crimes of bribery, money laundering, criminal conspiracy, criminal solicitation and criminal facilitation in violation of various provisions of the Penal Law of the Republic of Liberia.

Pre-trial conferences were conducted and pretrial motions were heard and disposed of by His Honour Yarmie Quiqui Gbessay, presiding by assignment over Criminal Court "C". At the pretrial conference, the respondents/appellants objected to the marking of certain species of documentary evidence: Global Witness Report, emails and spread sheets. Thereafter, respondents/appellants waived their right to jury trial and opted for a bench trial.

Upon the commencement of trial, the first witness for the State, Marc N. Kollie, an investigator from the Liberia National Police, testified to the investigation conducted by a special investigative team set up by the Government and to several pieces of documentary evidence that formed part of the investigation, including a report from Global Witness; emails said to have been exchanged between Co-respondent H. Varney Sharman and one Mr. Heines Van Niekerk; a report from an international anti-corruption agency; and a spread sheet containing the names of all of the respondents/appellants. As they did during the pretrial conference, the respondents/appellants again objected to the marking and admission of the Global Witness Report, the emails, and the spread sheet. The trial judge directed that the respondents/appellants should file a formal written objection to the instruments in question and have same served on the State, and that the State should file a formal written response to the objection so that the court would enter a formal ruling on the objection. The hearing of the case was postponed to allow the parties, through their counsels, comply with the judge's order.

In the objection filed by Co-respondents/Co-appellants H. Varney G. Sherman, E. C. B. Jones, Christopher Onanugua and Eugene Shannon, Morris Saytumah and Richard Tolbert, they essentially contended (a) that the emails and spreadsheet were products of hacking of the e-mail account of either Co-respondent H. Varney

G. Sherman or Sable Mining which is a criminal offense under Liberian law; (b) that the documents were obtained in violation of the privacy right of the defendants, guaranteed by Article 16 of the Liberian Constitution and the statutory laws of Liberia, and that the medium by which they were obtained is criminal under the laws of Liberia; (c) that the defendants deny the existence, authenticity and contents of the emails and spreadsheets; (d) that the emails and spreadsheets were illegally obtained from the email accounts of Sherman & Sherman, Inc. and/or Sable Mining, and that these institutions did not consent to obtaining the instruments; (e) that the emails could have been doctored by the hacker and hence inadmissible in a court of law; (f) that the marking and admission of the said documents would be tantamount to a denial of the defendants' right to confront their accuser, in contravention of Article 21 (b) and (l) of the 1986 Constitution of Liberia; (g) that the emails and spreadsheets having been illegally obtained without the order of court was in contravention of Article 21(b) of the Constitution of Liberia and hence fell within the parameters of the "Exclusionary Evidence Rule"; (h) that the act of hacking into the email account of Co-respondent/Co-appellant Sherman and producing the records which were sought to be marked violated the absolute immunity clause contained in Article 21(i) of the Constitution of Liberia which protects practicing and licensed lawyers in Liberia; (i) that the documents are products of hearsay information as defined under section 25.7 of the Civil Procedure Law; (j) that the documents fail to meet the standard of section 17.1 of the Criminal Procedure Law; and (k) that the documents are not products of the best evidence rule, as required under section 25.6 of the Civil Procedure Law.

Co-respondent/Co-appellants J. Alex Tyler filed a separate objection to the marking and admission of certain instruments which are similar in content to the above quoted objection filed by Co-respondents/Co-appellants H. Varney G. Sherman, E. C. B. Jones, Christopher Onanugua and Eugene Shannon, Morris Saytumah and Richard Tolbert, so we will treat with the two objections under one breath.

In resistance to the objections filed by the respondents/appellants, the State contended a) that the instruments objected to were authentic and genuine and

the process of obtaining them was not in violation of the right of privacy and the right against illegal search and seizure; b) that the evidence was obtained by investigators from persons(recipients) of personal knowledge in persons of Heine Van Niekerk and Paul O'Sullivan and that the instruments were written in the course of regular transaction with Co-respondent/Co-appellant H. Varney Sherman, Heine Van Niekerk and Paul O'Sullivan and that Van Niekerk and Paul O'Sullivan voluntarily turned over all of the e-mail communications to the investigators; c) that Co-respondents/appellants Counsellor Sherman cannot invoke a lawyer's privilege as a defense to the e-mail communications because under the Federal Rule of Evidence, a criminal act is not included under client/lawyer privilege; d) that the burden of proof rests on the party who alleges, but the respondents/appellants who claim that the emails in question were hacked have failed to show any evidence supporting the said averments that the emails objected to were hacked and therefore an invasion of their privacy; and e) that it is an established principle of law in this jurisdiction that all relevant evidence must go to the jury who will have the sole responsibility to determine the weight of the evidence.

After hearing arguments pro and con on the objections and the resistance thereto, the co-respondent trial judge, on March 20, 2017, ruled granting the objectors' objections but with the modification that he would place temporary marks on the documents objected to pending the appearance of Heines Van Niekerk to testify and to be cross-examined by the respondents/appellants. The trial judge also ruled that if the State failed to produce Heines Van Niekerk to give testimony relative to the temporarily marked documents, the documents would be expunged from the records of the court as if they did not exist.

The records show that all the parties excepted to the trial court's ruling and gave notice that they would take advantage of the laws controlling. But no party took any action to have an appellate review of the ruling by the filing of a remedial writ. Instead, the records show that as directed by the trial judge, immediately following the ruling, the trial of the case was resumed with the prosecution's first witness continuing his testimony from where he had left when the objections were raised to the marking of the documents objected to. The documents that

were objected to by the defendants were temporarily marked, subject to the conditions stated by the trial judge in his ruling. The records further show that the prosecution's second witness took the witness stand and began his testimony. It was while this witness was testifying that the State filed a motion to rescind, praying the trial judge to rescind his ruling earlier made in respect to the documents objected to by the respondents/appellants.

The State maintained in the motion to rescind a) that the trial judge erred in setting as a precondition for the marking of the documents objected to by the defendants that the State should produce Heine Van Niekerk as a witness to testify and be cross-examined by the respondents/appellants and that a failure by the State to produce the said witness shall result in the exclusion of the email and spreadsheets from admission into evidence and that all information relating to the said documents shall be expunged from the records of the court; b) that the judge committed error in requiring that the State should produce Heine Van Neikerk to enable the defendants to establish and prove their innocence as such standard, as wrongly articulated by the court, not only violates the law that a defendant is innocent until proved guilty, but shifts the burden from the State proving guilt of a defendant to a defendant proving his/her innocence; c) that the judge erred in stating in his ruling that the conversation had between Varney Sherman and Kluas Piprek with reference to Co-defendant J. Alex Tyler was hearsay and therefore inadmissible and cannot be used to determine the guilt or innocence of Co-defendant J. Alex Tyler, since the said statement constituted prejudgment of the case in regard to J. Alex Tyler; (d) that the trial judge misapplied the doctrine of facing one's accusers to the circumstances in the instant case; and (e) that the statement made by the court that if the State did not produce Heine Van Niekerk at the trial to testify to the affidavit executed by him, the court will consider the affidavit to be unduly and unfairly prejudicial to the defendants interest was prejudicial to the State and hence a basis for the judge to rescind his ruling.

We have deemed it necessary to quote the motion to rescind filed by the State as follows:

"MOVANT'S MOTION

AND NOW COMES MOVANT in the above entitled cause of action and submits to Your Honour and requesting the rescission of Your Honor's ruling for the following legal and factual reasons, to wit:

1. That the movant is party plaintiff in the ongoing trial before Your Honour. Your Honour is respectfully requested to take judicial notice of the records in these proceedings.

2. That in obedience to Your Honour's order growing out of the pretrial conference during which the defendants/objectors generally objected to the marking of the emails, spreadsheets and the Global Witness' report, formal objections were filed and resisted by the respondent/movant herein. Again Your Honour is respectfully requested to take judicial notice of the records in these proceedings.

3. That thereafter and following arguments pro and con, Your Honour on the 20th day of March, 2017, entered a ruling stating that: "the objectors' objections are hereby granted in part with modification that the emails and spreadsheets are hereby ordered temporarily marked and the trial is hereby order proceeded with on condition that the State witness in person of Heine van Niekerk will appear in open Court before the end of this trial to testify to emails and spreadsheets to give the Defense Team an opportunity to cross-examine him; failure of which said emails and spreadsheets shall be excluded from admission and all relevant information therefrom shall be expunged from the records of this trial as though they never existed. And so ordered."

4. That under our laws, including case law, as found in 25 LLR page 131, Your Honour and this court have the authority to rescind and or modify Your Honour's ruling within term time upon notice to the parties.

5. That further to count 4 above, Your Honour inadvertently ruled that Heine van Niekerk must appear before the court on grounds of his sworn affidavit that he submitted to the prosecution emails and spreadsheets that were used by the investigators. Movant submits that there was no challenge as to whether or not Heine Van Niekerk executed the affidavit; the issue by the Objectors in argument was the non-availability of the apostille; for the court to demand the appearance of Heine van Niekerk as a condition precedent to accepting the emails and spreadsheets as evidential materials, although identified and testified to by prosecution witnesses and marked by court is an attempt to overlook the laws controlling markings

and admissions of evidential materials. Movant prays that Your Honour must rescind that portion of your ruling.

6. That in granting the Objector's motion in part, Your Honour stated that "This Court is of the considered opinion that every precaution should be taken to ensure that the defendants have maximum opportunity to establish and prove their innocence..... Your Honor articulated this standard inadvertently as it is contrary to law, contrary to centuries of criminal jurisprudence adopted by this jurisdiction and enshrined in our Constitution that the defendants are innocent until proven guilty.

7. That Your Honor's inadvertent use of this erroneous legal standard shifts the burden of proof on the defendants and therefore compelled the appearance of a witness whose appearance should be solely within the purview of the prosecution and whose non-appearance may be weighed by the trier of fact when considering what weight to give any evidence adduced from such witness. That Your Honour ruling adopting the wrong legal standard should be rescinded and ruling modified consistent with the Constitution, law and practice in this jurisdiction.

8. That also Your Honour, in the said ruling inadvertently and prematurely stated: "the court however agrees with Co-defendant Alex Tyler counsel contention that the alleged conversation between Co-defendant Varney Sherman and Klaus Piprek with reference to Co-defendant Alex Tyler is a hearsay evidence and inadmissible, but the court says same will be marked and may be admitted not for its truthfulness or probative value but for the mere fact that such statement was made when proven and that said statement will not be used to determine the guilt of Co-defendant Alex Tyler." Movant submits that this quoted portion constitutes a prejudgment of the case as against Co-defendant Alex Tyler of which Your Honour is requested to rescind said ruling, Your Honour being both the judge of the law and facts.

9. That Your Honour in the said ruling averred that Heine Van Niekerk made grave allegations against the defendants. This assertion on Your Honour's part was inadvertently made because Heine only confirmed that the email exchanges he had with Varney Sherman were delivered by him to the Prosecution and Paul O'Sullivan, and not that he accused the defendants of any crimes. The doctrine of facing an accuser is inapplicable under the circumstances, and movant prays that Your Honour will rescind and modify Your Honour's ruling consistent with trial practice and procedures.

10. That also in the subject ruling Your Honour prejudicially or inadvertently stated that "if Prosecution rest its side of the case without parading Heine

Van Niekerk, the testimony of Heine van Niekerk contained in the said affidavit will be considered unduly and unfairly prejudicial to the defendants' interest; this court will refuse admission of emails and spreadsheets and will expunge from the records of the trial all information regarding the emails and the spreadsheet." The statement quoted above is bias, contrary to trial procedures and practice and the laws in vogue. Your Honour is requested to rescind that portion of Your Honour's ruling consistent with law.

WHEREFORE AND IN VIEW OF THE FOREGOING, MOVANT/PROSECUTION prays Your Honour and this Honourable Court to rescind Your Monday, March 20, 2017 ruling on the Objectors' Objections to the marking of emails and spreadsheets and Global Witness' report (the "Deceiver") and order that emails and spreadsheets and Global Witness' report (the "Deceiver") be permanently marked by this Honourable Court."

The respondents/appellants, on the other hand, filed three separate instruments of resistance, contending basically that the judge did not err when he decided that only temporary marks would be placed on the contested documents, that the prosecution should produce Heine Van Niekerk to testify to the emails, and that a failure by the State to produce the said witness, the documents marked by the court would be expunged from the records of the court as if they did not exist. The respondents/appellants contended that the trial judge's ruling was intended to protect their due process of law and privacy rights guaranteed by the Liberian Constitution and other laws of the nation. We quote each resistance, referenced as (A), (B) and (C) as follows, to wit:

"(A) RESISTANCE OF H. VARNEY G. SHERMAN, E.C.B. JONES, CHRISTOPHER ONANUGA, J. ALEX TYLER, EUGENE SHANNON, MORRIS SAYTUMAH AND WILLIE BELLEH TO MOTION TO RESCIND

Respondents in the above-entitled cause of action deny the legal and factual sufficiency of the Motion to Rescind, and accordingly pray Your Honor to deny and dismiss same for reasons, as follows:

1. That as to counts one (1) and two (2) of the motion, respondents say that said counts do not present any traversable issue. Nevertheless, respondents pray Your Honor to take judicial notice that movant conceded that the emails, spreadsheet and the Global

Witness Report (The Deceivers) were objected to by respondents at the pre-trial conference.

2. That as to count three (3) of the motion, respondents say that same presents no traversable issue.

3. That as to counts four (4) and five (5) of the motion, respondents do not deny the authority of a trial judge to rescind or modify his ruling or judgment within term time, provided that appropriate notice is given to all the parties. In the instant case, the Ruling of Your Honor, which movant seeks to rescind or modify, is not one that this law intends to cover. This law is intended to cover conditional rulings, which are intended to secure and protect to a defendant in a criminal trial the attributes of "innocent until proved guilty beyond all reasonable doubts". That is, any doubt in a criminal case must operate in favor of the defendant.

4. That further to count three (3) above, Your Honor ruled, by giving a temporary mark to the emails, spreadsheets, and the Global Witness Report (The Deceivers), on condition that Heine van Niekerk, who allegedly signed the statement which formed the basis of the emails and spreadsheets, is listed as a witness and will be brought to testify. And for that reason, Your Honor said that if Heine van Niekerk were to come and testify to the authenticity and legitimacy of the emails and spreadsheets, then these documents would be given a permanent mark; but if he does not come, then the emails and spreadsheets would be expunged from the records. Respondents submit that no error was committed by that ruling; the ruling merely secures to respondents their constitutional and statutory rights to "innocence until proved guilty, beyond all reasonable doubts".

5. Further to Count Four (4) above, Respondents say that the appearance of Heine van Niekerek at the trial is consistent with the constitutional right of the Respondents/Defendants to confront their accuser and cross-examine him as to the truthfulness of his statement or allegation in open court, consistent with due process of law as enshrined in Article 20(a) of the Constitution of Liberia. Moreover, "in all criminal cases, the accused shall have the right to be represented by counsel of his choice to confront witnesses against him and to have compulsory process for obtaining witnesses in his favor...." (Emphasis supplied). (Article 21(h) of the Constitution of Liberia.....

6. That also as to Counts Three(3), Four (4) and Five (5) above, Respondents say that the statement allegedly made by Heine van Niekerk was signed by a person who claims to be a notary public in South Africa, and he used a rubber stamp as his seal. Both Liberia and South Africa are signatories to the Hague Convention; and under South African law, in order for that statement from South Africa to be used in Liberia, in an official proceeding or matter, the document should have been taken to the High Court of the area in which the notary public operates so that an Apostille Certificate would be placed thereon and thereby certify the authority of the notary public. But this was not done, and obviously makes the document materially defective and apparently the aforesaid document plus emails and spreadsheets should have been stricken by Your Honor on Respondents' application at the pre-trial conference. So Your Honor's Ruling actually gave Movant another chance to prove the authenticity and legitimacy of the aforesaid documents; and if they fail to do so, then those species of evidence would be ex-sponged from the trial records.

7. That specifically as to Count Five (5) of the Motion, Respondents say that there is no attempt by the Court to overlook the laws of the Republic of Liberia or the requirements of the Hague Convention. Respondents never challenged whether or not Heine van Niekerk executed the statement or affidavit, because Respondents knew that the statement or affidavit does not qualify under Liberian law and the Hague Convention to be used in an official proceeding in Liberia. That means challenging the signature of Heine van Niekerk would have been an unnecessary surplus which does not vitiate from the main issue of the authenticity and legitimacy of the statement/affidavit, which does not comply with South African law or the requirement of the Hague Convention to be used in Liberia in an official proceeding. That is, there was no way to confirm that the person who alleges to be a notary public in South Africa is actually a notary public in that jurisdiction and qualified to sign that statement/affidavit by use of a rubber stamp.

8. That as to Count Six (6) of the motion, same presents no traversable issue. That is, the law is that the prosecution should prove the guilt of the defendant beyond all reasonable doubts; and where the prosecution fails to do so, then the innocence of the defendant, which is presumed from the time an Indictment was issued, is proven. So, Your Honor's statement is not contrary to law and does not in any way undermine the criminal jurisprudence of Liberia or any other provision of our Constitution.

9. That as to count seven (7) of the Motion, Respondents say that no wrong legal standard has been adopted by Your Honor. The appearance and non-appearance of Heine van Niekerk, an alleged principal participant in the alleged crimes, is very important for reason that he has been indicted along with Respondents for the same crimes and no basis has been shown as to why he would give any statement/affidavit to Movant. Any paper alleged to have been signed by Heine van Niekerk and intended to be used in the trial of this case must conform to the requirements of the laws of South Africa and the Hague Convention; otherwise, that document is fatally defective as to its authenticity and legitimacy. And Respondents should not be required to respond to a document which has such material and fatal defects.

10. That as to count eight (8) of the Motion, Respondents say that there has been no pre-judgment of the case as against Co-Respondent Alex Tyler. The Global Witness Report (The Deceivers) is hearsay until such time that evidence, outside of the Report itself, confirms its content. That is why the Global Witness Report was objected to, because in addition to being hearsay, it relies on documents and information which were dubiously obtained through the hacking of the email accounts of Sherman & Sherman and/or Sable Mining, which is a crime. In addition thereto, Respondents say that a hacker can doctor the email, its content and materials attached to it, include new material, exclude other materials, and even create non-existent material to give an impression or make a representation that the email was never intended to give. Hacking is a computer crime; it is the surreptitious break into the computer, network, servers, or database of another person or organization. Black's Law Dictionary, Ninth Edition, 2009, page 780. And surreptitious is defined as unauthorized and clandestine, stealthily and usually fraudulently done — surreptitious interception of electronic communication which is prohibited by law. Ibid, page 1582.

11. Even though Global Witness claimed in its publication of The Deceivers that the spreadsheets and emails were leaked to it, it never disclosed how these documents were taken from the email or other internet accounts of Sherman & Sherman or Sable Mining Africa and leaked to Global Witness. Obviously therefore, these illegally obtained emails and spreadsheets from the email accounts or internet accounts of Sherman & Sherman and/or Sable Mining Africa Limited are not admissible in evidence in the trial of this case

and should accordingly be denied, dismissed and stricken from this case.

12. Most important is that at least respondents had denied the authenticity and legitimacy of the spreadsheets and emails and have submitted that unless Movant can produce evidence that proves the authenticity and legitimacy of the spreadsheets and emails they should not be identified, marked and admitted into evidence. And Movant has not met up with this challenge in a manner that is legally accepted under Liberian law. So the Ruling is simply consistent with Liberian law and the Hague Convention to which Liberia is a party.

13. That specifically as to count nine (9) of the motion, the doctrine of the accused facing his accuser is applicable in this case. Heine van Niekerk and Paul O'Sullivan are alleged to have made statements and confirmed statements, which, if true, would be used, and are being used by the Movant to convict Respondents. Certainly, Movant is the Republic of Liberia, which can only speak through witnesses and Heine van Niekerk and Paul O'Sullivan have both been named as two of Movant's twenty-six (26) witnesses. It is therefore mandatorily required that statements made by them should be questioned as to their authenticity and legitimacy to the highest degree so as to surround Respondents with every degree of reasonable doubt. Otherwise, Respondents' constitutional and statutory rights to free and transparent trial and to "innocence until proved guilty in a court of law" would have been violated. Therefore, Your Honor did not make any error.

14. That as to count ten (10) of the motion, respondents say that again Your Honor committed no error in ruling that without the testimony of Heine van Niekerk to confirm the contents of the affidavit or statement, Your Honor would refuse to admit the emails and spreadsheets and would ex-sponge from the records all information regarding said emails and spreadsheets. This statement by Your Honor is not bias and is not contrary to trial procedure and practice and the law in vogue in Liberia. Your Honor's Ruling merely confirms a fundamental principle of law which protects a defendant in a criminal case from conviction based on unproved charges and based on speculations by persons who never appeared to face the defendant. Therefore, no prejudicial error has been committed by Your Honour to "warrant the rescission of Your Honor's Ruling.

15. Respondents say that Your Honor's Ruling is consistent with Article 16 of the Constitution of Liberia, which prohibits the interference with the privacy of a person, his family, home or

correspondents, except by order by a court of competent jurisdiction. No court order was obtained for the hacking into the internet or email accounts of Sherman & Sherman or Sable Mining. And Article 21(b) of the Constitution prohibits the search or seizure of a person or his property, whether on a criminal charge or for any other purpose, unless upon warrant lawfully issued upon probable cause supported by a solemn oath or affirmation, specifically identifying the person or place to be searched and stating the object of the search. No search warrant was obtained to warrant the hacking into the internet or email accounts of Sherman & Sherman or Sable Mining. Respondents also say that Section 19.1 of the Penal Law provides that there shall be no unlawful eavesdropping or surveillance and there shall be no interception without the consent of the sender or receiver a message by telephone, telegraph, letter or other means of communicating privately; and there shall be no divulgence of the content of such message if the actor knows that the message was illegally intercepted or if he learns of the message in the course of employment with an agency engaged in transmitting it. Your Honor's Ruling is clearly intended to protect the Respondents against these violations of these statutory and constitutional rights; and this is no novelty.

16. Finally, respondents attach hereto The Hague Convention as Exhibit "R/1" and its explanatory Note as Exhibit "R12". Respondents also attach hereto as Exhibit "R/3" explanatory notes for the authentication of documents executed inside or outside of South Africa for use in public proceedings; Respondents further attach hereto as Exhibit "R/4" a list of apostille countries which shows that both South Africa and Liberia are apostille countries.

17. Respondents attach hereto as Exhibit "R/5" additional Professional Articles regarding hacking and the criminality of hacking for Your Honor's information.

18. Respondents deny all and singular the allegations of both law and fact contained in the Motion to Rescind and not specifically traversed in this Resistance.

Wherefore and in view of the foregoing, Respondents pray Your Honor and this Honorable Court to deny and dismiss Movant's Motion to Rescind in its entirety and grant unto Respondents any other and further relief as may by Your Honor be deemed just, legal and equitable in the premises."

(B) "CO-RESPONDENT J. ALEX TYLER RESISTANCE

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

1. That as to counts one (1), two (2), three (3) and four (4) of the Motion, Co-Respondent J. Alex Tyler says that same present no traversable issues and therefore need not be traversed.

2. That as to counts five (5), six (6) and seven (7) of the motion, Co-respondent J. Alex Tyler says that the portion of Your Honor's ruling mentioned in said counts five (5), six (6) and seven (7) of the motion relates to the other Co-respondents and therefore need not be traversed by Co-respondent J. Alex Tyler.

3. That as to count eight (8) of the Motion, Co-Respondent J. Alex Tyler says that the Supreme Court of Liberia held in the case: Camer (Liberia), Inc., versus Tarpeh Cambo, 32 LLR, 127, that the testimony of a witness based on written information of past incidence to which he was not a party is considered hearsay evidence and therefore inadmissible. The Supreme Court of Liberia also held in the case: Matierzo versus Republic, 34LLR, 791, that the law rejects all hearsay reports of a transaction, whether verbal or written giving by person not produced as witness. In the instant case, the email between Varney Sherman and Heine, dated August 7, 2010 in which Heine informed Varney Sherman that Klaus had informed him that Co-Respondent J. Alex Tyler called Klaus the night before and presented to him (Klaus) the Act and also informed him that Co-Respondent J. Alex Tyler was soliciting US\$250,000.00 (United States Dollars Two Hundred Fifty Thousand) to process the Act through the Senate and Cllr. Sherman's response thereto clearly constitute hearsay as provided for in the opinion of the Supreme Court mentioned herein.

4. Also as to count three (3) above, Co-Respondent J. Alex Tyler says that Article 21 (h) of the 1986 Constitution of the Republic of Liberia provides that "... in all criminal cases, the accused shall have the right to be represented by counsel of his choice, to confront witnesses against him and to have compulsory process for obtaining witnesses in his favor.." It is in the spirit of this Constitutional provision that the Supreme Court held in Christoma M. Matierzo versus Republic cited supra that the law rejects all hearsay reports of a transaction, whether verbal or written given by persons not produced as witness.

5. That the trial judge determined that the emails exchanged between Co-respondent Varney Sherman and Heine van Niekerk in respect of an alleged conversation between Co-respondent J. Alex Tyler and Klaus Piprek constituted hearsay evidence. Notwithstanding and contrary to the opinions of the Supreme Court cited hereinabove, the trial judge elected to have said documents marked and to be introduced into evidence not for its truthfulness or probative value but the mere fact that said statement would be considered made when proven and that said statement will not be used to determine the guilt of Co-Respondent J. Alex Tyler. Co-Respondent J. Alex Tyler submits that the trial judge having determined that the emails mentioned herein constitute hearsay, the portion of said ruling granting the admissibility of said emails should be modified thereby denying the admission of said emails as provided for, and in keeping with the opinions of the Supreme Court mentioned hereinabove and Section 25.7 of the Civil Procedure Law.

6. That as to counts nine (9) and ten (10) of the motion, Co-respondent J. Alex Tyler says that the averments contained therein do not relate to the objection filed by said Co-respondent J. Alex Tyler.

7. Co-Respondent J. Alex Tyler denies all and singular the allegations of both facts and law as are contained in Movant's Motion to Rescind that were not specifically traversed in the foregoing Co-respondent J. Alex Tyler' Resistance to movant's motion.

Wherefore and in view of the foregoing, Co-respondent J. Alex Tyler prays Your Honor to deny and dismiss movant's motion to rescind, modify Your Honor's ruling thereby denying the admission into evidence the emails mentioned herein, and grant unto Co-Respondent J. Alex Tyler any other and further relief as Your Honor may deem legal, just and equitable in the premises."

(C) "CO-RESPONDENT RICHARD V. TOLBERT'S RESISTANCE

COME NOW CO-RESPONDENT Richard Tolbert in the above entitled cause of action and most respectfully prays court and Your Honor to deny and dismiss the bales motion filed by the Movant for reasons as sheweth to wit:

1. Co-respondent Richard Tolbert submits that this trial involves his name, image personality and also the name, image and stature of the Tolbert family. Moreover, Co-respondent says as a consequence of the allegations made by the prosecution and its collaborators,

although faceless and shameful, his rights and privileges under the law as a private and peaceful citizen are being to a large extent restrained, and his activities and movements monitored and Co-respondent cannot fully enjoy all of his rights as a free citizen until this trial is concluded and therefore no time should be wasted by the prosecution which has already started producing evidence to proceed with this trial so that Co-defendant/respondent can have the opportunity not only to present his side of the case as required by law but also to allow his lawyers to cross-examine the witnesses of the prosecution, test their inclinations and possibly expose their biases. Your Honor is most respectfully requested to take judicial notice of the fact the Co-Respondent is entitled to a speedy trial as it matter of aw

2 Co-respondent submits that there are attempts by the prosecution and its supporters either for personal gains or publicity glory or for some vested interest best known to it, to disrupt this trial and this is demonstrated by its recent conduct in which, although already indicted along with co-respondent for the same crimes and is on trial, Cllr. Varney Sherman was ordered by this Honorable Court based on the submission of the prosecution to take the witness stand as 'prosecution's witness' to be directed on the whereabouts of returned checks said to be in his possession which the prosecution claimed were germane to its case and which perhaps formed the basis for the indictment.

3. Further, Co-respondent says though the process was irregular, strange, foreign and totally violative of the principle of presumption of innocence and the rights of Co-respondent Varney Sherman as a defendant, the submission by the prosecution was never objected to so as not to disrupt the ongoing trial. Co-respondent says the prosecution then directed Cllr. Sherman as its witness, although a defendant on trial, in gross violation of our trial procedure in criminal case, this was done to have a smooth trial. Your Honor is most respectfully requested to take judicial notice of the irregular conduct of the prosecution.

4. Further to count , above, Co-respondent further says that the motion to rescind is but one A many diversionary tactics employed by the prosecution to disrupt this trial, and it should not come as a surprise in a motion which is now being contemplated or is in the office, based on the behavior of the prosecution in open court, is Filed asking either of the defense lawyers or may the court iuclics the case maybe, to recuse itself from these proceedings based on a

disruptive tantrums similar to the one demonstrated recently by key prosecution lawyer, Cllr. Theophilus C. Gould, when in his reaction to the court sustaining an objection to a direct examination question by Cllr. Sayma Syrenius Cephus, he remarked: "then we might after all stop the whole trial if you will sustain an objection to my question to the witness on the stand." Your Honor is most respectfully requested to take judicial notice of the conduct of the prosecution during the trial.

5. Co-respondent says the purported motion to rescind is part of the "Then we might alter all stop the whole trial if you will sustain an objection to my question to the witness on the stand"—a diversion an lactic intended to disrupt this trial and therefore the motion should be denied and dismissed-

6. That as to counts 1, 2 and 3, Co-Respondent says same present no traversable issues and therefore need not to be traversed.

7. That as to count 4 of the so-called motion, Co-respondent says it is an affront to the court for the Movant to suggest that the court inadvertently ruled that Heine Van Nierk must appear on grounds of his sworn affidavit Respondent says although the purported affidavit was challenged for not bearing an apostil, notwithstanding the main challenge was to the emails, spreadsheets allegedly containing summary of payments of bribes money and the objective for the defense's objection was that Heine Van Nierk, the purported producer needed to appear in court to be cross-examined as to how he acquired the emails and other financial records that were allegedly given to the prosecution. Co-Respondent says it is strange to note that the prosecution which is on recordings for boasting that it possesses an avalanche of evidence from Great Britain and has material witnesses to prove its case, is now insinuating the appearance of Heine van Nierk at the trial is not material and therefore the court should rescind its ruling. Further. Co-Respondent says if Heine Van Nierk does not appear, who will tell the court as to how the entails spreadsheets, and other contested documents were acquired'? Count 4 should be denied and dismissed.

8. That as to count 5, 6, 7, 8, 9 and 10, Co-respondent incorporates the averments of its count 4. 5. and 6 and says the prosecution is up for a game and it is not interested in going forward with trial because these issues raised in counts 5, 6, 7, 8, 9 and 10 of its so-called motion are only meant for the prosecution to go on a remedial process if the court denies them as groundless and total is illogical.

Co-respondent says a ruling by a court on a motion/ objection tiled by a party cannot be considered as 'prematurely' especially so where both parties have rested arguments. Therefore, the entire motion should be denied and dismissed.

9. That specifically as to count 9 of the motion, co-respondent says it would seem that the prosecution is familiar with or did not carefully read the testimony of its key witness Marc Kollie prior to Jilin the so-called motion. On sheet 3, March 10, 2017. Marc Kollie testified: "Internationally, the investigators also spoke to or interviewed Heine Van Nierk who name may be strange but very familiar to the named defendants told the investigation that he was cc and emails directly sent to him and as such he turned over these emails to the investigation, which the investigation intends to present before this court." See sheet 3, Friday, March 10, 2017, 22nd day jury sitting. Co-Respondent says there's nowhere in the records of the case or the testimony of the witnesses where it is stated that Hiene Van Nierk confirmed the emails, instead lie has been named as the source and giver of the emails to the prosecution. Hence, count 9 being a product of frauds and misrepresentation, same should be denied and dismissed.

Wherefore and in view of the foregoing, it is the prayer of Co-Respondent Richard Tolbert that Your Honor will:

- a. Order den' and dismissed the purported motion as a complete waste of time and energy I'm reasons stated inter alia:
- b. Hold the Movant in contempt for attempt to disrupt this trial with such a frivolous motion that is not supported by any law; and
- c. Grant unto Co-respondent any further relief that Your Honor may deem just and equitable in the premises."

The trial judge entertained arguments on the motion to rescind and the resistances thereto and on April 4, 2017, ruled denying the motion to rescind to which ruling the State noted exception and informed the trial court that it will take advantage of the law.

On April 10, 2017 the State filed a petition for a writ of certiorari contending that  
a) that the judge erred when he ruled that Mr. Heine Van Neikerk must appear and testify before the court as a precondition to the contested documents being admitted into evidence; b) that the respondents/appellants, having alleged that

the emails and spreadsheets which they objected to were the product of hacking, they were under a legal obligation to prove that the emails were hacked, and that the trial judge was in error in seeking to compel the State to produce a particular witness to prove the respondents/appellants' claim.

The Justice presiding in Chambers, His Honor Philip A.Z. Banks, III, invited the parties to a conference after which he ordered the issuance of the alternative writ of certiorari; he further ordered the respondents/appellants to file their respective returns on or before May 1, 2017. In obedience to the Chambers Justice's order, each of the parties filed separate returns to the petition.

Co-respondents/Co-appellants H. Varney G. Sherman, E. C. B. Jones, Christopher Onanuga, Eugene Shannon, Morris Saytumah and Willie Belleh, in their returns maintained that the Global Witness Report constituted hearsay; that the emails and spreadsheets were obtained in violation of their privacy rights and that the emails and spreadsheets could only have been obtained by hacking or other illegal intrusion into the email accounts of Co-respondent/Co-appellant Sherman or Sable Mining. They challenged the authenticity of the sworn affidavit of Mr. Heine Van Niekerk, contending that his signature could have been doctored and that unless he appeared and testified to the instrument, the challenged documents could not be legally admitted; that the sworn affidavit was self-serving and that admitting it without the appearance of the alleged author would be a violation of their due process right and the right to confront their accusers.

Co-respondent/Co-appellant J. Alex Tyler argued in his returns that the testimony of the witness on the stand, based on written information of past incidence to which he was not a party, was hearsay evidence and therefore inadmissible; that the alleged conversation between Co-respondent/Co-appellant H. Varney Sherman and Mr. Heine Van Niekerk indicating that he was soliciting a bribe of US\$250,000.00 to process the Act constituted hearsay; and that the Global Witness report having been generated from leaked emails, constituted hearsay and thus was similarly inadmissible.

Co-respondent/Co-appellant Richard Tolbert, for his part, contended that the entire petition failed to state any error committed by the trial judge but rather that it merely recited factual issues; that the granting of a motion to rescind is an exercise exclusively within the discretion of the trial judge and which cannot be made a subject of judicial review; that the placing of temporary marks of confirmation on the documents did not violate any statutory or decisional laws of this Republic and that the mere execution of an affidavit is not in and of itself conclusive evidence until the deponent can appear and identify, and testify to confirm and reconfirm the averments contained therein.

The Chambers Justice, after hearing the petition for certiorari and the various returns filed by the respondents/appellants., entered a ruling on June 15, 2017, granting the petition for certiorari, from which ruling the respondents/appellants announced an appeal to the Full Bench of this Court.

At the hearing of this case before us, the counsels for the appellants presented arguments in line with their respective positions contained in their briefs and in line with the returns to the petition for certiorari which we have summarized herein above; the State also argued in line with its position in the petition for certiorari which we have also summarized herein above.

Having carefully perused the full records of this case which include especially the petition for the writ of certiorari and the returns filed thereto; the objections filed by the respondents/appellants to the marking of certain instruments; the motion to rescind the trial judge's ruling on objections; and having also perused the rulings of the trial judge both on the objections to the marking of instruments and the motion to rescind, we have determined that there are two salient issue for the determination of this case:

1. Whether or not the trial judge erred in denying the motion to rescind his ruling made wherein he ordered the temporary marking

of emails and spreadsheets on condition that the State produces witness Heine van Niekerk to testify to these instruments?

## 2. Whether or not the writ of certiorari will lie in this case?

We should note that these are the same issues considered by the Justice in Chambers as the deciding issues in this case. And Co-respondents/Co-appellants H. Varney G. Sherman, E. C. B. Jones, Christopher Onanuga, Eugene Shannon, Morris Saytumah and Willie Belleh also considered the question of whether or not the trial judge erred by ordering the placement of temporary mark of identification on the instruments in question as a deciding issue in this case.

In ruling on the first issue, the Justice in Chambers held that the trial judge was in error. Because we are in full agreement with our Colleague in Chambers not only on the conclusion he reached but also on the analysis of the issue and the laws applicable thereto, we have incorporated a greater portion of his ruling into this Opinion. This is how the Justice ruled:

“[I] hold that the trial judge was in error in denying the motion to rescind. It is [my] further holding that there was a sufficient basis, from a full examination of all of the circumstances of the case, for the trial judge to grant the motion to rescind. In this jurisdiction, where error is made by the judge in his disposition of a matter, he is allowed upon a proper showing, upon a proper motion, upon proper exceptions taken to the ruling, and in the face of the law, to rescind his ruling. *Trokon International et al. v. Reeves et al.*, 39 LLR 626 (1999). Firstly, as the prosecution correctly pointed out, it was the defendants that made the allegations that the emails and other challenged documents upon which the prosecution relied for pursuing its case against them were hacked or otherwise obtained illegally from Sherman and Sherman, Counsellor H. Varney G. Sherman, or Sable Mining. The burden of proving that the documents were in fact hacked rested with the defendants. It was not for the State to prove that the documents were not hacked or illegally obtained. In this jurisdiction, a party making an allegation of fact has the burden of proving that fact alleged. *Civil Procedure Law, Rev. Code 1:25(5)*; *Frankyu et al., v. ACF* 39LLR 289 (1999); *Teah v. Netty el al.*, 39 LLR 493 501 (1999). It should not be left to the court to speculate as to how the State obtained [the] document, or to impose on the State the burden of proving that the documents were legally obtained. Nor do we believe that the mere fact that the State chose to deny that the documents were hacked or that they were obtained from a legitimate source or that an affidavit was executed by the source acknowledging that he had in fact provided the documents to the State

through the State's investigators shift the burden from the defendants to show that the documents were illegally obtained. It is only upon such showing by the defendants that the burden would then shift to the State to prove that the documents were in fact illegally obtained or secured. It was therefore error for the trial judge to rule that the documents would only be marked temporarily and that if the State failed to produce Mr. Heine van Niekerk the documents would be expunged from the records of the court as if they did not exist. In the face of such error, a motion to rescind could legally be filed and the judge should have granted same and rescinded his previous ruling..."

On the question of "temporary" marking of documents, this is what the Chambers Justice said:

"The facts, as culled from the records before this Court, show that following the indictment of the respondents and prior to the resumption of trial, the petitioner submitted several pieces of evidence in support of its allegations against the respondents; that at a pretrial conference, the respondents individually objected to three documents to include, the Global Witness Report, a spreadsheet containing the names and allotment of cash received by each of the respondents and copies of emails said to have been exchanged between co-respondent H. Varney Sherman and Mr. Heine Van Niekerk; that the trial judge reserved his ruling on the objections and ordered the respondents to formalize their respective objections and file same during the course of the trial.

The records also show that during the trial, the petitioner first witness took the stand and testified to the contested documents hereinabove mentioned; that the documents were identified and confirmed by the witness but before the court could mark same for admission into evidence, the respondents filed their respective objections stating as grounds therefor the contentions previously indicated in this ruling; that the trial judge entertained the objections and the petitioner's resistance thereto and ruled granting the objections, but instead of denying the marking and subsequent admission of the evidence as prayed for by the objectors/respondents, he proceeded to place what he termed as 'temporary mark' and ruled that a permanent mark would only be placed on the documents upon the testimony of a particular witness of the petitioner.

The question then is, could a document identified, and testified to be temporarily marked and reserved by the judge without submitting said document into evidence for review by the trial of facts? We think not. We agree with the petitioner's contention as we have done in several opinions of this Court that documents, once identified, received and marked by the court, must go to the trier of the facts. This is because the Court has held that in order for such document that has been received, identified and marked by court to go to the trier of the facts, the document must have been pleaded and it must be relevant to issues of facts raised in the

pleading. *Walker v. Morris*, [1963] LRSC 42; 15 LLR 424 (1963); *African Mercantile Agencies v. Bonnah*, [1977] LRSC 24; 26 LLR 80 (1977).

[My] position above is in consonance with the governing rule of this jurisdiction that documentary evidence annexed to a pleading is a factual issue to be testified to by witnesses, marked and confirmed by the court, and presented to the jury, the trier of facts in the case and that all documentary evidence which is material to issues of fact raised in the pleadings and which is received and marked by the court should be presented to the jury. *Momolu et al. v. Cummings* 38 LLR 307 (1996).

The peculiarity associated with this case is that it is a bench trial wherein the judge is serving as the sole trier of the facts and the law. This means that the trial judge should be cognizant as to what stage of the trial he is required to wear the garment of a judge and when to dress in his form of a juror. The importance of such knowledge is that the judge and jury play separate roles in the handling of evidence, the judge being a trial of law only concerns himself with the test for admission of evidence while when the evidence is admitted, the jury goes to its authenticity and materiality of said piece of evidence.

The judge in testing for admission of evidence only questions the relevancy of the evidence which is whether such piece of evidence has the tendency to establish the truth or falsehood of the allegations or denials of the parties or relate to the extent of damages while the jury in weighing the authenticity and materiality of the evidence goes to what constitutes the preponderance of the evidence. *Civil Procedure Law, Rev. Code 1:25.4; Morgan v. Barclay*, 42 LLR 259 272 (2004); *United States Trading Company v. Sackie et al.*, 42 LLR 243, 253 (2004). This is why when documentary evidence which is material to issue of facts raised in pleadings is identified, received, marked and reconfirmed by the court it should be presented to the jury. *Fayah v. Dennis*, 39 LLR 587, 596 (1999); *Walker v. Morris* 15 LLR 424 (1963). Hence, while it is true that in the instant case the judge plays the role of judge and jury, the principle is still applicable so that as the jury he should determine the weight of the evidence to be accorded and the authenticity to be given to it. He should therefore have allowed himself to weigh the evidence and determine the credibility or the lack thereof to be given to it, and, if finding the evidence not to be sufficient credible, to treat it as such and to conclude that the evidence does not establish the guilt of the defendants. To threaten to exclude the evidence and expunge it from the records was therefore error and formed a sufficient basis for the judge to rescind his previous ruling.

[I] add further that a judge can only refuse to mark a particular piece of evidence identified and testified to on the basis of it being irrelevant or mark same on the basis of its relevancy and submit it to the jury for evaluation of its weight. Thus, although sitting as both trier of the facts and the law, a judge cannot pass on any piece of document not properly admitted into evidence and for evidence to be deemed to have been properly admitted, it must be identified, testified to by a witness, marked

by court and confirmed. *The Heirs of the Late Jesse R. Cooper and Cooper v. The Augustus W. Cooper Estate and Heirs of the Late James F. Cooper*, 39 LLR 431 (1999).

Applying the principles of law to the case at bar, Judge Gbeisay's primary duty at that particular stage of the trial was to determine whether the contested documents were relevant and if he found in the affirmative, he was under obligation to mark same and admit them into evidence to decide upon its weight at the disposition of the case on the merits, or if he found to the contrary, he should out rightly have denied the admission of the evidence. [I] find no support in law for Judge Gbeisay's action in placing "temporary" marks on the evidence since all of the concerns raised as to the authenticity of the evidence could have been handled at the time of the disposition of the case. What is more amazing to [me] is that Judge Gbeisay seems to recognize the relevancy of the documents when he stated in his ruling that... *"the allegations made by Heines Van Niekerk as contained in the sworn affidavit sought to be marked is grave and it touches the nerve-center or nucleus of this case to be made from a distance"* but notwithstanding this recognition, he reserved the admission of the documents thereby preventing same from being tested as to its authenticity on grounds that he was doubtful of the information contained therein and that until and unless the maker appeared to testify to the documents, same would be expunge from the records.

[I] wonder if Judge Gbeisay was deciding the case at this point since his concern was to the truthfulness of the allegation contained in the affidavit rather than the relevance of the said allegations to the disposition of the issue before him; would the testimony of Mr. Heine Van Niekerk automatically grant the documents the required weight Judge Gbeisay sought at that point? What was the relevance of the temporary mark in the face of his doubt towards the documents? [I] hold therefore that Judge Gbeisay erred when he placed temporary marks on the documents, subject to the production of Heine van Niekerk by the State to testify to the said documents... "

As to the second and final issue whether or not the writ of certiorari will lie in this case, the Chambers Justice answered in the affirmative, and we again fully agree with him. Here is how he ruled on this issue:

"Having determined that the trial judge was in error in denying the motion to rescind, as indeed the motion was designed to have the judge correct the errors which he had made in his previous ruling granting the objectors' objection, [I] must next decide whether certiorari is the appropriate remedy to address the judge's denial of the motion to rescind. [I] hold that certiorari is the appropriate remedial writ to address and correct the errors made by the judge.

Remedial writs are summary proceedings to correct errors committed by a judge in the conduct of a trial and do not go to the merits of the case but

rather review the procedural aspect of the trial complained of by the petitioner. Like many other remedial processes, Certiorari is a *"is a special proceeding to review and correct decisions of officials, boards, or agencies acting in a judicial capacity, or to review an intermediate order or interlocutory judgment of a court."* Civil Procedure Law, Rev. Code 1:16.21 (1). This Court has held that:

"Certiorari will not be granted to correct the action of a [trial] court judge if he has not issued an interlocutory ruling which prejudiced the rights of the petitioner; nor would certiorari lie to perform the functions of other remedial processes such as securing the release of a person from illegal detention and that certiorari concerns itself only with the records." *Karout v. Flomo* 27 LLR 60; *Jidsanc Inc. et al. v. Pearson et al.*, 35 LLR 742 [1988]

Mr. Justice MR. JUSTICE KPOMAKPOR speaking for a unanimous Court described the purview of certiorari as:

"The definite and specific function of a writ of certiorari is to review the records and correct prejudicial errors of a [trial] court during the pendency of a case..." *Vanderoode v. Morris*, [1956] LRSC 16; 12 LLR 323 (1956)".

Wherefore and in view of all we have said, the ruling of the Justice in Chambers appealed from which reversed the trial judge's ruling is affirmed. The alternative writ of certiorari issued is sustained and the peremptory writ of certiorari prayed for is hereby ordered issued. The Clerk of this Court is ordered to send a mandate to the court below, directing the judge presiding therein to resume jurisdiction over this case, and proceed to place permanent marks on the contested documents, subject of these certiorari proceedings so that their authenticity and materiality will be determined at the appropriate time.

Petition granted.

Counsellors G. Moses Paegar and Albert Sims of Sherman and Sherman Inc., Frank Musa Dean, Jr., of Dean & Associates, Inc., Emmanuel B. James of International Group of Legal Advocates and Consultants and Sayma Syrenius Cephus appeared for Co-respondents/Co-appellants H. Varney G. Sherman, E.C.B. Jones, Christopher Onanuga, Richard Tolbert, Eugene Shannon, Morris Saytumah and Willie Belleh. Counsellor Amara Sheriff of J. Johnny Momo and Associates Legal Chambers, Inc., appeared for Co-respondent/Co-appellant J. Alex Tyler.

Counsellors J. Daku Mulbah, County Attorney, Montserrado County, Othello S. Payman, I., Legal Counsel, Liberia Anti-Corruption Commission, Arthur T. Johnson and Swaliho A. Seysay appeared for the State.