

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

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

**Vrex Remodeling, Inc., by and thru its Attorney-In-Fact,)
Henry Q. Taylor, of the City of Monrovia, Liberia...APPELLANT)**

VERSUS) APPEAL

**Liberia Petroleum Refining Company, by and thru its Mana-)
ging Director, Sumo G. Kupee, the Public Procurement and)
Concessions Commission, by and thru its Executive Director,)
James Dorbor Jallah, Lutech Engineering and Lutech Engineer-)
ing and Project Management Consultants FZC JV..APPELLEES)**

GROWING OUT OF THE PROCEEDING:)

**Liberia Petroleum Refining Company, by and thru its Mana-)
ging Director, Sumo G. Kupee, of the City of Monrovia,)
Liberia, and Lutech Engineering and Project Management)
Consultants FZC JV.....MOVANTS)**

**VERSUS) MOTION TO
DISMISS**

**Vrex Remodeling, Inc., by and thru its Attorney-In-Fact, Henry)
Q. Taylor, of the City of Monrovia, Liberia.....RESPONDENT)**

GROWING OUT OF THE CASE:)

**Vrex Remodeling, Inc., by and thru its Attorney-In-Fact, Henry) PETITION FOR
Q. Taylor, of the City of Monrovia, Liberia.....PETITIONER) ENFORCEMENT
OF THE RULING/
VERSUS) DECISION OF THE
THE COMPLAINTS**

**Liberia Petroleum Refining Company, by and thru its Mana-)
ging Director, Sumo G. Kupee, the Public Procurement and)
Concessions Commission, by and thru its Executive Director,)
James Dorbor Jallah, Lutech Engineering and Lutech Engi-)
neering and Project Management Consultants FZC JV.....)
.....RESPONDENTS)**

GROWING OUT OF THE CASE:)

Vrex Remodeling, Inc.....APPELLANT)

VERSUS)
)
 Liberia Petroleum Refining Company, Lutech Engineering and)
 Lutech Engineering and Project Management Consultants FZC)
 JV.....APPELLEES)
)
GROWING OUT OF THE CASE:)
)
 Vrex Remodeling, Inc.....COMPLAINANT) Violation of
) Part III
)
)
 VERSUS)
)
 Lutech Engineering and Lutech Engineering and Project)
 Management Consultants FZC JV.....DEFENDANTS)

Heard: August 10, 2016.

Decided: September 21, 2016.

Counsellor F. Musah Dean of Dean and Associates, Inc. appeared for the appellants. Counsellor Betty Lamin Blamo, Solicitor General, Republic of Liberia, in association with Counsellor Stephen B. Dunbar, Jr. of Dunbar and Dunbar Law Offices, appeared for the appellees.

MR. JUSTICE BANKS delivered the Opinion of the Court.

We are asked on this appeal to reverse the judgment entered by the judge presiding at the March Term, A. D. 2016, of the Circuit Court for the Sixth Judicial Circuit, Montserrado County, His Honour Peter W. Gbeneweleh, granting the appellees’ motion to dismiss appellant’s petition for enforcement of the ruling made by the Complaints, Appeals and Review Panel (CARP) of the Public Procurement and Concession Commission (PPCC), which ruling of CARP, the appellant, Vrex Remodeling, Inc., asserts, effectively awarded to it the contract to undertake the project for the rehabilitation and expansion of the Product Storage Terminal Facility of the Liberia Petroleum Refining Corporation (LPRC). The Complaints, Appeals and Review Panel (CARP) had, upon hearing of the appeal taken to it, annulled the award made by the LPRC in favor of Co-appellee Lutech Engineering and Project Management Consultants FZC JV and ordered that the award be given instead to the second most responsive evaluated bidder if it met the technical requirements set by Co-appellee LPRC for bids on the project. The appellant further asserts that by virtue of the Bid Report, it became the second most responsive evaluated bidder on the list of

Co-appellee LPRC's qualified bidders, and hence, that the contract should have been awarded to it, as directed in the ruling of the CARP; but that Co-appellee LPRC had applied new conditions which it had used to deprive appellant of the award, to cancel the original bidding process, and to announce a new bidding process, all in violation of the ruling of CARP.

Additionally, the appellant, in seeking this Court's reversal of Judge Gbeneweleh's judgment, has prayed that this Court would enter, in the stead of the said judgment, a new and final judgment that either (a) directs the trial judge to order the enforcement of the ruling of the CARP and restrain Co-appellee LPRC from using the point system which reduced appellant status from being the second most responsive evaluated bidder; or (b) that in the alternative, if Co-appellee LPRC elected to use the point system, then to have the said co-appellee award appellant fifteen (15) additional points which would have the appellant retain its status as the second highest responsive evaluated bidder with the technical requirements and competence to undertake the project of rehabilitating Co-appellee LPRC's Product Storage Terminal Facilities, and as such would have the contract awarded to it.

The crust of and basis for the appeal, from the perspective of the appellant, are set out in the following chronological sequence of occurrences and events which the appellant says necessitated its petition to the lower court for enforcement of the decision of the Complaints, Appeals and Review Panel (CARP): That Co-appellee Liberian Petroleum Refining Company, having determined that its Product Storage Terminal had suffered serious deterioration and needed to be rehabilitated and expanded, had in early February, 2013, solicited international bids for a rehabilitation and expansion project to be carried out on the mentioned Product Storage Terminal; that the appellant, in response to the solicitation publication had, along with twenty (20) other corporate entities, including a corporation called Lutech Engineering, submitted to Co-appellee LPRC applications expressing interest in the invitation to bid and in participating in bidding for the Project; that appellant, along with six other corporate entities, including a corporation called Lutech Engineering, were informed that they had met the minimum qualification criteria set for the rehabilitation project and

were therefore pre-qualified to participate in the bidding process; that appellant was thereafter informed that out of the seven entities that had been pre-qualified, the appellant, along with two other companies, including Lutech Engineering, had been shortlisted by the LPRC Procurement Committee to submit bids; that the Bid Evaluation Panel having evaluated the bids and submitted its report and recommendation to the Procurement Committee, the appellant was, on December 28, 2015, informed by Co-appellee Liberia Petroleum Refining Company that Co-appellee Lutech Engineering and Project Management Consultants FZC JV, which was not among the entities that had been pre-qualified, had emerged as the lowest evaluated responsive bidder and hence that its bid had been accepted for contract award; that even though a company by the name of Lutech Engineering was shortlisted along with the appellant, and did participate in the prequalification phase, that company was not Co-appellee Lutech Engineering and Project Management Consultants FZC JV; that the appellant, not being satisfied with the decision awarding the Storage Product Terminal Rehabilitation Contract to Co-appellee Lutech Engineering and Project Management Consultants FZC JV, and believing the decision to be in violation of the LPPC Act and Regulations, filed a complaint with Co-appellee LPRC, as required by law, contesting the award; that when Co-appellee LPRC denied the relief prayed for by the appellant on the ground that Lutech Engineering was the short form for Lutech Engineering and Project Management Consultants FZC JV, it appealed the matter further to the Complaints, Appeals and Review Panel, the body vested by law with the authority to review complaints against the awards of bids of public entities; that upon a hearing duly had, the Complaints, Appeals and Review Panel, on February 4, 2016, delivered its Ruling adjudging Co-appellee LPRC to be in violation of Section 62(3) of the PPCC Act and Section 5.2(b) of the Standard Bidding Document issued by Co-appellee LPRC and hence annulling the LPRC's award decision in favour of Co-appellee Lutech Engineering and Project Management Consultants FZC JV and ordering that the second most responsive evaluated bidder be awarded the contract; that under the CARP Ruling, the contract was to be awarded to the second highest bidder; that although Co-

appellee LPRC excepted to CARP's Ruling and announced an appeal therefrom, but rather than pursuing the said appeal and filing a petition for judicial review with the Circuit Court for the Sixth Judicial Circuit, Montserrado County, it elected, in concert with Co-appellee PPCC, and against the Ruling of CARP, to proceed to cancel the original bidding process and institute a new bidding process, which action it communicated to the appellant on March 4, 2015, thirty (30) days from the date of the CARP's Ruling; that in the said letter, Co-appellee LPRC also informed the appellant that Co-appellee PPCC had granted permission to it to undertake a new restricted bidding process comprising the three highest bidders of the previous bidding exercise; that even though the appellant was in fact the second most responsive evaluated bidder, Co-appellee LPRC had refused to comply with the CARP ruling, and to instead conduct a new restrictive bidding process, opposed to by the appellant; that as a consequence of the failure of Co-appellee LPRC to pursue its appeal taken from the ruling of CARP, and being of the view that Co-appellees LPRC and PPCC were without the authority to undertake a new bidding process but should have instead awarded the contract to the appellant as directed by the Ruling of CARP, the appellant filed with the Circuit Court for the Sixth Judicial Circuit, Montserrado County, a petition for the enforcement of the Ruling of CARP; and that it was the petition for enforcement of the Ruling of CARP that Co-appellee LPRC filed a motion to dismiss, which was granted by the lower court and the petition ordered dismissed. The foregoing, the appellant says, is the background of its case and the basis for the appeal taken to this Court.

The appellees, on the other hand, have given an account of the events leading up to this appeal that is at variance with that given by the appellant. They assert, for example that contrary to what the appellant has alleged and adverse to the findings of the Complaints, Appeals and Review Panel, Co-appellee Lutech Engineering and Project Management Consultants FZC JV did submit an application to bid, did participate in the bidding process, was in fact the most responsive evaluated bidder, and hence entitled to the award of the contract to do the rehabilitation and expansion work on LPRC's Petroleum Storage Terminal Facility. They contended that it was in light of the foregoing

that they, believing the CARP Ruling to be in error of the facts and the law, had appealed the said Ruling. They argued, however, that because of the urgency attached to the Project, the security and health concerns delay an appeal would entail, and recognizing the condition which the CARP had placed in its Ruling regarding the selection of the second most responsive evaluated bidder to replace Co-appellee Lutech Engineering and Project Management Consultants FZC JV, the LPRC abandoned the appeal and proceeded as directed by the CARP Ruling. They noted that the CARP Ruling did not simply mandate that Co-appellee LPRC select the second most responsive evaluated bidder, as contended by the appellant, but rather that the mandate contained in the CARP Ruling had placed a condition on the selection of the second most responsive evaluated bidder; the mandate, which Co-appellee LPRC was obligated to adhere to, directed that the selection of the second most responsive evaluated bidder was subject to such second most responsive evaluated bidder meeting the minimum technical requirements of the LPRC for the Project. The appellees maintained that as neither the appellant who was the second most responsive evaluated bidder nor Enpetrol, who was the third most responsive evaluated bidder, met the minimum technical requirements mandated by the CARP Ruling, none of them qualified under the said Ruling for selection.

The appellees assert that it was given the events aforementioned, and particularly the failure of the appellant and Enpetrol to meet the requirements which the CARP Ruling had set as a condition for the award of the contract, that Co-appellee LPRC, faced with the dilemma growing therefrom, sought from and obtained the permission of Co-appellee PPCC to cancel the previous bidding process and commence a new restrictive bidding process involving the most responsive evaluated bidders, given the urgency attached to the rehabilitation of the Petroleum Storage Terminal Facility. This, the appellees said, accounted for its communication to the three most responsive evaluated bidders to submit new bids, which invitation was complied with by the entities to which the communications had been sent. The appellees make the claim that it was upon the new responses and bids, on this second bidding undertaking, at which all of the three parties were given new opportunities to bid, that Co-appellee Lutech

Engineering and Project Management Consultants FZC JV, again being the most responsive bidder, was selected and again awarded the contract to perform the task of rehabilitating and expanding the LPRC Petroleum Storage Terminal Project. The appellees also insist that it is from this process that the appellant, rather than appealing therefrom, filed instead, in the Circuit Court for the Sixth Judicial Circuit, a petition for the enforcement of the CARP Ruling. It was this filing of the petition, which was without the time period allowed by statute, the appellees declared, that formed the basis for their filing of the motion to dismiss, which was granted by the lower court and the petition dismissed.

The foregoing, the appellees stressed, viewed from their lens or their version of the events that transpired, provides the underpinnings of the appeal taken by the appellant to this Court of last resort for a review of the final judgment of the lower court, and the basis for the appellees' prayer to this Court to confirm the lower court's judgment denying the petition for enforcement of the Ruling of the CARP and affirm the selection of Co-appellee Lutech Engineering and Project Management Consultants FZC JV as the most responsive evaluated bidder to be awarded the contract to rehabilitate the LPRC Petroleum Storage Terminal Facility.

Recognizing that any determination of the issues raised above is dependent on how this Court deciphers the facts revealed by the records certified to this Court, in consonance with the controlling laws, as opposed to the facts presented through the lens of the parties, we take recourse to the certified records before us. The factual details exposed by the records divulge the following events:

On January 12, 2015, Co-appellee herein, Liberia Petroleum Refining Company (LPRC), in an attempt to address the severe degenerating and deteriorating condition of its product storage terminal facility ("PST Plant") due to years of neglect and disrepair, which threatened the supply of petroleum products to the Liberian market, published in the widely circulated public media, electronic and print, a notice soliciting interest in an international bidding process, consistent with the PPCC Law of Liberia, aimed at identifying an

entity capable of undertaking the project of rehabilitating and expanding the LPRC storage facility.

Let us note at this juncture, however, that because the case focuses primarily on the appellant, Vrex Remodeling Inc., and Co-appellees Liberian Petroleum Refining Company, Public Procurement and Concession Commission and Lutech Engineering and Project Management Consultants FZC JV, we shall concentrate our focus mainly on those aspects of the records that lend to the resolution of the dispute as relate to the parties directly involved in these proceedings. In that regard the records indicate that in response to the LPRC publication solicitation interest in an international bidding process for the rehabilitation and expansion of the petroleum storage facility at LPRC, twenty-one (21) entities from a number of countries submitted applications expressing interest in the project and in participating in the first phase of the process, which was the prequalification phase. One of the twenty-one (21) companies expressing interest in and submitting application in the prequalification phase of the process was the appellant, Vrex Remodeling Inc., a company incorporated in the United States of America. We also note that at page 22 of the certified records is the listing of the twenty-one (21) companies that submitted pre-qualification papers and that the appellant, referred to only as “Vrex Remodeling” was stated as not being in compliance with the requirements at the time on account of it not having submitted “proof of it being a legally registered company (Certificate of Registration)”. It isn’t clear if this deficiency was clear, but we assume that the deficiency was cured since the appellant was in fact subsequently shortlisted.

What the records do disclose is that by letter bearing date February 18, 2015, Co-appellee Lutech Engineering and Project Management Consultants FZC JV also submitted an application to be prequalified to participate in the bidding process. The records indicate additionally that Minutes were taken on February 20, 2015, recorded on the letterhead of Co-appellee LPRC, attesting to the fact that on the date stated therein a meeting was held for the purpose of reviewing the prequalification applications received by the LPRC from the twenty-one (21) entities referenced above. The Minutes reveal that twenty persons attended the

meeting, amongst who were Karngar J. Diggs (no. 1 on the list), stated to be representing a company whose name was stated as “Lutech Engineering j.v.”, and Freeman F. Dennis (no. 9 on the list), said to be representing a company whose name was carried as “Vrex”. The Minutes specifically stated: “The twenty-one (21) companies [that] submitted prequalification applications are: ... (5) Vrex Remodeling..... (13) Lutech Engineering & Project Management Consultant FZC JV.....” The Minutes then went on to state that the documents which the companies had submitted in response to the prequalification invitation, stating them in the alphabetical order from “A” to “U”. As regards the appellant and co-appellee Lutech Engineering, this is what the Prequalification Minutes reflected: “....E. Vrex Remodeling: one original, 5 other copies. Submission duly signed.... M. Lutech Engineering and Project Management Consultant FZC JV: Submitted one original, 5 other copies, valid business registration submitted, submission letter duly signed....” The Minutes were signed by one Carol S. Cholopleh, Sr., Procurement Officer. [See page 39 of the certified records].

In the same Minutes, when the names were announced, the appellant name, stated as no. 5, was read as “Vrex Remodeling”, while Co-appellant Lutech Engineering and Project Management Consultant FZC JV name, stated as no. 13, was read as “Lutech Engineering and Project Management Consultant FZC JV”. The Minutes do not reflect that any challenge was raised at this prequalification bid application meeting as to any of the named entities not having submitted prequalification applications.

Following the prequalification bid meeting of February 20, 2015, a part of which we quoted above from the Minutes of the same date, and after an internal evaluative process of the applicants, Co-appellee Liberia Petroleum Refining Company, on September 25, 2015, addressed letters to “Vrex Remodeling Inc.”, “Lutech Engineering”, and five other entities, for a total of seven (7), informing them that they had been prequalified and shortlisted, and hence were being invited to submit sealed bids for Phase I of the Product Storage Terminal Expansion Project. [See pages 150-163 of the certified records] This is how the letter to the appellant and the other shortlisted companies read:

“September 25, 2015

Vedat Rexhepi
President and CEO
Vrex Remodeling Inc.
320 E 109 St.
New York, NY 10029 United States

Dear Mr. Rexhepi:

RE: PST EXPANSION PROJECT (IEB No. LPRC/ICB/00112015/2016)

We are pleased to inform you that your company (Vrex Remodeling Inc.) has been prequalified and shortlisted to participate in the bidding process for the Product Storage Terminal Expansion Project Phase I (IFS. NO. LPRC/ICB/061/2015/2016). Below is a list of other prequalified and shortlisted applicants to this invitation.

1. Xinjian Petroleum Investigation Design & Research Institute (Co. Ltd,)
2. DRA
3. Lutech Engineering
4. Enpetrol
5. Afcons Infrastructure Limited
6. Eco Fuel FZE.

We now invite you and the other prequalified Applicants to submit sealed bids for the execution and completion of the cited project.

You may obtain further Information from, and inspect and acquire the bidding documents at our offices Procurement Unit, Liberia Petroleum Refining Company PST, Bushrod Island Monrovia, Liberia, Email: pkleh@lprclib.com, Mobile; +231886523397

Web: www.lprclib.com

A complete set of bidding documents may be purchased by you at the above office, beginning September 25, 2015 and upon payment of a nonrefundable fee of US\$250.00 (Two hundred & Fifty United States Dollars).

All prequalified companies are required to carry out a mandatory project site Inspection before submitting their bids. The site inspection begins October 1, 2015 to October 23, 2015.

A pre-bid meeting is scheduled for October 23, 2015 at 12:00 noon in the LPRC Training Hall at 12:00 noon.

All bids must be accompanied by a bid security of US\$150,000.00 (One Hundred & Fifty Thousand United States Dollars) in the form of a Bank Guarantee from a reputable bank.

All bids must be submitted in six (6) sets, one original and five (5) copies.

The deadline for bid submission is November 6, 2015 at 1:00 p.m. Any bid submitted after this date and time will be rejected and returned to the bidder unopened. Electronic bids will not be accepted.

Bids will be opened in the presence of bidders or their representatives who choose to attend in the LPRC Training Hall, PST, Bushrod Island, Monrovia, on November 6, 2015 at 1:00 p.m.

All bids must be marked "CONFIDENTIAL" and delivered to the following address:

Procurement Manager
Procurement Unit
Liberia Petroleum Refining Company
Bushrod Island, Monrovia, Liberia
Email; pkleh@lprclib.com
Mobil: +231886523397
Web: www.lprcllb.com

Yours truly,

Sumo G. Kupee
Managing Director"

As noted before, identical communications, as the one quoted above, were forwarded to the other six shortlisted applicants. Our attention is called to the fact that the third name on the communication of September 25, 2015, informing the applicants that they had been shortlisted is supposedly that of Co-appellee Lutech Engineering and Project Management Consultant FZC JV, but that the actual name that appears on the said document reads "Lutech Engineering". We take note also that in the above quoted communication, the companies shortlisted by Co-appellee Liberian Petroleum Refining Company were informed, amongst other things, that a pre-bid meeting would be held on October 23, 2015 and that all bidders listed could participate in the bidding process; that the bid should be accompanied with a bid security in the amount of US\$150,000.00 in the form of a bank guarantee from a reputable bank; that the deadline for the submission of bids was November 6, 2015; and that the bids would be opened in the presence of the bidders or their representatives on November 6, 2015, at 1:00 p.m.

We see in the records a document captioned "Minutes" of a Pre-bid meeting of the selected companies, at which were present representatives from Vrex Remodeling Inc. (referred to in the minutes of the meeting as "Vrex remodeling"), Lutech Engineering and Project Management Consultant FZC JV (referred to as "Lutech Engineering"), Xinjian Petroleum, Enpetrol, Afcons Infrastructure Ltd., DRA-Liberia, and Ecofuel. These Minutes do not show that any issues were raised with respect to any of the pre-qualified entities not having submitted pre-qualification documents as would have rendered not qualified to participate in the bid.

Subsequently, as was indicated in the communications to the shortlisted entities, a bid opening meeting was held on November 20, 2015. At the meeting it was revealed that of the seven (7) entities who had been shortlisted to bid, only three [Vrex Remodeling, Inc., Enpetrol and Lutech Engineering and Project Management Consultant FZC JV] had met the deadline for the submission of bids, and hence that the process would be proceeded with involving the three companies. It was at this bid opening meeting, the appellant alleges, that its representative raised issues regarding the participation of Co-appellee Lutech

Engineering and Project Management Consultant FZC JV in the bidding process. The appellant asserts that it did an audio recording of what transpired at the meeting.

According to the appellant, the recordings disclosed that Co-appellee Liberia Petroleum Refining Company acknowledged that Co-appellee Lutech Engineering and Project Management Consultant FZC JV was a joint venture company, and hence as such, the showing of “tax clearance for only one venture” and registration for only one company, when there should have been a showing for “both companies of the joint venture”, did not fulfil the requirements where a joint venture company is a participant and therefore rendered the documents that were filed defective. In fact, the main contention subsequently developed by the appellant and which formed the basis of its appeal to the LPRC against the selection of Co-appellee Lutech Engineering and Project Management Consultant FZC JV as winner of the bid, and later to the Complaints Appeals and Review Panel of the Public Procurement and Concession Commission, is that Co-appellee Lutech Engineering and Project Management Consultant FZC JV, which submitted the bid, did not submit any pre-qualification documents and was therefore never vetted, but that instead it was Lutech Engineering Liberia Limited that had been prequalified by the LPRC.

Three days after the bid opening meeting, the Managing Directors of Co-appellee LPRC, appointed a nine (9) member Bid Evaluation Panel to review and evaluate the bids and make recommendations. The Panel, after extensive evaluation of the bids, on December 8, 2015 submitted its report to the LPRC showing a breakdown of the criteria used in evaluating the bids and the scores which each of the bidders had attained. On the basis of those evaluations, the Panel determined that as Co-appellee Lutech Engineering and Project Management Consultant FZC JV was the lowest most responsive bidder, it be considered of contract negotiation for the execution of the project. On the same date, that is, December 28, 2015, the management of Co-appellee LPRC informed the respective bidding companies of the result of the bidding exercise carried out by the Panel and notified them that as a consequence of the recommendation of

the Panel, the bid submitted by Co-appellee Lutech Engineering and Project Management Consultant FZC JV had been accepted for contract award.

The appellant, not being satisfied with the contract award to Co-appellee Lutech Engineering and Project Management Consultant FZC JV, filed a complaint with Co-appellee LPRC protesting the selection and asking for a review of the decision. We quote the full content of the letter of complaint, as follows:

"January 4, 2016

Hon. Sumo G. Kupee

Managing Director

Liberia Petroleum Refining Company Monrovia, Liberia

Dear Hon. Kupee:

Re: Complaint of Virex Remodeling, Inc.

We present compliments and acknowledge receipt of your letter Ref: MD-LPRCI2061201, informing us "...that after evaluating the bids received for the Product Storage Terminal Expansion Project Phase One: (IFB.No.LPRC/ICB/00112015/2016, Lutech Engineering and Project Management Consultants FZC JV emerged as the "most evaluated responsive bidder and its bid has been accepted for contract award".

Please find herewith our formal complaint in accordance with the, PPCC Act Part VII-Complaints and Review Process.

On September 25, 2015, the Procurement Union of the Liberia Petroleum Refining Company informed us that only seven (7) of the twenty-one (21) respondents prequalified. The seven (7) Companies were:. Vrex Remodeling, Inc., Xinjian Petroleum Investigation Design & Research Institute (Co.Ltd.), Lutech Engineering, Enpetrol, Afcons Infrastructure Limited and Eco Fuel FZE. However, we note that on November 20, 2015, Lutech Engineering & Project Management Consultants FZC JV, an unvetted firm, which did not prequalify, submitted a bid. A bid from this Joint Venture is objectionable since we have every reason to believe that the Joint Venture occurred after the vetting period.

Part V, section 62(3) of the PPCC Act clearly says: "if a prequalification procedure was applied, a bid received from any entity other than the prequalified bidders shall be rejected and excluded". Consistent with this provision of the law, the procurement unit should have rejected the bid submitted by Lutech Engineering and Project Management Consultants FZC JV as the said Joint Venture neither responded to the invitation to bid nor prequalified.

By the attached notarized document, Vrex wishes to re-confirm the appointment of Mr. H. Q. Taylor as its Agent and all communications should be delivered to:

Mr. H.Q. Taylor

c/a Dean & Associates. Inc. Law Office

152 Carey Street

1st Floor, Milton & Richards' Building,

Monrovia, Liberia

Tei-0886515400/0777280052

We pray that LPRC, as the procurement entity, will give due consideration to our complaint. Please find attached the relevant documents namely, (1) Letter from the Procurement Unit dated September 25, 2015; (2) Letter from the Procurement Unit, dated December 28, 2015; and (3) Authority of Mr. H. Q. Taylor.

Kind regards

Vedat Rexhepiu
President & CEO"

Two days following the letter of complaint from Vrex Remodeling, Inc., Co-appellee LPRC, by its Managing Directors, Mr. Sumo Kupee, on January 6, 2016, provided its response. In the response, the LPRC outlined the sequence of events as related to the application and participation by Co-appellee Lutech Engineering and Project Management Consultant FZC JV in the bidding process. As with the letter of complaint filed by the appellant with the LPRC, we herewith reproduce the detailed response of Co-appellee LPRC to the appellant, as follows, to wit:

"January 6, 2015

Dear Mr. Rexhepi:

I present my compliments and acknowledge receipt of your letter dated January 4, 2016 in which you filed a complaint against the selection of Lutech Engineering and project Management Consultants FZC JV for contract award for the Product Storage Terminal Expansion Project (IFS No. LPRC/ICB/001/2015/16) on grounds that it was "unvetted" and did not prequalify.

Upon receipt of your complaint and considering the importance of this project, I ordered an immediate investigation and the following were revealed after a review of documentary evidences available:

1. That on January 13, 2015 Lutech Engineering and Project Management Consultants FZC JV sent a representative to take delivery of the hard copy of the prequalification document issued by LPRC, a day after the document was released. Interested companies had the option of downloading the document from the website or picking up hard copy at the LPRC Procurement Unit). Please see attached the register signed by companies that took delivery of hard copies from the procurement unit.
2. That on February 20, 2015 at 11:07 Lutech Engineering and Project Management Consultants FZC JV submitted prequalification application as indicated on the attached signed receiving register. (Plse. see attached)
3. That Lutech Engineering and Project Management Consultants FZC JV submitted a formal application letter for prequalification along with its prequalification information with the same full name as indicated in the bid. (Please see attached application letter for prequalification)
4. That on February 20, 2015 Lutech Engineering and Project Management Consultants FZC JV application for prequalification was publicly opened along with other applications received in the presence of bidders or their representatives who decided to attend. (Plse see attached signed attendance sheet)
5. That on February 20, 2015 Mr. Ford F. Dennis represented VREX Remolding at the public opening of the prequalification application where Lutech Engineering and Project Management Consultants FZC JV was openly recorded as one of the applicants for prequalification.(Please see attached attendance sheet and opening minutes)
6. That Lutech Engineering and Project Management Consultants FZC JV application for prequalification was vetted and assessed by the Liberia Petroleum Refining Company (LPRC) along with other applications received.
7. That Lutech Engineering and Project Management Consultants FZC JV, along with six other companies was prequalified and shortlisted for participation in the final bidding process.

8. That Lutech Engineering and Project Management Consultants FZC JV submitted bid for the execution of the project before the deadline expired on November 20, 2015 at 1:00 pm.

9. That "Lutech Engineering" is the short form for Lutech Engineering and Project Management Consultants FZC JV as indicated in the left corner of the company's letter head. That LPRC chose to use the short form of the company's name as indicated in the document you referenced. (Please see attached)

It is also worth noting that similar issue contained in your complaint was raised by VREX representative, Mr. H.Q. Taylor at the bid opening on November 20, 2015 and it was made cleared to him and other bidders present that Lutech Engineering and Project Management Consultants FZC JV participated in the prequalification process. Mr. H. Q. Taylor was also invited to inspect the prequalification application submitted by Lutech Engineering and Project Management Consultants FZC JV.

Based on the facts presented above, it is proven that Lutech Engineering and Project Management Consultants FZC JV participated in the prequalification process and LPRC decision to select Lutech Engineering and Project Management Consultants FZC JV for contract award remains legal and unchanged.

Sumo G. Kupee
Managing Director"

The appellant viewed the response of the LPRC as its final decision on the issues raised by the appellant regarding Co-appellee Lutech Engineering and Project Management Consultants FZC JV in the bidding process and its selection as the most responsive evaluated bidder. Thus, the LPRC letter formed the basis for the appeal taken by the appellant, Vrex Remodeling, Inc. to the Complaints, Appeals and Review Panel of the Public Procurement and Concession Commission, seeking a review of the LPRC decision. We believe that it is worthy, in order to fully appreciate the contention of the appellant, as articulated in the complaint filed with the CARP on January 11, 2016, that we capture its full essence word for word, as expressed in the complaint, which we quote here-with verbatim:

"January 11, 2016

The Executive Director
Public Procurement and Concessions Commission
Executive Mansion Ground
Capitol Hill
Monrovia, Liberia

Attn.: The Complaints, Appeals and Review Panel:

Dear Mr. Executive Director:

Consistent with Section 126 of the Amendment and Restatement of the Public Procurement and Concessions Act, 2005, (the "Act"), approved September 16, 2010-"Further Review by the Complaints, Appeals and Review Panel", we herewith seek a review by the Complaints, Appeals and Review Panel (the "Review Panel") of the decision of the Liberia Petroleum Refining Company ("LPRC"), as contained in its letter dated January 6, 2016. Copy of the letter

containing LPRC's decision, dated January 6, 2016, is hereto attached and marked complainant's Exhibit "A/1".

We wish to draw the attention of the Review Panel to the fact that our Complaint was duly filed on January 4, 2016. We received a response/decision two (2) days after, on January 6, 2016. This runs contrary to section 125 (6) of the Act which states:

"To give other interested parties an opportunity to comment on the complaint, no such decision shall be issued prior to ten (10) days following receipt of the complaint by the Head of the Procuring or Concession Entity".

Substance of Vrex Remodeling, Inc.'s appeal:

(1) As stated in our Complaint, we maintain that Lutech Engineering, and not Lutech Engineering and Project Management Consultants FZC JV, is the Company that pre-qualified and should have submitted a bid. The Joint Venture did not pre-qualify and should not have submitted a bid.

Further to the above, an examination of the application letter, submitted by the LPRC in response to our Complaint, will confirm that the letterhead carries the names "Lutech Engineering and Project Management Consultants FZC" and "Lutech Engineering". No Joint Venture is mentioned in the letterhead of the application. Moreover, the letter of application is dated February 18, 2015 and the date the Company (Lutech Engineering) is supposed to have signed for and received the pre-qualification documents is January 13, 2015; meaning the Company received the pre-qualification documents on January 13, 2015, before applying for the pre-qualification documents on February 18, 2015. Copies of the letter of application and the list of companies that received the pre-qualification documents, reflecting the date on which each company received the pre-qualification documents, are hereto attached in bulk and marked complainant's Exhibit "A/2".

(2) That the Tax Clearance Certificate and Bid Guarantee, dated October 26, 2015 and November 4, 2015 respectively, submitted to the Procurement Committee, are in the name of Lutech Engineering (Liberia) Limited. No Joint Venture is mentioned anywhere. Copies of the Tax Clearance Certificate and the Bid Guarantee, issued by the Liberia Revenue Authority and the International Bank respectively, are hereto attached in bulk and marked complainant's Exhibit "A/3".

(3) That the information contained in the penultimate paragraph of LPRC's letter, dated January 6, 2016, is not supported by the minutes of the meeting. In the said letter, LPRC states: "It is worth noting that similar issue contained in your complaint was raised by VREX representative, Mr. H. Q. Taylor at the bid opening on November 20, 2015 and it was made clear to him and other bidders present that Lutech Engineering and Project Management Consultants FZC JV participated in the prequalification process. Mr. H.Q. Taylor was also invited to inspect the prequalification application submitted by Lutech Engineering and Project Management Consultants FZC JV".

Mr. Taylor was never invited by the Procurement Committee to inspect the prequalification application submitted by Lutech Engineering and Project Management Consultants FZC JV. The issue of prequalification was never raised. Mr. Taylor simply asked if the Company which submitted the Bid was a joint venture or a single entity. The answer was: Joint Venture. Copy of the transcript of the recording at the meeting is hereto attached and marked Complainant's Exhibit "A/4". We give notice that during the hearing or upon the request of the Review Panel, we shall submit the audio recording in support of the averment herein contained.

(4) The minutes as taken by the LPRC at the Pre-Bid Meeting on October 9, 2015, the List of Companies Submitting Prequalification Papers and the Letter to us informing us of companies that pre-qualified, as prepared and published by the LPRC, all carry the name "Lutech Engineering". Copies of the minutes, the list of companies submitting pre-qualification papers and Letter informing

us of companies that pre-qualified are hereto attached in bulk and marked Complainant's Exhibit "A/5".

Having stated the above, we wish to indicate that at no time during the entire process was Vrex Remodeling, Inc. or its representative told and/or was of the understanding that Lutech Engineering is the short cut for Lutech Engineering & Project Management FZC JV. A joint venture is a new and different entity under the law.

All official communications received from LPRC prior to the bid opening date on November 20, 2015 referred to Lutech Engineering as Lutech Engineering. Please see the several exhibits, Any and all documents indicating otherwise, as submitted by LPRC in support of its claim, are self-serving and leave much to be desired.

There are three (3) separate and distinct companies/entities here: Lutech Engineering (Liberia) Limited (the Company which pre-qualified), Lutech Engineering and Project Management Consultant FZC, a Dubai company and Lutech Engineering & Project Management Consultant FZC JV. Mr. Kieh is heard at the Bid Opening meeting as saying:

Kieh: "In the appendix to bid in the bid documents, we made it as an option. That any company participating that will be bidding as a joint venture should state that".

Kieh: "I am sure you saw that. So that detail will be worked out in the detailed evaluation, to see whether all the details will make the joint venture truly joint venture, I mean in our eyes legal, the determination will be made by the company. But once it is determined that it is a joint venture we will proceed, otherwise the procurement committee, like I said, will act in the best interest of the Company".

Mr. Kupee joins in: "Lawyers will say that, in that being a unit, you will then have an agreement with the person with who you have (inaudible).

Clearly, up to the opening of the Bid, no Joint Venture document had been presented and the procurement committee confirmed that after the opening of the bid, it would be evaluating the Joint Venture Agreement and the Joint Venture documents to determine if it was truly a joint venture. This determination should have been made at the pre-qualification evaluation and not at or after the bid opening. The determination was being deferred to the evaluation process because only Lutech Engineering pre-qualified and Lutech Engineering and Project Management Consultants FZC JV submitted the bid. The Procurement Committee now had to decide if the Joint Venture was truly a joint venture.

Finally, we are constrained to appeal the decision of the LPRC because it is in violation of the PPCC Act. Part V, section 62(3) the PPCC Act clearly states: "if a pre-qualification procedure was applied, a bid received from any entity other than the prequalified bidders shall be rejected and excluded".

We, therefore, pray the Review Panel to give due consideration to our appeal and correct this major wrong.

Yours sincerely,

VREX REMODELING, INC."

The LPRC, upon receipt of the complaint, forwarded to it by CARP, and as per the request of CARP, dated January 13, 2015, made by letter under the cover of its Chairman, Counsellor Beyan Howard, that the LPRC submits all documents relating to the bidding process carried out by it, forwarded the requested documents, along with a cover letter explaining to CARP what the co-appellee said had transpired. Again, and because the LPRC communication to

CARP provides additional insight into what is said to have transpired in the course of the bidding process, we highlight the said communication by quoting the same herewith:

"January 14, 2016

**Beyan D. Howard (CLLR.)
Chairman
Complaints, Appeals, & Review Panel (CARP)
Public Procurement & Concessions Commission
Executive Mansion Grounds
Capitol Hill
Monrovia, Liberia**

Dear Cllr. Beyan;

We present our compliments and acknowledge receipt of your communication requesting documents relative to the complaint filed by VREX Remodeling Inc. We wish to bring the following to the attention of CARP:

1. On January 4, 2016- LPRC received a complaint from VREX Remodeling Inc. against the awarding of the Product Storage Terminal Expansion Project contract to Lutech Engineering and Project Management Consultants FTC JV on grounds that this company was "unvetted" and did not participate in the prequalification process which, according to Vrex violates Section 62(3) of the Public Procurement & Concessions Commission Act (PPCA);

2. On January 6, 2016 Consistent with Section 125(6 a, b & c), LPRC investigated and promptly communicated its decision to the complainant with all the necessary documentary evidences attached and filed a copy with the Commission;

It is worth noting that the Product Storage Terminal Expansion Project is very critical to the fuel security of this country and borders on national security. The storage facilities currently being used to store the country's fuel supply is in a very deplorable state and urgent actions are required to upgrade the facilities. LPRC will continue to adhere to the Public procurement Concession Act (PPCA) in awarding this contract as a priority of the Government of Liberia.

With this in mind, LPRC investigated and responded to the complaint filed in a timely manner, consistent with Section 125 (6a, b & c) and did not see the need to wait for 15 days to expire before responding, since all the facts surrounding the complaint were readily available to inform our decision. The facts are the facts. Whether released immediately or in 15 days, still remain the facts. It is in LPRC best interest to present the facts to address the concern of the complainant.

We are beginning to get the impression that the Intention of the complainant is to pose unnecessary delays to this project for unclear reasons. The shift by the complainant from the crust of its original complaint to the citation of "violation" of Section 125(6) is a clear evidence. We will safeguard against this tactic by always exhibiting the facts to all stakeholders.

Hence, we are submitting the below listed documents for the review of the Complaint, Appeal & Review Panel relevant to the original complaint filed on January 4, 2016:

- a) LPRC's response to the complainant;**
- b) Register of companies that signed for and took delivery of hard copy of the prequalification document from the procurement unit. Companies had the option of downloading the document from the Internet or pick up hard copy);**
- c) Signed register of companies that submitted prequalification application before the deadline expired;**

- d) Prequalification application letter submitted by Lutech Engineering and Project Management Consultants FZC JV, along with its prequalification Information before the deadline expired;
 - e) Attendance sheet of public opening of prequalification applications received with applicants' representatives who chose to attend on February 20, 2015. Mr. Freeman Dennis Represented VREX Remodeling Inc. at this opening where all applications were recorded;
 - f) Minutes of prequalification public opening;
 - g) Letter to the Chief Executive Officer of the PPCC transmitting all the prequalification applications received from twenty-one (21) companies. This means all the prequalification applications received by LPRC have been transferred to the Public Procurement & Concessions Commission for review;
 - h) Complaint received from Vrex Remodeling, Inc.
- We pledge our commitment and willingness to provide all Information required to enable you to review and decide this matter in a timely manner.
- Best Regards,
Sincerely yours,
Sumo G. Kupee
Managing Director.”

The facts referenced above, as observed from the various communications, including exchanges between and amongst the parties, the Minutes of meetings held involving the parties and other documents pertaining to the bidding process, formed the backdrop to the investigation undertaken by CARP into the complaint filed by the appellant. CARP, having conducted investigation into the complaint, studied the documents requested by it, relating to the entire bidding process, and entertained arguments from the parties, handed down its Opinion wherein, after reciting a summary of the facts, which it believed captured the essential elements of the dispute, and predicated upon which it identified one issue, made findings thereon and entered a ruling annulling the award made to Co-appellee Lutech Engineering and Project Management Consultants FZC JV. As we believe the ruling of CARP is critical to the issues raised by the appellant, it deserves being fully revealed, both for purposes of the arguments made by the parties and for the analysis made and position taken herein by this Court. Accordingly, we herewith quote the said ruling of CARP, as follows:

“OPINION

BACKGROUND

Complainant, over the signature of Mr. Vedat Rexhepi, President and CEO of Vrex Remodeling Inc. (VREX) filed a formal complaint with the Public Procurement and Concessions Commission (PPCC) against defendant, Liberia Petroleum Refining Company (LPRC) on the 11th day of January, 2016 for allegedly violating Part III, Section 62(3) of the Public Procurement and

Concession Act of 2010. Consistent with the PPC Act which established this Commission, the letter of complaint by VREX was forwarded to the Complaints, Appeals and Review Panel (CARP).

Having received the Complaint of VREX, and in keeping with Part II, Section 10 of the Act, the Complaints, Appeals and Review Panel (CARP) resumed jurisdiction over the matter by inviting all parties to a hearing on the 26th of January, 2016 in the Conference Room of the Commission to the precise hour of 2:00 p. m. All Parties, including VREX, LPRC and Lutech Engineering and Project Management Consultants FZC JV, were present along with their representatives and legal counsels; except, Lutech Engineering which was represented by its Director for Liberia Ops.

At the start of the hearing, CARP, through a roll call afforded each party an opportunity to introduce its delegation, beginning with VREX, LPRC the latter and Lutech Engineering and Project Management Consultants FZC JV. This preceded the introduction of the members of the Complaints, Appeals and Review Panel.

The CARP, through its Chairman, Cllr. Beyan D. Howard, took particular interest by explaining to the parties as to why Lutech Engineering and Project Management Consultants FZC JV was invited based on the question posed by the Managing Director of LPRC, though Lutech Engineering and Project Management Consultants FZC JV was not mentioned in the complaint. The Chairman told the parties that Lutech Engineering and Project Management Consultants FZC JV was invited due to the fact that Lutech Engineering and Project Management Consultants FZC JV was the bidder that won the contract; and that any decision reached by the Panel could likely have an effect on Lutech Engineering and Project Management Consultants FZC JV.

Complainant (VREX) was given the space through its Agent to state his complaint. Mr. Taylor told the hearing that a Company (Lutech Engineering and Project Management Consultants FZC JV) which did not take part in the prequalification stage of the Product Storage Terminal (PST) Expansion project and should not have taken part in the bidding process, tendered for the contract and won. Taylor argued that during the opening of the bids in October 2015, there wasn't any document to prove or show that there was a joint venture taking part in the process.

Mr. Kupee of the LPRC, in response, told the Hearing that Mr. Taylor's assertion was false and misleading. He (Kupee) said that the LPRC is in possession of the facts and is willing to provide them. Considering the claims and counter claims made by both parties (VREX and LPRC), that CARP mandated all parties to file in a legal memorandum on or before Friday, January 29, 2016 to the Commission before 4:00 pm.

Another issue that was satisfied at the hearing was whether or not should the Hearing go ahead in the absence of a legal counsel to represent the interest of Lutech Engineering and Project Management Consultants FZC JV. Mr. Diggs, Director of Liberia Ops to Lutech Engineering and Project Management Consultants FZC JV, said that the Hearing proceed and that Lutech Engineering and Project Management Consultants ZC JV will adhere to any outcome of the said Hearing.

METHODOLOGY:

Prior to the submission of the legal memorandum filed by each party on the 29th of January, 2016 in order to provide legal reliance as to why should one prevail, the Panel at its January 26, 2016 and hearing considered verbal arguments of the parties. Henceforth, the Management of LPRC was requested to also make available all documentations with regard to the entire bidding process of the Product Storage Terminal (PST) Expansion Project before the hearing. Obedient to the CARP request, the Liberia Petroleum Refining Company provided the documents.

The Panel reviewed the documents submitted by LPRC as well as the legal memoranda filed by the Parties (VREX and LPRC), VREX January 4, 2016 letter of complaint written to the Managing Director of the LPRC, LPRC response to VREX Complaint, etc. The Panel relied most importantly on the Public Procurement and Concessions Act in the disposition of the matter.

FACTS

VREX Remodeling Inc. by its letter dated Jan 4, 2016, filed an official complaint to Hon. Sumo G. Kupee, Managing Director & Head of Procurement Committee of the Liberia Petroleum Refining Company. The complaint alleged that:

Lutech Engineering & Project Management Consultants FZC JV, an unvetted firm which did not prequalify, submitted a bid. The complaint further alleges that a bid from this Joint Venture is objectionable since it (VREX) has every reason to believe that the Joint Venture occurred after the vetting period.

The Liberia Petroleum Refining Company, on 25th September, 2015, advertised a bid for the Product Storage Terminal (PST) Expansion Project Phase One. Prior to advertising of the bid, a prequalification of bidders was conducted. According to the records before the Panel, twenty-one (21) companies applied during the prequalification stage. At the completion of the process (prequalification stage), seven (7) companies were prequalified. The prequalified companies, according to LPRC's September 25, 2015 Form for Invitation for bids, over the signature of its Managing Director, include: Eco Fuel, VREX Remodeling Inc., Afcons Infrastructure Limited, Lutech Engineering, Xinjiun Petroleum Investigation Design & Research Institute Co. Ltd. DRA and Enpetrol. However, VREX insists that at no time was a Joint Venture mentioned in any of the meetings; and that it was after the prequalification stage the Joint Venture was formed.

ISSUE:

The issue that is dispositive of this case now before this Panel is “whether or not a bid can be received from any bidder other than the prequalified bidders if a prequalified procedure was applied”?

The answer is NO.

DISCUSSION OF THE ISSUE:

VREX maintains, in both of its letters of January 4, 2016 and that of January 11, 2016, addressed to the Managing Director of LPRC and Executive Director of PPCC respectively, that Lutech Engineering, and not Lutech Engineering and Project Management Consultants FZC JV, is the company that prequalified and should have submitted a bid. The Joint Venture did not prequalify and should not have submitted a bid.

Considering VREX's allegation, even though we were not privileged to have been present at the submission of each bidder's application during the prequalification stage, individuals may question the veracity of the Joint Venture based on grounds that the February 18, 2015 application letter of Lutech Engineering and Project Management Consultants FZC JV is different. In other words, the letterhead bears Lutech Engineering on the one hand and Lutech Engineering and Product Management Consultants FZC on the other hand.

Moreover, Page One of the Attendance Sheet for Pre-Qualification Opening for the PST Expansion Project, dated Feb. 20, 2015, carries the name “LUTECH ENGINEERING J.V”. Again, on February 20, 2015, list of companies that received the prequalification document, the name written for Lutech is Lutech Engineering. This change of names made in the different documents before the Panel in regard to Lutech Engineering could suggest inconsistencies to anyone and would create doubt to both LPRC and Lutech Engineering's records.

Furthermore, Section 5.2 (b) of the Standard Bidding Document states that bids submitted by Joint Ventures of two or more firms as Partners shall comply with

the following requirement; viz, the bid, bid security as the Agreement shall be signed in case of a successful bidder to legally bind partners.

OPINION/ FINDINGS:

Wherefore and in view of the foregoing facts and laws, it is the opinion of the Complaints, Appeals and Review Panel of the Public Procurement and Concessions Commission of the Republic of Liberia that the Liberia Petroleum Company is in violation of Section 62(3) of the PPC Act, 2010 as well as Section 5.2 (b) of the Standard Bidding Document issued by the LPRC. The Complaints, Appeals and Review Panel believe that the contention is based on inconsistencies of the records submitted by the LPRC.

RULING:

Accordingly, the Complaints, Appeals and Review Panel (CARP) annuls the decision of LPRC in favor of Lutech Engineer and Project Management Consultants FZC JV. The Liberia Petroleum Refining Company is hereby ordered to award the project to the second most responsive evaluated bidder if the bidder meets all the LPRC's technical requirements, and furnish a report to all parties not later than seven (7) days as of the receipt of this Ruling. AND IT IS HEREBY SO ORDERED.

IN WITNESS WHEREOF, WE (MEMBERS OF THE PANEL) HAVE HERE ONTO SET OUR HANDS AND AFFIXED OUR SIGNATURES TO THIS DOCUMENT THIS 4TH DAY OF FEBRUARY, A. D. 2016.

Cllr. Beyan D. Howard

Hon. Massaquoi M. Kamara

Cllr. Eric B. Morlu

Hon. David M. Jallah”

The records further show that Co-appellee LPRC, by an instrument dated February 10, 2016, excepted to the CARP ruling and gave notice to CARP that it [Co-appellee LPRC] will file a petition for judicial review with the circuit court of competent jurisdiction within the statutory period in accordance with law. However, we have found nothing in the records showing that any appeal was pursued by Co-appellee LPRC, either by the filing of a petition for judicial review as it indicated it would, or by the pursuit of any other appeal or review mechanism. In arguments before this Court, Co-appellee LPRC contended that although it had originally intended to appeal the decision of CARP, it later changed its mind and decided instead to comply with the decision of CARP. Yet, while nothing in the records shows that any such intention was communicated to CARP or to Co-appellee PPCC, the records do show that Co-appellee LPRC did proceed, in an apparent attempt to comply with the ruling of CARP, to do an examination of the bid documents submitted by the appellant, the third most responsive evaluated bidder, and Enpetrol, the second most responsive evaluated bidder. In that connection, it is worth reemphasizing that there were only three entities that had submitted bids up to the deadline set by the LPRC for the submission of bids. They included Appellant Vrex Remodeling, Inc., Co-appellee

Lutech Engineering and Project Management Consultant FZC JV, and Enpetrol. Thus, with the disqualification of Co-appellee Lutech Engineering and Project Management Consultant FZC JV, that left only Enpetrol, who had come second in the bid, and Appellant Vrex Remodeling, Inc., who had come third in the bid.

The LPRC contends that the ruling of CARP did not automatically award or order that the LPRC should automatically award the contract to the second highest bidder. Rather, it says, the ruling recognized that the second highest bidder may not necessarily have attained the threshold set by the LPRC in the bid solicitation documents and subsequent instruments for award of the bid, and hence, the ruling set a condition for the award of the bid or contract to the second highest bidder. Under the ruling, the LPRC states, the second or next highest bidder in the line of descend could only be awarded the bid contract if it met the technical requirements laid down in the bid documents. Thus, the LPRC argued that it had a legal obligation to examine the bid documents submitted by the two bidders left in the contest for the bid contract and that it was only upon certifying that one of them had met the technical requirements that the bid contract could be awarded. Our attention is directed to the CARP ruling which, after disqualifying Co-appellee Lutech Engineering and Project Management Consultant FZC JV, then states: "Accordingly, the Complaints, Appeals and Review Panel (CARP) annuls the decision of LPRC in favor of Lutech Engineer and Project Management Consultants FZC JV. The Liberia Petroleum Refining Company is hereby ordered to award the project to the second most responsive evaluated bidder if the bidder meets all the LPRC's technical requirements, and furnish a report to all parties not later than seven (7) days as of the receipt of this Ruling."

The ruling does not state why CARP decided to set that standard as a condition for the award of the bid contract and we do not propose to speculate as to the reasons. What is important for this Court is that the CARP had set a condition for the award of the bid contract, and that the LPRC indicated that it was in adherence to that mandate of the ruling of CARP that it had proceeded to evaluate the documents of the remaining two entities in the contest for the bid contract to determine whether they had met the technical requirements laid

down for the award of the contract. The records disclose further that following the LPRC evaluation of the bid documents of the two remaining entities in contest for the bid contract, it determined that none of the entities had met the technical requirements laid down for the award of the bid contract. The LPRC noted that Vrex Remodeling, Inc. attained nineteen (19) points on the technical criteria, thirty one (31) points below the minimum bench mark of fifty (50) points, and that Enpetrol attained twenty one (21) points on the technical criteria, twenty nine (29) points below the minimum bench mark of fifty (50) points.

There are no indications in the records that LPRC communicated with the Complaints, Appeals and Review Panel informing that body of the inability of the remaining two final bidders to meet or attain the condition laid down in the ruling and that guidance was being sought, or that on account of the failure of the two bidders to meet the conditions laid down in the ruling, Co-appellee LPRC was constrained to cancel the bid and begin a new bidding process, or even that it intended to seek the permission or approval of the PPCC to cancel the bidding process previously undertaken. What we do observe from the records is that as a result of the determination made by the LPRC that the remaining bidders had not met the threshold set in the technical requirements, a condition stated in the ruling of CARP, and which meant that the mandatory condition set in the CARP ruling for the award of the bid contract could not be attained, Co-appellee LPRC, on March 2, 2016 communicated with Co-appellee PPCC, seeking permission to cancel the original bid process and to commence a new bidding process. Here is how the said communication read:

March 2, 2016

Hon. James Dorbor Jallah
Chief Executive Officer
Public Procurement & Concessions Commission
Executive Mansion Grounds
Capitol Hill
Monrovia, Liberia

Dear Hon. Jallah:

For and on behalf of the Liberia Petroleum Refining Company ("LPRC"), we bring the following to your attention and through you, to the attention of the Public Procurement & Concessions Commission (the "Commission") for your judicious action.

We note the ruling of the Complaints, Appeals and Review Panel (CARP), in the case VREX Remodeling Inc. ("VREX") versus LPRC annulling LPRC's decision to award the Product Storage Terminal Expansion Project contract (the

"Contract") to Lutech Engineering and Project Management Consultants FZC JV, and requiring LPRC to award the Contract to the second most responsive evaluated bidder if the bidder meets all of LPRC's technical requirements.

In this connection, please be Informed that based on the Bid Evaluation Report copy, of which is In the possession of the Commission, the bidder that came second, Enpetrol EnerJi Taah San TIC LTD. STI did not meet the minimum bench mark of fifty (50) points out of the total seventy (70) points allotted to the Technical Criteria In other to be qualified to Implement the contract.

Additionally, Enpetrol EnerJ Taah San TIC LTD. STI Total Bid Price of US\$32,103,320.00 (Thirty Two Million One Hundred & Three Thousand Three Hundred & twenty United States Dollars) is far in excess of LPRC's estimated cost for the contract. Furthermore, LPRC lacks the financial capacity to fund the said amount. Therefore, Enpetrol Enerji Taah San TIC LTD. STI was neither the most responsive qualified bidder nor did it meet LPRC's technical requirements.

The bidder that came third, VREX Remodeling Inc. also did not meet the minimum bench mark of fifty (50) points out of the total seventy (70) points allotted to the technical criteria in order to be qualified to implement the contract. Therefore, VREX remodeling Inc. also was not the most responsive qualified bidder and it also did not meet LPRC's technical requirements to implement the contract.

In light of the above, LPRC hereby requests the Commission's approval or "no objection" for the following:

a) To cancel this entire bidding process and to authorize the conduct of a new procurement process to select a qualified company to implement the Product Storage Terminal Expansion Project.

b) To also authorize LPRC to utilize the restricted bidding process to conduct the new procurement process as well as a reduction in the lead time to Two (2) weeks within 10 which to conduct the new procurement process.

Based on the Commission's approval to utilize the restricted bidding process, LPRC solicits the Commission's approval to invite the below listed companies to participate in the Restricted Bidding process:

1. Enpetrol Enerji Taah.San.TIC. LTD.STI
2. VREX Remodeling Inc.
3. Lutech Engineering and Project Management Consultants FZC JV.

LPRC looks forward to the Commission's timely response in the Interest of expediting and concluding the Product Storage Terminal Expansion Project.

Kindest Regards.

Sincerely yours,

Sumo G. Kupee

Managing Director"

We further observe from the records that upon receipt of the request from LPRC, Co-appellee PPCC, on March 3, 2016, responded positively to the same and granted permission to the LPRC to cancel the original bid and commence a new bidding process utilizing the restricted bidding method. We quote the response, as follows, to wit:

March 3, 2016

Hon. Sumo G. Kupee

MANAGING DIRECTOR

Liberia Petroleum Refining Company Republic of Liberia

Your ret MD-LPRC/03412016

Dear Hon. Kupee:

Subject: NO OBJECTION" TO USE THE RESTRICTED BIDDING METHOD OF PROCUREMENT WITH A REDUCED LEAD TIME OF TWO WEEKS FOR THE EXPANSION OF THE PRODUCT STORAGE TERMINAL.

Email: info@ppcc.gov.lr - Phone Short Code: 7722

We present our compliments and wish to acknowledge receipt of your letter referenced above, and accompanying documents, which informed the Commission that the Liberia Petroleum Refining Company (LPRC) could not award the contract for the expansion of the product storage terminal ("the Works") to any of the other participating bidders as none of said bidders met its technical requirements, We understand that due to the aforementioned, the LPRC could not execute the opinion of the Complaints, Appeals and Review Panel (CARP), and the company therefore requests approval to cancel the procurement process. In consideration of the above, the Commission herein approves for the LPRC to cancel the procurement process in keeping with Section 36 of the PPCA, 2010.

Given the above, the Commission notes your assertions and relying on your assurances interposes "no objection" for the Liberia Petroleum Refining Company to use the Restricted Bidding procurement method, consistent with Section 50 of the PPCA, 2010, by inviting Enpetrol Enerji Taah San TIC LTD STI, VREX Remodeling Inc., and Lutech Engineering and Project Management Consultants FZC JV. As you are aware, our approval for the LPRC to use these three firms is based on the fact that these are the only bidders known by the LPRC to be involved in the works as indicated above, given their expressed interest in the Request for Proposals issued during the canceled procurement process. Also, as requested by the LPRC we approve a reduction in the lead time to two (2) weeks, and advise that the Company waive the cost of the bidding document. Please ensure that the LPRC adheres to Regulation No. 003 which states that procuring entities are required to notify the Commission of their intent to award all works contracts above the threshold of US\$400,000.00.

We look forward to your continuous support as we strive to attain equality, fairness, transparency, accountability and public confidence in our procurement and concessions processes.

Kind regards,

James Dorbor Jallah
CHIEF EXECUTIVE OFFICER"

One day following the PPCC's approval of its request, conveyed in the letter quoted above, Co-appellee LPRC, on March 4, 2016, communicated to the three entities that had submitted bids, including the appellant, information regarding the cancellation of the original bid process and the institution of a new bid process, and PPCC's approval that the new process be a restricted one. Again, because this communication, the same as other communications previously referenced in this Opinion and considered important to the case, is also deemed important to a full appreciation of these proceedings, we quote herewith the said March 4, 2016 communication, this being the one addressed to the appellant, to wit:

March 4, 2016

VREX REMODELING INC.

H. Q. Taylor
Dean & Associates, Inc. Law Office
1 Floor, Milton & Richards Building
152 Carey Street Monrovia, Liberia

Dear Sirs:

For and on behalf of Liberia Petroleum Refining Company ("LPRC"), we take this opportunity to advise that as a consequence of the Opinion of the Complaints, Appeals and Review Panel (CARP) of the Public Procurement & Concessions Commission (the "Commission") growing out of a complaint filed by Vrex Remodeling Inc., coupled with the impossibility of LPRC carrying out the details of the Opinion, the Commission has granted approval for LPRC to cancel the recently concluded procurement process for LPRC's Product Storage Terminal (PST) Expansion Project (the "Project"). This serves as a notice of cancellation of the bidding process for said project.

In this connection, please be further advised that the Commission has also granted approval for LPRC to utilize the restricted bidding procurement method in order to expeditiously select a company to undertake the project. We shall shortly advise you under separate cover as to the details of the Restricted Bidding procurement method.

Kind regards.

Sincerely,

Sumo G. Kupee

Managing Director

cc: Public Procurement & Concessions Commission"

The appellant, upon receipt of the above communication, had its legal counsel in Liberia respond to same and expressing the appellant's exceptions to the action and decision which Co-appellee LPRC indicated had been taken in regard to the whole bidding process and giving notice that it intended seeking legal redress. As we see a benefit in quoting the said letter, we do so herewith, as follows:

March 7, 2016

Hon. Sumo G. Kupee
Managing Director
Liberia Petroleum Refining Company
Monrovia, Liberia

Dear Hon. Kupee:

Vrex Remodeling, Inc.....COMPLAINANT)

Versus

) Violation of Part III,

The Liberia Petroleum Refining

) 62(3) of the

Company, Lutech Engineering and

) PPCC ACT, 2010

Lutech Engineering and Project

)

Management Consultants FZC

)

JV.....DEFENDANTS)

This will serve to acknowledge receipt of your letter of Friday, the 4th instant, addressed to our client, Vrex Remodeling, Inc.("Vrex"), informing Vrex that "the Commission has granted approval for LPRC to cancel the recently concluded procurement process for LPRC's Product Storage Terminal (PST) Expansion Project (the "Project)".

This serves as a notice that Vrex excepts to the decision contained in the letter and shall take advantage of the Statute as made and provided in such cases.

Kind regards.

Very truly yours,
 DEAN & ASSOCIATES, INC.
 Frank Mush Dean, Jr.
 COUNSELLOR-AT-LAW"

Our extensive review of the records reveals that the case file is devoid of any communications or responses from the other two recipients of the March 4, 2016 letter. What we find in the records are further communications from Co-appellee LPRC, identical in form, addressed to the three bidders of the previous bidding process informing them that under the restricted bidding being undertaking, approved by the PPCC, they were invited to participate in the new bidding process. We quote one of such communications, the one addressed to the appellant, as it is the appellant that has complained of the actions of the Co-appellees LPRC and PPCC. The letter, dated March 7, 2016, reads:

"March 7, 2016

VREX REMODELING INC.
 c/o H. Q. Taylor
 Dean & Associates, Inc. Law Office
 1st Floor, Milton & Richards Building
 152 Carey Street
 Monrovia, Liberia

Dear Sirs:

The Liberia Petroleum Refining Company (LPRC) hereby informs you that based on the approval from the Public Procurement & Concessions Commission (PPCC) VREX REMODELING INC. is selected to participate in the Restricted Bidding Process for LPRC Product Storage Terminal Expansion Project Phase - one (IFB No. LPRC/RB/003/2016) (the "Project"). A list of other companies invited to participate is attached as Appendix "A".

LPRC now invites you and the other selected companies to submit sealed bids for the execution and completion of the project.

Please be informed that bidders are allowed to submit their bids as joint venture. Bidders submitting as joint venture must adhere to procedures and requirements for a joint venture as stipulated in the bid document.

A complete set of bidding documents is herewith attached to this invitation.

All bids must be accompanied by a bid security of US\$150,000.00. (One Hundred & Fifty Thousand United States Dollars) in the form of a Bank Guarantee from a reputable bank.

All bids must be submitted in six (6) sets. One (1) original and Five (5) copies.

The deadline for bid submission is March 23, 2016 at 1:00 p.m. Any bid submitted after this date and time will be rejected and returned to the bidder unopened. Electronic bids are not allowed and will not be accepted.

Bids received before the deadline expires will be opened in the LPRCs Training Hall, Product Storage Terminal, Bushrod Island, Monrovia, Liberia on March 23, 2016 at 1:00 p.m. in the presence of bidders or their representatives who choose to attend.

All bids must be marked "CONFIDENTIAL" and delivered to the below address:

Procurement Manager
 Procurement Unit
 Liberia Petroleum Refining Company Bushrod Island
 Monrovia, Liberia

Mobile: +231886523397

Email: pkieh@lprclib.com

Website: www.lprclib.com

Please confirm receipt of this letter immediately in writing. If you do not intend to bid, we would appreciate being so notified also in writing at your earliest opportunity.

Yours,

SUMO G. KUPEE,

MANAGING DIRECTOR

LIBERIA PETROLEUM REFINING COMPANY"

The appellant, not being satisfied with the new bidding process being undertaking and, believing that the course being pursued by the appellees was not in harmony with the decision of the Complaints, Appeals and Review Panel, from which Co-appellee LPRC had taken an appeal but had failed to perfect same, and considering that the said acts were in contravention of the governing laws, especially the Public Procurement and Concession Act, as amended 2010, sought the intervention of the Circuit Court for the Sixth Judicial Circuit, Montserrado County, by filing, on march 8, 2015, a petition praying the court to enforce the ruling/decision made by the Complaints, Appeals and Review Panel of the PPCC, and requesting that in accordance with the said ruling, as perceived by the petitioner/appellant, it [appellant] be declared the second most responsive evaluated bidder, thereby entitling it to be awarded the bid contract. We recite herewith the full text of the petition by quoting the same verbatim in its entirety as follows:

PETITIONER'S PETITION

AND NOW COMES Petitioner, Vrex Remodeling, Inc., by and thru its attorney-in-fact, Henry Q. Taylor, in the above entitled cause of action, and most respectfully petitions Your Honour and this Honourable Court for enforcement of the Ruling/Decision of the Complaints, Appeals and Review Panel of the Public Procurement and Concessions Commission and, for legal and factual reasons, showeth the following, to wit:

Petitioner says the New Executive Law, Enforcement of Agency Order, states:

Any final order by an agency or a hearing officer or hearing officers of such agency which is made to carry out a determination may, in the absence of any timely request for judicial review by the person against whom the order is directed, be enforced by a proceedings in the circuit court of the county in which the person resides against whom the order was issued, or in the county in which such person is regularly employed or has his regular place of business....".

Executive Law, Rev. Code 12:82.9, Captioned Administrative Procedure Act, Approved May 11, 1972, and Published June 9, 1972.

2. Further to count one (1) herein above, Petitioner says section 125 of the Amendment and Restatement of the Public Procurement and Concessions Act, 2005, Approved September 16, 2010, Published September 18, 2010 provides for a complaint and review process available to "any bidder who has suffered

or is at the risk of suffering a loss or damage as a result of a violation" of the Public Procurement and Concessions Act, Section 125 requires that the Complaint is first lodged with the Head of the Procuring Entity, in the instant case, the Liberia Petroleum Refining Company; and section 126 provides for further review by the Complaints, Appeals and Review Panel in the event a bidder is dissatisfied with the decision of the Head of the Procuring Entity.

3. Further to count two (2) herein above, Section 127 (7) of the same Public Procurement and Concessions Commission Act, 2010 says: "the decisions of a designated complaint and appeal panel of the Complaints, Appeals and Review Panel are final and binding upon all parties, subject only to review by a court of competent jurisdiction. Any party to the matter decided may bring an action under the Administrative Procedure Act to enforce the decision and this right includes the right of a prevailing party to bring an action against the losing party to enforce the decision notwithstanding any definitions in the Administrative Procedure Act" (emphasis ours).

4. Further to count three (3) herein above, petitioner says its petition is brought under the relevant provisions of the Administrative Procedure Act and the Public Procurement and Concessions Act as herein cited above, for Enforcement of the ruling/decision of the Complaints, Appeals and Review Panel of the Public Procurement and Concessions Commission.

5. Petitioner says it is a corporation duly organized, constituted and existing under the laws of the State of New York, the United States of America. Petitioner says due to its absence from the Republic of Liberia, it has designated, constituted and appointed Henry Q. Taylor as its lawful Attorney-In-Fact, to prosecute its legal interest as though it was personally present in the Republic of Liberia. Copies of petitioner's Certificate of Incorporation, Power of Attorney and Authority issued by petitioner to the said Henry Q. Taylor are hereto attached in bulk and marked petitioner's Exhibit "P/1".

6. Petitioner says in 2015, Co-respondent, Liberia Petroleum Refining Company, published and advertised an invitation to bid for the expansion of its Product Storage Terminal, known as the "LPRC's Product Storage Terminal (PST) Expansion Project". The entire bidding process and procedures were governed by the Amendment and Restatement of the Public Procurement and Concessions Act, 2005, approved September 16, 2010, and published by authority, Ministry of Foreign Affairs, Monrovia, Liberia, on September 18, 2010.

7. That twenty-one (21) companies, including petitioner, initially expressed interest in the invitation to bid. However, at the end of the pre-qualification phase, as confirmed by letter dated September 25, 2015, addressed to petitioner, only seven companies, including petitioner, pre-qualified. Copy of Pre-qualification Letter sent to petitioner is hereto attached as petitioner's Exhibit "P/2".

8. Petitioner says the court is respectfully requested to take judicial notice of the other six (6) pre-qualified companies, aside from petitioner, and the name: "Lutech Engineering", in particular, as follows:

1. Xinjian Petroleum Investigation Design & Research Institute (Co. Ltd.)
2. DRA
3. Lutech Engineering
4. Enpetrol
5. Afcons Infrastructure Limited
6. Eco Fuel FZE

9. Further to count eight (8) herein above, petitioner says the bid opening meeting was held on November 20, 2015. During the said bid opening meeting, it was announced that Lutech Engineering & Project Management Consultants FZC JV, an un-vetted firm, which had not previously pre-qualified, submitted a bid.

10. Further to nine (9) herein above, petitioner says its representative, in the person of Henry Q. Taylor, immediately raised the issue as to whether the Company submitting the bid, Lutech Engineering & Project Management Consultants FZC JV was a single entity comprising one (1) company or a Joint Venture comprising two (2) or more entities. Co-Respondent Liberia Petroleum Refining Company's Procurement Manager, Mr. Prince W. Kieh, answered that the Company submitting the Bid was a Joint Venture comprising two (2) companies. As the bid opening meeting was a public event and attendees were advised to record and take due notes of the proceedings, if they elected to, petitioner's representative, Henry Q. Taylor, made written notes obtained from an audio recording of what transpired at the said Bid Opening Meeting. Copy of the transcript of excerpts of that audio recording is hereto attached and marked petitioner's Exhibit "P/3". Petitioner also gives notice that at the hearing of this Petition, it shall produce a copy of the said audio recording in substantiation of the averment herein contained.

11. Further to ten (10) herein above, petitioner says on December 28, 2015, it received a letter from Co-respondent Liberia Petroleum Refining Company that Lutech Engineering and Project Management Consultant FZC JV emerged as the lowest evaluated responsive bidder; and that its bid had been accepted for contract award. Copy of Co-respondent Liberia Petroleum Refining Company's letter, dated December 28, 2015, informing petitioner that Lutech Engineering and Project Management Consultant FZC JV emerged as the lowest evaluated responsive bidder is hereto attached and marked petitioner's Exhibit "P/4".

12. Further to count eleven (11) herein above, petitioner says on January 4, 2016, it filed a complaint with Co-respondent Liberia Petroleum Refining Company against the decision of the said co-respondent that declared Lutech Engineering and Project Management Consultant FZC JV as the lowest evaluated responsive bidder. In its complaint, petitioner averred that the Joint Venture, Lutech Engineering and Project Management Consultant FZC JV, could not have emerged as the lowest evaluated responsive bidder because the said Joint Venture did not pre-qualify, and consistent with law, could not and should not have submitted a bid. Petitioner further indicated that only Lutech Engineering pre-qualified and only Lutech Engineering should have submitted a bid. Copy of petitioner's complaint is hereto attached and marked Petitioner's Exhibit "P/5".

13. Petitioner says on January 6, 2016, Co-respondent Liberia Petroleum Refining Company responded to petitioner's complaint, denied the relief prayed for by petitioner; and further indicated that "Lutech Engineering" was the short form for Lutech Engineering and Project Management Consultants FZC JV. To substantiate this position, Co-respondent Liberia Petroleum Refining Company made profert what it considered the application letter for pre-qualification bid submitted by the Joint Venture, Lutech Engineering and Project Management Consultants FZC JV, reportedly dated February 18, 2015. Copy of Co-respondent Liberia Petroleum Refining Company's letter dated January 6, 2016, in response to petitioner's complaint, is hereto attached and marked petitioner's Exhibit "P/6".

14. Further to count thirteen (13) herein above, petitioner respectfully requests Court to take judicial notice of the fact that the said Letter of Application made profert by Co-respondent Liberia Petroleum Refining Company was never in the public domain; the said letter was always in the exclusive possession of the Co-respondent Liberia Petroleum Refining Company and "Lutech Engineering", thus leaving it wanting. Moreover, all the documents that were placed in the public domain, the Tax Clearance and Business Registration to which Mr. Prince W. Kieh referred during the Bid Opening Meeting, as can be gleaned from the transcript of the recording at the Bid Opening Meeting, the bond and other important documents, are not in the

name of the Joint Venture, Lutech Engineering and Project Management Consultants FZC JV, but rather in the name of Lutech Engineering (Liberia), Ltd.

15. Further to count fourteen (14) herein above, on January 11, 2016, petitioner filed with the Executive Director of the Public Procurement and Concessions Commission an appeal from the decision of the Co-respondent, Liberia Petroleum Refining Company denying petitioner's complaint, for the attention of the Complaints, Appeals and Review Panel. The letter of appeal restated the gravamen of petitioner's complaint and had attached to it several species of evidence, as Exhibits A-1 thru A-5, including (1) Letter from the LPRC to petitioner, dated January 6, 2016, denying petitioner's complaint and the relief sought by petitioner; (2) the pre-qualification bid application letter by Lutech Engineering dated February 18, 2015, (3) the Tax Clearance submitted in the name of Lutech Engineering Liberia, Ltd. and the Bond submitted, in support of the Bid, in the name of Lutech Engineering (Liberia) Limited; (4) excerpts of the transcript of the meeting for Bid Opening LPRC Texaco Tank Farm LPRC Bushrod Island November 20, 2015 and the audio recording; and (5) the form of invitation for bids, minutes of Pre-Bid Meeting Product Storage Terminal Expansion Project; list of companies submitting pre-qualification and letter to petitioner by Co-respondent Liberia Petroleum Refining Company, notifying petitioner that six (6) other companies had pre-qualified. The court is respectfully requested to take judicial notice that all these documents were placed in the public domain by the Co-respondent, Liberia Petroleum Refining Company, and all of them carry the name: LUTECH Engineering Liberia Limited. Copy of petitioner's appeal to the Complaints, Appeals and Review Panel, together with the attachments and species of evidence, is hereto attached and marked Petitioner's Exhibit "P/7".

16. Further to count fifteen (15) herein above, petitioner says following a hearing conducted by the Complaints, Appeals and Review Panel on the 26th day of January, A. D. 2016, at the headquarters of the Public Procurement and Concessions Commission, the Complaints, Appeals and Review Panel ordered each party to submit Legal Memorandum, summarizing its arguments, by latest January 29, 2016. Petitioner submitted its legal memorandum on time, a copy of which is hereto attached and marked Petitioner's Exhibit "P/8".

17. Petitioner says on February 4, 2016, the Complaints, Appeals and Review Panel delivered its Decision/Ruling as follows:

OPINION/FINDINGS:

Wherefore and in view of the foregoing facts and law, it is the opinion of the Complaints, Appeals and Review Panel of the Public Procurement and Concessions Commission of the Republic of Liberia that the Liberia Petroleum Refining Company is in violation of Section 62 (3) of the PPCC Act, 2010 as well as Section 5.2 (b) of the Standard Bidding Document issued by the LPRC. The Complaints, Appeals and Review Panel believes that the contention is based on inconsistencies of the records submitted by the LPRC.

RULING:

Accordingly, the Complaints, Appeals and Review Panel (CARP) annuls the decision of LPRC in favor of Lutech Engineering and Project Management Consultants FZC JV. The Liberia Petroleum Refining Company is hereby ordered to award the project to the second most responsive evaluated bidder if the bidder meets all LPRC's technical requirements, and furnish a report to all parties not later than seven (7) days as of the receipt of this ruling. **AND IT IS HEREBY SO ORDERED.**

Copy of the said decision/ruling of the Complaints, Appeals and Review Panel is hereto attached and marked petitioner's Exhibit "P/9".

18. Further to count seventeen (17) herein above, petitioner says Section 62 (3) of the PPCC Act, 2010, which the Complaints, Appeals and Review Panel found Co-respondent LPRC violated says: "If a pre-qualification procedure was

applied, a bid received from any entity other than the pre-qualified bidders shall be rejected and excluded."(Emphasis ours)

19. Further to count eighteen (18) herein above, petitioner says upon receipt of the ruling, Co-respondent Liberia Petroleum Refining Company, by and thru its retained counsel, Dunbar & Dunbar Law Offices, excepted to the ruling and informed the Complaints, Appeals and Review Panel that it "shall file a petition for judicial review at the circuit court within the statutory period in accordance with the prevailing law", Copies of the Co-respondent LPRC's Notices of Appointment of Counsel and Exception and Appeal are hereto attached in bulk and marked petitioner's Exhibit "P/10".

20. Further to count nineteen (19) herein above, petitioner says on Friday, March 4, 2016, instead of the Co-respondent Liberia Petroleum Refining Company filing its petition for judicial review at the circuit court, it sent petitioner a letter indicating "the Commission has granted approval for LPRC to cancel the recently concluded procurement process for LPRC's Product Storage Terminal (PST) Expansion Project (the "Project"). This serves as a notice of cancellation of the bidding process for said project". The said letter further says: "In this connection, please be further advised that the Commission has also granted approval for LPRC to utilize the restricted bidding procurement method in order to expeditiously select a company to undertake the project". Copy of the said Letter is hereto attached and marked petitioner's Exhibit "P/11".

21. Further to count twenty (20) herein above, petitioner says on Monday, March 7, 2016, petitioner, by and thru its counsel, notified Co-respondent Liberia Petroleum Refining Company of Petitioner's exception and appeal from the decision of the said Co-respondent, LPRC, cited above. Copy of petitioner counsel's letter to Co-respondent Liberia Petroleum Refining Company, dated March 7, 2016, is hereto attached and marked petitioner's Exhibit "P/12".

22. Further to count twenty-one (21) herein above, petitioner says despite the announcement of its exception to the decision of the Co-respondent Liberia Petroleum Refining Company and information to the effect that petitioner shall take advantage of the Statute as made and provide in such cases, the said Co-respondent has hastily sent out a letter, dated the selfsame March 7, 2016, to companies to participate in a new bid for the same project. It must be noted that one of the companies invited is the Company disqualified by the decision of the Complaints, Appeals and Review Panel namely, "Lutech Engineering and Project Management Consultants FZC JV. Copy of Co-respondent Liberia Petroleum Refining Company's letter, conveying the Invitation For Bid, dated March 7, 2016, is hereto attached and marked petitioner's Exhibit "P/13".

23. Further to count twenty-two (22) herein above, petitioner says this petition for enforcement of the decision/ruling of the Complaints, Appeals and Review Panel will lie because Section 127 (7) of the Public Procurement and Concessions Commission Act, 2010 says: "the decisions of a designated complaint and appeal panel of the Complaints, Appeals and Review Panel are final and binding upon all parties, subject only to review by a court of competent jurisdiction. Any party to the matter decided may bring an action under the Administrative Procedure Act to enforce the decision and this right includes the right of a prevailing party to bring an action against the losing party to enforce the decision notwithstanding any definitions in the Administrative Procedure Act" (emphasis ours).

24. Further to count twenty-three (23) herein above, Co-respondents Liberia Petroleum Refining Company, the Public Procurement and Concessions Commission and the Complaints, Appeals and Review Panel lost jurisdiction over the matter when Co-respondent Liberia Petroleum Refining Company announced an appeal from the decision/ruling of the Complaints, Appeals and Review Panel to the Civil Law Court, Sixth Judicial Circuit, Montserrado County. To have attempted taking further action in the matter, evidenced by Co-

respondent Liberia Petroleum Refining Company's letter to bidders for the same project, is illegal and untenable. Thus, this court is herewith petitioned to enforce the decision/ruling of the Complaints, Appeals and Review Panel.

WHEREFORE AND IN VIEW OF THE FOREGOING facts, circumstance and laws controlling, petitioner most respectfully prays Your Honour to order the respondents to stay all further proceedings in the matter of the notification and/or cancellation of the bidding process for the Liberia Petroleum Refining Company's Product Storage Terminal (PST) Expansion Project and not to proceed any further with the preparation and/or holding of any new bid and/or Restricted Bid pending the disposition of this petition for judicial review; to set a date and time for the hearing of the said petition; and after the hearing, to set aside the erroneous decision of the Co-respondents Liberia Petroleum Refining Company and the Public Procurement and Concessions Commission cancelling the bid; to order that the ruling/decision of the Complaints, Appeals and Review Panel be enforced; to rule that Co-respondent Liberia Petroleum Refining Company award the project to the second most responsive evaluated bidder who has met LPRC's technical requirements; and to rule all costs of these proceedings against the respondents. Petitioner also prays Your Honour to grant unto petitioner any other and further relief as Your Honour may deem just, legal and equitable.

Respectfully submitted:"

Upon filing of the petition, wherein the request was made of the court for a judge's order directing the issuance of a writ of summons, the order was appropriately issued, and along with the writ of summons, in company with a copy of the petition, was served on the Co-appellees. As directed by the writ, the Co-appellee LPRC filed returns to the petition, along with a motion to dismiss the petition, the latter of which was withdrawn and an amended motion to dismiss filed with the court. As with other instruments crucial to the understanding of the dispute and upon which this Court is asked to make a determination, we quote herewith both the returns and the amended motion to dismiss, as follows:

"RESPONDENT LPRC'S RETURNS

Respondent LPRC denies the legal and factual sufficiency of petitioner's petition for enforcement, prays that said petition be denied and dismissed and, for legal and factual reasons, showeth the following, to wit:

1. That as to counts 1, 2, 3, 4, 5 and 6 of the petition, respondent says that said counts do not present any traversable issue. Respondent prays that said counts be overruled and the petition be dismissed.
2. That as to counts 7, 8, 9, and 10 of the petition, respondent denies the allegations contained therein. On the contrary, respondent submits that it commenced the competitive bidding process by publication on January 12, 2015 of the Invitation to Bid for the Product Storage Terminal Expansion Project in the local and international media outlets. In response to the Invitation, twenty one (21) local and international companies submitted applications for prequalification. The names of the twenty one (21) companies that submitted applications for prequalification were communicated to the PPCC by letter dated January 12, 2016, copy of which is attached and marked Exhibit "M/1", a review of which confirms that Lutech Engineering &

Management Consultants FZC JV indeed and in fact submitted a prequalification application. The list of the said twenty-one companies shows only one company with the name Lutech.

3. Further to count 2 above, Respondent submits further that Lutech Engineering & Management Consultants FZC JV, one of the twenty-one companies that responded to the Invitation to Bid submitted its prequalification application as part of a box file consisting of seventeen (17) items. The box file was submitted to Co-respondent PPCC and its Complaints, Appeals & Review Panel and is part of the certified records of these proceedings as clearly substantiated by letter dated January 13, 2016 from PPCC to Co-respondent LPRC and the response thereto dated January 14, 2016 from Respondent LPRC to Co-respondent PPCC and its Complaints, Appeals & Review Panel, copy of each of which is attached and marked Exhibit "R/2", in Bulk.

4. Further to counts 2 and 3 above, respondent respectfully requests Your Honour to take judicial notice of the box file which includes the following:

a. The cover page of the box file clearly shows Pre-Qualification Bid for the Product Storage Terminal Expansion Project submitted by Lutech Engineering & Project Management Consultants FZC JV;

b. Item 01 of the box file is Lutech Engineering & Project Management Consultant FCZ JV's pre-qualification application letter. The letter is dated February 18, 2016 and the letter is signed by Anjan Kumar Ray, Project Head, Lutech Engineering & Project Management Consultant FZC JV;

c. Item 02 of the box file is the General Condition for Pre-Qualification which shows Lutech Engineering & Project Management Consultant FZC JV as the contractor for the project;

d. Item 07 shows that Lutech Engineering & Project Management Consultant FZC, supported by its subsidiary Lutech Engineering (Liberia) Limited of Liberia, (designated as Partner-I) and Fab-Tech Works Construction PVT. LTD. of India, (designated as Partner-II) entered into a Joint Venture Agreement on February 5, 2015 by the terms of which the Partner I and Partner II agreed inter alia that: (1) Lutech Engineering & Management Consultants FZC JV shall submit the bid for the Product Storage Terminal Expansion Project; and (2) Partner I, Lutech Engineering & Project Management Consultant FZC, and its subsidiary Lutech Engineering (Liberia) Limited shall obtain the bid bond for and on behalf of the Joint Venture. Copy of portions of the box file submitted by Lutech Engineering & Management Consultants FZC JV to Respondent LPRC and which box file was subsequently forwarded to PPCC by Respondent LPRC is attached and marked Exhibit "R/3" In Bulk.

5. That further to counts 7, 8, 9, and 10 of the petition, respondent submits that the said documentary evidence (Exhibit "R/1 ", Exhibit "R12" In Bulk and Exhibit "R/3") confirms the following: (a) that Lutech Engineering (Liberia) Limited ("Lutech Engineering") is a subsidiary of Lutech Engineering & Project Management Consultant FZC; (b) that Lutech Engineering & Project Management Consultant FZC and Fab-Tech Works Construction PVT. LTD formed the joint venture company designated as Lutech Engineering & Management Consultants FZC JV for the purpose of submission of a bid for the Project Storage Terminal Expansion Project; (c) that the joint venture was formed on February 5, 2015 prior to the submission of application of February 18, 2015 during the prequalification stage; (d) that the joint venture company Lutech Engineering & Project Management Consultants FZC JV did in fact submit prequalification information in order to qualify to bid; (e) that out of the twenty-one (21) companies that submitted prequalification application, the joint venture Lutech Engineering & Project Management Consultants FZC JV was one of the seven (7) companies shortlisted by Respondent LPRC to participate in the bidding process for the Product Storage Terminal Expansion Project and (f) "Lutech Engineering" is the acronym for and is synonymous with

Lutech Engineering & Project Management Consultants FZC, which important fact was inadvertently or otherwise deliberately disregarded by PPCC and its Complaints, Appeals & Review Panel. Copies of letters to the seven (7) shortlisted companies dated September 25, 2015 are attached and marked Exhibit "P/4", in bulk. Respondent prays that counts 7, 8, 9, and 10 of the petition be overruled and the petition be dismissed.

6. That Respondent submits still further that it conducted an assessment of the twenty-one (21) responses and seven (7) companies were shorted to submit final bids for the Project. Three (3) of the seven (7) shortlisted companies submitted bids by the November 20, 2015 deadline. The three (3) companies that submitted final bids were VREX Remolding Inc., Lutech Engineering & Project Management Consultants FZC JV, and En-petrol Inc.

7. That further to counts 7, 8, 9, and 10 of the petition, respondent maintains and contends that Co-petitioner Vrex's allegations: (a) that Lutech Engineering & Project Management Consultants FZC JV did not respond to the Invitation to bid; (b) that Lutech Engineering & Project Management Consultants FZC JV did not pre-qualify to bid; and (c) that Lutech Engineering & Project Management Consultants FZC JV should not have been allowed to bid, are categorically false, not supported by the records of these proceedings, and was deliberately intended to and did mislead PPCC and its Complaints, Appeals & Review Panel which resulted in the final ruling that respondent violated Section 62(3) of the PPCC Act and, as such, respondent's decision to award a contract to Lutech Engineering & Project Management Consultants FZC JV is annulled. Respondent prays that counts 7, 8, 9, and 10 of the petition be denied and the petition be dismissed.

8. That as to count 11 of the petition, respondent says that said count presents no traversable issue because the records of these proceedings confirm that Lutech Engineering & Project Management Consultants FZC JV was indeed and in fact the lowest evaluated responsive bidder. Respondent prays that count 11 be overruled and the Petition be dismissed.

9. That as to count 12 of the petition, respondent denies the allegations contained therein, and confirms and affirms that Lutech Engineering & Project Management Consultants FZC JV pre-qualified for and did indeed and in fact submit a bid for the project. Respondent prays that count 12 be overruled and the petition be dismissed.

10. That as to counts 13 and 14 of the petition, respondent says that Lutech Engineering (Liberia) Limited ("Lutech Engineering") is a subsidiary of Lutech Engineering & Project Management Consultant FZC. "Lutech Engineering" is the acronym for, is synonymous with, and is also the short form for Lutech Engineering & Project Management Consultants FZC JV. Respondent prays that counts 13 and 14 be overruled and the Petition be dismissed.

11. That as to count 15 of the petition, respondent confirms and affirms count four (4) of these returns that: (a) Lutech Engineering (Liberia) Limited is the subsidiary of Lutech Engineering & Project Management Consultant FZC; (b) Lutech Engineering & Project Management Consultant FZC and Fab-Tech Works Construction PVT. LTD. of India entered into a Joint Venture Agreement on February 5, 2015 for the purpose of submitting a bid as Lutech Engineering & Management Consultants FZC JV for the Product Storage Terminal Expansion Project; and (c) Lutech Engineering & Project Management Consultant FZC, and its subsidiary Lutech Engineering (Liberia) Limited shall obtain the bid bond for and on behalf of the Joint Venture. Respondent prays that count 15 be overruled and the petition be dismissed.

12. That as to counts 16, 17, 18, and 19 of the petition, respondent says that said counts do not present any traversable issues. Respondent prays that said counts be overruled and the petition be dismissed.

13. That as to counts 20, 21, and 22 of the petition, respondent says that PPCC and its Complaints, Appeals & Review Panel in its final ruling inter alia ordered

respondent to award the project to the second most responsive evaluated bidder if such bidder satisfied Respondent's technical requirements.

14. That further to count 13 above, the Petitioner Vrex submitted a final bid of US\$22.5 Million; Lutech Engineering & Project Management Consultants FZC JV submitted a final bid of US\$22.2 Million; and En-Petrol Inc. submitted a final bid of US\$32.1 Million;

15. That further to counts 13, and 14 hereof, Respondent says that pursuant to the Standard Bidding Document that was provided to each of the seven (7) shortlisted bidders, the three (3) final bids were required to be evaluated utilizing the evaluation criteria as contained in the Standard Bidding Document. Copy of portion of the Standard Bidding Document delivered to Co-respondent PPCC and its Complaints, Appeals & Review Panel as well as the seven (7) shortlisted bidders as part of the competitive bidding process is attached and marked Exhibit "R/5".

16. That pursuant to the Standard Bidding Document, the Chairman of the Procurement Committee appointed a Bid Evaluation Panel consisting of nine (9) members to carry out a detailed evaluation of the three (3) final bids (the "Evaluation Panel").

17. That the Standard Bidding Document provides under Section VIII, Evaluation Criteria, that the total points allotted for Technical Criteria is seventy (70) points. Further that a company must attain the minimum bench mark of fifty (50) points out of the total seventy (70) score allotted to the technical criteria in order to be qualified to implement the Project.

18. That further to counts 15, 16, and 17 hereof, the Evaluation Panel conducted a comprehensive evaluation of the three (3) final bids. Thereafter, the Evaluation Panel submitted to the chairman of the Procurement Committee a Bid Evaluation Report on the three (3) final bids.

The chairman of the Procurement Committee, by letter dated January 5, 2016, submitted to Co-respondent PPCC and its Complaints, Appeals & Review Panel the Bid Evaluation Report together with other listed documents. Copy of the Bid Evaluation Report together with the appointment of the Bid Evaluation Panel are attached and marked Exhibit "R/6" In Bulk.

19. That recourse to the Bid Evaluation Report, particularly page 9 thereof, shows that Petitioner Vrex did not attain the minimum bench mark of fifty (50) points out of the total seventy (70) score allotted to the technical criteria in order to be qualified to implement the project. Meanwhile, Lutech Engineering & Project Management Consultants FCZ JV exceeded the minimum bench mark and attained 58 points out of the total seventy (70) score allotted to the technical criteria. Consequently, Petitioner Vrex could not be and is not the second most responsive evaluated bidder.

20. That predicated upon Petitioner Vrex not having attained the minimum bench mark of fifty (50) points out of the total seventy (70) score allotted to the technical criteria with the resultant impossibility of respondent carrying out the order of co-respondent and its Complaints, Appeals & Review Panel owing to the fact that Petitioner Vrex could not be and is not the second most responsive evaluated bidder coupled with the fact that the bidder that came second, Enpetrol also did not meet the technical requirements and that its bid price exceeded respondents' estimated cost for the project, respondent requested from PPCC: (a) approval for cancellation of the bidding process; (b) authorization to conduct a new procurement process utilizing the restricted bidding process; and (c) authorization to invite the three shortlisted companies, Enpetrol, Petitioner Vrex and Lutech Engineering & Management Consultants FZC JV to participate in the restricted bidding process as substantiated by copy of respondent's letter to PPCC dated March 2, 2016 attached and marked Exhibit "R17".

21. That PPCC, by letter to respondent dated March 3, 2016: (a) granted approval for respondent to cancel the procurement process; (b) authorized

respondent to utilize the restricted bidding procurement method by inviting Enpetrol, Petitioner Vrex and Lutech Engineering & Management Consultants FZC JV to participate; (c) approved the reduction to two weeks within which to conduct the new procurement process; and (d) approved the waiver of cost for the bidding documents. Thereafter, respondent informed the three shortlisted companies, Enpetrol, Petitioner Vrex and Lutech Engineering & Management Consultants FZC JV of notice of cancellation of the bidding process. Documentation in substantiation of the foregoing is attached and marked Exhibit "R/8" In Bulk. Respondent prays that counts 20, 21, and 22 of the Petition be overruled and the petition be dismissed.

22. That as to count 23 of the petition, respondent says that Section 127 (7) of the Public Procurement and Concessions Commission Act 2010 (the "Act") is not a mandatory requirement. On the contrary, a party may bring an action under the Administrative Procedure Act should such party desire to file a petition for judicial review. Alternatively, a party may seek such other remedy as may be provided either under the Act or other statutory provisions. Respondent prays that count 23 be overruled and the petition be dismissed.

23. That as to count 24 of the Petition, Respondent categorically denies the allegations contained therein. On the contrary, Respondent submits that relevant portion of the Standard Bidding Document, copy of which is in the possession of Co-respondent PPCC and its Complaints, Appeals & Review Panel as well as the seven (7) shortlisted bidders as part of the competitive bidding process, specifically Section 34 thereof, provides that the respondent has the right to accept or reject any bid, and to annul the bidding process and reject all bids, at any time prior to award of contract, without thereby incurring any liability to the affected bidder or bidders and without any obligation to inform the affected bidder or bidders of the grounds for the Respondent's action. Copy of the relevant portion of the Standard Bidding Document is attached and marked Exhibit "R/9". Respondent prays that count 24 be overruled and he petition be dismissed.

WHEREFORE and in view of the foregoing, respondent prays Your Honour to overrule, deny and dismiss the petition in its entirety and to sustain these returns and, by so doing, to: (a) lift the stay order imposed by Your Honour; (b) endorse, confirm and affirm the restrictive bidding procurement method with the participation of the three shortlisted companies, Enpetrol, Petitioner Vrex and Lutech Engineering & Management Consultants FZC JV; (c) rule of costs of these proceedings against Petitioner; and (d) grant to Respondent such other and further relief as Your Honour may deem legal, just and equitable.

Respectfully submitted:"

The amended motion to dismiss the petition for enforcement, which replaced the motion to dismiss, filed simultaneously with the returns but subsequently withdrawn, set forth as the grounds for the request to dismiss the petition the following:

"MOVANT'S AMENDED MOTION

NOW comes the above named movant, Liberia Petroleum Refining Company ("LPRC"), and most respectfully moves Your Honor and this Honourable Court to dismiss petitioner's petition for enforcement of the ruling/decision of the Complaints, Appeals and Review Panel of the Public Procurement and Concessions Commission (the "Petition for Enforcement") and for cause showeth the following, to wit:

1. Movant is co-respondent in the above petition for enforcement instituted by the respondent/petitioner. The petition for enforcement is pending undeter-

mined before this Honorable Court. In this regard, Your Honor is most respectfully requested to take judicial notice of the records of these proceedings.

2. Under Liberian law, "at the time of service of his responsive pleading, a party may move for judgment dismissing one or more claims for relief asserted against him in a complaint or counterclaim on any of the following grounds"...that the court lacks jurisdiction because the claim is barred by statute of limitation.

3. Liberian law also provides that:

Any final order by an agency or a hearing officer or hearing officers of such agency which is made to carry out a determination may, in the absence of any timely request for judicial review by the person against whom the order is directed, be enforced by a proceeding in the circuit court of the county in which the person resides against whom the order was issued.... A proceeding to enforce such an order shall be commenced by the filing of a petition for enforcement in the circuit court. Provided, however, that the petition to enforce the order shall be filed within ten (10) days after non-compliance with the order has occurred. Liberian Codes Revised, Vol III, Page 634, Administrative Procedure Act, Section 82.9. Concisely, it is a mandatory requirement that a petition to enforce an order of an administrative agency must be filed within ten (10) days after non-compliance with the order has occurred; failing which the petition is time barred and the court lacks jurisdiction to hear and determine the petition.

4. Movant submits that respondent/petitioner's petition for enforcement is time barred for the following reasons:

(a) By respondent/petitioner's own admission, the ruling/decision sought to be enforced was delivered on February 4, 2016 in which Movant LPRC was "ordered to award the project to the second most responsive evaluated bidder if the bidder meets all LPRC's technical requirements, and furnish a report to all parties not later than seven (7) days as of the receipt of the ruling." Copy of the ruling/decision is attached and marked Exhibit "M/1";

(b) Movant LPRC received the ruling/decision on February 9, 2016; so that movant/LPRC had seven (7) days commencing from February 9, 2016 within which to comply with the order; that is to say by February 16, 2016. Acknowledgment of receipt of the ruling/decision on February 9, 2016 is attached marked Exhibit "M/2";

(c) Movant LPRC did not comply with the order by February 16, 2016. Consequently, by Movant LPRC failing to comply with the order by February 16, 2016, non-compliance with the order occurred on February 17, 2016;

(d) Pursuant to the law, respondent/petitioner had a period often (10) days after non-compliance occurred with the order within which to file a petition to enforce the order. Non-compliance with the order having occurred on February 17, 2016, respondent/petitioner was mandatorily required to file its petition for enforcement by February 27, 2016;

(e) Respondent/petitioner failed and neglected to file its petition to enforce the order within ten (10) days after non-compliance with the order occurred, that is by February 27, 2016 as mandatorily required. Instead, respondent/petitioner, in total disregard of as well as in gross violation of the mandatory requirement for filing a petition to enforce the order, filed its petition on March 8, 2016, as substantiated by copy of a Clerk Certificate attached and marked Exhibit "M/3".

5. Movant maintains and contends that by respondent/petitioner having failed and neglected to file its petition to enforce the order within ten (10) days after non-compliance with the order occurred, that is by February 27, 2016, as mandatorily required, this Honourable Court lacks jurisdiction to hear and determine the petition for enforcement because the petition for enforcement is barred by statute of limitation.

6. And also because movant requests Your Honor to take judicial notice of Respondent Vrex's resistance to movant's motion to dismiss and specifically counts 5 and 9 thereof. In count 5, respondent states that "...respondent could not, therefore, move to enforce the judgment until thirty (30) days after the announcement of the appeal." And in count 9, respondent states that "Respondent says in the face of movant's appeal from the Panel, respondent had to wait for thirty (30) days to allow movant to file its petition for judicial review."

7. And also because movant further requests Your Honor to take judicial notice of respondent's admission that: on February 9, 2016, movant announced an appeal and reserved the right to file a petition for judicial review; and (b) respondent could not move to enforce the judgment until thirty (30) days after the announcement of appeal. Yet, as confirmed by a Clerk's Certificate, movant's Exhibit "M/3", respondent filed its petition for enforcement on the 8th day of March, 2016, a period less than thirty (30) days after the announcement of appeal by movant. Movant submits that respondent's haste in filing a petition for enforcement prior to the elapse of thirty (30) days is inconsistent with respondent's own admissions that respondent could not move to enforce the judgment until thirty (30) days after the announcement of appeal. Additionally, the filing of the said petition for enforcement legally negates the conditional phrase "in the absence of any timely request for judicial review..." And, as such, respondent is in violation of the mandatory requirement of Section 82.9 of the Administrative Procedure Act by having failed and neglected to file its petition to enforce the order within ten (10) days after non-compliance with the order occurred on February 27, 2016 as mandatorily required. Consequently, this Honourable Court lacks jurisdiction to hear and determine the petition for enforcement because the petition for enforcement is barred by statute of limitation.

8. And also because movant requests Your Honor to further take judicial notice of Respondent Vrex's petition for enforcement and specifically count 20 and 21 and 22 thereof.

In count 20, respondent references a letter dated March 4, 2016 from movant to respondent in which movant informed respondent that due to the impossibility of movant carrying out the details of the opinion of CARP, the Public Procurement Concession Commission had granted approval for movant to cancel the procurement process and to utilize the restricted bidding procurement method to select a company to undertake the project.

In count 21, respondent states that respondent informed movant of respondent's exception and appeal against the approval for cancellation of the procurement process.

In count 22, respondent states that despite its announcement of appeal, movant invited respondent to participate in the restricted bidding. Movant maintains and contends that respondent's announcement of appeal should be to the Public Procurement Concession Commission/CARP as Your Honor lacks the authority to hear and determine such appeal.

9. That movant concedes that this Honourable Court is vested by statute with and has subject matter jurisdiction to hear and determine petitions for enforcement of a final order by an administrative agency. Movant further concedes that any defense or objection challenging the jurisdiction of a court other than subject matter jurisdiction must be raised in a motion to dismiss and filed at the time of service of a responding pleading. Consequently, movant has filed this motion to dismiss challenging the court's jurisdiction to hear the petition for enforcement because respondent/petitioner's petition for enforcement is barred by statute of limitation; and movant prays and moves Your Honour to so hold.

10. Movants further maintains and contends that under the prevailing law, every court must firstly determine its jurisdiction before proceeding with any

matter. In making such determination, movant submits for Your Honour's consideration that under the facts and circumstances of these proceedings, this Honourable Court lacks jurisdiction to hear the petition for enforcement because said petition for enforcement is time barred; and that following Your Honour's determination that this court lacks jurisdiction, Your Honour will grant this amended motion to dismiss and deny and dismiss the petition for enforcement.

WHEREFORE, and in view of the foregoing, movant most respectfully prays and moves Your Honor to grant this amended motion to dismiss and, by so doing, to: (a) deny and dismiss respondent/petitioner's petition for enforcement; (b) rule all costs of the proceedings against the respondent/petitioner; and (c) grant to movant any and all such relief deemed by Your Honor to be just, equitable, proper and legal as in keeping with Law."

In response to the appellees/respondents returns the appellant/petitioner filed a reply, and in response to the amended motion to dismiss, it filed an amended resistance. We quote both instruments below, to wit:

"PETITIONER'S REPLY

Petitioner, in the above entitled cause of action, denies the legal and factual sufficiency of respondent's returns, and, therefore, prays this Honourable Court to deny and dismiss said returns for the following legal and factual reasons, showeth to wit:

1. That as to the entire returns, petitioner says same should be dismissed and denied and the ruling /decision of the Complaints, Appeals and Review Panel ordered enforced because even Co-respondent Liberia Petroleum Refining Company ("LPRC") admits that the applicable law states: Any final order by an agency or a hearing officer or hearing officers of such agency which is made to carry out a determination may, in the absence of any timely request for judicial review by the person against whom the order is directed, be enforced by a proceedings in the circuit court of the county in which the person resides against whom the order was issued, or in the county in which such person is regularly employed or has his regular place of business....". Executive Law, Rev. Code 12:82.9, Captioned Administrative Procedure Act, Approved May 11, 1972, and Published June 9, 1972.
2. Further to count one (1) herein above, petitioner says Co-respondent LPRC also agrees and interposes no objection(s) that the applicable law, the Public Procurement and Concessions Act, 2010, also states: "the decisions of a designated complaint and appeal panel of the Complaints, Appeals and Review Panel are final and binding upon all parties, subject only to review by a court of competent jurisdiction. Any party to the matter decided may bring an action under the Administrative Procedure Act to enforce the decision and this right includes the right of a prevailing party to bring an action against the losing party to enforce the decision notwithstanding any definitions in the Administrative Procedure Act" (emphasis ours). Public Procurement and Concessions Commission Act, 2010, Section 127 (7).
3. Further to count two (2) herein above, petitioner says under the relevant sections of the Executive Law and the Public Procurement and Concessions Act, 2010, herein quoted above in counts one (1) and two (2) of this reply, the only interdiction and prohibition against the immediate enforcement of a determination by an administrative agency is ".....any timely request for judicial review by the person against whom the order is directed.....".
4. Further to count three (3) herein above, petitioner respectfully requests court to take judicial notice of the fact that when the final Ruling/Decision of the Complaints, Appeals and Review Panel was delivered, Co-respondent;

Liberia Petroleum Refining Company, clearly excepted to the Ruling, announced an appeal and unequivocally gave notice of its intent to file a petition for judicial review at the Civil Law Court, Sixth Judicial Circuit, Montserrado County, Republic of Liberia. Copies of the Notice of Appointment of Counsel and the Notice of Exception and Appeal are hereto attached in bulk and marked Petitioner's Exhibit "PR/1".

5. Further to count four (4) herein above, petitioner says Co-respondent LPRC having failed, refused and neglected to file a petition for judicial review within thirty (30) days, as required by the Statute, cannot seek to open the matter for judicial review. The gravamen of the current action is petitioner's petition before this court for enforcement of the ruling/decision of the Complaints, Appeals and Review Panel.

6. Further to count five (5) herein above, petitioner says Co-respondent LPRC's argument that it cannot enforce the Ruling/Decision of the Complaints, Appeals and Review Panel because "Petitioner Vrex did not attain the minimum bench mark of fifty (50) points out of the total seventy (70) score allotted to the technical criteria in order to be qualified to implement the project", is preposterous, absurd and untenable. Moreover, the said argument is moot and not cognizable before this Honorable Court because to seek to entertain any argument from Co-respondent LPRC not related to enforcement is to seek to open the matter for judicial review. However, it must be stated for the purpose of mere academic gymnastics that Co-respondent Liberia Petroleum Refining Company, having pre-qualified three (3) companies, one of which is petitioner, Vrex Remodeling, Inc., cannot make the argument that petitioner did not attain the minimum benchmark.

7. Further to count six (6) herein above, petitioner says this Honourable Court cannot entertain an argument related to the substance of the final ruling/decision of the Complaints, Review and Appeals Panel and/or Co-respondent LPRC's inability to implement and/or enforce the ruling/decision of the Panel. Co-respondent LPRC having announced an appeal and having failed to perfect its appeal within statutory time is barred from making any such argument(s). If Co-respondent LPRC seriously and honestly believed that it could not enforce the ruling/decision of the Complaints, Appeals and Review Panel, an argument which is false, misleading, untrue and untenable, it could have resorted to the proper remedy within statutory time, namely by filing before the Complaints, Appeals and Review Panel either a motion to modify/amend ruling, motion to rescind and/or motion for re-argument. But to have announced an appeal, refused and neglected to perfect the appeal and yet take actions that are incongruous and inconsistent with the ruling/decision of the Complaints, Appeals and Review Panel clearly demonstrates a lack of respect for the rule of law and contempt for the judicial system.

8. Further to count seven (7) herein above, petitioner says for mere academic gymnastics it shall expose the flaw contained in the argument postulated by the Co-respondent, LPRC, though the said argument is not legally cognizable before this Court; because Co-respondent LPRC announced an appeal and failed miserably to file a petition for judicial review within statutory time to confer appellate jurisdiction on this Honourable Court.

9. Further to count eight (8) herein above, Petitioner says under the Public Procurement and Concessions Commission Act, 2010, once Co-respondent Liberia Petroleum Refining Company pre-qualified Petitioner, Vrex Remodeling, Inc., LPRC could not and cannot make the argument that "Petitioner Vrex did not attain the minimum bench mark of fifty (50) points out of the total seventy (70) score allotted to the technical criteria in order to be qualified to implement the project". The relevant sections of the law are herein quoted below: Part IV of the Public Procurement and Concessions Commission Act, 2010, captioned: "General Provisions on Procurement Proceedings of the Procurement Entities" states:

Qualifications of Bidders

(1) In order to participate in procurement proceedings, a bidder must qualify by meeting the criteria set by the procuring entity, which will normally include evidence of

- (a) Professional and technical qualifications;
- (b) Equipment availability, where applicable;
- (c) Past Performance;
- (d) After-sales service, where applicable;
- (e) Spare parts availability;
- (f) Legal capacity;
- (g) Financial resources and conditions;
- (h) Verification by the internal revenue authority of payment of taxes and social security contributions when due. Public Procurement and Concessions Commission Act, 2010, Part IV, section 32 (1).

10. Further to count nine (9) herein above, petitioner says the law is also clear that Co-respondent LPRC cannot and should not use any point system to determine and/or maintain that petitioner, Vrex, did not meet the threshold requirement. The law states:

The qualification criteria set forth in subsection (1) of this section shall be applied by examining, through investigation and collaboration with other relevant agencies, to ascertain whether or not the bidder meets the minimum qualification criteria established for the bid and not by using a point system for comparing the relevant level of qualifications of participating bidders (emphasis ours). Public Procurement and Concessions Commission Act, 2010, Part IV, section 12 (2).

"The procuring entity shall be entitled to demand qualification documentation from potential bidders in formal pre-qualification proceedings, or as a required component of a bid submission." [Emphasis ours] Public Procurement and Concessions Commission Act, 2010, Part IV, section 32 (3).

11. Further to count ten (10) herein above, petitioner says under the laws quoted above, the procuring entity, in the instant case LPRC, could and did demand qualification documentation during the pre-qualification stage. The procuring entity, Co-respondent LPRC, could do so only once; and it elected to exercise the option at the pre-qualification stage. It cannot demand qualification documentation during bid submission, as though there was no pre-qualification conducted.

12. Further to count eleven (11) herein above, petitioner says Co-respondent LPRC, as the procuring entity, consistent with the PPCC Act herein quoted above, conducted a pre-qualification exercise during which petitioner qualified by meeting the criteria, which included, as prescribed by the statute on pre-qualification quoted above: (a) professional and technical qualifications; b) Equipment availability, (c) past performance; (d) after-sales service, (e) spare parts availability; (f) legal capacity; (g) financial resources and conditions; (h) Verification by the internal revenue authority of payment of taxes and social security contributions when due.

13. Further to count twelve (12) herein above, petitioner says as Co-respondent LPRC, the procuring entity, was and is required to only once demand qualification documentation, that is, either pursuant to a pre-qualification exercise as a required component of a bid submission, and it opted to demand pre-qualification documentation as opposed to a required component of a bid submission; it cannot now apply the second option; meaning, it cannot now demand qualification documentation as a required component of a bid submission. The court is respectfully requested to take judicial notice of the word "or", as used in the statute. Demand for qualification documentation is made either at the pre-qualification stage or bid submission stage. And the law says this minimum qualification criteria is established "by examining, through investigation and collaboration with other relevant agencies, to ascertain

whether or not the bidder meets the minimum qualification criteria established for the bid and not by using a point system for comparing the relevant level of qualifications of participating bidders (emphasis ours).

14. Further to count thirteen (13) herein above, petitioner says what Co-respondent LPRC is seeking to do is clearly prohibited by the PPCC Act. The law clearly says: "the qualification criteria set forth in subsection (1) of this section shall be applied by examining, through investigation and collaboration with other relevant agencies, to ascertain whether or not the bidder meets the minimum qualification criteria established for the bid and not by using a point system for comparing the relevant level of qualifications of participating bidders (emphasis ours). Public Procurement and Concessions Commission Act, 2010, Part IV, section 32 (2).

15. Further to count fourteen (14) herein above, petitioner says assuming, without admitting, that Co-respondent LPRC may use the point system, it would be required to award petitioner fifteen (15) additional points to petitioner because, following the disqualification of Lutech Engineering and Project Management Consultants FZC JV as the lowest price bidder, petitioner became the lowest price bidder. The court is respectfully requested to take judicial notice of the fact that on page eighteen (18) of Co-respondent LPRC's Bid Evaluation Report, attached to its returns as part of respondent's Exhibit "R/6", fifteen (15) points are awarded for lowest bid price.

16. Further to count fifteen (15) herein above, petitioner respectfully requests Court to take judicial notice that on page nine (9) of Co-respondent LPRC's Bid Evaluation Report, attached to its returns as part of respondent's Exhibit "R/6", it is stipulated: "Following the comprehensive evaluation of the three (3) bids, the Panel is pleased to report the respective outcome of each company on the technical and commercial financial scale:

COMPANY'S NAME	TECHNICAL	FINANCIAL	TOTAL (%)
1. VREX	19	2	21
2. LUTECH	58	27	85
3. EN-PETROL	21	4	25

17. Further to count sixteen (16) herein above, petitioner says the following were the bid prices submitted by the bidders:

En-Petrol, Inc.	-	US\$32,103,320.00
Vrex Remodeling, Inc.	-	US\$22,538,302.82
Lutech		US\$22,230,000.00

18. Further to count seventeen (17) herein above, petitioner says following the disqualification of Lutech Engineering and Project Management Consultants FZC JV, Petitioner Vrex Remodeling, Inc. became the lowest price bidder and is entitled to fifteen (15) points as stipulated on page eighteen (18) of the Bid Evaluation Report. That would give Petitioner Vrex Remodeling, Inc. thirty-six (36) points, ahead of En-Petrol with twenty-five (25) points. Thus, Vrex Remodeling, Inc., consistent with the ruling/decision of the Complaints, Appeals and Review Panel, should be awarded the Project.

19. Further to count eighteen (18) herein above, petitioner says Co-respondent LPRC has refused to comply with and enforce the ruling/decision of the Complaints, Appeals and Review Panel and is bent on awarding the Contract to Lutech Engineering and Project Management Consultants FZC JV. In its illegal notice to conduct a restricted bid, Co-respondent LPRC arrogantly, daringly and contemptuously sent Lutech Engineering and Project Management Consultants FZC JV an invitation to bid, though the said Lutech Engineering and Project Management Consultants FZC JV is disqualified by the Panel. If Co-respondent LPRC claims that the re-bid or restricted bid is confined to pre-qualified bidders, by what parity of reasoning did it send an invitation to Lutech Engineering and Project Management Consultants FZC JV, which has been disqualified by the Complaints, Appeals and Review Panel, as not having pre-qualified, to bid?

20. Further to count nineteen (19) herein above, Petitioner says if Co-respondent LPRC maintains that "Petitioner Vrex did not attain the minimum bench mark of fifty (50) points out of the total seventy (70) score allotted to the technical criteria in order to be qualified to implement the project", by what parity of reasoning did Co-respondent LPRC send petitioner, Vrex Remodeling, Inc., an invitation to participate in a re-bid or restricted bid. Thus, it can be clearly seen that Co-respondent LPRC is engaged in a sham attempt to evade the final ruling/decision of the Complaints, Appeals and Review Panel and to award the Contract to Lutech Engineering and Project Management Consultants FZC JV, an entity which did not pre-qualify in the first place.

21. That count one (1) of the Returns concedes counts one (1), two (2), three (3), four (4), five (5) and six (6) of the Petition, the said count one (1) of the Returns, therefore, raises no traversable issue. Respondent prays that the said count one (1) of the Returns be overruled and the entire Returns be dismissed. Petitioner says indeed and in fact, the Complaints, Appeals and Review Panel rightfully found and determined that Lutech Engineering & Management Consultants FZC JV did not pre-qualify and should not have been allowed to submit a bid; and that the project should be awarded to the second most responsive evaluated bidder if the bidder meets all the LPRC 's technical requirements. Co-respondent LPRC having appealed the final Ruling/Decision of the Complaints, Appeals and Review Panel, and having refused and failed to perfect its appeal by timely filing a petition for judicial review, must be ordered to enforce the final ruling/decision of the Panel. Petitioner, therefore, prays for an enforcement of the ruling/decision of the Complaints, Appeals and Review Panel.

22. That as to count two (2) of the returns, petitioner denies the averments therein contained, especially as it relates to Lutech Engineering & Management Consultants FZC JV having pre-qualified. The Court is respectfully requested to take judicial notice of the fact that the document made profert and marked Respondent's Exhibit "R/1", in support of its argument, has always been in the private domain of Co-respondent LPRC; that the said document is self-serving and wanting in integrity; and that it was communicated to the Public Procurement and Concessions Commission on January 12, 2016, after Petitioner had filed its Complaint on January 4, 2016 with the Procuring Entity, and a follow-up appeal on January 11, 2016, addressed to the Complaints, Appeals and Review Panel. Petitioner says indeed and in fact, the Complaints, Appeals and Review Panel rightfully found and determined that Lutech Engineering & Management Consultants FZC JV did not pre-qualify and should not have been allowed to submit a bid; and that the project should be awarded to the second most responsive evaluated bidder. Co-respondent LPRC having appealed the final Ruling/Decision of the Complaints, Appeals and Review Panel, and having refused and failed to perfect its appeal by timely filing a petition for judicial review, must be ordered to enforce the final Ruling/Decision of the Panel. Petitioner, therefore, prays for an enforcement of the Panel's Ruling/Decision.

23. That as to counts three (3), four (4), five (5), six (6) and seven (7) of the Returns, Petitioner denies the averments therein contained and says further that in said counts, Co-respondent LPRC has placed the following on record:

1. That it submitted a box file to Co-respondent PPCC and its Complaints, Appeals & Review Panel, containing seventeen (17) items; that the said box file was submitted under cover of the letter dated January 14, 2016, in response to the request of the Complaints, Appeals and Review Panel, as contained in a letter dated January 13, 2014, over the signature of the Chairman of the Complaints, Appeals and Review Panel, to provide "any and all documents relating to this case on or before Thursday, January 21, 2016 in order to enhance the investigation."

2. That "Lutech Engineering" is the acronym of Lutech Engineering & Project Management Consultants FZC".

3. That "Lutech Engineering" is synonymous with Lutech Engineering and Project Management Consultant FZC".

4. That "Lutech Engineering (Liberia) Limited ("Lutech Engineering") is a subsidiary of Lutech Engineering & Project Management Consultant FZC".

5. That "Lutech Engineering is the short form for Lutech Engineering & Project Management Consultant FZC".

24. Further to count twenty-three (23) herein above, as to Co-respondent's stipulation quoted above that it submitted a box file containing seventeen (17) items, Petitioner respectfully requests Court to take judicial notice of Co-respondent LPRC's cover letter to the Complaints, Appeals and Review Panel, by which Co-respondent LPRC submitted to the Panel "any and all documents relating" to the case. The said cover letter of January 14, 2016, attached to Co-respondent LPRC's Returns, as part of Exhibit "R/2", lists only eight (8) items. The eight (8) items listed includes Vrex Remodeling, Inc.'s Complaint and Co-respondent LPRC's response to the Complaint. Where were the additional nine (9) items that have subsequently emerged and surfaced? Petitioner says as they were not part of the certified records submitted to the Complaints, Appeal and Reviewed Panel, they cannot be submitted as part of the records before this Honorable Court. Additionally, any and all other evidentiary submissions not provided the Panel on or before Thursday, January 21, 2016 cannot be admissible in the current proceedings; and this includes the fabricated Joint Venture Agreement.

25. Further to count twenty-four (24) herein above, as to Co-respondent LPRC's submission that "Lutech Engineering" is the acronym of Lutech Engineering & Project Management Consultants FZC", Petitioner says an acronym is a word or name formed as an abbreviation from the initial component in a phrase or a word. Usually individuals letter and sometimes syllables like USAID or UNDP. Accordingly, "Lutech Engineering" cannot be an acronym for anything.

26. Further to count twenty-five (25) herein above, as to Co-respondent LPRC's submission that "Lutech Engineering" is synonymous with Lutech Engineering Consultant FZC", petitioner says synonymous describes synonyms, with same or similar meanings in the same language like purse and hand Engineering" is not synonymous with Lutech Engineering and Project Management, "Lutech Engineering" cannot be synonymous with anything other than "Lutech Engineering Liberia (Limited)". However, even if it is synonymous with the Lutech Management Consultant FZC of (UAE), as maintained in Co-respondent not synonymous with the JV.

27. Further to count twenty-six (26) herein above, as to Co-respondent LPRC's submission that "Lutech Engineering (Liberia) Limited ("Lutech Engineering") is a subsidiary of Lutech Engineering & Project Management Consultant FZC", Petitioner says exactly, Co-respondent LPRC has finally agreed that "Lutech Engineering" refers to the Liberian Limited Company, and agrees that as a subsidiary, it is a separate and distinct entity.

28. Further to count twenty-seven (27) herein above, as to submission that "Lutech Engineering is the short form for Lutech Management Consultant FZC JV", petitioner says it has already established that "Lutech Engineering" refers to the subsidiary. A subsidiary is not the "short form" of its parent company or any other company. A subsidiary is a daughter company of a parent or that parent company owns or controls the subsidiary. A subsidiary can be a cc, a limited liability company

29. Further to count twenty-eight (28) herein above, petitioner respectfully requests court to take judicial notice of the bond offered in support of Co-respondent Lutech Engineering & Project Management Consultant FZC JV's bid. It says: Whereas Lutech Engineering (Liberia) Limited, on behalf of Lutech

Engineering & Project Management Consultants FZC UAE (hereinafter called "the Bidder") has submitted to you its Bid dated November 4, 2015 (herein after the Bid) for the Products Storage Terminal Expansion Project Phase One at the Liberia Petroleum Refining Company (LPRC) under IFB No. /LPRC/ICB/001/2015/2016". Clearly, Lutech Engineering & Project Management Consultants FZC UAE is described as the Bidder.

30. Further to count twenty-nine (29) herein above, Petitioner says the submission that Lutech Engineering & Project Management Consultants FZC UAE is described as the Bidder is consistent with what Co-respondent LPRC itself has spread on record that the Joint Venture comprises Lutech Engineering & Project Management Consultant FZC", a Dubai company and Fab-Tech Works Construction PVT. LTD, an Indian company. Lutech Engineering (Liberia) Limited is not a party to the Joint Venture. In count five (5) of the Returns, Co-respondent LPRC says: " (b) that Lutech Engineering & Project Management Consultant FZC and Fab-Tech Works Construction PVT. LTD formed the joint venture company designated as Lutech Engineering & Project Management Consultant FZC JV for the purpose of submission of a bid for the Project Storage Terminal Expansion Project".

31. Further to count thirty (30) herein above, Petitioner says neither was Lutech Engineering & Project Management Consultant FZC, Fab-Tech Works Construction PVT. LTD and for Lutech Engineering & Project Management Consultant FZC JV pre-qualified. Only Lutech Engineering (Liberia) Limited pre-qualified and only Lutech Engineering (Liberia) Limited should have submitted a bid as a single company. Lutech Engineering (Liberia) Limited (Liberia) and Lutech Engineering & Project Management Consultant FZC (UAE) are two (2) separate and distinct companies; and even if Lutech Engineering (Liberia) Limited (Liberia) is a subsidiary of Lutech Engineering & Project Management Consultant FZC (UAE), they are still two (2) separate and distinct companies; and the fact that Lutech Engineering & Project Management Consultant FZC (UAE) entered into a joint venture with Fab-Tech Works Construction PVT. LTD (India) does not ipso facto make Lutech Engineering (Liberia) Limited (Liberia) party to the Joint Venture.

32. Further to count thirty-one (31) herein above, for clarity and the avoidance of doubt, Petitioner says the entities are Lutech Engineering (Liberia) Limited, incorporated under the laws of Liberia. Lutech Engineering (Liberia) Limited is a subsidiary of Lutech Engineering & Project Management Consultant FZC (UAE), a Dubai company. They are separate and distinct companies. Lutech Engineering & Project Management Consultant FZC (UAE) is the major joint venture partner company and the parent company of "Lutech Engineering (Liberia) Limited". Fab-Tech Works Construction PVT. LTD, incorporated under the laws of India, is the smaller partner in the Joint Venture. The Joint Venture comprises Lutech Engineering & Project Management Consultant FZC and Fab-Tech Works Construction PVT. LTD. The Joint Venture, Lutech Engineering and Project Management Consultants FZC JV, submitted the Bid; but only Lutech Engineering (Liberia) Limited pre-qualified as a single company, not Lutech Engineering and Project Management Consultants FZC N. Lutech Engineering and Project Management Consultants FZC JV is the Joint Venture, comprising Lutech Engineering and Project Management Consultants FZC (Dubai) and Fab-Tech Works Construction PVT. LTD (India). It must be noted that "Lutech Engineering (Liberia) Limited is not party to the Joint Venture and even if it were, it pre-qualified as a single company and should have submitted its bid as a single company.

33. Further to count thirty-two (32) herein above, Petitioner says up to and including the date of the Bid Opening on November 20, 2015, Co-respondent LPRC had definitely not been presented with any Joint Venture Agreement. During the opening of the Bid, Mr. Kieh is heard saying: "So now the verification will be done, as we request in the bidding documents that if you

are a joint venture, you must state it". Mr. Sumo Kupee is heard saying: "We will not go into it, but there will be tax clearance for an entity that is bidding. Because when you do a joint venture, you become a unit". Finally, Mr. Kupee says: "Lawyers will say that, in that being a unit, you will then have an agreement with the person with who you have" (inaudible).

34. Further to count thirty-three (33) herein above, Petitioner respectfully requests Court take judicial notice of the Tax Clearance, the Bond and other documents attached to Lutech Engineering (Liberia) Limited's Pre-qualification Application. They are all in the name of Lutech Engineering (Liberia) Limited, a non-member of the Joint Venture. Moreover, how could Corespondent LPRC have pre-qualified the Joint Venture when up to the opening of the Bid, the said Co-respondent LPRC had not received the Joint Venture Agreement. Mr. Kupee, the Managing Director of Co-respondent LPRC is heard saying: "Lawyers will say that, in that being a unit, you will then have an agreement with the person with who you have" (inaudible).

35. Further to count thirty-four (34) herein above, Petitioner respectfully requests Court to take judicial notice of the fact that the documents exhibited and attached to Co-respondent LPRC 's Returns, as Respondent's Exhibit "R/1" (Letter dated January 12, 2016 allegedly from Co-respondent LPRC to Public Procurement and Concessions Commission, conveying list of pre-qualified applicants), "R13" (Pre-qualification Bid allegedly submitted by Lutech Engineering and Project Management Consultants FZC JV), Joint Venture Agreement between Lutech Engineering & Project Management Consultant FZC (UAE) and Fab-Tech Works Construction PVT. LTD (India), "R/6"(Bid Evaluation Report), in support of its argument, have always been in the exclusive and private domain of Co-respondent LPRC; and that the said documents are self-serving and wanting in integrity. Petitioner says it is seeing these documents for the first time and they seem to raise new issues not cognizable before this Court in this Petition for Enforcement of the Ruling/Decision of the Panel. Petitioner says indeed and in fact, the Complaints, Appeals and Review Panel rightfully found and determined that Lutech Engineering & Management Consultants FZC JV did not pre-qualify and should not have been allowed to submit a bid; and that the project should be awarded to the second most responsive evaluated bidder. Co-respondent LPRC having appealed the final Ruling/Decision of the Complaints, Appeals and Review Panel, and having refused and failed to perfect its appeal by timely filing a petition for judicial review, must be ordered to enforce the final Ruling/Decision of the Panel. Petitioner, therefore, prays for an enforcement of the Panel's Ruling/Decision.

36. That as to count eight (8) of the Returns, Petitioner says same concedes count (11) of Petitioner's Petition and raises no traversable issue. Petitioner prays that the said count eight (8) be overruled and the entire Returns be dismissed. Petitioner says indeed and in fact, the Complaints, Appeals and Review Panel rightfully found and determined that Lutech Engineering & Management Consultants FZC JV did not pre-qualify and should not have been allowed to submit a bid; and that the project should be awarded to the second most responsive evaluated bidder. Co-respondent LPRC having appealed the final Ruling/Decision of the Complaints, Appeals and Review Panel, and having refused and failed to perfect its appeal by timely filing a petition for judicial review, must be ordered to enforce the final Ruling/Decision of the Panel. Petitioner, therefore, prays for an enforcement of the Panel's Ruling/Decision.

37. That as to counts nine (9), ten (10) and eleven (11) of the Returns, Petitioner denies and denounces the averments therein contained as self-serving and lacking in integrity. Petitioner says indeed and in fact, the Complaints, Appeals and Review Panel rightfully found and determined that Lutech Engineering & Management Consultants FZC JV did not pre-qualify and should not have been allowed to submit a bid; and that the project should be awarded to the second most responsive evaluated bidder. Co-respondent LPRC

having appealed the final Ruling/Decision of the Complaints, Appeals and Review Panel, and having refused and failed to perfect its appeal by timely filing a petition for judicial review, must be ordered to enforce the final Ruling/Decision of the Panel. Petitioner, therefore, prays for an enforcement of the Panel's Ruling/Decision. .

38. That count twelve (12) of the Returns concedes counts sixteen (16), seventeen (17), eighteen (18) and nineteen (19) of the Petition. Petitioner prays that the said count (12) be overruled and the entire Returns be dismissed. Petitioner says indeed and in fact, the Complaints, Appeals and Review Panel rightfully found and determined that Lutech Engineering & Management Consultants FZC JV did not pre-qualify and should not have been allowed to submit a bid; and that the project should be awarded to the second most responsive evaluated bidder. Co-respondent LPRC having appealed the final Ruling/Decision of the Complaints, Appeals and Review Panel, and having refused and failed to perfect its appeal by timely filing a petition for judicial review, must be ordered to enforce the final Ruling/Decision of the Panel. Petitioner, therefore, prays for an enforcement of the Panel's Ruling/Decision.

39. That as to counts thirteen (13), fourteen (14) and fifteen (15) of the Returns, Petitioner denies the averments therein contained; and further asserts, re-asserts, confirms and reconfirms counts ten (10) thru eighteen (18) of this Reply. Petitioner prays that the said counts thirteen (13), fourteen (14) and fifteen (15) of the Returns be overruled and the entire Returns be dismissed. Petitioner says indeed and in fact, the Complaints, Appeals and Review Panel rightfully found and determined that Lutech Engineering & Management Consultants FZC N did not pre-qualify and should not have been allowed to submit a bid; and that the project should be awarded to the second most responsive evaluated bidder. Petitioner prays for an enforcement of the Panel's Ruling/Decision.

40. That as to counts sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23) and the Prayer of the Returns, Petitioner denies and denounces the averments therein contained as lacking any integrity. Petitioner further asserts, re-asserts, confirms and reconfirms counts ten (10) thru thirty-three (33) of this Reply. Petitioner prays that the said counts sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23) and the Prayer of the Returns be overruled and the entire Returns be dismissed. Petitioner says indeed and in fact, the Complaints, Appeals and Review Panel rightfully found and determined that Lutech Engineering & Management Consultants FZC JV did not pre-qualify and should not have been allowed to submit a bid; and that the project should be awarded to the second most responsive evaluated bidder. Co-respondent LPRC having appealed the final Ruling/Decision of the Complaints, Appeals and Review Panel, and having refused and failed to perfect its appeal by timely filing a petition for judicial review, must be ordered to enforce the final Ruling/Decision of the Panel. Petitioner, therefore, prays for an enforcement of the Panel's Ruling/Decision.

41. Further to count forty (40) herein above, Petitioner says the Decision/Ruling of the Complaints, Appeals and Review Panel is enforceable; that Co-respondent LPRC having elected to utilize the pre-qualification option, and having demanded and received pre-qualification documentation pursuant to the said pre-qualification option, cannot now seek to utilize the point system or the option which allows it to demand qualification documentation as a required component of a bid submission; and that assuming, without admitting it may legally use the point system, Petitioner would emerge as the most responsive bidder because, as the lowest price bidder, Petitioner, Vrex Remodeling, Inc. would be entitled to fifteen (15) additional points.

42. Further to count forty-one (41) herein above, Petitioner category rejects Co-respondent LPRC's argument that "the Respondent has the right to accept

or reject any bid, and to annul the bidding process and reject all bids, at any time prior to award of Contract, without thereby incurring any liability to the affected bidder or bidders and without any obligation to inform the affected bidder or bidders of the grounds for the Respondent's action". Petitioner says this postulation and/or any such provision contained in the Bid Document runs contrary to the Public Procurement and Concessions Commission Act, 2010.

43. Further to count forty-two (42) herein above, Petitioner says Counsel for Co-respondent LPRC knows that any such provision, contained in the Bid Document that runs contrary to the PPCC Act is illegal and should not have been placed there in the first place. The said provision not only runs contrary to the letter, intent and spirit of the PPCC Act, but would undermine and obviate the need to conduct any bidding process if legally allowed, permitted or sustained.

44. Further to count forty-three (43) herein above, PART IV, section 36 of the PPCC Act deals with rejection and/or cancellation of bids and clearly stipulates that "a bid maybe rejected only in accordance with this Act and regulations made thereunder". It further says: "A procuring Entity may reject all bids at any time prior to the acceptance of a bid". Public Procurement and Concessions Commission Act, 2010, PART IV, SECTION 36 (1) (2) (3).

45. Further to count forty-four (44) herein above, Petitioner says Co-respondent LPRC cannot reject and/or cancel Petitioner's Bid after it has been accepted. The argument advanced by Co-respondent is flawed, untenable, illegal and contrary to the law. It must be rejected.

46. Petitioner denies all and singular the allegations of law and facts contained in Respondent's Returns and not specifically traversed in this Reply.

WHEREFORE AND IN VIEW OF THE FOREGOING facts, circumstances and laws controlling, petitioner most respectfully prays Your Honour to set aside and overrule the returns, order the enforcement of final ruling/decision of the Complaints, Appeals and Review Panel; and grant unto Petitioner any other and further relief as Your Honour may deem just, legal and equitable."

As noted before, the appellant also filed an amended resistance to the amended motion to dismiss. We quote the said resistance.

"RESPONDENT'S AMENDED RESISTANCE

Respondent, in the above-entitled proceeding, denies the legal and factual sufficiency of Movant's Amended Motion to Dismiss, and prays Your Honor to deny, overrule and dismiss said Amended Motion, for legal and factual reasons, showeth the following, to wit:

1. That as to counts one (1), two (2) and three (3) of the Amended Motion, Respondent says the said counts raise no traversable issue. Respondent prays that said counts be overruled and the Amended Motion be dismissed.
2. That as to counts four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10) and the Prayer of the Amended Motion, Respondent denies the averments therein contained and says further that the Ruling/Decision of the Complaints, Appeals and Review Panel, which Respondent has asked this Court to enforce, was made on the 4th day of February, A. D. 2016 and received by Movant's own admission, on the 9th day of February, A. D. 2016.
3. Further to count two (2) herein above, Respondent says on the selfsame 9th day of February, A. D. 2016, Movant announced an exception and appealed from the Ruling/Decision, reserving the right to file a petition for judicial review. Copies of Movant's Notice of Appointment of Counsel and Notice of Exception and Appeal are hereto attached in bulk and marked Respondent's Exhibit "R/1".
4. Further to count three (3) herein above, Respondent says the law is that: Any final order by an agency or a hearing officer or hearing officers of such

agency which is made to carry out a determination may, in the absence of any timely request for judicial review by the person against whom the order is directed, be enforced by a proceedings in the Circuit Court of the county in which the person resides against whom the order was issued, or in the county in which such person is regularly employed or has his regular place of business...." (emphasis ours). Executive Law, Rev. Code 12:82.9, Captioned Administrative Procedure Act, Approved May 11, 1972, and Published June 9, 1972.

5. Further to count four (4) herein above, Respondent says the key words in the law cited above are ",.....in the absence of any timely request for judicial review by the person against whom the order is directed.....". In the instant case, Movant announced a request for judicial review. Respondent could not, therefore, move to enforce the judgment until thirty (30) days after the announcement of the appeal; or where, as in the instant case, Movant took steps and engaged in conduct which amounted to a waiver of the appeal. Movant's failure to perfect its appeal, by timely filing a petition for judicial review, coupled with its subsequent engagement in conduct that was tantamount to waiver of the appeal, are the basis for Respondent's instant Petition for Enforcement of the Judgment.

6. Further to count five (5) herein above, Respondent says Movant, having failed and neglected to perfect its appeal by filing a petition for judicial review, elected to engage in conduct to circumvent the Ruling/Decision of the Complaints, Appeals and Review Panel by sending out Notices to three (3) companies, including Respondent, to engage in a restricted bidding process. Copy of Movant's letter to the three (3) companies, including Respondent, is hereto attached and marked Respondent's Exhibit "R/2".

7. Further to count six (6) herein above, Respondent says upon receipt of Movant's letter, dated Friday, March 4, 2016, Respondent immediately excepted to the decision as contained in the said letter and informed Movant that it would take advantage of the statue as made and provided. Copy of Respondent's letter, dated Monday, March 7, 2016 is hereto attached and marked Respondent's Exhibit "R/3".

8. Further to count seven (7) herein above, Respondent respectfully requests Court to take judicial notice of the records in the case file that on March 8, 2016, Respondent promptly filed the instant Petition for the Enforcement of the Ruling/Decision of the Complaints, Appeals and Review Panel.

9. Respondent says in the face of Movant's appeal from the Ruling/Decision of the Complaints, Appeals and Review Panel, Respondent had to initially and ordinarily wait for thirty (30) days to allow Movant to file its Petition for Judicial Review. Initially, the announcement of an appeal obviated any and all other provisions of the Statute relating to enforcement, until the elapse of the thirty (30) days provided by law. However, subsequently Movant engaged in conduct tantamount to the abandonment of the appeal which obviated the need to wait for thirty (30) days.

10. Further to count nine (9) herein above, Respondent says while waiting for thirty (30) days for Movant to perfect its appeal, on the 4th day of March, 2014, Movant took steps and engaged in conduct which clearly indicated it abandoned its appeal. Movant's letter of March 4, 2016, by which it gave notice of cancellation of the bidding process and further announced its decision to "utilize the Restricted Bidding procurement method", constituted a clear abandonment of the appeal process.

11. Further to count ten (10) herein above, Respondent says Legal Authority has held that estoppel by election is "the intentional exercise of a choice between inconsistent alternatives that bars the person making the choice from the benefits of the one not selected". Black's Law Dictionary, 9th edition.

12. Further to count eleven (11) herein above, Respondent says most recently the Supreme Court, applying the principle of estoppel in pais, held that the

Government of Liberia was precluded from relying on the existence of an arbitration clause in the contract in dispute, because it took the affirmative and unilateral action to terminate the Agreement which contained the arbitration clause. The Government was precluded from evoking the arbitration clause in the said contract because by the Government's action to cancel the Contract, without resorting to arbitration, it "acted in manner that was tantamount to a waiver of the arbitration provision in the agreement". Ministry of Lands, Mines and Energy et al. v. Liberty Gold and Diamond Company et al, Opinion of the Supreme Court of Liberia, October Term, A. D. 2014, decided January 16, 2014.

13. Further to count twelve (12) herein above, Respondent says when Movant gave notice of cancellation of the bidding process and further announced its decision to "utilize the Restricted Bidding procurement method", it waived the perfection of its appeal. Moreover, despite Respondent's Petition for Enforcement, which Movant maintains was hastily filed, what prevented Movant from perfecting its appeal within thirty (30) days? If it had perfected its appeal, this petition may have been moot.

14. Further to count thirteen (13) herein above, respondent respectfully requests Court to take judicial notice of movant's returns to the petition for Enforcement of the decision/ruling of the Complaints, Appeals and Review Panel of the Public Procurement and Concessions Commission, specifically count twenty (20). In the said count, movant discloses that it never ever intended to abide by the ruling/decision of the Panel; instead, in the face of the ruling/decision, it sought from the Public Procurement and Concessions Commission "(a) approval for cancellation of the bidding process; (b) authorization to conduct a new procurement process utilizing the Restricted Bidding Process; and (c) authorization to invite the three short listed companies, Enpetrol, petitioner Vrex and Lutech Engineering to conduct a new procurement process utilizing the restricted bidding process". Hereto attached and marked respondent's Exhibit "R/4" in bulk are movant's letter to the Public Procurement and Concessions Commission (PPCC), dated March 2, 2016; PPCC's response dated March 3, 2016; and Movant's letters to the three (3) companies, Enpetrol Enerji Taahsan TIC. Ltd. Stl, Lutech Engineering and Project Management Consultants FCZ JV and respondent, Vrex Remodeling, Inc.

15. Further to count fourteen (14) herein above, Respondent says that by Movant's letters dated March 2, 2014 and March 4, 2016, Movant clearly abandoned its appeal announced on February 9, 2016. Suffice it to say, Movant knew that neither the Public Procurement and Concessions Commission nor movant could cancel respondent's bid or the bidding process after respondent's bid had been accepted and/or after the Panel had delivered its ruling/decision. The Public Procurement and Concessions Act, 2010 states: "the decisions of a designated complaint and appeal panel of the Complaints, Appeals and Review Panel are final and binding upon all parties, subject only to review by a court of competent jurisdiction. Any party to the matter decided may bring an action under the Administrative Procedure Act to enforce the decision and this right includes the right of a prevailing party to bring an action against the losing party to enforce the decision notwithstanding any definitions in the Administrative Procedure Act" (emphasis ours). Public Procurement and Concessions Commission Act, 2010, Section 127 (7). PART IV, section 36 of the PPCC Act deals with rejection and/or cancellation of bids and clearly stipulates that "a bid may be rejected only in accordance with this Act and regulations made thereunder". It further says: "A procuring Entity may reject all bids at any time prior to the acceptance of a bid". Public Procurement and Concessions Commission Act, 2010, PART IV, SECTION 36 (1) (2) (3).

16. Further to count fifteen (15) herein above, Respondent says it did not announce an appeal from the decision contained in Movant's letter of March 4, 2016; rather, it only announced an exception. The Court is respectfully

requested to take judicial notice of the exception as contained in copy of Respondent's letter, dated Monday, March 7, 2016, hereto attached and marked Respondent's Exhibit "R/3".

17. Further to count sixteen (16) herein above, Respondent says it did not announce an appeal against the decision of Movant not to abide by the decision of the Panel; rather, it only excepted to the decision. Our Supreme Court has held that "every person is entitled to take full advantage of the law in defense of his right, but the law gives no protection to him who abuses his own right. Alhaji Momoh vs. His Hon. Henric Pearson et al., 35 LLR, text at page 355. Syllabus 4. Also, in that case, syllabus 5 provides that "he who is silent when he should speak assents" and syllabus 6 states that "the unreasonable delay by a party in seeking redress in a cause, amounts to laches, and a judgment resulting therefrom will not be disturbed, especially where the status quo cannot be restored".

18. Further to count seventeen (17) herein above, Respondent says it did not announce an appeal and could not have appealed to the Complaints, Appeals and Review Panel of the Public Procurement and Concessions Commission because the said Panel lost jurisdiction when it delivered its decision on February 4, 2016 and Movant announced an appeal from the said decision on February 9, 2016.

19. Respondent says our law states that "on announcement of an appeal by a defendant, no execution shall issue on a judgment against him nor shall any proceedings be taken for its enforcement until final judgment is rendered.....". Civil Procedure Law, 1 L. C. L. Rev., tit. 1, section 42.6 (1973).

20. Respondent says Movant is estopped from evoking the provision of the law which required Respondent to seek enforcement within any shorter period of thirty (30) days due to the announcement of Movant's appeal; except for the fact that Movant subsequently engaged in conduct that was tantamount to an abandonment of its appeal. Estoppel by election is "the intentional exercise of a choice between inconsistent alternatives that bars the person making the choice from the benefits of the one not selected". This same "principle operates to preclude one who prevents a thing from being done from availing himself to the nonperformance which he himself has occasioned. 28 AM JUR. 20. (2000).

21. Further to count twenty (20) herein above, Respondent respectfully requests Court to take judicial notice that Movant has made several inconsistent arguments, namely (1) that Respondent should have sought to enforce the Ruling/Decision of the Complaints, Appeals and Review Panel of the Public Procurement and Concessions Commission within ten (10) days of Movant's failure to implement the said Ruling/Decision (despite the fact that Movant announced an appeal); (2) Respondent should have waited for thirty (30) days to file the Petition for Enforcement (despite the fact that on March 4, 2016, Movant notified Respondent of the "cancellation of the bidding process" and further announced its decision to "utilize the Restricted Bidding procurement method"); (3) that Respondent announcement of exception against Movant's decision of March 4, 2016 was an appeal (despite the fact that Respondent only excepted to Movant's notice to cancel the bid and Movant's decision to conduct a restricted bidding process); and (4) that the said appeal should have lied with the Complaints, Appeals and Review Panel of the Public Procurement and Concessions Commission, (despite the fact that the Panel lost jurisdiction on February 4, 2009 when it rendered its Ruling/Decision and Movant on February 9, 2016).

22. Respondent denies all and singular the averments of fact and law contained in Movant's Amended Motion to Dismiss 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 Movant's Amended Motion to Dismiss; order the hearing of the Petition for Enforcement of the Ruling/Decision of the Complaints, Appeals and Review Panel of the Public Procurement and Concessions Commission; and grant unto Respondent such other and further relief as to this Court may seem just and equitable."

As required by our Civil Procedure Law, reaffirmed in countless number of cases decided by the Supreme Court, the trial judge proceeded, firstly, to entertain the motion to dismiss. *Baaklini and Metropolitan Bank, s.a.l. v. Henries, Younis et al.*, 39 LLR 303 (1999); *Ketter v. Jones et al.*, 41 LLR 81 (2002); *Firestone Plantations Company v. Hare*, 41 LLR 127 (2002); *Jawhary v. The Intestate Estates and heirs of Rosetta Watts Johnson and Rebecca Watts Pierre and J. N. Lewis et al.*, 42 LLR 474 (2005). Arguments having been made by the parties, the lower court, on April 7, 2016 handed down its ruling on the motion sustaining the contentions advanced by the appellees, granting the motion, and dismissing the petition. The judge set out the following as the rationale for his dismissal of the petition:

"COURT'S RULING ON THE AMENDED MOTION TO DISMISS

On March 4, 2016, the Complaints, Appeals & Review Panel (CARP), of the Public Procurement Concessions Commission (PPCC), rendered a ruling in a complaint filed by Vrex Remodeling Inc. (Vrex), respondent herein, against Liberia Petroleum Refining Company (LPRC) and Lutech Engineering and Project Management Consultants FZC, movants herein. The ruling states as follows:

"Accordingly, the Complaints, Appeals and Review Panel (CARP) annuls the decision of LPRC in favor of Lutech Engineering and Project Management Consultants FZC JV. The Liberian Petroleum Refining Company is hereby ordered to award the project to the second most responsive evaluated bidder if the bidder meets all the LPRC's technical requirements and furnish a report to all parties not later than seven (7) days as of the receipt of this Ruling. AND IT IS HEREBY SO ORDERED."

PPCC served Movant LPRC with the ruling on February 9, 2016. Thus, Movant LPRC had seven (7) days commencing from February 9, 2016, that is to say, by February 16, 2016, within which to comply with the order. Movant LPRC excepted and announced an appeal.

Movant LPRC did not comply with the Order by February 16, 2016. Hence non-compliance with the Order occurred on February 17, 2016.

Respondent Vrex did not file its petition for enforcement by February 27, 2016 because, according to Respondent Vrex: (a) Respondent Vrex could not file its petition for enforcement until the thirty (30) days for movant to file its petition for judicial review had elapsed; and (b) movant had informed Respondent Vrex that consequent on the impossibility of movant implementing the Order owing to the fact that two of the three bidders, Respondent Vrex and Enpetrol, did not meet Movant LPRC's technical requirements, PPCC had approved of the cancellation of the previously held procurement process and had authorized a restricted bidding procurement method with the three bidders — Respondent Vrex, Enpetrol and Lutech Engineering and Project Management Consultants FZC JV invited to participate, to which Respondent Vrex had excepted thereby preserving its rights.

The thirty (30) days for movant to file its petition for judicial review elapsed on March 10, 2016: Respondent Vrex filed its petition for enforcement on March 8, 2016.

Movant filed a motion to dismiss, withdrew its motion and refilled an amended motion to dismiss on ground that Respondent Vrex's petition for enforcement as filed on March 8, 2016, is time barred and, as such, this court lacks jurisdiction to hear and determine Respondent Vrex's petition for enforcement.

Respondent Vrex filed a resistance to movant's motion to dismiss, withdrew its resistance and refilled an amended resistance. In the mind of the court, the motions, resistance and oral arguments present a single substantive legal question for the determination by this court. Whether, under the particular facts and circumstances of this case, the petition for enforcement is properly before this court.

Section 82.9 of the Administrative Procedure Act, Enforcement of Agency Order states in relevant parts that "... Any final order by an agency... may, in the absence of any timely request for judicial review by the person against whom the order is directed, be enforced by a proceeding in the circuit court of the county in which the person resides against whom the order was issued.... A proceeding to enforce such an order shall be commenced by the filing of a petition for enforcement in the circuit court. Provided, however, that the petition to enforce the order shall be filed within (10) days after non-compliance with the order has occurred. Liberian Codes Reserved, Vol. III, Administrative Procedure Act, Section 82.9, page 34.

Section 82.9 therefore mandatorily requires that a petition to enforce an order of an administrative agency must be filed within ten (10) days after non-compliance with the order has occurred.

The non-compliance by Movant LPRC having occurred on February 17, 2016, Respondent Vrex was required by Section 89.2 to file its petition for enforcement not later than February 27, 2016.

According to Respondent Vrex, since movant excepted to the ruling of CARP and gave notice that movant would file a petition for judicial review, Respondent Vrex had no option other than to wait for thirty (30) days in order for movant to file its petition for judicial review, which thirty (30) days period would have elapsed on March 10, 2016.

The records confirm, however, that Respondent Vrex did not wait for the thirty (30) days to elapse. Instead the records show that Respondent Vrex filed its petition for enforcement on March 8, 2016, two (2) days prior to the expiration of the thirty day (30) days.

Further, according to Respondent Vrex, the approved cancellation of the previously held procurement process and the authorization to conduct a restricted bidding procurement method with three companies — Respondent Vrex, Enpetrol and Lutech Engineering and Project Management Consultants FZC JV--- invited to participate, constituted abandonment of movant's announcement of appeal, thereby obviating the necessity to wait for the expiration of the thirty (30) days period.

The court says that the said contention by Respondent Vrex is not convincing considering that Respondent Vrex having to wait an additional two (2) days for the thirty (30) days to expire and thereafter filling its petition for enforcement would not have and did not prejudice any substantial rights of Respondent Vrex.

Additionally, the court notes that Respondent Vrex's filling of its petition for enforcement on March 8, 2016 is inconsistent with Respondent Vrex's admission that it could not move to enforce the ruling within thirty (30) days after movant's announcement of appeal. The court says that Respondent Vrex's inconsistency and the resultant filling of its petition for enforcement on March 8, 2016, two (2) days prior to the expiration of the thirty (30) days

legally negated the conditional phrase "in the absence of any timely request for judicial review..." and review the phrase "... the petition to enforce the order shall be filed within ten (10) days after non-compliance with the order has occurred." Consequently, by Respondent Vrex having filed its petition for enforcement prior to the expiration of the period of thirty (30) days allowed by law for the movant to perfect its appeal before this court, the petition for enforcement is improperly before this Court; and as such, the court lacks jurisdiction to hear and determine Respondent Vrex's petition for enforcement.

WHEREFORE, and in view of the foregoing facts and circumstances, movant's amended motion to dismiss be and is hereby granted and the amended resistance denied. Costs are ruled against the Respondent Vrex. AND IT IS HEREBY SO ORDERED."

The appellant, being seriously of the view that the trial judge committed reversible error in granting the motion to dismiss and in dismissing the petition for enforcement of the ruling/decision of the Complaints, Appeals and Review Panel, noted exceptions to the ruling and announced an appeal therefrom. The exceptions having been noted by the court and the appeal granted, the appellant, as required by and within the time allowed by Section 51.7 of the Civil Procedure Law, filed a nine (9) count bill of exceptions. In order the essence of the complaint against the ruling of the trial judge is fully grasp we quote the bill of exceptions verbatim in its entirety, as follows:

"PETITIONER/RESPONDENT/APPELLANT'S BILL OF EXCEPTIONS

Vrex Remodeling, Inc., by and thru its Attorney-In-Fact, Henry Q. Taylor, of the City of Monrovia, Liberia, petitioner/respondent/appellant in the above-entitled proceedings, most respectfully informs Your Honour that on the 7th day of April, A. D. 2016, Your Honour rendered final judgment/ruling against appellant; from which final judgment/ruling of Your Honour, appellant excepted and announced an appeal to the Honourable Supreme Court of the Republic of Liberia, sitting in its October Term, A. D. 2016, and, therefore, hereby submits this bill of exceptions for Your Honour's approval, as follows, to wit:

1. Appellant says and avers that Your Honour erred, when in your final judgment/ruling on the motion to dismiss, you inadvertently failed and refused to apply the principle of estoppel by election, despite the fact that appellant had argued same before Your Honour and respectfully urged Your Honour to consider said argument in your final judgment/ruling. Estoppel by election is defined as "the intentional exercise of a choice between inconsistent alternatives that bars the person making the choice from the benefits of the one not selected". Black's Law Dictionary, 8th Edition, page 590. Therefore, petitioner/respondent/appellant excepted.
2. Appellant says and avers that Your Honour erred when, in your final judgment/ruling on the motion to dismiss, you inadvertently failed and refused to accept the fact that though movant/appellee announced an appeal from the ruling/decision of the Complaints, Appeals and Review Panel of the Public Procurement and Concessions Commission, which ruling/decision ordered movant/appellee to "award the project to the second most responsive evaluated bidder", movant/appellee proceeded to cancel the bidding process for the project and to invite companies to engage in a restricted bidding

process for the same Project. This, respondent says, was tantamount to movant/appellee abandoning its appeal. Therefore, petitioner/respondent/appellant excepted.

3. Appellant says and avers that Your Honour erred when, in your final judgment/ruling on the motion to dismiss, you inadvertently failed and refused to recognize the fact that movant/appellee acted in abrogation, negation and annulment of its announced appeal when, instead of perfecting its appeal, it engaged in actions and conduct which clearly established an abandonment of its appeal. Therefore, petitioner/respondent/appellant excepted.

4. Appellant says and avers that Your Honour erred when, in your final judgment/ruling on the motion to dismiss, you inadvertently held that respondent/appellant should have waited for thirty (30) days before filing its petition for enforcement of the decision/ruling of the Complaints, Appeals and Review Panel of the Public Procurement and Commission, despite the fact that movant/appellee had taken clear steps in abandonment of its appeal and further steps in violation and infringement of appellant's rights. Appellant says in the vigorous and vigilant defense of its rights, it filed the petition for enforcement of the ruling/decision of the Complaints, Appeals and Review Panel. Our Supreme Court has held that "the unreasonable delay by a party in seeking redress in a cause amounts to laches, and a judgment resulting therefrom will not be disturbed, especially where the status quo cannot be restored". This Court has further held that "he who is silent when he should speak assents." Also, that "every person is entitled to take full advantage of the law in defense of his right, but the law gives no protection to him who abuses his own right". *Alhaji Momoh vs. His Hon Henric Pearson et al.*, 35 LLR, text at page 355, syllabus 4. Therefore, petitioner/respondent/appellant excepted.

5. Appellant says and avers that Your Honour erred when, in your final judgment/ruling, you inadvertently held that respondent/appellant should have waited for thirty (30) days before filing its petition for enforcement of the decision/ruling of the Complaints, Appeals and Review Panel of the Public Procurement and Concessions Commission, though appellant's action in filing the petition for enforcement was occasioned by the conduct of the appellee. Appellant could not wait for thirty (30) days because appellant's rights were being violated and the Re-bid, as embarked upon by appellee, if allowed to proceed, would have had far reaching consequences. The doctrine of estoppel and waiver "operates to preclude one who prevents a thing from being done from availing himself to the nonperformance which he himself has occasioned. 28 AM. JUR. 2D (2000). Therefore, petitioner/respondent/appellant excepted.

6. Appellant says and avers that Your Honour erred when, in your final judgment/ruling, you inadvertently held that appellant should have waited for thirty (30) days before filing its petition, though its rights were being violated and abused. Appellant says that while the law provides for appellee to perfect its appeal within thirty (30) day, appellee's subsequent conduct to cancel the bid and declare a re-bid was inconsistent with the announcement of its appeal; hence, a repudiation of its appeal. This Supreme Court has held that "the conscience of the court is repelled by the assertion of rights inconsistent with a litigant's past conduct". Therefore, petitioner/respondent/appellant excepted.

6. Appellant says and avers that Your Honour erred, when in your Final judgment/ruling on the motion to dismiss, you inadvertently failed and refused to take judicial notice of appellee/movant's own argument and admission that appellant/respondent should have filed its petition for the enforcement of the decision/ruling of the Complaints, Appeals and Review Panel of the Public Procurement and Concessions Commission within ten (10) days, a clear indication that appellee/movant disavowed and repudiated its own announced appeal. Therefore, petitioner/respondent/appellant excepted.

7. Appellant says and avers that Your Honour erred when, in your final judgment/ruling on the motion to dismiss, you inadvertently failed and refused to take judicial notice of appellee/movant's action in announcing an appeal on the 9th day of February, A. D. 2016, but prior to the expiration of the thirty (30) day period allotted to perfect its appeal, elected to cancel the bid on the 4th day of March, A. D. 2016, and further, on the very next day, March 7, 2016, send out invitations for the submission of new bids. Thus appellant/respondent had to act in defense of its rights or suffer lashes. Therefore, petitioner/respondent/appellant excepted.

8. Appellant says and avers that Your Honour erred when, in your final judgment/ruling on the motion to dismiss, you inadvertently failed and refused to take judicial notice of the several averments contained in appellee/movant's returns to the effect: (1) that appellee/movant never ever intended to implement the final decision/ruling of the Complaints, Appeals and Review Panel of the Public Procurement and Concessions Commission; (2) that appellee/movant argued that the decision was not enforceable; (3) that instead of appellee/movant reverting to the Complaints, Appeals and Review Panel of the Public Procurement and Concessions Commission, the judicial arm of the Public Procurement and Concessions Commission, with its argument by way of motion to modify final ruling/decision, appellee/movant elected to request approval from the Executor Director of the Public Procurement and Concessions Commission, though the Complaints, Appeals and Review Panel is an independent body and its decisions are reviewable only by the Civil Law Court, Sixth Judicial Circuit, Montserrado County, Republic of Liberia. Therefore, petitioner/respondent/appellant excepted.

9. Appellant says and avers that Your Honour erred when, in your final judgment/ruling on the motion to dismiss, you inadvertently failed and refused to take judicial notice of the fact that even up to and including the day of your final judgment/ruling, appellee/respondent had not perfected its appeal because it never intended to perfect its appeal in the first place. Appellant submits that aside from its action for enforcement of the final ruling/decision of the Complaints, Appeals and Review Panel, appellee could have perfected its appeal if it wanted to; but the facts are clear that appellee never ever intended to perfect its appeal. Therefore, petitioner/respondent/appellant excepted.

WHEREFORE, and in view of the foregoing, appellant hereby tenders this as its bill of exceptions for Your Honour's approval so that the adverse final judgement/ruling of Your Honour made will be reviewed by the Honourable Supreme Court."

We should note from the foregoing that although the bill of exceptions present a multiple of contentions, its central theme centers around one prime issue, that is, whether the trial court judge committed a reversible error in granting the motion to dismiss the petition for enforcement of the CARP ruling and also thereby dismissing the petitioner's petition. Of course, associated with this prime issue are the following ancillary questions: (a) Did the appellant file its petition for enforcement of the ruling of CARP beyond or within the time allowed by the Administrative Procedure Act? (b) Did the appeal communicated to CARP informing that Body that Co-appellee LPRC excepted to its ruling and therefore was taking an appeal therefrom by the filing of a petition for judicial

review toll the ten day time period allowed by the Administrative Procedure Act? In other words, did the period allowed for filing a petition for enforcement of the CARP ruling commence as of the date of the ruling or as of the date Co-appellee LPRC determined to abandon the appeal and instead comply with the ruling of CARP? (c) Were the actions subsequently pursued by Co-appellee LPRC after its notification of an appeal in compliance with the CARP ruling such that the ruling can be deemed to have been carried out, thereby precluding the trial court from entertaining the petition for enforcement? While the basic thrust of the trial court's ruling/judgment was that the petition for enforcement of CARP's ruling was without the time allowed by the Administrative Procedure Act, we shall also deal with the ancillary issues stated herein and others as they filter into whether the trial court's action constituted reversible error.

However, before we proceed to address the issues referenced above, it is important that we make reference to other procedural embarkation that followed the filing of the bill of exceptions. In that connection, this Court notes that while the appeal was taken to the October Term, 2016, of this Court, the appellees, fearing that health, safety and security issues with serious negative implications could develop in the community where the degenerated facility was located, caused by the passage of time, filed before this Court a motion for advancement of the case on the Supreme Court's docket and that the appeal be accorded an urgent hearing at the March Term, 2016 of this Court. The motion was resisted by the appellant who advanced the principal contentions that (a) as the appeal was taken to the October Term of the Court, it should be heard at the October Term of the Court; (b) it did not see a national security or health threat that warranted advancing the case on the docket; and (c) the motion for advancement of the case was filed by the Ministry of Justice which was not counsel to the proceedings in the lower court and regarding which no notice of additional counsel had been filed by the appellees as is prescribed by law.

Given the allegations of health, safety and security to the community, as set forth in the motion for advancement of the case on the docket of the Supreme Court, this Court determined to hear and pass upon the said motion since there was not a call for the Court to convene a special session as the Court

was still in session in the March 2016 session. Thus, upon a hearing duly had on August 8, 2016, this Court, on the same day and date, decided that as sufficient basis, recognized under the law as legitimate, was presented for the advancement of the case on the docket and for an assignment of the appeal for hearing at the March Term 2016, which was still in session, the motion should be granted and the case ordered assigned for hearing on August 10, 2016. As regards the issue of the Ministry of Justice being additional counsel, the Court informed the parties that under Chapter 22 of the Executive Law, Title 12, Liberian Code of Laws Revised, the Ministry of Justice is statutorily vested with the authority to represent the Government of Liberia and all of its agencies and parastatals in all matters, whether as plaintiff or as defendants, and whether in the lower courts or at the level of the Supreme Court. Hence, the fact that a parastatal of the Government may have chosen to engage private counsel to represent it in any particular case, such engagement did not preclude the Government's statutory counsel, obligated by law to represent the Government and its interest, from joining the proceedings at any stage of the proceedings. This Court is therefore of the view that the provision of the Civil Procedure Law which requires that notice be given to the adversary of any additional counsel being engaged by a party to a judicial proceeding was not applicable to the Ministry of Justice representing the Government or its parastatals, especially if or where the Ministry determines that the Government's interest is best protected by its involvement in or association with the proceedings.

That issue having thus been cleared up, the parties were each duly accorded the opportunity to submit briefs in support of their various positions and to present oral arguments before the Court confirming and reinforcing the contentions asserted by them in the written instruments, which they did with dignity, eloquence and to the satisfaction of the Court.

In seeking to decipher the issues presented for our determination, we take particular recourse to the summary of three major instruments: (a) the petition for enforcement and other ancillary documents filed before the trial court by the petitioner; (b) the motion to dismiss the petition for enforcement and the returns to the petition; (c) the trial judge's ruling and final judgment on

the motion to dismiss the petition for enforcement; and (d) the bill of exceptions filed by the appellant.

The petition for enforcement of the ruling/decision of the Complaints, Appeals and Review Panel basically asserted that although Co-appellee LPRC had communicated with the Complaints, Appeals and Review Panel informing that Body that it was taking an appeal from that Body's ruling/decision, handed down on February 5, 2016, and that it would accordingly, in furtherance of the appeal, be filing with the Circuit Court for the Sixth Judicial Circuit, Montserrado County, a petition for judicial review, no such action was taken, as required by law, to perfect the said appeal. Hence, the appellant said, that by the Co-appellee's pursuit of a different course, i.e. the cancellation of the original bid process and the institution of a new restricted bid process even as its appeal communicated to CARP was still awaiting the expiration of the thirty day period allowed by law, the appellees had effectively abandoned the appeal, and hence provided justification for the petition for enforcement of the ruling of the Complaints, Appeals and Review Panel. It rejected the contention of the appellees that the filing of the petition for enforcement of the ruling of CARP was beyond the time allowed by law for the filing of such petition, noting that the action being taken by the appellees was only notified to it [appellant] between one and four days prior to the filing of the petition for enforcement.

The appellees, on the other hand, asserted that under Section 82.9 of the Administrative Procedure Act, which is Chapter 82 of the Executive Law, Title 12, Liberian Codes of Laws Revised, the appellant should have filed its petition for enforcement of the ruling of Complaints, Appeals and Review Panel not later than ten (10) days following the expiration of the date of non-compliance with the said ruling, rather than on the eighteenth (18th) day after the date of non-compliance. They argued that CARP entered its ruling on February 4, 2016; that the ruling was received by Co-appellees LPRC on February 9, 2016; that the ruling declared the award of the bid contract to Co-appellee Lutech Engineering and Project management Consultant FZC JV annulled and ordered that the second most responsive evaluated bidder meeting the technical requirements of the LPRC be awarded the contract; that a report on compliance with the

mandate of the ruling be submitted to the parties within seven (7) days of the date of the ruling or the date of receipt of the ruling; that as the seven day compliance period expired on February 16, 2016, the day thereafter, being February 17, 2016 had rendered Co-appellee LPRC in non-compliance with the ruling; that the February 17, 2016 date triggered the beginning of the ten-day enforcement period allowed by law and within which the appellant should have filed the petition for enforcement of the CARP ruling; that the ten-day period, counting from February 17, 2016, lapsed February 27, 2016; that the failure of the appellant to file the petition for enforcement on or before February 27, 2016 rendered any subsequent filing by the appellant time barred by the statute of limitations, and thereby deprived the trial court of the requisite jurisdiction to entertain the petition; and that as the trial court was without the jurisdiction to entertain the petition, the trial judge was not in error in dismissing the petition.

The appellant countered the appellees' theory or rationale for the trial court's action in dismissing the petition for enforcement by asserting that as Co-appellee LPRC had appealed the decision of CARP and as the law grants a period of thirty days or one month for the perfection of the appeal, the appellant was precluded from filing a petition for enforcement of the decision of CARP while the appeal period had not expired. The appellant noted that since Co-appellee LPRC received the ruling of CARP on February 9, 2016, a calculation of the thirty-day appeal period placed the last day for the completion of the appeal at March 11, 2016; that it could not have filed a petition for the enforcement of the decision of CARP while the appeal was still pending; that notification by the appellant that it had abandoned the appeal was not given until March 4, 2016 when the Co-appellee informed the appellant that it had secured from Co-appellee PPCC approval to cancel the original bid process and institute a new bid process, using the restricted bidding method, and later on March 7, 2016 when Co-appellee LPRC informed the appellant that it had been selected to participate in the new bidding process; and that it was only upon the said notification that the appellant became aware that as the appeal taken by Co-appellee LPRC had been abandoned and hence, on March 8, 2016, one day after

the March 7, 2016 notification from Co-appellee LPRC, that it sought the intervention of the court by the filing of the petition for enforcement of the ruling of CARP. Therefore, the appellant concluded, it cannot be said to have filed the petition without the time allowed by Section 82.9 of the Administrative Procedure Act.

As noted before, the trial court judge disagreed with the contentions advanced by the appellant, subscribed to the position of the appellees, granted the motion to dismiss the petition for enforcement, and accordingly ordered the dismissal of the petition. Hence, the question is, did the trial court act in error in granting the motion and dismissing the petition? In attempting to arrive at an answer to the query, let us take recourse to the relevant governing laws. The first is the Public Procurement and Concession Act, 2010. That Act provides at Section 127, captioned "Decisions on Complaints and Appeals", at sub-section (7), that: "The decision of a designated complaint and appeal panel of the Complaints, Appeals and Review Panel are final and binding upon all parties, subject only to review by a court of competent jurisdiction. Any party to the matter decided may bring an action under the Administrative Procedure Act to enforce the decision and this right includes the right of a prevailing party to bring an action against the losing party to enforce the decision notwithstanding any definitions in the Administrative Procedure Act." While this Act does not specifically stipulate the process and the procedure which the appeal from the Complaints, Appeals and Review Panel is to take, it does state that such process shall be as provided in the Administrative Procedure Act. Hence, we also take recourse to the Administrative Procedure Act for guidance. This is what the Administrative Procedure Act, in reiterating the right of appeal from the decision or ruling of an administrative agency, provides, firstly at Section 82.8:

82.8. Judicial review of contested matters.

1. Right to review. A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final determination in a contested matter is entitled to judicial review under this chapter. For contested matters in which the right to review provided by this section affords an adequate remedy, no other means of review, redress or relief shall be available. A preliminary procedural or intermediate agency action or ruling is immediately reviewable if review of the final agency determination would not provide an adequate remedy.

2. *Instituting proceedings for review.* Unless otherwise expressly provided by law, proceedings for review shall be instituted by filing a petition requesting in the circuit court within 30 days after the final determination of the agency or, if a rehearing is requested, within 30 days after the determination thereon. Copies of the petition shall be served upon the agency and all parties of record.
3. *Stay.* The filing of the petition does not itself stay enforcement of the agency determination. The agency may grant, or the reviewing court may order, a stay upon appropriate terms.”

Thus, under the quoted section of the Administrative Procedure Act, Co-appellee LPRC was vested with the right to appeal the final ruling/decision of the Complaints, Appeals and Review Panel of the Public Procurement and Concession Commission. The co-appellee chose to exercise that right and hence, through its legal counsel, informed the CARP that it was availing itself of the right and that in accordance with the quoted statute, it would within the thirty-day period allowed by the law, file a petition for judicial review with the Circuit Court for the Sixth Judicial Circuit. The records reveal, however, that Co-appellee LPRC chose not to pursue the appeal but to instead comply with the ruling made by CARP. In that regard, by letter dated March 2, 2016, it informed the PPCC of the ruling made by CARP and noted that as per the said ruling it had examined the submissions made by the two final bidders to determine if they had met the technical requirements stated in the CARP ruling as a condition for the selection of any one of them. The examination, Co-appellee LPRC said, showed that none of the final bidders met the technical requirements and hence that it needed the approval of the PPC to cancel the original bid process and embark on a new restricted bid process. That approval was granted by the PPCC on March 3, 2016. On March 4, 2016, the information was communicated to the appellant, and on March 7, 2016, by a similar communication the appellant was informed that it had been selected, along with Co-appellee Lutech Engineering and Project Management Consultant FCZ JV and Enpetrol, to participate in the new restricted bid process. It was these acts that precipitated the filing on March 8, 2016 of the petition for enforcement, thirty-two days after the ruling of CARP and nineteen (19) days after the appellees said it was in non-compliance with the ruling of CARP.

In that regard, Section 89.2 of the Administrative Procedure Act states:

§ 82.9. Enforcement of Agency order.

1. Instituting proceedings; powers of court. Any final order by an agency or a hearing officer or hearing officers of such agency which is made to carry out a determination may, in the absence of any timely request for judicial review by the person against whom the order is directed, be enforced by a proceeding in the Circuit Court of the county in which the person resides against whom the order was issued, or in the county in which such person is regularly employed or has his regular place of business. A proceeding to enforce such an order shall be commenced when the head of the agency or authorized officer thereof files a petition for enforcement in the circuit court together with the certified record in the matter, or such portion thereof as the parties may stipulate.... The petition to enforce the order shall be filed within ten days after non-compliance with the order has occurred."

We believe that the trial judge was in error in his interpretation and application of the quoted section. We agree with the judge and with the appellees that a petition for the enforcement of a final ruling or decision of an administrative agency should be filed within ten (10) day of the date of non-compliance by a party to the proceedings. We agree also that ordinarily the filing of the petition for enforcement of the final ruling of an administrative agency three days after the time allowed by the law renders the petition time barred and accordingly renders the court without the jurisdiction to delve into the merits of the petition. But we acknowledge similarly that the records indicate that the ruling of the Complaints, Appeals and Review Panel was handed down on February 4, 2016; that the ruling was received by Co-appellee LPRC on February 9, 2016; that the ruling required compliance and a report of compliance within seven (7) days of the date of the ruling or of the date of receipt of the ruling; that compliance therefore should have been completed by February 16, 2016; that the petition for enforcement should ordinarily have been filed between February 17, 2016 and February 27, 2016; and that any filing after February 27, 2016 rendered the filing late and time barred under the law. But we disagree with the appellees and the trial judge that although the facts and circumstances of the instant case show that the principal Co-appellee, affected by the ruling of the Complaints, Appeals and Review Panel took an appeal from the ruling, the appellant is still bound to seek enforcement of the ruling within ten days of the expiration of the date stated in the ruling within

which compliance is mandated. We note that given the co-appellee taken an appeal from the ruling of CARP, the ten day period for filing of the petition for enforcement of the final ruling did not begin to run from the date of the final ruling of ACRP but rather from the date after the expiration of the thirty-day period provided by the Administrative Procedure Act. Executive Law, Rev. Code 12:82.9.

This Court subscribes to that position. The position of both the statute referenced herein and the Supreme Court conform to the dictate of the Constitution which pronounces the right of appeal as inviolable. LIB. CONST, ART. 20(b) (1986); *Woewiyu and Harvey v. The international Trust Company of Liberia*, 38 LLR 568 (1998); *National iron Ore Company et al. v. Yancy et al.*, 39 LLR 126 (1998); *Majority Membership of the United Church of the Lord, Inc. v. Minority Membership of the United Church of the Lord, Inc.*, 39 LLR 692 (1999). We therefore agree that to hold that even though an appeal is announced and the party appealing has a period of thirty days under the law within which to complete the appeal, the adverse party must still seek enforcement of the administrative ruling when the appeal period has not expired is to render the entire appeal process meaningless and defeat the rights guaranteed under the nation's most sacred document and the core constitutional decisions of this Court. We do not believe that this was ever the intention of the framers of the Constitution or of the Legislature when it enacted the Public Procurement and Concession Act, 2010, or the Administrative Procedure Act. And we are not prepared to pursue such a course. Hence, we reject the contention advanced by the appellees and hold that the trial judge was in error in ruling that the appellant should have filed the petition for enforcement of the final ruling of the Complaints, Appeals and Review Panel on or before February 27, 2016. We hold further that as contemplated by the Legislature and as was the intention of that Body, the filing of the petition was to have been made within ten days as of the expiration of the appeal period. This means that the appellant should have filed its petition for enforcement between the 31st and the 41st day from the date of receipt by the appellees of the ruling of the Complaints, Appeals and Review Panel.

Thus, the filing on March 8, 2016 of the petition for enforcement was premature and therefore not legally before the court, and entertaining it would not only have been in clear violation of the law but would have deprived the appellees the period granted them by statute to complete the appeal taken by them. The justification advanced for its premature filing of the petition finds no legal basis or support in law; hence, we reject the said contention advocated by the appellant. Accordingly, we hold that as the petition, having been filed before the expiration of the statutory period allowed for perfection of the appeal, and was premature, and not validly before the court, same was fit for dismissal. Hence, we herewith order the dismissal of the petition.

In holding that the petition was improperly before the lower court and that it is therefore dismissed, the case reverts to the ruling of the Complaints, Appeals and Review Panel. From our reading of the ruling of CARP, we have formed the opinion that same is grossly misconstrued by the appellant. We address this element of the case at two levels. Firstly, the appellant misconstrues the ruling as automatically vesting in the second most responsive evaluated bidder the right to the bid contract. A careful examination of the ruling, and of the words used by CARP in the said ruling, leaves no doubt that the ruling does not automatically vest in the second most responsive evaluated bidder the right to the bid contract. To the contrary, the ruling clearly sets a condition for the award of the bid contract to whoever is determined to be the second most responsive evaluated bidder. The ruling states unambiguously that in order to be awarded the bid contract, the second most responsive bidder must meet the technical requirements of the LPRC as stated in the bid documents. Here is how the ruling worded the condition for award of the bid: “Accordingly, the Complaints, Appeals and Review Panel (CARP) annuls the decision of LPRC in favor of Lutech Engineer and Project Management Consultants FZC JV. The Liberia Petroleum Refining Company is hereby ordered to award the project to the second most responsive evaluated bidder if the bidder meets all the LPRC's technical requirements, and furnish a report to all parties not later than seven (7) days as of the receipt of this Ruling.” [Emphasis ours]

The unmistakable and explicit language of the ruling leaves no room for doubt or second guessing. It unequivocally states that in order to be awarded the bid contract, the second most responsive evaluated bidder must meet the “LPRC’s technical requirement”. Thus, even if one accepted the theory advanced by the appellant that it should have been positioned as the second most responsive evaluated bidder, by virtue of the addition of fifteen (15) point over the nineteen (19) points which it had achieved on the technical scale since, of the two remaining bidders it had the lower financial estimate, it still would not have been entitled to the bid award under the criteria set in the CARP ruling. The fifteen (15) points added to the nineteen (19) points which it had accumulated brought the total points scored on the technical requirements to thirty-four (34), which still left it 16 points short of the minimum technical requirement of fifty (50) points, being the minimum points stipulated in the Bid Evaluation Documents which it was required to achieve in order to be awarded the bid contract. Thus, neither the appellant nor Enpetrol qualified or met the standard set by the CARP ruling to be entitled to the award of the bid contract. The obvious conclusion then is that Co-appellee LPRC was not in error in determining that none of the two remaining bidders [the appellant and Enpetrol] had met the technical requirement for award of the contract. This meant that there was no basis, legal or factual, for the appellant’s challenge of the determination made by Co-appellee LPRC, and that, as in the several other instances alluded to hereinbefore, the petition for enforcement of the ruling/ decision of CARP was a fit subject for dismissal and that its dismissal was therefore no error, although a different ground was relied on by the trial court for the dismissal. This Court has said in several Opinions that where an action can be dismissed on several grounds, the fact that a different ground is used in dismissing the action is not a legal basis for reversing the dismissal of the action.

Given what we have said above, and having concluded that Co-appellee LPRC was not in a state of non-compliance with the ruling of CARP, it would ordinarily be enough for us to just remand the case and order that Co-appellee LPRC proceeds to commence and conclude the new restricted bid process, approved by the PPCC. But such directive from this Court would be predicated

upon the assumption that the ruling or decision of CARP was correct, in conformity with the law, and in accord with the facts and the evidence adduced from the bidding process and the proceedings before CARP. That is not what obtained in the instant case, where the ruling was clearly against the evidence and the documents that were before CARP. In such cases, the courts are not bound to accept the erroneous facts and misapplication of the law made by the administrative agency. This is what the Administrative Procedure Law says in respect of the decisions of administrative agencies:

"7. Decision by the court. The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or the decisions are:

- (a) In violation of constitutional or statutory provisions;
- (b) In excess of the statutory authority of the agency;
- (c) Made upon unlawful procedure;
- (d) Affected by other error of law;
- (e) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Executive Law, Rev. Code 12:82.8(7).

The quoted provision recognize that where there exist any of the elements stated therein, the courts have the authority and are authorized to probe into the decision of an administrative agency to ensure that the finding of facts and the conclusions and rulings made as a consequence thereof, comport with both the evidence and the law, and do not prejudice the rights of parties, impose injustice upon them, are in harmony with the law [constitutional, statutory and case], and are not arbitrary or capricious. We believe that the framers of our laws were quite aware of the abuse that could ensue unless there was an element of constraint placed on the openness of the principle. We believe that it was with this forethought that the framers of our laws created this delicate balance that ensures recognition of the attributes and conclusiveness of the fact findings process of administrative agencies but at the same time ensures that an avenue will be available to check abuses meted out in with that administrative process.

In speaking to that statutory provision, the Supreme Court has said similarly that while ordinarily courts are without the authority and therefore

should not disturb the findings and conclusions of administrative agencies or substitute their own view for that of the administrative, the Court recognizes and is cognizant of exceptions to the principle, as couched in the statutory laws of Liberia, but also as part of its constitutional mandate, stated in both Liberia's old and new Constitutions, to ensure that rights are protected and that the principle does not become an avenue for abuse of the law, the perpetration of injustice in the administrative process, or the deprivation of guaranteed rights. *Vijayaraman and Williams v. The management of Xoanon Liberia (Ltd.)*, 42 LLR 41 (2004); *The Liberia Institute of Certified Public Accountants of Liberia v. The Ministry of Finance et al.*, 38 LLR 657 (1998); *The Management of the Liberian Opportunities Industrialization Center, Inc. (LOIC) v. Williams and Zinnah*, 42 LLR 461 (2005).

Thus, we take cognizant of the manifold decisions of this Court that while there should be adherence by the courts to the facts found and conclusions reached by administrative agencies, and the rulings made by those agencies growing out of the fact-finding process, this must never serve as the basis for the court abdicating their legal duties and responsibilities, constitutional and statutory, in protecting the laws of the land and the rights granted under those laws to the people of this nation; that the courts must balance the principle with the need for the protection of the law and rights guaranteed under the law, and that while they should continue to adhere to the basic principle that it will not interfere with the findings and conclusions of administrative agencies, that adherence must be premised on the agencies complying with the tenets of the law, not abusing the process, not distorting the facts and the evidence, making rulings on the strength of the evidence adduced before them rather than on arbitrariness or selfish considerations, ensuing that the rulings conform to the tenets of justice and not the abusive of the justice process, and that the rulings are free of fraud, deception and misrepresentation, and that they embed the cognitive values enshrined in the law. Here is how the Supreme Court has expressed this view in some of its Opinions. In the case, *The Management of the Liberian Opportunities Industrialization Center, Inc. (LOIC) v. Williams and Zinnah*, this Court said: "If upon a review, the administrative findings,

inferences, conclusions or decisions are found to be in violation of the law or clearly erroneous, in view of the substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion, then the court is not duty bound to enforce such findings but to instead reverse or modify same." *Id.*, 42 LLR 461 (2005).

So, while this Court will continue to honor, respect and give adherence to the principle of not interfering with the facts found by and administrative agency, it will also keep its focus on engaging the exceptions to the principle where warranted and where resorting to the exceptions will enable guidance and protection of the tenets of justice and preservation of the values of our democratic sphere. Thus, we are bound in every instance, and as a matter of law, to ensure that the findings, conclusions and rulings made by an administrative agency are not violative of the law or are not so adverse to the facts and the evidence in the case that injustice would be inflicted by our not reviewing the records and ensuring that the administrative agency has acted in consonance with the facts, the evidence and the law. *The Management of Liberia Katopas Fishing Company v. Meyers and Orellana*, 37 LLR 850 (1995). In that case, the Supreme Court said:

"A court reviewing an administrative determination will not disturb the finding of facts by the agency because the finding and determination of fact questions is conclusively within the province of the administrative agency and therefore such finding is final and binding except under certain situations."

The Court then added:

"Where there is evidence of fraud or bias, or that the administrative did not act within its jurisdiction and authority, or that the findings were not made in compliance with law, or that they were not the result of fair determination, the findings of the administrative agency may be set aside." *Id.*

In the instant case, CARP had ruled annulling the determination made by Co-appellee LPRC, firstly, in concluding that Co-appellee Lutech Engineering and Project Management Consultants FZC JV was the most responsive evaluated bidder in the bidding process undertaken by LPRC, and secondly, that as such it should awarded the bid contract to undertake the renovation and expansion of the LPRC's Petroleum Storage Terminal Facility, using as the sole basis for the annulment that Co-appellee Lutech Engineering and Project Management

Consultants FZC JV the was not involved in the prequalification phase of the bidding process and that as such it was not entitled to submit a bid or be awarded the bid contract. Our review of the records shows the contrary to have existed in the bidding process, and hence provide the legal basis for the application of the exceptions to the administrative principle which we have alluded to above, and our reversal of CARP's ruling and the reinstatement of the decision made by Co-appellee LPRC that as Co-appellee Lutech Engineering and Project Management Consultants FZC JV was the most responsive evaluated bidder, that the contract be entered into with the said entity for the Project.

The records, as we indicated earlier in this Opinion, show that a letter of application was submitted to LPRC on February 18, 2015 by a company bearing the name Lutech Engineering and Project Management Consultant FZC JV. The letterhead of the letter of application also bears the name Lutech Engineering and Project Management Consultants FZC JV. Unless the appellant had evidence to the contrary, which it would have been expected to submit in substantiation any claim to the contrary, the letter of application remained a matter of fact and the best evidence that indeed and in fact, a letter of application was submitted. This fact could not be arbitrarily disregarded by CARP on the mere allegation of a competing bidder, and without the production of evidence to the contrary.

It is a cardinal principle of law, enunciated by both the statutory laws and the decisional law of the Supreme Court, that mere allegation is not proof [*Morgan v. Barclay*, 42 LLR 259 (2004)]; that a party who alleges a fact or set forth a claim has the burden of proving or substantiating the allegations by a preponderance of the evidence [*V. H. Timber v. Naca Logging Company et al.*, 42 LLR 527 (2005)]; and that in the absence of such proof, the allegations cannot be accepted as true [*Konnah and Tiawan v. Carver*, 36 LLR 319 (1989)]. The ruling of CARP defied that cardinal principle it was therefore clearly an erroneous basis for reversal of the decision of LPRC in, firstly, allowing Co-appellee Lutech Engineering and Project Management Consultants FZC JV to participate in the prequalification phase of the Project, and secondly, in

allowing Co-appellee Lutech Engineering and Project Management Consultants FZC JV to submit a bid, the same as it allowed the appellant to submit a bid.

Additionally, we have also seen in the records the Minutes taken of the prequalification meeting held between Co-appellee LPRC and the entities that had submitted prequalification applications to participate in the bidding process for the Project. The Minutes contain a listing of the names of the entities present at the meeting, as well as the names of the persons representing the said entities. The listing carries the name of the appellant as well as the name of Co-appellee Lutech Engineering and Project Management Consultants FZC JV exactly as appeared on the latter of application. If the contention of the appellant was that Co-appellant Lutech Engineering and Project Management Consultants FZC JV was not present and did not participate in the said meeting, it had the legal obligation to present evidence to CARP showing the contrary. We have seen no such evidence in the records, and hence cannot conclude, as CARP erroneously did, that there was a basis for annulling the determination made by Co-appellee LPRC awarding Co-appellee Lutech Engineering and Project Management Consultants FZC JV the award or the contract. Again, our procedural law and the law on evidence are very clear. Unless the appellant presented evidence showing that Co-appellee Lutech Engineering and Project Management Consultants FZC JV was not present at the said meeting or that the Minutes recorded were false and fraudulent, the Minutes had to be accepted as true and correct. One who makes an allegation has the burden proving by evidence that the allegations are true. *The Management of the United States Trading Company v. Richards and Brown*, 41 LLR 205 (202). The appellant did not meet that burden of proof standard required by law and hence it was error for CARP to accept as true the said allegations. The records having shown to the contrary, the allegations are not only dismissed but the ruling which was predicated upon the said allegations also crumbles and in like manner is reversed.

Wherefore and in view of the foregoing, it is the judgment of this Court that the ruling entered by the Complaints, Appeals and Review Panel of the Public Procurement and Concession Commission is hereby reversed, the petition

for enforcement of the ruling of CARP dismissed, the award of the bid contract made by the Liberian Petroleum Refining Company to Lutech Engineering and Project Management Consultants FZC JV be and is hereby reinstated, and the LPRC and Lutech Engineering and Project Management Consultants FZC JV directed to execute the said bid contract.

The Clerk of this Court is ordered to send a mandate to the lower court directing the judge presiding therein to resume jurisdiction over the case and proceed to enforce the Judgment of this Court as stipulated in this Opinion. Costs are adjudged against the appellant.