

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

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

BAF Corporation, Inc. by and thru its Managing)
Director, Facinet Kamara, of the City of Monrovia)
.....APPELLANT)

VERSUS)

APPEAL

Liberia Industrial Property Office, RL, represented)
by Robert Mezzeh1ST APPELLEE)

AND)

The Ministry of Commerce, represented by its)
Minister Axel Addy, Deputy Ministers, Assistant)
Ministers and other Officers acting under their)
authority.....2ND APPELLEE)

AND)

Housseni Kessell, a Lebanese, businessman and)
owner of HK Enterprises, located at Redlight)
.....3RD APPELLEE)

GROWING OUT OF THE CASE:)

BAF Corporation, Inc. by and thru its Managing)
Director, Facinet Kamara, of the City of Monrovia)
.....APPELLANT)

VERSUS)

**PETITION FOR
DECLARATORY
JUDGMENT**

Liberia Industrial Property Office, RL, represented)
by Robert Mezzeh1ST APPELLEE)

AND)

The Ministry of Commerce, represented by its)
Minister Axel Addy, Deputy Ministers, Assistant)
Ministers and other Officers acting under their)
authority.....2ND APPELLEE)

AND)

Housseni Kessell, a Lebanese, businessman and)
owner of HK Enterprises, located at Redlight)
.....3RD APPELLEE)

Heard: November 24, 2020

Decided: March 3, 2021

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

The certified records establish that there is one common and core contention of the parties to the present appeal which centers on use and the right of entitlement to the trademark of a commodity for the purpose of its sale and distribution on the Liberian market.

The records from the Commercial Court of Liberia show that the appellant, the BAF Corporation Inc., filed an action for declaratory judgment against the 1st, 2nd and 3rd appellees herein, the Liberia Industrial Property Office, the Ministry of Commerce, and Mr. Housseni Kessell, owner of the HK Enterprise, respectively.

In view of the fact that the appellant and the 3rd appellee are the main parties to the controversy, we will focus on their contentions and where necessary, make reference to the roles played by the 1st and 2nd appellees due to their authority and supervisory roles in the enforcement of the provisions of the Industrial Property Act of Liberia.

We therefore hereunder quote relevant counts of the appellant/petitioner's petition for declaratory judgment, to wit:

PETITIONER'S PETITION

4. ".....That on March 21, 2010, Petitioner applied for and having met the requirements of the law, obtained a certificate of Registration of Trademark for the product identified known and referred to as Pop Drink (Drink). Hereto attached and marked Exhibit "P/2" is a copy of Petitioner's Trademark Certificate for Pop Drink to form a cogent party of Petitioner's Petition.
5. That the product Pop Drink, an Indonesian product, being strange and unknown to the Liberian consuming public, Petitioner made tremendous efforts to advertise, including selling the products at giveaway price to create the taste and market for the product, thereby not gaining profit in the beginning.
6. That under the law controlling, Petitioner is entitled exclusively to import and supply Pop Drink in Liberia under its Trademark Registration Certificate for a period of ten (10) years, reserving the right for an extension of this period, after the expiration of ten (10) years. See Industrial Property Act of Liberia, Section 43(4)(a) (2003).
7. That 3rd Respondent having observed that by 2014 Pop Drink had become popular and profitable, in clear violation of the law governing the issuance of Trademark Certificate, applied for and obtained another trademark certificate for the same product, Pop Drink, from the Liberia Industrial Property Office, knowing or having reasons to know that Petitioner was the supplier of the said product on the Liberian market. Hereto attached and

marked Exhibit “P/3” is a copy of 3rd respondent’s trademark certificate to form a cogent part of the petition.

8. That 1st Respondent in flagrant violation of the Industrial Property Act of Liberia (2003), which was created to promote, implement, defend and protect the said law, issued the Trademark Certificate referred to above in Count Five (5) of the petition.
9. That Petitioner through its Legal Counsel wrote a letter to the Minister of Commerce, with a copy to the Industrial Property Office complaining about the action of the Industrial Property Office and requesting the Ministry of Commerce not to allow the Pop Drink to be sold by Mr. Houseni Kessell of HK Enterprises. Hereto attached is a copy of said letter marked Exhibit “P/4”.
10. That while Petitioner’s Complaint was pending before 2nd Respondent, 1st Respondent wrote on May 9, 2014, Petitioner informing it that its exclusive right to the Pop Drink Trademark had been restored for the remainder of the ten (10) years covered by the Trademark Certificate. See attached a copy of said letter marked as Exhibit “P/5” to form a part of the petition.
11. That, also while Petitioner’s Complaint was pending before 2nd Respondent, 1st Respondent arbitrarily revoked Petitioner’s trademark certificate, according to him, because the manufacturer of the product had appointed another distributor of its product in Liberia and that the said distributor had appointed the third Respondent as its sub-distributor in Liberia. Petitioner, respectfully requests this Honorable Court to take judicial notice of the fact that the Liberia Industrial Property Act does not make it a pre-condition that an applicant for trademark certificate be a distributor or sub-distributor for the manufacturer of the product before it can be issued a trademark certificate. Hereto attached and marked Exhibit “P/6” in bulk is a copy of said letter along with attachments to form a cogent part of the petition.
12. That in the late July 2014, 2nd Respondent represented by Minister Axel Addy at a meeting held at his office with Petitioner’s Counsel, Tiawan S. Gongloe, instructed 2nd Respondent’s legal counsel Attorney Roosevelt Gould to inform 1st Respondent to restore the rights of Petitioner as the exclusive trademark holder for “Pop Drink” in Liberia. However, 2nd Respondent’s legal counsel refused to carry out this clear instruction of his boss. Hence, after more than two (2) months of the legal Counsel’s failure, to carry out his boss’ instruction, Petitioner’s legal Counsel wrote Minister Addy two (2) letters on October 2, 2014 and October 16, 2014, respectively, informing him of the failure of his legal Counsel to carry out his instruction and that our client’s exclusive right to the trademark for Pop Drink had not been restored. Hereto attached and marked Exhibit “P/7” in bulk are the two (2) letters written to Minister Addy to form a cogent part of this case. Petitioner says that there were no written responses to these letters.

We also quote pertinent counts of the 3rd appellee's returns to the petition for declaratory judgment as follows, to wit:

3rd Appellee/Respondent's Returns

Husseni Kessell, 3rd Respondent in the above entitled cause of action, most respectfully requests Your Honors and this Honorable Court to deny and dismiss Petitioner's Petition for the following legal and factual reasons showeth to wit:

1. That as to the entire Petition, 3rd Respondent says that the Petitioner has no legal standing to institute the said action because the Petitioner's Exhibits "P/6" in bulk and "P/9" in bulk all establish that (i) Petitioner is not the owner of the trademark, but only had a right of its use for a limited period; (2) that Petitioner does not have any current, valid interest whatsoever in the Pop Drink trademark following expiry of the one-year assignment it had thereto; and (2) that Petitioner had no right to register or use the trademark beyond a period of one year, especially when its trademark registration of Pop Drink was revoked and remained revoked.
2. Further to Count (1) above and still as to the entire Petition, 3rd Respondent says that contrary to the false assertion of Petitioner that it is the owner or assignee of the Pop Drinks trademarks, it is in fact H.K. Enterprises that is and has been the assignee and holder of the exclusive right of use of the Pop Drinks trade mark in Liberia pursuant to an assignment of rights received **first in 2014 and then in this year-2015 from Franco-Asian Enterprises Singapore PTE LTD. ("Franco")**, a company based in Singapore, which appointed H.K. Enterprise as the 'EXCLUSIVE DISTRIBUTOR' of "POP DRINK" product/trademark in Liberia for the period January 1 to December 31, 2014 and then from January 1 to December 31, 2015, respectively. Petitioner avers that the said Franco had earlier received "the exclusive right to distribute, to make sales and all activities" of 'Pop Drink' Product/Trademark in Liberia by PT Forisa Nusapersada ("Forisa"), an Indonesian Company which is the owner and manufacturer of Pop Drink, in each of 2014 and 2015. Attached hereto and marked as **3rd Respondent's Exhibit "R/1" in bulk** are copies of (i) H.K. Enterprise's letters of Appointment by Franco and (ii) Franco's letters of appointment by Forisa to form integral part of this Returns.
3. That as to Counts 1 and 2 of the Petition, 3rd Respondent says that while he acknowledges the Declaratory Judgment Statute, the said statute is however not applicable in favor of the Petitioner in the instant case because the Petitioner does not have any rights or legal relations to the Pop Drink trademark such as to seek a declaration of any interest it has therein. Instead, Declaratory Judgment will lie in favor of the 3rd Respondent to declare its contractual and statutory right in the trademark.
4. That as to Count 3 of the Petition, 3rd Respondent says that it is without sufficient information to confirm or deny the truth of the matter asserted therein.
5. That as to Count 4 of the Petition, 3rd Respondent says that assuming without admitting the claims asserted by Petitioner in Count Four of its

Petition, the purported registration of the trademark for ten (10) years or an indefinite period by Petitioner is a legal nullity because (i) Petitioner not being the manufacturer of the drinks or owner of the trademark could not register it as if he owned it, and also (ii) because any registration of the trademark could not be for any period longer than the one-year period of use granted petitioner by the owner of the trademark. Respondent says that the assertion of the Petitioner that its registration of the Pop Drinks Trademark entitles it to enjoy its exclusive use for ten (10) years is a misunderstanding of the law because one who is not the owner of a trademark is entitled to use of a trademark, a license or any other IP product for such period of time as the owner may grant in an appointment or by contract, which in the instant case was one year for the Petitioner. The Petitioner has woefully failed to show any competent factual or legal basis why it is entitled to use of the trademark beyond the one year period granted it by the owner of the mark, especially where the owner has granted the right of exclusive use to another period.

6. Further to Count five (5) hereinabove, 3rd Respondent submits that Section 3.1 of the Patent, Copyright and Trademark Law of Liberia defines trademark as *“a mark used or proposed to be used upon or in connection with goods for the purpose of indicating that they have been manufactured, selected, certified, dealt with or offered for sale by the proprietor of the trademark.”* 3rd Respondent avers that it is clear and unambiguous that registration of trademarks can only offer protection and exclusive right of use to the manufacturer and/or owner of the trademark and by extension, to an agent duly authorized by him. In the instant case, Petitioner is not the manufacturer or owner of Pop Drink; neither does it have the authority of or is it the agent of the manufacturer/owner to claim the trademark, for reasons stated hereinabove. Hence, it cannot claim any right to the trademark or claim exclusive distributorship.
7. Further, 3rd Respondent avers that Petitioner’s Exhibit “P/2” is a legal nullity because Petitioner is not the owner of the trademark or the agent of the owner as there is no business relationship between Petitioner and the Owner because the appointment of Petitioner’s principal, Afrindo Business International (“Afrindo”), by the owner of Pop Drink was cancelled, and by extension, the right given to Petitioner by its principal, Franco, was also cancelled; thereby leading to the appointment by the manufacturer of 3rd Respondent’s principal (Franco) and Franco’s subsequent appointment of 3rd Respondent, which proceeded and registered the trademark. 3rd Respondent submits that it is a simple and elementary principle of law that one cannot claim that to which he has no title. Attached hereto as **Respondent’s Exhibit “R/2”** is the Certificate of Registration of Trademark issued to 3rd Respondent by the 1st Respondent.
8. That as to Count 6 of the Petition, 3rd Respondent denies that Petitioner is entitled exclusively to import and supply Pop Drink in Liberia when in fact the right to such exclusive importation and distribution of Pop Drinks in Liberia was given to 3rd Respondent by the owner of the trademarks and manufacturer of the drinks, as shown by the records of these proceedings, including Petitioner’s own Exhibit P/7-P/9. 3rd Respondent avers that the

Trademark Registration Certificate issued to Petitioner is illegal and null and void because Petitioner is not the manufacturer or owner of the trademark neither was it authorized to register the trademark by the manufacturer/owner, as trademarks can only be registered by the owner or a person/entity authorized by him. 3rd Respondent says that the Petitioner was given a one year appointment/assignment by an intermediary agent of the manufacturer from 2010 to 2013 and not for a perpetual period such that Petitioner can claim the Pop Drink Trademark. Further, 1st Respondent, being the governmental body having direct oversight and administration responsibilities over trademarks and related affairs, has revoked the trademark certificate issued to Petitioner based on its determination and/or discovery of the misrepresentation made by Petitioner in registering the trademark.

9. That as to Count 7 of the Petition, 3rd Respondent categorically denied the false allegations contained therein, 3rd Respondent says that H.K. Enterprises was appointed as the exclusive distributor of the Pop Drink brand in 2014 by a new agent of the manufacturer more than several months after Petitioner's appointment was terminated in mid- 2013, and that the appointment of H.K. Enterprises was confirmed and reconfirmed by the owner of the trademark and manufacturer of the Pop Drinks.
10. That as to Count 8 of the Petition, 3rd Respondent denies that the issuance of a Trademark Certificate to H.K. Enterprises in 2014 by 1st Respondent was a violation of the Industrial Property Act of Liberia. To the contrary, 3rd Respondent submits that the Pop Drink Trademark Certificate issued to H.K. Enterprises in 2014 after the appointment of Petitioner had been revoked in 2013 by the manufacturer and H.K. Enterprises had been appointed is consistent with law. Section 3.0 (Assignment of registered marks) of the Patent, Copyrights and Trademark law of Liberia provides that "a registered trademark or service mark....shall be assignable with the goodwill of the business in which the mark is used". Section 1.3 (2) of the statute provides for the assignment to be in writing and also published, all of which the assignment to 3rd Respondent satisfied. The assertion of Count (8) of the Petition and the entire petition is therefore without any basis in fact or law, and should be denied and dismissed with prejudice.
11. That as to Counts (9-16) of the Petition, 3rd Respondent categorically denies the false assertions or insinuations contained therein. 3rd Respondent submits that although the Petitioner's appointment as the exclusive distributor of Pop Drink in Liberia was for a limited period of one year and also automatically terminated as a result of the abrogation and cancellation of the appointment of Petitioner's principal, Afrindo, by the owner and manufacturer of the trademark, Petitioner still illegally indulged in the distribution and sale of Pop Drink on the Liberian market, thus wrongfully claiming the trademark and exclusive distributorship of Pop Drink in Liberia. 3rd Respondent submits that in an effort to assert ownership of the trademark and distribution of the Pop Drink and thereby deny 3rd Respondent the full enjoyment of its right as the newly appointed distributor of the product. Petitioner filed a complaint alleging infringement

of the Pop Drink trademark against H.K. Enterprise with the 2nd Respondent and copies the 1st Respondent.

12. Further to Count (12) hereinabove, 3rd Respondent avers that 2nd Respondent instructed 1st Respondent to investigate the matter. During the conduct of the investigation, it was established that Forisa was the owner and manufacturer of the Pop Drink product/trademark. The manufacturer of the Trademark in fact sent a letter of confirmation in which it expressly declared as follows: *“In June 09, 2010, we have appointed PT Afrindo Business International (“Afrindo”) as our sole agent for POP DRINK product in Liberia nationwide and its appointment has expired on June 2013. Since that period, we treated Afrindo as our free trader with last shipment to Liberia on November 2013, designated to BAF Trading Incorporation (“BAF”) as Afrindo’s distributor in Liberia nationwide.”* The letter then concluded that Forisa had *“appointed Franco Asian Enterprises Singagore Pte Ltd. (“FAE”) as our sole agent for POP DRINK IN Liberia nationwide”* and that *“We delivered POP DRINK as requested by FA, designated to HK Enterprises...”* Attached hereto as **3rd Respondent’s Exhibit “R/3”** in bulk are (i) Forisa’s letter to the Hon. Stephen T. Marvie, Jr., Assistant Minister of Commerce and (ii) Forisa’s confirmation of Franco/FAE as its sole agent.
13. Further to Count (13) above, 3rd Respondent submits that 1st Respondent concluded its investigation and submitted its report to the 2nd Respondent, by and through the Senior Legal Counsel. In the report, 1st Respondent held that (i) BAF Corporation’s (Petitioner) right expired since June, 2013; and (ii) H.K. Enterprises was licensed PAE/Franco as the main distributor to Liberia. 1st Respondent then resolved in the report to revoke the Trademark Certificate granted to Petitioner *“on grounds that the rights given to them by Afrindo expired as on June 2013”*. Attached hereto as **3rd Respondent’s Exhibit “R/4”** in bulk are copies of 1st Respondent’s report and 2nd Respondent’s letter informing H.K. Enterprises of the outcome of the investigation.
14. Petitioner says that despite the findings of the investigation conducted by the 1st Respondent, and endorsed by the 2nd Respondent, Petitioner has refused and failed to cede and relinquish the exclusive distributorship of Pop Drink in Liberia, but is employing tricks and artifice to illegally claim the exclusive distribution and unauthorized trademark it registered; thereby importing and selling on the Liberian market “Pop Drink” products/trademarks.
15. Further to Count (15) hereinabove, 3rd Respondent says that as part of its design and pattern of infringing the right of H.K. Enterprises in its Trademarks, the petitioner has been engaged in the illegal importation into Liberia of Pop Drinks destined for import and distribution only to Guinea. Attached hereto as **3rd Respondent’s Exhibit “R/5”** in bulk are photocopies of cartoons of pop drinks authorized for import and distribution in Guinea, which the petitioner has illegally brought into Liberia and has been selling.

We take note of the fact that prior to the filing of the petition for declaratory judgment, on April 17, 2014, the appellant through its legal counsel, filed a formal complaint before the Minister of Commerce, the 2nd appellee alleging trademark infringement by the 3rd appellee, and which letter of complaint the 2nd appellee forwarded to the 1st appellee, the Liberia Industrial Office (LIPO) for the conduct of an administrative investigation,. We quote excerpts of the letter of complaint as follow, to wit:

“... On behalf of our client we wish to bring to your attention the violation of the infringement of its trademark by Housseni Kessell, Lebanese businessman and owner of HK Enterprise, a business entity located at Paynesville Red-light, Paynesville, Liberia.

Since 2010, our client has been the trademark holder and sole distributor of Pop Drink in Liberia and representative of PT Forsia, Nusapersada, Food and Beverages Manufacturer Trading 1580, based in the Republic of Indonesia, the producer of Pop Drink. Please find hereto attached a copy of our client’s Certificate of Registration of trademark and copy of our client’s letter of appointment from PT AFRINDO BUSINESS INTERNATIONAL of Indonesia, distributor of the “Pop Drink” to our client appointing it as the sole sub-distributor of the product in Liberia. Recently, Mr. Kessell obtained a certificate of registration of trademark for the same product from the Industrial Property Office of Liberia, for the purpose of importing and distributing the same product for which our client has had a certificate of registration of trademark and has been a sole distributor since 2010 in the Republic of Liberia. The action of Mr. Kessell violates section 3.4(d) and 3.9 of the Patent, Copyright and Trademark Law, Title 24, Liberian Code of Laws Revised.

Honorable Minister, it is obvious that if businessman Kessell is permitted to infringe upon the trademark right of our client in such a flagrant and reckless manner and in utter disregard for the law as quoted hereinabove, our client’s business will be seriously impaired and damaged to a degree that could put our client completely out of our business.

It is, therefore, our fervent hope and ardent desire that as a minister in charge of the development and sustenance of Commerce and Industry in Liberia, you will do everything within your authority and power to stop the infringement of our client’s trademark by businessman Housseni Kessell by first not approving any request for Import Permit Declaration (IPD) by him and second, ordering a hearing into this complaint by any competent official of your ministry...”

The records show that during the pendency of the investigation, the 1st appellee, LIPO informed the appellant by a letter dated May 9, 2014, that its exclusive right to the “POP DRINK” trademark in Liberia is restored for the period for which it was granted, that is, for a period of ten (10) years, however, pending the outcome of the investigation into its complaint against the 3rd appellee. Following the investigation into the appellant’s complaint, the 1st appellee addressed another letter dated June 24, 2014, to the appellant and attaching thereto the report on the findings and conclusion reached from the investigation which included contact

with the manufacturer of the drink from which the dispute grew. We quote, the said findings and conclusions as follow, to wit:

“FINDINGS:

1. That the right granted to the appellant, BAF Trading Corporation expired since June 2013;
2. That the 3rd appellee, H.K. Enterprise was licensed by the manufacturer as the main distributor in Liberia on the basis of which a trademark certificate was issued it; and
3. That PAE’s agency agreement with the manufacturer is for a period of one year (1st January to 31st December, 2014).

DECISION:

1. Revocation of the appellant’s trademark certificate as the rights given it by AFRINDO expired as of June 2013.
2. That the certificate of trademark of the 3rd appellee, H.K. Enterprise which was suspended, be restored.”

In an apparent show of its dissatisfaction with the above decision by the 1st and 2nd appellees, which was in favour of the 3rd appellee, the appellant instituted the action for declaratory judgment praying the trial court as follow:

1. That the appellant remains the exclusive holder of the trademark for “pop drink” in Liberia and order the 1st, 2nd and 3rd appellees to refrain from infringing upon its rights under the said trademark certificate which it obtained since 2010; and
2. That the importation of the same “pop drink” by the 3rd appellee absent an agreement with it, (the appellant) is a violation of the law controlling the sale of goods for which a trademark is registered.

The trial was conducted, and final ruling rendered on August 5, 2016, upholding the administrative conclusions reached by the 1st and 2nd appellees to the effect that the present appellant lost its right to the importation and distribution of the drink under the Trademark “POP Drink” when its certificate was revoked by the 1st appellee, the Liberia Industrial Property Office and confirmed by its principal, the Ministry of Commerce, the 2nd appellee as well as the expiration of appellant’s period of appointment by the agent of the owner of the Trademark, “Pop Drink”. The trial court also ruled that as the matter had been duly investigated by the proper administrative authority, the LIPO, and that a decision therefrom was appealable through a petition for judicial review and not a petition for declaratory judgment. We quote excerpt of the trial court’s final ruling, to wit:

“...Having concluded that the LIPO, in keeping with the Industrial Property Act, has original jurisdiction over the matter, we now turn to the Opinions of the Supreme Court of Liberia on this issue. The Court has held, ‘in matters over which a government agency has been expressly given original jurisdiction, a court is prohibited from exercising original jurisdiction’. (See *Vamply of Liberia, Inc. v. James M.T. Kandakai*, 22 LLR 241) Pursuant to this Opinion of the Supreme Court, this court cannot assume and exercise

original jurisdiction as is been urged by the Petitioner herein. This position of ours is further enhanced by the fact that the Petitioner, in recognition of LIPO's original jurisdiction, filed a formal complaint with the agency, a complaint upon which the agency concluded, holding that the Petitioner did not have a right to the trademark, subject of these proceedings, and that LIPO had justifiably revoked the certificate issued to the Petitioner. We conclude therefore that this court will not act to disturb the conclusions of the agency of first instance by a declaration of rights..."

The appellant noted exceptions to the trial court's ruling and announced an appeal to this Court, filed an 18 count bill of exceptions and subsequently perfected its appeal.

It is useful that we re-emphasize this Court's numerous holdings, that decisions of administrative agencies acting in the capacity of quasi-judicial forums are reviewable by circuit courts *via* the process of judicial review. Although the Commercial Court of Liberia is a specialized court, its jurisdictional authority is concurrent to that of a circuit court; and, the matter being one of a commercial nature, it was proper to venue same before the Commercial Court, albeit through a petition for judicial review.

But as this Court has opined in plethora of its Opinions, that it is the substance of a pleading, and not the caption, which determines the nature thereof, we herewith hold that the trial judge acted within the ambit of the law by entertaining the petition for the sole purpose of reviewing the decision of the administrative agency, the LIPO, and not the captioned petition for declaratory judgment. Therefore, we will only make a determination as to whether or not to affirm or reverse the decision of the trial court which confirmed the ruling of the 1st and 2nd appellees.

The arguments by both the appellant and the 3rd appellee, as contained in their respective briefs filed before this Court, remain the same as the contentions raised in their pleadings before the trial court. We will therefore not burden this Opinion by recapping their allegations and counter allegations.

It is however undisputed that both parties are claiming exclusive rights to the importation and distribution of the contested drink in Liberia and have relied on provisions of the Industrial Property Act of Liberia (2003) and which was subsequently amended in 2014. We note that the provision of the 2003 law relied upon by the parties remained the same in the subsequent amendment.

The records confirm the appellant's assertion that the Liberia Intellectual Property Office (LIPO) granted it exclusive right to the Pop Drink Trademark in Liberia for a period of ten (10) years, beginning March 2010 to March 2020, with the option to renew said right thereafter. The trial court recognized, and rightfully so, that the LIPO is the legal entity authorized by law to issue licenses and permits for trademarks and other related intellectual property rights. The trial court's determination of this right of LIPO, and our affirmation thereof, finds basis under section I, sub-section 2.1(4) of the Industrial Property Act (2003), which states that the head of the LIPO "*...shall be entrusted with all functions relating to the procedure for the grant of patents and the registration of industrial design, marks and collective marks and for the administration of granted patents and registered industrial designs, marks...*"

While the Act allows for the registration of a mark by the filing of an application and paying the prescribed application fees, it goes without saying that the mark sought to be registered must not be one that legally belongs to another person, enterprise, or organization; if so, the person seeking to use the said mark must first obtain the acquiescence of the owner.

It is undisputed that “Pop Drink” is the registered trademark of PT Forisa Nusapersada (Forisa), an Indonesia company which manufactures and sells said product. That on June 9, 2010, Forisa appointed PT Afrindo Business International (Afrindo) as its sole distributor of Pop Drink on the Liberian market for a period of three (3) years, and said appointment expired in June, 2013; that pursuant to its appointment, Afrindo assigned its right of sole distributorship to the appellant, while its appointment from Forisa was still in full force and effect.

The letter of appointment for sole distributorship issued to the appellant’s principle specifically states: “...*the Distributor recognizes the value of the goodwill associated with the Trademark [Pop Drink] and acknowledges that all the rights therein belong exclusively to the Principal [PT Forisa Nusapersada (Forisa)], thus, the Distributor shall not register the said Trademark under [its] name for whatsoever reasons...*”; by extension, this caveat applied to any and all agents of “Afrindo”, to include the appellant. Pursuant to the legal principle that no one gives what they do not have, the appellant was without authority to request registration of the “Pop Drink” trademark because it was not the owner, neither did it have the authorization of the owner to that effect. We are therefore of the considered opinion that the caveat against the registration of the Pop Drink trademark under the name of the appellant’s principal was sufficient grounds for denial of the appellant’s application for the registration of the trademark under its name.

Howbeit, the records show that the “Pop Drink” trademark was registered under the appellant’s name for ten (10) years, even though the agreement from which the appellant allegedly obtained its authority to use the said trademark did not exceed three (3) years in its lifespan.

Subsequently in 2014, following the expiration of the sole distributorship right of the appellant’s principal, “Forisa” appointed Franco Asian Enterprises Singapore Pte Ltd. (FAE) as its sole distributor of Pop Drink on the Liberian market; thereafter, FAE assigned its right of sole distributorship to the 3rd appellee. Predicated on FAE’s assignment of its right as ‘sole distributor of Pop Drink on the Liberian market’ to the 3rd appellee, the latter then applied for and was granted approval for the registration of the selfsame “Pop Drink” trademark. In fact, in a letter dated April 29, 2014 and addressed to the Assistant Minister for Commerce, Ministry of Commerce & Industry, Liberia, Forisa, through its Chief Operating Officer (COO), informed the said Assistant Minister of Commerce that the appellant had registered the “Pop Drink” trademark without its consent or acknowledge. Additionally, Forisa requested permit for sole distributorship right on behalf of the 3rd appellee, predicated on the agency relation that existed between the appellee and FAE, Forisa’s appointed sole distributor of Pop Drink in Liberia.

We observe that the request for permit filed by Forisa on behalf of the 3rd appellee is for sole distributor right of Pop Drink on the Liberian market, and not for registration of the “Pop Drink” trademark.

Howbeit, we also note that unlike the case of the appellant, the LIPO issued a one (1) year certificate of registration of the “Pop Drink” trademark in favour of the 3rd appellee. Therefore, we hold the view that although the appellee is not the owner of the “Pop Drink” trademark, it is entitled to its use and the accompanying benefits for the period stipulated in its letter of assignment as agent of FAE, the authorized sole distributor of Pop Drink on the Liberian market.

WHEREFORE AND IN VIEW OF THE FOREGOING, the judgment of the Commercial Court of Liberia, confirming the decision of the Liberia Intellectual Property Office is hereby affirmed. The Clerk of this Court is ordered to send a Mandate to the court below, ordering the judge presiding therein to resume jurisdiction over this case and give effect to the Judgment of this Opinion. Costs are ruled against the appellant. IT IS HEREBY SO ORDERED.

Appeal Denied

When this case was called for hearing, Counsellors Momolu G. Kandakai and Tiawon S. Gongloe of the Gongloe & Associates, Inc. appeared for the appellant. Counsellors T. Negbalee Warner and J. Awia Vankan of the Heritage Partners and Associates, Inc. appeared for the 3rd appellee. No Lawyer appeared for the 1st and 2nd appellees.