IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA, SITTING IN ITS OCTOBER TERM, A.D. 2019

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR. ....CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE........ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH..................ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE.........................ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA...............................ASSOCIATE JUSTICE

Liberia Hardwood Corporation represented by and thru its Managing Director, Mr. Jihad Y. Akkari, of Grand Gedeh County, Republic of Liberia..............................Appellant)	
)	APPEAL
Versus)	
A&M Enterprise Inc., represented by its Manager, Mohammed T. Swaray, of the City of Monrovia, Liberia ....Appellee)	
GROWING OUT OF THE CASE:)	
A&M Enterprise Inc., represented by its Manager, Mohammed T. Swaray, of the City of Monrovia, Liberia ....Petitioner)	
Versus)	PETITION FOR CANCELLATION OF CONTRACT
A&M Enterprise Inc., represented by its Manager, Mohammed T. Swaray, of the City of Monrovia, Liberia ....Respondent)	

Heard: July 10, 2019 Decided: December 23, 2019

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

A Petition for cancellation of a written agreement is an equitable proceeding wherein the petitioner appeals to the conscience of the court to do justice, fairness, and equity in setting aside the agreement entered into between the petitioner and the respondent, as in the present appeal, which grows out of a petition for the cancellation of a forest management agreement. There is a legal axiom which states that "he who seeks equity or comes to the court of equity must come with clean hands and pureness of heart". *Cole v. His Honor Wah et al.*, Supreme Court Opinion, October Term, 2013; *Keita v. Keita*, Supreme Court Opinion, March Term, 2016; *Ellis v. Johnson*, 40 LLR 474, 478 (2001).

On June 23, 2017, the A&M Enterprise, the appellee herein, instituted an equity proceeding for the cancellation of a contract, filed before the 7th Judicial Circuit, Grand Gedeh County, against the Liberia Hardwood Corporation, the appellant herein. The trial court, upon attending to the evidence adduced by both parties rendered judgment in favor of the appellee by ordering the cancellation of a Forestry Management Agreement (FMA) between the appellee and the appellant. The appellant announced an appeal therefrom to the Supreme Court, praying for a review and reversal of the trial court's judgment, thus the present appeal.

The genesis of this appeal is traced to May 31, 2011, the date the appellee entered into two separate memorandum of understanding (MOU) with the Communities Forest Management Bodies (CFMB) of the Bloquia Clan and the Neezonnie-Gboe Clan respectively, of Grand Gedeh County. The respective MOUs, bearing the same contents, provided that the appellee would be responsible and obligated to the respective clans as follows:

a) Payment of US$1.00 to the communities within one week for every shipment of one cubic meter log;

b) Ensure that the payment of the US$1.00 for the cubic meter log is deposited into a bank account after every shipment;

c) Construction of roads in the four clans of each Community during the first three successive years of operations;

d) Initiate talks with Forest Development Authority (FDA) to conduct training for the Community Forest Management Body (CFMB) to enable them understand and play their role;

e) Respect the rights of the communities in carrying out and preserving their traditional practices in conformity with applicable customary laws in particular that has to do with animals, plants medicinal plant site, hunting ground and non-timber forest products;

f) Provide first preference for employment of skilled and unskilled persons from the communities;

g) Hold regular consultative meetings with the people of the communities;

h) Build culvert bridges on major farm-to-market roads in the clan within the third, fourth, and fifth years;

i) Construct hand pumps up to international level/standard in towns designated by the citizens in order to provide the residents of the communities access to safe drinking water; and

j) Provide educational scholarship, within two years of signing the MOU, for ten youths from the district to pursue college/university education at the University of Liberia.

It is worthy to note that prior to entering into the agreements, the communities obtained authorization from the Forestry Development Authority (FDA), in compliance with the requisite provisions of the National Forestry Reform Law, particularly section 5.6 (d)(ii), which permits community participation within the forest sector by the granting of Community Forest Permit, the latter which allows the communities to enter into contracts with corporations for logging activities in the forests of the respective communities. Thus, on August 15, 2011, both the Neezonnie-Gbao and the Blouquia Clans of Grand Gedeh County by and through their respective Forest Management Committee entered into separate Community Forestry Management Agreements with the FDA.

The records are silent as to whether or not the appellee ever commenced operation of the allotted forest areas by the felling, harvesting and exporting of logs or that it performed or complied with any of the above mentioned obligations, after it entered into the Memoranda of Understanding with the two communities. What the records reveal however, is that within thirteen (13) months of the execution of the above mentioned MOUs with the two (2) communities, that is, on June 12, 2012, the appellee herein entered into a Forestry Management Agreement (FMA) with the appellant for it to manage the forest areas of the two communities, and to comply with all of the social obligations as provided for in the MOUs. According to the Forestry Management Agreement (FMA), in consideration of the appellee's assignment of its obligations to the appellant, the appellant agreed to the following:

a) Produce and/or extract a combined minimum of ten thousand cubic meters of logs annually from the designated forest areas commencing January 2, 2013.

b) Pay to the appellee a royalty of US$10.00 for every cubic meter of log extracted from the forest areas;

c) Ensure that the payment of the agreed royalty shall be made within ten (10) working days after the bill of lading for any shipment of logs;

d) Discharge all obligations arising out of first party's social agreements with the communities of Bloquia and Neezonnie-Gboe clans without any deduction from the royalty herein agreed to be paid by second party to first party;

e) Be responsible to source and provide all the machinery, equipment, supplies and other consumables necessary for the smooth and efficient operation in the designated forest areas; and

f) Be exclusively responsible to pay or cause to be paid any and all taxes levied by the County Authority or the Government of Liberia in connection with, or incidental to operations in the said forest areas.

We note that the quantity of forest land for the extraction of the logs from both communities covered an area of 86,218 (eighty six thousand two hundred eighteen) hectares of land.

The records reveal that during the period the appellant commenced operation of the forests, disagreements ensued between the appellant and the CFMB of both the Clans, which initially resulted in the CFMB halting the operational activities of the appellant, albeit temporarily. However, as time elapsed, the disagreements between the parties continued to persist leading to the CFMB forwarding a communication dated February 28, 2017, requesting the appellee to terminate its FMA with the appellant, and giving the appellee an ultimatum that if it fails to effect the termination, the CFMB "will no longer work" with the appellee.

On June 23, 2017, following the communication from the CFMB, the appellee instituted cancellation proceedings of the FMA in the Seventh Judicial Circuit Court, Grand Gedeh County by filing a 29 count petition requesting the cancellation of the June 12, 2012 Forest Management Agreement (FMA). The appellee alleged that the appellant was in breach of the Forest Management Agreement in that it failed to execute the following specific obligations some of which were for the benefit of the two communities:

a. The production and/or extraction of a combined minimum of ten thousand cubic meters (10,000 m3) of logs annually from the designated forest areas commencing January 2, 2013;

b. The payment of royalty to the appellee in the amount of US\$10,000/m^3 of logs procured and/or extracted from the forest areas within ten (10) working days after the bill of lading for any shipment of logs destined for export as signed by the Port Authority;

c. To fulfill all Social Agreements with the people of Bloquia and Neesonnie-Gbao Clans;

d. To source and provide all the machinery, equipment, supplies and other consumables necessary for the smooth and efficient operation....in the designated forest areas thus failing to demonstrate technical expertise to harvest the forest;

e. To pay or cause to be paid any and all taxes levied by the County Authorities or the Government of Liberia in connection with, or incidental to....the operations in the said forest areas; and

f. To practice fair-dealings when it, the appellant subcontracted the self-same forest area to a company called Mandra Forest Management without the knowledge or consent of the appellee and the communities.

In its prayer, the appellee stated the following:

a) "...To adjudge the Respondent liable for breach of the Management Agreement occasioned by the Respondent's breaches of material terms of the Management Agreement; its failure to uphold its fiscal and operational obligations under the Management Agreement; its lack of good faith and fair dealing; lack of capacity to perform its obligations under the Agreement, and failure to comply with laws and regulations governing the forestry sector, each, a combination or all of which has damaged the Petitioner and further exposed its remaining interest under the MOU's;

b) Cancel the Management Agreement between Petitioner and Respondent;

c) Order Respondent to pay Petitioner any royalty due from its operations under the Agreement;

d) Rule the cost of these proceedings against the Respondent; and

e) To grant unto Petitioner any and all relief which this Honorable Court may deem just, legal and equitable..."

The appellee attached to its petition, sundry complaints from the citizens of both Clans, as well as communications to and from the Forestry Development Authority on the appellant's alleged breach and non-compliance to its obligations under the Forest Management Agreement wherein was incorporated the two (2) MOUs.

The appellant filed a sixty nine (69) count returns categorically denying being in breach of the Forest Management Agreement as alleged by the appellee, stating therein that it has the technical capacity to manage the forest; that it never assigned or transferred its harvesting rights under the FMA to Mandra Forest Management as alleged in the petition; that it is not in violation of any FDA regulations or laws of Liberia; that it is tax compliant; that it had overpaid the communities and the appellee's corporation above the thresh-hold amount required by both the Forest Management Agreement and the MOUs; that it has performed its social development responsibilities and obligations to both Clans, especially Bloquia; that its operation to commence the extraction of logs was impeded by: (i) a moratorium placed by the Government of Liberia on logging activities, (ii) substantial delay in the issuance of FDA's permits required to access the communities' forest, (iii) the outbreak of the Ebola Epidemic, and (iv) deplorable road conditions.

We also quote below the prayer of the appellant, to wit:

i. "Deny and dismiss Petitioner's Petition in its entirety;

ii. Confirm and affirm Respondent's rights enshrined in the Forest Management Agreement and as a corollary thereof, hold that Respondent is entitled to enter upon and conduct its logging business without hindrance, neither from the communities nor Petitioner itself;

iii. Grant unto Respondent any other and further relief as Your Honor may deem just, legal and equitable..."

The trial commenced and at its conclusion, on April 12, 2018, the trial court ruled cancelling the Forestry Management Agreement (FMA) between the appellant and the appellee on the basis that the appellant was in breach of the agreement when it failed to build roads and hand-pumps within the four communities of the Bloquia forest area; that the appellant failed to provide scholarships and jobs to the citizens of the areas; that the appellant demonstrated serious lack of capacity in executing the terms of the agreement; that although the Government of Liberia had imposed a moratorium on logging activities in 2014, and there was the Ebola outbreak, the moratorium and the Ebola epidemic did not amount to a force majeure to excuse the appellant from its obligations under the Forestry Management Agreement (FMA) since the appellant continued with its logging activities during the period.

On April 21, 2018, the appellant filed a forty (40) count bill of exceptions asserting that the trial court erred in its final ruling because the appellee failed to prove the alleged breach of the Forestry Management Agreement (FMA); that the appellee failed to rebut the testimonies of the appellant's witnesses showing that the appellant had constructed roads and bridges in the four communities of Bloquia forest area; that the appellee failed to rebut the testimonies that the appellant provided scholarships and jobs in keeping with the Forestry Management Agreement, and that the trial court committed a reversible error when it failed to take judicial notice of the Ebola epidemic. The appellant contended that because the appellee failed to prove its case by preponderance of the evidence showing the alleged breach in the Forestry Management Agreement (FMA), the trial court's final judgment cancelling the agreement in favor of the appellee is evidentiary wanting, unsupported, and a reversible error.

A review of the records and the issues raised by the parties can be combined into the following issue which we have determined to be dispositive of this appeal, to wit:

- whether or not there was sufficient evidence to prove that the appellant breached the Forestry Management Agreement (FMA) thus necessitating the trial court's ordering the cancellation thereof.

The appellee's first two witnesses were Mohammed Swaray the appellee's General Manager, and Mrs. Aissata Conde, the appellee's Chief Executive Officer, who testified that they received several complaints from the Bloquia and Neezonnie-Gboe Clans to the effect that the appellant failed to build roads as agreed upon; that the appellant failed to build hand-pumps within the communities; and that the appellant failed to provide jobs, employment and scholarships for the local residents as agreed upon. These witnesses testified that the appellee on several occasions made interventions and mediated between the appellant and the communities, but these efforts proved futile. The appellee's corporate executives further testified that due to the complaints it had received from the communities, and the appellant's failure to remedy the situation giving rise to the complaints even after the Forestry Development Authority (FDA) made further intervention, it was constrained to file for the cancellation of the Forestry Management Agreement (FMA).

The appellee's last witness, Mr. Sampson Zammie, the Chairman of Bloquia Community Forestry Management Board provided testimony similar to the first two witnesses, and added that the communities did not want the appellant operating within the forest areas of Bloquia clan and Neezonnie-Gboe clan.

The appellant for its part produced one witness, Mr. Jihad Akkari, the appellant's General Manager who testified that it was not in breach of the Forestry Management Agreement (FMA). The witness testified that upon consummating the Forestry Management Agreement (FMA) it had constructed roads, bridges, and install culverts within various towns and communities of the forest areas of Bloquia clan and Neezonnie-Gboe clan in consultation with the Ministry of Public Works; that the appellant provided scholarships for the ten students of the communities but the Chairman of the Communities Forest Management Bodies (CFMB) neglected to provide the names of the prospective students; that the appellant commenced the construction and installation of hand-pumps on several occasions in the community of Gbo Geewon but the Chairman of the Communities Forest Management Bodies (CFMB) objected to the construction and installation of the hand-pumps on grounds that the hand-pumps were being installed in the wrong locations within the communities; and that 40% of the appellant's work force are inhabitants from the Bloquia clan and Neezonnie-Gboe clan and they comprised of skilled and unskilled laborers.

The witness also testified that the appellant experienced many challenges that stalled its logging operations; that although it paid for its operating permit to the Forestry Development Authority (FDA), the Authority issued its operating permit very late; that the Forestry Development Authority (FDA) in demarcating the forest areas of Bloquia clan and Neezonnie-Gboe clan provided wrong and inaccurate geographical boundaries of the forest and as such the Forestry Development Authority (FDA) had to re-demarcate and correct the forest boundaries before the appellant could commence its operation; that the 2014 moratorium placed on logging activities during the Ebola epidemic and the net effect of the Ebola epidemic forced the appellant to cease its operation; that although it paid over US$100,000.00 as royalty to the appellee's corporation for the benefit of the Bloquia clan and Neezonnie-Gboe clan, it still experienced challenges from the local communities that necessitated the intervention of the FDA.

From our thorough perusal of the forgoing testimonies by both parties and their respective witnesses, we are cautioned of the fact that proof is the perfection of evidence, says the law; and where proof is lacking, evidence is bound to crumble and allegation vanishes into oblivion. *National Port Authority v. Kimah 31LLR 545, 551 (1983)*. This Court has been unwavering and consistent in holding that it is the evidence alone that enables the court to pronounce with certainty concerning the matter in dispute; therefore, every party alleging a fact must prove its allegation by a preponderance of the evidence. That is, evidence of greater weight, or evidence which is more credible, weighty, superior and convincing to the mind. *Jogensen v. Knowland 1LLR 266, 267 (1895); Massaquoi v. The Republic et al., 8LLR 113, 119 (1943); American Life Insurance Co. v Sandy*, 32 LLR 338 (1984); *The Management of the Forestry Development v. Walters and the Board of General Appeals 34LLR 777, 783 (1988)*; *Pentee v. Tulay 40LLR 207, 215 (2000); Knuckles v. TRADEVCO 40LLR 511, 525 (2001); Yardamah v. Natt*, Supreme Court Opinion, March Term, 2015 A.D.

In consonance with the above cited Opinions of the Supreme Court, we observe that like the averments in the appellant's lengthy sixty-nine (69) count returns and the lengthy forty count (40) bill of exceptions, the appellant made general denials of the lack of evidence by the appellee to support its claim and that the trial court's ruling being contrary to the weight of the evidence presented by the appellee, without one iota of proof. For example, the appellant claimed that it awarded ten (10) scholarships to students but produced no records of the names of the students or the schools in which they were enrolled. But more surprisingly, although the appellant claimed to have awarded the scholarships, it stated that the communities failed to provide the names of the students for the scholarships. There is nothing in the records to show that the appellant communicated to the communities its concern regarding the communities' alleged failure to submit to the appellant names of prospective or qualified beneficiaries for the scholarships. By these inconsistent pleadings, we conclude and hold that no scholarships were ever awarded to students from the Clans.

Another example is the appellant's assertion that it employed residents of the two communities in both skilled and unskilled positions, but failed to admit into evidence employment records or a payroll indicating salary payments, or at least, financial statements showing the monthly payroll payment to the alleged employees. It should be noted that the employment of people from the communities was an important undertaking under the memoranda of understanding.

We also note that although the appellant placed the delay of the commencement of operations to the Ebola epidemic and the executive moratorium placed on logging activities, both of which events occurred in 2013 and 2014 respectively, there is no evidence in the records to show the cessation of its logging activities during these periods; we see no communications from the appellant addressed to the leaders of the communities expressing the appellant's inability to perform during this period.

Still further, the appellant averred that it installed hand pumps in some of the communities but again failed to present into evidence, purchase orders, invoices, vouchers or construction documentations to establish that hand pumps were indeed purchased and installation services paid for.

More importantly, the appellant itself alluded to the fact that it experienced what was referred to as "serious impediments and/or challenges" from the inhabitants of the two communities or clans, thus breaching one of the cardinal principles of a contract, which is, a meeting of the minds. "Among the requisites to the formation of a contract is that there must have been the mutual assent of two or more persons competent to contract, founded on a sufficient and legal consideration to perform some legal act or to omit to do something, the performance of which is not enjoined by law. In furtherance of providing clarity as to what consititute a meeting of the minds, the Court explained, "The apparent mutual assent of the parties essential to the formation of a contract, must be gathered from their outward expressions and acts, and not from an unexpressed intention. *CFAO (Liberia) Ltd. V. Cooper et al.*, 39 LLR 511 (1999).

Also, the appellant mentioned that as regards the Neezonnie Gboe Clan, it commenced the process of complying with pre-felling requirements in August 2012, but no harvesting activities; that when it was about to embark upon harvesting, then the imposition of the moratorium which lasted until March 2013 when the FDA granted permission by letter dated March 14, 2013, to access the forest areas and commence operation. Again, the appellant stated that it could not commence operation in the forest of the Neezonnie Clan due to wrong boundaries, which issue was not resolved until late March 29, 2017, thereby proving that appellant did not comply with the terms and conditions of the FMA as asserted by the appellee.

Concerning the Blouquiah Clan forest, the appellant repeated similar explanation regarding pre-felling requirements and attendant costs, the Ebola virus, the moratorium, but yet stated that it returned to "normal operations" at the forest between April 2015 to August 2015, but again for a brief period due to deplorable road conditions. The appellant also alluded to various amounts it expended for road constructions and that it will produce witnesses during trial to prove these amounts. We reaffirm a cardinal principle of contract law as held by several opinions of this Court that "Under the parole evidence rule, oral testimony cannot be used to defeat or explain a written instrument", *Kpoto v. Kpoto,* 34 LLR 371 (1987). We wonder how the testimonies of witnesses can suffice or supplant the better evidence like invoices and receipts evidencing purchases of materials for the building of said roads, payment for workmanship, etc. These periods of inactivity spanned almost five (5) years, that is, from the signing of the FMA in June 2012 to mid-April, 2017.

The above statements by the appellant amounts to admissions, thus making it crystal clear that the appellant failed to perform under the terms and conditions of the FMA and for a period of almost five (5) years, practically kept both forests in a state of dormancy thus accruing no development or other benefits to the two Clans.

Before concluding this Opinion we take judicial notice of our records which show that on October 6, 2017, Mr. Justice Banks then presiding in chambers issued the alternative writ of prohibition in this same case and ordered that the appellant sell the logs already felled under the supervision of the Forestry Development Authority (FDA) and deposit all proceeds in an escrow account; that the trial court supervise the said account and that a calculation of all logs fell be conducted to determine the proceeds due the Communities and the appellee. We also note that on May 18, 2018, Madam Justice Wolokolie upon succeeding Mr. Justice Banks in Chambers also issued an order in this case instructing the parties to comply with the mandate of Mr. Justice Banks or risk being held in contempt. The records show that the parties did comply with this Court's mandate and an amount remains in the escrow account under the supervision of the 7th Judicial Circuit Court, Grand Gedeh County. We therefore hold and mandate that upon the trial court's resumption of jurisdiction over this case, it proceeds with the calculation of the money held in the escrow account and distribute same in accordance with the FMA.

WHEREFORE AND IN VIEW OF THE FOREGOING, it is the considered opinion of this Court that the trial court's final judgment cancelling the Forestry Management Agreement (FMA) executed by and between the appellant and the appellee should be and is hereby affirmed; and as to the escrow account as mandated herein. The Clerk of this Court is hereby ordered to send a mandate to the trial court directing the judge presiding therein to resume jurisdiction over this case and give effect to this Opinion. Costs are ruled against the appellant. AND IT IS HEREBY SO ORDERED.

Judgment affirmed.

When this case was called for hearing, Counsellors Golda Bonah Elliot, and Neto Z. Lighe of Sherman & Sherman Inc. appeared for the appellant. Counsellors Mark M. M. Marvey, and J. Awia Vankan of Heritage Partners & Associates Inc., appeared for the appellee.