

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC  
OF LIBERIA, SITTING IN ITS MARCH TERM, A.D. 2022

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

Liberia Traffic Management Incorporated, represented by its )  
Chief Executive Officer, Mohammed Abou Darwich of the City )  
of Monrovia, Liberia .....Appellant )

Versus )

Government of the Republic of Liberia, Montserrado County, )  
Liberia.....1<sup>st</sup> Appellee )

Appeal

AND. )

Modern Development and Management Corporation (MDMC) )  
Express, Incorporated, represented by its General Manager, and )  
Chief Executive Officer, John S. Youboty, of the City of Monrovia, )  
Liberia, and the Liberia Bank for Development and Investment )  
(LBDI), represented by its General Manager and all those operating )  
under said authority .....2<sup>nd</sup> Appellees )

GROWING OUT OF THE CASE: )

Liberia Traffic Management Incorporated, represented by its )  
Chief Executive Officer, Mohammed Abou Darwich of the City )  
of Monrovia, Liberia.....Petitioner )

Versus )

Government of the Republic of Liberia, Montserrado County, )  
Liberia.....1<sup>st</sup> Respondent )

Petition for  
Declaratory  
Judgment

AND )

Modern Development and Management Corporation (MDMC) )  
Express, Incorporated, represented by its General Manager, and )  
Chief Executive Officer, John S. Youboty, of the City of Monrovia, )  
Liberia, and the Liberia Bank for Development and Investment )  
(LBDI), represented by its General Manager and all those operating )  
Under said authority .....2<sup>nd</sup> Respondents )

HEARD: March 23, 2022

DECIDED: September 23, 2022

Madam JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

The Revised Rules of the Supreme Court of the Republic of Liberia, Title III, Part  
2, captioned: Continuance and Withdrawal states, among other things, the following,  
to wit:

"... When the appellant and appellee, or the petitioner and respondent shall in vacation by themselves, or either counsel, sign and file with the clerk an agreement in writing directing the cause to be withdrawn and specifying the terms on which it is to be withdrawn as to costs, shall pay to the clerk any fees that may be due him and the ministerial officers, it shall be the duty of the clerk to enter the case withdrawn upon the approval of the Chief Justice or any Justice of the Court, and to give to either party requesting it, a certificate of withdrawal".

Pursuant to the above quoted provision of the Revised Rules of the Supreme Court, on September 15, 2021, two of the parties, the Liberia Traffic Management Corporation (LTMC), the appellant, by and through its legal counsel, Arthur T. Johnson and its Chief Executive Officer, Mohammed Abou Darwick and the Government of Liberia, the 1<sup>st</sup> appellee, through the Ministry of Justice, represented by the Solicitor General, Counsellor Sayma Syrenius Cephus, signed and filed with the Clerk of the Supreme Court a Stipulation of Voluntary Discontinuance/Withdrawal. The notice pertained to the withdrawal of an appeal in the case: *Liberia Traffic Management Incorporated v. the Government of the Republic of Liberia and the Modern Development and Management Corporation* growing out of an action for specific performance filed before the Sixth Judicial Circuit, Civil Law Court, Montserrado County. In accordance with the above quoted provision of the Rules of the Supreme Court, the said withdrawal was approved by our Colleague, Mr. Justice Joseph N. Nagbe.

At the call of the case on March 23, 2022, the 1<sup>st</sup> appellee, through the Solicitor General, Republic of Liberia, Counsellor Sayma Syrenius Cephus, by leave of Court made a submission on the minutes as follows:

"At this stage, one of counsels for the Republic of Liberia prays Court and your Honors to reinstate the cause of action which was discontinued by the parties on grounds that the discussion anticipated from the execution of the stipulation agreement had broken down and not been held, and as a consequence of that, the Republic of Liberia has filed its legal brief praying that the matter be reinstated so that the Court can make a final determination on the factual and legal issues presented.

Counsel says that the application is made in good faith and it is part of the constitutional right of every citizen to join and/or discontinue with any institution as in this instance case which is seeking the compliance by agencies of any decision emanating from this action. Counsel says because the concession agreement provides for arbitration and being that counsel recognizes the agreement to be valid between it and the appellant, it will be prudent for the appellant as was advised or mandated by the court below to evoke the appropriate provisions for a settlement of any dispute deriving therefrom... "

The counsel representing the Modern Development and Management Corporation (MDMC), 2<sup>nd</sup> appellee, also by leave of Court placed the following resistance on the minutes:

" ... At this stage, one of counsels for MDMC, brings to the attention of this Court that it is party to both the underlining action, and the appeal pending before this Court, but strangely, it was never consulted and did not participate in the discussions and negotiations leading to the voluntary discontinuance of the appeal, and therefore is not a party to the contractual obligations negotiated and agreed to by the appellant and the 1<sup>st</sup> appellee.

Counsel submits that ordinarily, it would not have raised any concern for the discontinuance of the appeal, but it is constrained to do so because counts 1, 2, and 3 of the undertakings by both the appellant and the 1<sup>st</sup> appellee would affect the protectable interest of MDMC in the execution and implementation of its rights and contractual obligation under the terms and condition of the private public partnership agreement between MDMC and the 1<sup>st</sup> appellee, the Republic of Liberia.

Counsel therefore submits that a reconsideration of the stipulation of voluntary discontinuance would be appropriate in order to afford MDMC to exercise its right in the appeal process and preserve its interest thereby insuring that counts 1, 2, and 3 of the stipulation of voluntary discontinuance is set aside..

The counsel for the Liberia Traffic Management Corporation (LTMC), appellant, also by leave of Court made resistance on the minutes of Court. We however quote those counts deemed relevant as follows:

" ... The submission made by the Solicitor General that he intends to proceed with the matter and has filed a brief before this Court is a surprise. Counsel says that up to the time of this stipulation, he is yet to receive any submission for his request to proceed with the appeal. Counsel further says that there has been no fundamental basis for the Solicitor General's submission. Therefore counsel says that the fact that the Government of Liberia by and through the Ministry of Justice has signed this agreement and all of the parties have signed, that is to say, the LTM and the Government of Liberia, approved by the Supreme Court, is a rigor reason to bind the parties to this stipulation because this process was done voluntarily by the parties.

Counsel responding to the 2<sup>nd</sup> appellee MDMC says that the discussion had with the Ministry of Justice and the LTM does not include the MDMC. The very MDMC had maintained all through the records of the court that it is not a party to the concession agreement signed by the Government of Liberia and the LTM, and therefore had no part or interest in the concession agreement where the Government of Liberia and the LTM are the only parties.

Counsel says that there is no ambiguity to the stipulations and that the reasons given by the Solicitor General is not legal enough, because the signing and approval of the stipulation waives the Government of Liberia's position expressed by the Solicitor General that he intends to proceed with the appeal. The decision has been reached by this Honorable Supreme Court, and in substance, the Supreme Court has agreed with the parties as stipulated in this agreement. Therefore, the Government of Liberia's submission should be denied and a judgment without opinion be delivered by this Court."

This Court addressed similar issue in the case *Orange Liberia, Inc. v Liberia Telecommunications Authority*, Supreme Court Opinion, March Term, A. D. 2020. In that case, the counsel representing one of the parties had filed a Notice of Voluntary Discontinuance with the Clerk of Court and obtained the approval of an

Associate Justices in order to abate and terminate the appeal before the Supreme Court. Surprisingly, when the *Orange case* was called for hearing for the purpose of the lawyers to submit the Notice of Voluntary Discontinuance to the Court for approval in accordance with the applicable and prevailing rule and procedure, the Court observed that the lawyer representing the appellant had filed a brief, an indication of his readiness to proceed with the main appeal. Upon inquiry by the Court, the said counsel informed the Court that the filing of the said notice was conditional on the opposite party meeting certain conditions, which that party failed to do. The counsel also informed the Court that he did not obtain the consent of his client prior to filing the said notice. The Court then ordered the counsel to have his client write a formal letter clearly stating its position to the submission made on its behalf by its counsel and which order the client did complied and filed a formal communication with the Clerk of Court, wherein it informed the Court that it did not give instructions to its counsel to withdraw its appeal.

In disposing this issue: the Court described the act of the counsel as "strange" to the practice in this jurisdiction and opined as follows:

"... On the strict application of the above-quoted part of the revised rules, the appeal could have been deemed abated, terminated, and stricken from the Supreme Court's Docket. However, this Court has, over the years, called for the hearing of cases wherein a notice of withdrawal has been filed to ascertain whether the parties have given consent to their respective counsels to do so... Needless to mention that the Counsellor's conduct is a clear departure from practice before the Bench; ... "

Applying the above cited law to the present case, the records show that the Solicitor General, Counsellor Sayma Syrenius Cephus, representing the Republic of Liberia, by and through the Ministry of Justice, who signed and filed the approved stipulation of voluntary discontinuance/withdrawal with the Clerk of this Court, along with the appellant, has now come requesting the Court to withdraw the stipulation so filed, and to reinstate the appeal. Unlike the *Orange case* there is no showing that the Solicitor General obtained the express consent of the Attorney General, the Minister of Justice who by law is responsible to supervise and control the Solicitor General pursuant to Sections 22.2(a) and 22.4 of the Executive Law.

There is no proof that Counsellor Sayma Syrenius Cephus obtain the consent of the Republic of Liberia through the Attorney General as was done in the *Orange case* where the client disavowed and disagree to the withdrawal of his case. He only alluded to certain facts and circumstances contained in the case of specific performance, which this Court is not privy to due to the fact that the appeal has not been heard.

The Court notes however, that in the instant case, the Modern Development and Management Corporation (MDMC) Express Inc., one of the parties in the main case and to the appeal, was never notified or made a party to the notice of voluntary withdrawal, hence in its resistance to the 1<sup>st</sup> Appellee's submission requested the Court to set aside the said notice of voluntary withdrawal as its interests will be affected by the said withdrawal. This Court in consonance with the applicable provision of the Statute has opined that persons who ought to be parties in a case if complete relief is to be accorded between the persons who are parties to such action and stand to be inequitably affected by a judgment or decision must be joined to serve the ends of justice. *Civil Procedure Law, Rev. Code 1: 5.5(1); Insurance Company of North America v MS. Bhatti & Sons, Inc.*, 35 LLR 191, 198 (1988). We hold that there being no proof that the MDMC was dropped from this case or that it was one of the parties that executed the Notice of Withdrawal, this Court says that in order to accord substantive justice to all the parties the Notice of withdrawal hereby stricken from the records of this Court, and we so hold.

In furtherance to the above, this Court frowns on the misconduct of Solicitor General Sayma Syrenius Cephus which we find to be similar to that of Counsellor Barbu in the *Orange case*. In the *Orange case*, the Supreme Court censor Cllr. Barbu and sternly warned all lawyers appearing before it by holding as follow: "... we must emphasize our discountenance of any conduct of lawyers appearing before this Court of last resort, which behavior tends to mislead its final decision, a making that has far more significant implications to the party litigants. Hence, we give this strong warning to all lawyers appearing before this Court that such misconduct in the future shall warrant an appropriate penalty."

Pursuant to this strong warning enounced in the *Orange Case*, we must now set an appropriate penalty to serve as a deterrent, that henceforth, this Court's decisions

and decrees are adhered to at all times, and to ensure that lawyers desist from clouding the workings of the Court. Accordingly, the Ministry of Justice is hereby fined the amount of Five Hundred United States (US\$500.00) Dollars to be paid into Government's revenue within 72 hours as of the rendition of this Opinion and Judgment and receipt of the payment deposited with the office of the Marshall of the Supreme Court.

Henceforth, this Court will insist on the strict application of the above-quoted Revised Rules of the Supreme Court, where the Clerk of this Court has entered the case withdrawn upon the approval of the Chief Justice or any Justice of the Court, the appeal will be deemed abated, terminated, and stricken from the Supreme Court's Docket. The subsequent calling of the case by the Supreme Court is merely perfunctory to ascertain whether the parties have given consent to their respective counsels to file said notice, or whereas in the instant case, one of the parties to the appeal pending was not made a party to the withdrawal thereof, then and in such instances, the withdrawal shall be deemed to be null and void and the appeal proceeded with on its merits.

WHEREFORE AND IN VIEW OF THE FOREGOING, the approved and filed notice of voluntary discontinuance signed only by the appellant and the 1<sup>st</sup> appellee on September 15, 2021, to the exclusion of the 2<sup>nd</sup> appellee, is ordered stricken from the records of this Court and the appeal from the action for specific performance ordered heard on its merits. Costs are disallowed. AND IT IS HEREBY SO ORDERED.

*When this case was called for hearing, Counsellor Arthur T Johnson of the Consortium of Legal Practitioners, Inc. appeared for the appellant. Counsellor Sayma Syrenius Cephus, Solicitor General of the Republic of Liberia, appeared for the 1<sup>st</sup> appellee, the Republic of Liberia. Counsellor Abraham B. Sillah, Sr. appeared for the 2<sup>nd</sup> appellee, MDMC.*