IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2020

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

Ecobank Liberia Limited, by and thru its Managing Director, George Asante-Mensah, Comptroller, and all other Officers of the Bank, of the City of Monrovia, Liberia……… Appellant

Versus) APPEAL

The Management of Consolidated Group, Inc., by and thru its Chief Executive Officer, Simeon Freemen, and Simeon Freeman, of the City of Monrovia, Liberia………………Appellees

GROWING OUT OF THE CASE:

The Management of Consolidated Group, Inc., by and thru its Chief Executive Officer, Simeon Freemen, and Simeon Freeman, of the City of Monrovia, Liberia…………...Petitioners

Versus) PETITION FOR A WRIT OF CERTIORARI

His Honor Judge James E. Jones, Judge of the Debt of the Temple of Justice and Ecobank Liberia Limited, by and thru its Managing Director, George Asante-Mensah, Comptroller, and all other Officers of the Bank, of the City of Monrovia, Liberia …………………………………………………..…….....Respondents

GROWING OUT OF THE CASE:

The Management of Consolidated Group, Inc., by and thru its Chief Executive Officer, Simeon Freemen, and Simeon Freeman, of the City of Monrovia, Liberia……………....Movants

Versus) MOTION TO DISMISS

Ecobank Liberia Limited, by and thru its Managing Director, George Asante-Mensah, Comptroller, and all other Officers of the Bank, of the City of Monrovia, Liberia …………………………………………………………………Respondents

GROWING OUT OF THE CASE:

Ecobank Liberia Limited, by and thru its Managing Director, George Asante-Mensah, Comptroller, and all other Officers of the Bank, of the City of Monrovia, Liberia ……………………………………………………………………….… Plaintiff

Versus) ACTION OF DEBT

The Management of Radacon Liberia Limited, by and thru its Chief Executive Officer, Simeon Freemen, and Simeon Freeman, also of the City of Monrovia, Liberia

………………………………………………………………………….1st Defendant)
)
AND)
)
The Management of Consolidated Group, Inc., by and thru)
its Chief Executive Officer, Simeon Freemen, and Simeon)
Freeman, of the City of Monrovia, Liberia…..…2nd Defendants)

Heard: July 9, 2020 Decided: Sept. 4, 2020

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

The parties in this appeal are before this Court for the second time in a dispute arising from a banking transaction. The full account of the first litigation is recorded in the case *Ecobank Liberia Limited v. Consolidated Group, Inc.*, Supreme Court Opinion, October Term A.D. 2018.

It all began on February 12, 2010, when Radacon Liberia Limited (Radacon), concluded and executed with Ecobank Liberia Limited (Ecobank) a facility letter wherein Ecobank provided a medium term loan (MTL) to Radacon in the amount of Three Hundred Thousand United States Dollars (US$300,000.00) for acquisition of machinery and equipment. This MTL was subject to certain terms and conditions spelt out in a facility letter dated February 12, 2010.

In keeping with the conditions precedent to the drawdown of the loan facility, Mr. S. Blidi Elliott, Managing Director of Radacon, Mr. Simeon Freeman, Chief Executive Officer (CEO) of Consolidated Group, Inc., and the Consolidated Group, Inc. (CGI), all signed and issued irrevocable and unconditional guarantees in favor of Ecobank for the loan amount of Three Hundred Thousand United States Dollar (USD300,000.00). Mr. Simeon Freeman issued a personal guarantee in his own name with a statement of personal net worth, while CGI issued a Corporate Guarantee, by and through its Chief Executive Officer (CEO), Mr. Simeon Freeman.

In keeping with the agreement, Ecobank credited Radacon's account on March 1, 2010, with the amount of Three Hundred Thousand United States Dollars (US$300,000.00) and Radacon was required to pay said amount within twenty-four (24) months as of disbursement and after a four (4) month moratorium period. Payment on the loan was agreed at a monthly installment payment of US$15,000.00 plus interest.

When Radacon defaulted in the payment of the loan, it made a request to the bank for a restructuring of the loan. The bank accepted the request and had Radacon and Ecobank execute another facility letter, this time for the outstanding amount of Three Hundred Fifty-Eight Thousand Four Hundred Fifty Eight United States Dollars (US$358,458.00), representing the principal loan of February 12, 2012, and interest thereon. In consideration of the restructuring of the loan facility of February 12, 2010, a leasehold mortgage agreement was executed on August 31, 2011, by and between CGI, represented by Simeon Freeman as mortgagor, and Ecobank as mortgagee. The leasehold mortgage agreement guaranteed the restructured credit facility.

On September 5, 2011, a second facility letter (restructured medium term loan) was issued to Radacon, with a clause therein that in the event of default, if Radacon failed or was unable to remedy the default within thirty (30) days of receipt of written notice from the bank, the bank reserved the right to call in the facility. Subsequent thereto, on November 10, 2011, Radacon provided a certificate of resolution, signed by its Secretary and the Chairman of its Board, Mr. Simeon Freeman, authorizing Radacon's General Manager and Finance Manager to sign the restructured loan document.

Thereafter, Radacon again failed to honor its obligation under the restructured MTL and the bank tried to collect the outstanding loan amount from Radacon but it all ended in a fruitless chain of exchanges. Ecobank then debited the CGI's account, setting-off Radacon's obligations to the bank under the restructured MTL. The attending facts with regards the set-off are that on July 30, 2012, a credit transaction in the amount of US$499,968.00 occurred on CGI's account with Ecobank, and the bank, without notice or authorization from the account holder set-off the outstanding loan amount plus interest and bank charges, debiting the account of CGI, co-appellee, in the amount of US$435,476.97. CGI objected and challenged the legal propriety of Ecobank's conduct, and on August 22, 2012, instituted legal action against the bank in the Commercial Court of Liberia, which it captioned, "Action to Recover Money Wrongfully Withdrawn from Bank Account". The Commercial Court heard the case and entered final judgment on the 29th of January 2014, in favor of CGI. The court held that absent an express agreement between the parties reserving unto the defendant Ecobank the right of set-off against CGI/guarantor, the debit of said account was illegal, and Ecobank was accordingly adjudged liable to CGI for the unauthorized withdrawal of money from CGI's account. Ecobank appealed the Commercial Court's judgment, and on appeal, the Supreme Court

affirmed the Commercial Court's final judgment. The Court held, inter alia, that Ecobank could not unilaterally set-off Radacon's loan against the CGI/ guarantor's account as there was no assent by the parties to the effect; that rather, Ecobank reserved the right to call in the facility and thereafter exercise legal action for execution of several loan documents, securities to the loan; that the controlling clause for default and recovery under the mortgage agreement specifically granted the Bank, the mortgagee, an authority to foreclose the mortgage with or without further notice to the appellee (the mortgagor), should there be a failure on the mortgagor's part to perform its obligation as a security under the agreement. Ecobank was therefore ordered by the Court to pay back the amount it wrongfully debited from the CGI's account. This determination abated the first litigation regarding Ecobank's attempt to retrieve the loan amount paid to Radacon and guaranteed by CGI and Mr. Simeon Freemen.

When the parties returned to status quo ante, Radacon remained in default of its obligations to Ecobank under the restructured MTL and the guarantors, CGI and Mr. Simeon Freeman, made no concrete intervention to ensure the payment of the outstanding loan amount. Deciding to recover the loaned amount and accrued interest, Ecobank, appellant in these proceedings, instituted a debt action before the Debt Court of Montserrado County, on May 17, 2019, naming the Management of Radacon Liberia Limited by and thru its Chief Executive Officer, Mr. Simeon Freeman, as 1st defendant; the Management of Consolidated Group Incorporated by and thru its Chief Executive Officer, Mr. Simeon Freeman, and Mr. Simeon Freeman, as 2nd defendants, in the debt action.

Ecobank in its complaint of debt firstly recounted the chain of events that attended the execution of the original MTL loan of 2010 and the subsequent agreements that led to the restructuring of the loan in 2011. Succinctly, the complaint states that the 1st defendant/Radacon had defaulted and remained in default of its obligations under the 2011 restructured facility, the payment of which was secured and guaranteed by the appellees who on July 30, 2012 undertook to pay the obligations in the event of a default by Radacon but were taking no steps to remedy the situation as guarantors of the loan. In its prayer to the Debt Court, Ecobank requested the court to adjudge the appellees along with Radacon liable for One Million Twenty-Five Thousand Three Hundred Ten Dollars Thirty Cents (US$1,025,310.30), the outstanding principal amount on the loan plus accrued interest and applicable costs/charges as per the agreement, and to rule the cost of the proceedings against them.

Radacon, 1st defendant, did not file an answer to the above complaint. The appellees however filed a joint answer and a motion to dismiss the appellant's action.

The appellees in their motion to dismiss contended that Ecobank should have firstly pursued the 1st defendant/Radacon, the principal debtor, in every way possible, for recovery of the amount owed before proceeding against them for the unpaid loan amount; that assuming the appellant had a right of action against the appellees, the appellant had pursued the wrong form of action and had filed same at the wrong forum, in that the appellant's remedy against the appellees, if any, was tenable only under mortgage foreclosure proceeding in the Commercial Court, rather than a debt action in the Debt Court.

Resisting the motion to dismiss the debt action, Ecobank asserted that the action of debt grows out of a loan transaction as admitted by the appellees and is based on a guarantee for the payment of a loan obtained from the Ecobank by Radacon and the payment guaranteed by the appellees; that the records having shown that Radacon has not paid its obligation to Ecobank, the action of debt is a proper course available to the bank and the bank is not barred or estopped from filing a debt action.

Ecobank also asserted that the appellees' contention that the remedy available to it is a foreclosure proceeding rather than an action of debt is baseless as what is significant is that the appellees are indebted to the bank and the loan contracted by Radacon and guaranteed by the appellees should be fully paid; that also the only way the bank can move to foreclose the mortgage is to obtain a judgment against the appellees and use said judgment as the basis for the foreclosure proceedings.

In a ruling made on July 1, 2019, the Debt Court Judge denied the appellees' motion to dismiss, holding inter alia:

> "…When a loan is taken and the borrower is allowed to enter into a mortgage arrangement and further signs a promissory note and other personal obligation, as is in this case, then and in that case the creditor makes a choice whether to proceed initially for foreclosure or to proceed by debt in the Debt Court.
>
> In this case, the creditor/plaintiff has decided to proceed in the Debt Court since the transaction is purely a debt transaction. The motion must therefore be denied and disallowed."

The appellees excepted to the above ruling of the Debt Court and sought an

interlocutory review thereof via a petition for a writ of certiorari before Justice Joseph N. Nagbe, then presiding in Chambers. Justice Nagbe cited the parties to a conference and thereafter issued the alternative writ of certiorari and ordered the appellant Ecobank to file its returns to the petition.

The hearing and determination of the petition remained pending until Justice Nagbe's term in Chambers ended and his successor in Chambers, Justice Yussif D. Kaba, heard the petition and made the ruling that is the subject of this appeal.

The appellees contended in the petition for certiorari that the Debt Court ought to have declined jurisdiction of the debt action filed by the appellant on grounds that their only involvement with the loan transaction was that they (i.e., Consolidated Group, Inc., and Simeon Freemen) guaranteed and issued securities as a mortgage for the loan should Radacon fail to pay the loan; that Radacon having defaulted on the payment of the loan, the appellant Ecobank must firstly show that it had pursued and carried out all efforts to collect its loan from Radacon and Radacon had failed to make the loan payment; that pursuing the appellees for the loan was to be an option of last resort to be enforced by way of a mortgage foreclosure proceedings in the Commercial Court rather than a debt action in the Debt Court.

Countering the appellees contentions in its returns, Ecobank premised its argument on sections 5.51(a) and 6.1 of the Civil Procedure Law. Given the emphasis of the appellant's returns on said provisions, we deem it necessary to state herein the relevant portion of these provisions of the Civil Procedure Statute (1974):

Section 5.51. "When joinder required."

> "*Parties who should be joined*. Persons (a) who ought to be parties to an action if complete relief is to be accorded between the persons who are parties to such action, or……………."

Section 6.1. "Joinder Permitted"

> "Two or more claims for relief, whether legal or equitable, may be joined in one pleading, provided that all claims so joined are triable in the same court and all belong to one of the following classes:
>
> (a) Contracts, express or implied"

The appellant Ecobank argues that the above cited provisions of the Civil Procedure Law, support its joinder of Radacon, CGI and Simeon Freeman in a single action as joint defendants and it was therefore not compelled to go after them individually, one at a time. The appellant further dismissed the

appellees' assertion that an action of debt was the wrong course for recovery against the appellees, asserting that the debt action was properly instituted, as a judgment therefrom was necessary in order to have the corporate and personal guarantees enforced against Consolidated Group Incorporated and Simeon Freeman. The appellant Ecobank therefore prayed the Justice in Chambers to quash the alternative writ, deny the issuance of the peremptory Writ of Certiorari, order the Debt Court Judge to resume jurisdiction, hear and determine the debt case on its merits.

Justice Kaba having heard arguments pro et con, determined that the sole issue that was dispositive of the certiorari was whether a guarantor can be jointly sued with the principal debtor in an action of debt where the guarantor in securing the debt executed a loan mortgage agreement with the creditor?

In deciding the above question, Justice Kaba made reference to two cases, *Int'l Trust Co. v. Wiah et al*, 30 LLR 751 (1983) and the *Liberia United Bank Inc. v. Swope et al,* 39 LLR 537 (1999)] as reliance for prohibiting a creditor from bringing a joint action of debt against the principal debtor and the guarantor. However, the Chamber Justice recognized from the case *Ecobank v. Consolidated Group, Supreme Court Opinion, October Term A.D. 2018* that the debtor and the guarantor can be sued jointly. In reaching his conclusion, he however stated that there was an exception to the general rule of joint suit in the agreement between the parties. He quoted excerpts of the 2018 Supreme Court Opinion in support of his determination of the petition filed. Below is one of the excerpts highlighted in his ruling:

> "The trial judge's ruling is not only persuasive but also finds backing in law for several reasons: firstly, there is a distinction between the agreement granting the loan facility and the agreement surrendering collateral or offering guarantee for a credit facility. The former is squarely centered on the receipt and repayment of cash facility on specified terms while the latter solely deals with the procedure for recovery by the creditor bank in situation where the debtor customer fails and or refuses to pay. Secondly, in a loan agreement, the debtor is always a customer of the creditor bank and is subject to the internal rules and procedure of banking; whereas, under a guarantor agreement the only relationship between the bank and the guarantor is the terms and conditions of the agreement under which the security is offered. Thirdly, the general rule under collateral, mortgage or personal guarantee agreement, ***unless expressly stated otherwise***

[sic.], is to either file a joint action of debt against the principal [debtor] and personal guarantor, or to foreclose on the collateral or mortgage through a court of competent jurisdiction and not by means of off-setting the amount by an unauthorized withdrawal of monies from the guarantor's account where said account is held by the creditor bank."

Justice Kaba admitted that the general rule now held by this Court is that the creditor may either file a joint action of debt against the principal [debtor] and personal guarantor, or foreclose on the collateral or mortgage through a court of competent jurisdiction. He however referred to Clause 5 of the Leasehold Mortgage Agreement, holding that it suffices in the agreement as the exception to the general rule and by that rendered the general rule ineffectual and inapplicable in the instant case. Clause 5 in the agreement referred to by Justice Kaba as the exception in the loan agreement to the general rule, reads:

> "5. Should the mortgagor at any time fail to pay any part of the principal or interest when due, or fail to perform any covenants and agreements mentioned in this mortgage, the entire outstanding amount of principal and interest secured by this mortgage shall become due and collectable at once, at the option of the mortgagee, and this mortgage may, without further notice, be foreclosed for the whole or any unpaid balance of the debt secured by it, including principal, interest and costs."

The Court recognizes that the Chambers Justice limited the deciding issue in the certiorari to Clause 5 of the Leasehold Mortgage Agreement, stating that the mortgage agreement was executed between the appellees and Ecobank as a fall back plan in the event of a default on the part of Radacon, the borrower, and that the mortgage agreement (specifically Clause 5) provides that the mortgage may without further notice be foreclosed for the whole or any unpaid balance of the debt secured by it. The Justice ruled that from the plain expression of the mortgage agreement, it can be said that recourse for recovery of the outstanding loan amount available to the appellant is by foreclosure proceedings; that the appellant bank relies on provisions of the Civil Procedure Law on joinder of parties in defense of its position, and the Supreme Court in the case Ecobank Liberia v. Consolidated Group, Inc., affirms the bank's position that joint action of debt may be instituted against a debtor and a guarantor provided that there is no exception to the rule. Unfortunately for the bank, Justice Kaba held, there is an exception to the rule in the instant case as contained in Clause 5 of the leasehold mortgage agreement and that it goes without saying that the general rule then

becomes ineffectual, whereas the exception to the rule becomes operative in the present suit.

We disagree with the Chambers Justice's ruling placing emphasis on Clause 5 of the Leasehold Mortgage Agreement as providing exception to the general rule of joint suit against a debtor and a guarantor in enforcing collection of the loan debt. Our Colleague did not consider that the mortgage agreement was not the only security to be called in by the bank in the event of non-payment of the loan by Radacon. Under the "Existing Security/Support" clause of Ecobank Facility Letter, the CGI pledged a leasehold mortgage over commercial property which it leased by and thru its Chief Executive Officer, Mr. Simeon Freeman, valued at approximately US$500,000.00; Mr. Simeon Freeman, Radacon's principal shareholder/co-appellee, pledged a personal guarantee, dated October 31, 2011, supported by his personal net worth statement to include an undertaken not to dispose of any asset without the consent of the bank; and the CGI issued a Corporate Guarantee for the loan.

The records reveal that the leasehold agreement on which foreclosure Justice Kaba relied on as exception to the rule, is no longer in effect since the term of CGI's lease with Madam Gladys B. Miezah spanned over a period of ten years, that is, February 17, 2007 to February 16, 2017 and her lease with CGI had expired before the debt action was filed on May 17, 2019. This means that when the debt action was filed, the CGI leasehold interest in the mortgage property was no more. Therefore the entire leasehold mortgage agreement including the Clause 5 relied on by our colleague as the exception to the general rule was inoperative as a matter of law.

In addition, Mr. Simeon Freeman in a personal guarantee of October 31, 2011, promised to pay the bank the restructure loan amount of US$358,000.00 together with interest, commission and bank charges. The guarantee reads as follows:

" To: ECOBANK LIBERIA LIMITED
ASHMUN & RANDALL STREETS
P. O. BOX 4825
MONROVIA, LIBERIA

ATTN: MR. KOLA ADELEKE

PERSONAL GUARANTEE

WHEREAS, Radacon Liberia Limited of the City of Monrovia, Montserrado County, Liberia ("THE BORROWER") is desirous of obtaining a Credit Facility of USD358,000.00 (Three Hundred Fifty Eight Thousand United States Dollars). Ecobank has requested Mr.

Simeon Freeman to issue an irrevocable and unconditional GUARANTEE in favor of Ecobank for an amount of USD358,000.00 (Three Hundred Fifty Eight Thousand United States Dollars).

I, Mr. Simeon Freeman, do hereby agree and issue this GUARANTEE in favor of Ecobank Liberia for an amount of USD358,000.00 (Three Hundred Fifty Eight Thousand United States Dollars).
In the event the amount of USD358,000.00 (Three Hundred Fifty Eight Thousand United States Dollars) is not fully settled, I, Mr. Simeon Freeman hereby undertake to pay the said amount together with interest to Ecobank Liberia, upon its first written demand declaring the amount to be in default.

My obligation under this GUARANTEE shall continue until full amount of the USD358,000.00 (Three Hundred Fifty Eight Thousand United States Dollars) together with interest, commission and bank charges are paid.

This Promissory Note is binding on me, my heirs, administrator, executors and legal representatives as though each of them had personally received the sum of money mentioned herein and had personally executed this Promissory Note

Dated this 31st Day of October, 2011

By: SIGNATURE

Name: Mr. Simeon Freeman"

Mr. Simeon Freeman, personal guarantee above was supported by his personal net worth statement to include an undertaking not to dispose of any asset without the consent of the bank. He presented a statement of net worth, valued at (US$3,722,750.00). In the personal guarantee, supra, Mr. Freeman undertook to fully settle the restructured facility together with interest to Ecobank in the event the debtor/Radacon failed to pay.

Also the CGI was to execute a corporate guarantee as a condition precedent for the restructuring of the loan. We however, as stated in the in the 2018 *Ecobank Liberia Limited v. Consolidated Group Inc*. case, do not see any guarantee by CGI as required for the restructuring of the loan as was done for the original loan of 2010 when the CGI by and through its CEO, Mr. Simeon Freeman, executed a corporate guarantee for the loan which reads:

"Consolidated croup

February 24, 2010

ECOBANK LIBERIA LIMITED

CORPORATE GUARANTEE

Consolidated Group Inc. hereby guarantees that it will absorb any impact resulting from Radacon's inability to liquidate the $300,000 facility provided

by Ecobank Liberia.

Signed:
Mr. Simeon Freeman
Group CEO."

The Court held in 2018 Ecobank case reference above, that when a loan facility is restructured, all of the loan security guarantors remain in full force and their obligation under the original credit facility remain as such unless expressly discharged by the new agreement, and in this case where CGI thru its Chief Executive Officer, Mr. Simeon Freeman, was involved in the restructuring of the loan and CGI even executed a Leasehold Mortgage Agreement with Ecobank to secure the restructured loan, it remains a corporate guarantor under the restructured loan agreement.

This brings us to Ecobank's reliance of sections 5.51(a) and 6.1 of the Civil Procedure Law to bring a joint debt action against appellees and the principal debtor.

The Chambers Justice held that "it is therefore safe to conclude that the action of debt designating a guarantor as a principal defendant as in the present certiorari proceeding is not only untenable, but runs contrary to the intent and spirit of section 5.51 of the Civil Procedure Law, particularly, where, as in this case, the guarantor executed a mortgage agreement with the co-respondent bank as a channel for recovery by a foreclosure of the leasehold mortgage agreement in the event Radacon Liberia defaults to pay the full amount of the loan."

The Chambers Justice's ruling projects a view that sustaining appellant Ecobank's debt suit joining the appellee's and Radacon would defeat the intent and spirit of section 5.51, but he failed to specifically state how the intent of section 55.1 would be defeated by a suit brought jointly against the appellees and Radacon.

The Court says, sections 5.51 and 6.1 seek to promote speedy determination of cases by eliminating the need for multiplicity of suits on the same claim. In the case before us, requiring the appellant bank to pursue Radacon for its unpaid debt before pursuing the guarantors who took on the obligation to pay the loan amount should Radacon default would be encouraging multiple actions on the same claim.
It is public knowledge that commercial banks and other lenders in this jurisdiction are frequently challenged by the difficulties they persistently

encounter in recovering monies loaned to business institutions and the general public. Under the old rule which required creditors to exhaust all remedies against the principal debtor before pursuing the guarantor in the collection of unpaid loans, the banks had to endure the difficulty of instituting multiple suits. These challenges operate to the peril of banks in particular and lenders in general, thereby placing them at the risks of liquidity crisis.

As such, sections 5.51(a) and 6.1, must be construed as progression in the law with the object of removing obstacles of cumbersome rules of litigation, in favor of speedy prosecution of claims. It is obvious that decisions of this Court in the cases *Int'l Trust Co. v. Wiah et al*, and the *Liberia United Bank Inc. v. Swope et al,* referenced by our colleague, and other cases after the Civil Procedure Law (1974) took effect, requiring strict adherence to the old rule that a creditor must first exhaust remedy against the principal debtor before pursing the guarantor of a loan, are inconsistent with sections 5.51(a) and 6.1 of our Civil Procedure Statute, and are an inadvertence on the part of the Court to take note of the new progressive course reflected in the law.

WHEREFORE AND IN VIEW OF THE FOREGOING, it is the opinion of this court that Appellant/Ecobank's filing of a joint action of debt against the appellees and Radacon Liberia was within the pale of the law and therefore there are no legal grounds to dismiss said suit. Accordingly, the ruling made in chambers is hereby reversed, the alternative writ is quashed and the peremptory writ denied. The Debt Court's ruling is hereby re-instated.

The clerk is ordered to send a mandate to the Debt Court to resume jurisdiction and proceed to hear the debt action. AND IT IS SO ORDERED. Costs to abide final determination of the case.

When this case was called for hearing, Counsellor Bhatur Holmes Varmah, Ecobank in-house counsel, and Counsellor Golda A. Bonah Elliott of Sherman & Sherman, Inc., appeared for the appellants. Counsellors Milton D. Taylor and Fredrick L.M. Gbemie of the Law Offices Of Taylor & Associates appeared for the appellees.