IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA

SITTING IN ITS MARCH TERM, A.D. 2023

BEFORE HER HONOR: SIE-A-NYENE G. YUOH…….,,,,,,,,..……. CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE…….,..ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE……..……...ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA……..…..…ASSOCIATE JUSTICE
BEFORE HIS HONOR: YAMIE QUIQUI GBEISAY, SR. ……..…….ASSOCIATE JUSTICE

Acquillas Construction Company by and thru)
its Managing Director, Mr. Williams Cox of)
the City of Paynesville, Montserrado County)
…….……Appellant)
)
Versus) APPEAL
)
The Government of the Republic of Liberia, by)
And thru the Ministry of Finance, to include)
The Minister of Finance, Deputies, Assistant)
And Comptroller of the said Ministry,)
…….....Appellee)
)
GROWING OUT OF THE CASE:)
)
The Government of the Republic of Liberia, by)
And thru the Ministry of Finance, to include)
The Minister of Finance, Deputies, Assistant)
And Comptroller of the said Ministry,)
……...Petitioner)
)
Versus) PETITION FOR A WRIT OF
) CERTIORARI
His Honor Chan-Chan A. Paegar)
……1st Respondent)
)
And)
)
Acquillas Construction Company by and thru)
its Managing Director, Mr. Williams Cox of)
the City of Paynesville, Montserrado County)
…….……2nd Respondent)
)
GROWING OUT OF THE CASE:)
)
The Government of the Republic of Liberia, by)
And thru the Ministry of Finance, to include)
The Minister of Finance, Deputies, Assistant)
And Comptroller of the said Ministry,)
…….....Movant)

Versus) MOTION FOR RELIEF FROM
) JUDGMENT

Acquillas Construction Company by and thru its Managing Director, Mr. Williams Cox of the City of Paynesville, Montserrado County ……Respondent	)	
GROWING OUT OF THE CASE:	)	
Acquillas Construction Company by and thru its Managing Director, Mr. Williams Cox of the City of Paynesville, Montserrado County ……Plaintiff	)	
Versus	)	ACTION OF DEBT
The Government of the Republic of Liberia, by And thru the Ministry of Finance, to include The Minister of Finance, Deputies, Assistant And Comptroller of the said Ministry, ……Defendant	)	

Heard: June 6, 2023 Decided: August 11, 2023

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT

This appeal grows out of the ruling of our distinguished colleague, Chief Justice Her Honor Sie-A-Nyene G. Yuoh, then Justice presiding in Chambers of this Court during the October Term, A. D. 2016. Our review of the facts revealed by the records show that our colleague's ruling captures substantive narrative of the facts and rationale for granting the appellee's, the Government of Liberia, petition for a writ of certiorari. We quote the said ruling verbatim as follows:

> "On June 23, 2015, the Acquillas Construction Company, the respondent herein instituted an action of debt in the Commercial Court, Montserrado County sitting in its June Term A.D. 2015, against the Government of Liberia, the petitioner herein, for the amount of US$456,945.87 (Four Hundred Fifty Six Thousand Nine Hundred Forty Five United States Dollars Eighty Seven Cents). The respondent alleged that the said amount represented the value of Government issued savings bonds plus 5% interest rate per annum.
>
> According to the allegations in the complaint, in 1981, the petitioner, the Government of Liberia, issued savings bonds to its citizenry at an interest rate of 5% per annum; that the respondent embarked on a business venture by purchasing the petitioner's savings bonds from several individuals and businesses; that as a result of these acquisition

the respondent was seized of 1,166 (One Thousand One Hundred Sixty-six) savings bonds with a total value of US$454,672.51 (Four Hundred Fifty Four Thousand Six Hundred Seventy Two United States Dollars Fifty One Cents); that between 1988 to 2005, the respondent presented its claims to the petitioner for settlement but all said efforts proved futile hence, the institution of the action of debt, counts 2, 3, 4, 5, 6, 7, and 8 of the respondent's complaint being the embodiment of its contentions, the Court has decided to quote same herein below to wit.

2. "That because Plaintiff says that in the year 1981, the Government of the Republic of Liberia, under the then Leadership of Dr. Samuel K. Doe, in addressing stringent financial crisis in the country, introduced what was referred to as "The National Savings Bonds Scheme". This scheme had an objective of meeting with government's financial needs. For instance, at Section One of the Decree at page 1 at paragraphs 2, 3 & 4 provided that:

a) A Liberian National whose total gross income (including fringe benefits) is US$750.00 or above during the months referred to shall subscribe to and purchase Savings Bonds equivalent to 50% of the total gross income, net of income tax and development tax for each such month;

b) A Liberian National whose total gross income is more than US$50.00 and less than US750.00 during the months referred to in paragraph 4 of the PRC Decree, shall subscribe to and purchase Savings Bonds equivalent to 25% of the total gross income net of income tax and development tax for each such monthly.

c) The total subscription of each employee referred to at (2) and (3) of this Decree shall be deducted by the employer in four equal instalments from the remuneration for the months of January, March, May & June 1981 and remitted to the National Bank of Liberia (NBL).

3. The Decree provided for the retiring and repayment of the bond holders by the Government in three (3) categories, 6th, 7th and 8th as per section ten (10) at page 2 of the Decree all those bond holders, including government employees, private citizens and institutions who had obtained these bonds would have been paid from the Treasury of the Government of Liberia at a 5% interest rate per annum in accordance with subsection 10 at page 2 of the aforesaid PRC Decree. This provision spells out that: Savings Bonds shall be redeemed by the Government of Liberia on expiry of the 6th, 7th & 8th year after the issue date. The Government of Liberia shall redeem the bond by following speculations, in the 5th year, 30% in the 7th year, 30% and the 8th year, 40% with an

interest rate of 5%. ATTACHED AS p/2 IN BULK, is a photostat copy of the said PRC Decree #27, signed by the late Head of State, Samuel K. Doe in 1981.

4, That plaintiff says that in adhering to this policy of the Government, after the expiration of the period shown by the Government for retiring the bond from bondholders, plaintiff and his company engaged into what was referred to as "Capital Investment" that is, all monies acquired while in active service, was invested into purchasing bonds from companies, individuals, institutions and likes.

5. That because plaintiff continues that as a consequence of investment carried out, plaintiff was able to acquire more than 1,166 bonds, all amounting to United States Dollars, Four Hundred Fifty Four Thousand Six Hundred Seventy Two and 51/100.

6) That Because plaintiff says, in his capacity as the Managing Director of Acquillas Construction Company, he communicated to Central Government, especially in 1988 and 1989 to then President Dr. Samuel K. Doe and the Minister of Finance, Hon. David M. Farhat with respect to the redemption of the Savings Bond,. In response, the Minister said that the government was putting into effect a National Policy with the aim of redeeming its bonds. Attached as p/4 in bulk are the two communications to this plaintiff's complaint to form a significant part of plaintiff complaint.

7. That because plaintiff continues also and says that in the year 2005, he made a representation to the Ministry of Finance with respect to other claims which included the issue of the bonds through the National Debt Management Task Force of the Debt Management Office, 2nd Floor of the Ministry of Finance. His representation did not yield any meaningful purpose. Attached as p/5 in bulk is a copy of an instrument bearing the heading of the said section at the Ministry of Finance.

8. That because plaintiff says that after the defendant failed to honor its 2005 communication as stated in count 7 above, he proceeded and through his legal counsel in September of 2013, communicated with the Minister of Finance, Hon. Amara Konneh of the Ministry of Finance, reminding him and his Ministry of plaintiff's claim, but since the receipt of that communication, the defendant has failed and neglected to respond to plaintiff's claim. Attached as p/6 is a copy of plaintiff's communication to the defendant in 2013 to form a significant component of plaintiff's complaint."

Attached to the respondent's complaint, among other exhibits, were the savings bonds it allegedly acquired by legal purchase. We note that although it is indicated on the face of the bonds that the said bonds are not transferrable until the lapse of three (3) years from the date of stated thereon, the respondent did not attach any documentary evidence in the nature of receipts form the alleged sellers of the bonds and the dates the bonds were purchased. But this is an issue we will not delve into, as this Court does not receive evidence.

On July 3, 2015, the petitioner filed its answer stating *inter alia*, that the respondent illegally acquired the savings bonds; that the value of the 1,166 (One Thousand One Hundred Sixty) saving bonds was grossly inflated by the respondent from the value of US$206,457.75 (Two Hundred Six Thousand Four Hundred Fifty Seven United States Dollars Seventy Five Cents) to US$454,672.51 (Four Hundred Fifty Four Thousand Six Hundred Seventy Two United States Dollars Fifty One cents); that by this act, the respondent intended to unjustly enrich itself by extorting and cheating the petitioner; that the bonds were duplicated from 454 (Four Hundred Fifty Four) to 1,166 (One Thousand One Hundred Sixty-Six) saving bonds. These allegations of the petitioner being germane to this case are captured in counts 6, 7, and 8 of the answer which we quote herein below to wit:

6. "That as to count 4 of the plaintiff's complaint, defendants incorporate count 5 of their answer and say further that plaintiff engaged into capital investment which was the buying of savings bonds and redeeming them without obtaining a license or permission from the National Bank of Liberia (NBL) that was designated as custodian and had ownership responsibility over the accounts is a violation of the Financial Act of 1974 which states that: "it is a violation for one to do banking business in the Republic of Liberia without any registration with the then National Bank of Liberia." The plaintiff's complaint should be dismissed in its entirety for lack of capacity and/standing to file a lawsuit and defendant so pray.

7. That as to count 5 of plaintiff's complaint, defendant say same is false and misleading to this Honorable Court as the figure presented by plaintiff, same been 1,166 bonds is grossly inflated by the plaintiff with intent to extort money from the defendants. The truth of the matter is, the plaintiff with different motive to cheat the defendants duplicated some of the bonds, which inflated the number of the beneficiaries to the above-mentioned figure to unjustly enrich itself. The defendant request this Honorable Court to deny said court has been pleaded in the bad faith.

8. That, further to the above, defendants say that the actual number of savings bonds that were presented as Exhibit p/3 by the plaintiff summed up to 454 bonds, which amount to a monetary value of LD$206,457.75, and not 1,166 bonds with a monetary value of US$454,672.51, as alleged by plaintiff. What the plaintiff did is that he super imposed and duplicated some of the bonds on other, thus repeating one number on several bonds. Defendant beg the court to take judicial notice of said instrument marked as P/3 in bulk."

On July 10, 2015, the respondent filed its reply challenging the petitioner to prove the allegations in its answer, that the value of the savings bond was inflated or that the respondent duplicated the bonds from 454 (Four Hundred Fifty Four) to 1,166 (One Thousand One Hundred Sixty-six). Count 6 of the reply being relevant to the issue of this case, we quote same herein below to wit:

6. "That because as to count 7 of the Defendant's Answer, plaintiff says and submits that with respect to the assertion that plaintiff overstated the number of bonds to 1,166 when it should be 454 with a cash value of LD206,457.75, plaintiff challenges the defendant to produce proof of such overstatement. Plaintiff denies the sufficiency of this assertion and maintains the total number of bond as well as the amount so involves being sued for. The total list of names of bondholders corresponds with the bonds as well as the total tallying of the bonds and it is inconceivable that the numbering and amount will not tally out to produce the total number and figure as the defendant is attempting to convey. Still further, that is why a comprehensive listing of all names of bondholders, their cash value and bonds number as well as the batches of the actual bonds were packaged and pleaded. In effect, not only were these instruments made proffer to the defendant, but a set of same is maintained with the court and the original are still with the plaintiff to be produced upon demand by the court if necessary.

On December 30, 2015, the Commercial Court presided over by Judge Chan-Chan Paegar disposed of the law issues and ruled the case to trial. On March 30, 2016, at the commencement of trial, the respondent produced one witness, Mr. William Cox, Sr., the managing director and chief executive officer Acquillas Construction Company. When quizzed on the issue of some of the bonds being original while others were photocopies, the witness testified that most of the original savings bonds were looted and destroyed during the civil war; that he managed to obtain the photocopies of the original bonds which he eventually turned over to his lawyer. We wonder from what source the respondent obtained the photocopies of the bonds since it claimed the original were

looted and destroyed during the civil war. The records show that due to the allegation of the duplicity of the bonds, the parties, by leave of court, were granted continuance in order to verify the bonds.

At the call of the case on September 13, 2016, the petitioner made a submission to the trial court, alleging that the savings bonds as gleaned from the verification process were duplicated and their value inflated. The petitioner stated that the act of the respondent in duplicating the bonds was intentional and therefore fraudulent and an attempt to defraud the petitioner and as such, requested the Commercial Court to transfer the case to the Six Judicial Circuit, Montserrado County to determine the issue of fraud. The respondent for its part resisted the submission on grounds that the petitioner's request was belated since pre-trial-motion(s) were already disposed of; that the trial of the case had already commenced; that the parties having agreed to have the bonds verified to determine the originals from the duplicates, the Commercial Court should retain jurisdiction to hear and make a final determination of the case.

On the same date of September 13, 2016, Judge Chan-Chan Paegar having listened to the arguments, rendered his ruling on the submission and resistance thereto, wherein he denied the petitioner's submission stating that the petitioner's submission to have a jury trial was belated; that the petitioner failed to prove the allegation of fraud and that the Commercial Court in Judge Paegar's own words is "as the circuit court, it has jurisdiction to entertain the allegation of fraud wherein evidence would be adduced and the determination made thereof." The ruling of Judge Chan-Chan Paegar being relevant to these proceedings is herein quoted verbatim below as to wit:

"At the resting of pleadings in these proceedings this cause of action was assigned for hearing; all pre-trial motions including a motion to dismiss was heard and determined. When this case was called for trial the plaintiff introduced its witnesses who were qualified and permitted to testify on the plaintiff's behalf. While the plaintiff's testimony was being taken, the parties, both plaintiff and defendant requested court for continuance so that the parties could meet and sort out the saving bonds subject of these proceedings. Since as the defendant indicated there's a possibility that some of the bonds would have appeared twice due to human errors in the photocopying and compilation of the bonds. The parties also indicated that upon the completion of the exercise a report would be submitted to this court. The duplicated bonds having been removed; that is to say for example if a bond bearing the name John Doe with series number 00001 appearing twice, one of the two copies will be removed. At the making of the submission of the continuance, the parties agreed that that process would have led to the eliminations of all duplicated bonds. The issue raised by the defendant was not that there was any fraud perpetuated in the acquisition, possession or

presentation of the bond for redemption by the defendant. This court believing that the parties were acting in good faith granted the application. Following the granting the continuance, the parties by their own volition met; analysed the bonds; removed copies of those bonds that appeared twice and agreed that the bonds that did not appeared twice were authentic and therefore the proceedings should be based on such authenticated bonds. Further, this court says that subsequent to the correction, the parties again pray for continuance to allow them to meet and discuss with the view of find alternative out of court amicable resolution of the parties; the application was again granted. At the call of the case for continuation of trial today counsel for defendant urges this court that because some of the bonds were repeated, they assume and concluded that such repletion was an attempt by the plaintiff to [perpetrate] fraud and that having so alleged, this court must divest itself of jurisdiction and have this case forwarded to the Sixth Judicial Circuit Court, Montserrado County for trial.

This Court says that the Supreme Court of Liberia has in a series of opinions held that it is not sufficient to allege fraud but that all allegations of fraud must be proven in order to serve as a basis for relief. In the case, John Emmanuel Frances v. the Montserrado Fishing Company, the Supreme Court propounded [that] "it is not sufficient to merely plead fraud as a basis for relief, it must be established by proof. See 20LLR page 542. Similarly in the case, LAMCO J.V. Operating Company v. Pervola the Court held [that] "in all averments of fraud or mistake the circumstances constituting the fraud or mistake shall be stated with particularity. Also in the case Handrison v. Thomas Moore the Court held [that] "upon an allegation that a party had committed fraud every species of evidence tending to establish such allegation should be adduced." In the instant case, the defendant, GOL, has alleged fraud yet failed to show by any species of evidence the existence of fraud as it relates to the bonds which were analysed, verified and accepted by the said defendant as being authentic. Further this court says the jurisdiction conferred on it as a specialized court as contained in the statute creating this court confers upon it the power to hear and determine cases of all commercial nature such as this present [case] in the current proceedings. Further this court says as the circuit court, it has jurisdiction to entertain the allegation of fraud wherein evidence would be adduced and the determination made thereof. This court further says that the issue of the defendant in these proceedings being engaged in a business, the nature of which was not a trade in bond has been heard and determined and if the defendant has any issue as to that ruling the requisite and necessary remedy would have been pursued. Having failed to pursue this remedy, the defendant suffered waiver and lashes with respect of that aspect of the application and that application cannot and will not be granted for that purpose.

Wherefore the application by the defendant is denied and the cause of action ordered further proceeded with."

Although the judge in his ruling mention a verification exercise and parties in their pleadings and arguments before this Court conceded to the verification process, we see nothing in the records showing how this verification process was conducted or where and when it was conducted.

From the ruling quoted *supra,* the petitioner excepted thereto, challenging the jurisdiction of the Commercial Court to hear the issue of fraud and on November 7, 2016, filed a six (6) count petition before the Chambers Justice of the Supreme Court praying the issuance of the alternative writ of certiorari to review and reverse the ruling of Judge Chan-Chan Paegar, and to have the case transferred to the Sixth Judicial Circuit Court, Montserado County for a jury trial on the issue of fraud.

The Chambers Justice reviewed the petitioner's application and cited the parties to a conference on November 10, 2016, and upon the conclusion thereof ordered the Clerk of the Supreme Court to issue the alternative writ, mandating the respondent to file returns on or before November 24, 2016. In obedience thereto, on November 16, 2016, the respondent filed a twenty-six (26) count returns wherein it basically restated its resistance to the petitioner's submission of September 13, 2016, that there were no issues of fraud surrounding the savings bonds; that the petitioner's request to have the case transferred to the Six Judicial Circuit Court, Montserrado County was belated since pre-trial-motion(s) had already been disposed; that the trial of the case had commenced and the respondent's witness took the stand, testified and was discharged; that the trial court had allowed continuance for the parties to meet and verify the savings bonds in order to determine the originals from the duplicates which exercise was completed; that the petitioner had the burden to prove the issue of fraud rather than making mere assertions; and that the Commercial Court had requisite jurisdiction to hear and determine the issue of fraud without transferring the case to the Six Judicial Circuit Court, Montserado County.

On December 2, 2016, the case was called for arguments and having attended to the facts, the ruling of the trial judge and the pleadings in these proceedings, we shall now pass upon the controversy surrounding Judge Cha-Chan Paegar's ruling of September 13, 2016, that have brought the parties before this Chambers Session on the remedial process of certiorari.

Statute provides thus:

"certiorari is a special proceeding to review and correct decisions of officials, boards, or agencies acting in a judicial capacity, or to review

an intermediate or interlocutory judgment of a court." *Civil Procedure Law, Rev. Code 1:16.21(1).*

The Honorable Supreme Court has held that:

"The writ of Certiorari is for the purpose of correcting errors committed by a subordinate court or other body, while a matter is pending, and when such errors materially prejudice or injure the rights of a party." *William v. Clarke 2 LLR 130, 132 (1913); TRADEVCO v. Mathies, et. Al., 39 LLR, 578, 585 (1999); Friends of Liberia Association v. Thompson et. al., 41 LLR 174, 178 (2002).*

Before answering this question which raises the issue of jurisdiction, we must first review the act creating the Commercial Court and case law by the Supreme Court to determine the authority and power of the Commercial Court. This Court has said in numerous opinions that "once jurisdiction has been challenged, the court must cease all proceedings in the case and determine its own jurisdiction. In fact, the law imposes that duty on the court even if none of the parties raises the issue, that is, the court, *sua sponte* has the duty to first determine its own jurisdiction over the person and subject matter before proceeding to entertain the matter and render a ruling thereon. *SCANSHIP v. Flomo, 41 LLR 181, 188 (2002).* Also, *"a court must of necessity, and if need be, upon its own, always consider the question of its jurisdiction primarily over any issue brought before it, since it is a bound to take notice of the limits its authority." K. Rasammy Bros. v. Burnet, 21 LLR 271, 277 (1972).* Even further, it is essential to the proper rendition of a judgment that the court has jurisdiction over the subject matter. And, in order to confer jurisdiction on a court, the subject matter must be presented for its consideration in some mode sanctioned by law. Where judicial tribunals have no jurisdiction of the subject matter on which they assume to act, their proceedings are absolutely void in the strictest sense of the term. A court must recognize want of jurisdiction over the subject matter of a case even if no objection is made by any of the parties. Therefore whenever a want of jurisdiction is suggested by the courts for the examination of the case, or otherwise, it is the duty of the court to consider it, for if the court is without jurisdiction it is powerless to act in the case." *The Intestate Estate of the Late Chief Murphey-Vey John et. Al. v. The Intestate Estate of the Late Bendu Kaidii et. Al. 41 LLR 277, 282 (2002).*

Article VII (2) of the Commercial Court Act provides that *"cases brought before the Commercial Court shall be tried without a jury."* It is of great significance to note that the intent and letters of this provision of the law is also similar to that specified in the acts constituting specialized courts to include the Debt, the Monthly and Probate and the Tax Courts. Example, the New Judiciary Law which states that the Commercial Court shall try cases without a jury also provides that *"the*

Debt Court shall be a court of record and its cases shall be tried without a jury. New Judiciary Law, 17:4:11. Another example is found in the Decedents Estates Laws, the Rules of the Probate Court and the Opinions of the Supreme Court acknowledging that the Monthly and Probate Court is a court of record and that it sits without a jury. *Decedents Estates Law, Rev. Code 8:105.1 (4); Rule 19 of 89, 93 (1964); Kromah v. Pearson 33 LLR 42, 45 (1985); Tarr v. Wright, Supreme Court Opinion, March Term, A.D. 2015.*

This being said, can the Commercial Court determine issue of fraud where the said issue is not raised at the beginning of the trial? This question is not a novelty or an innovation of law in our jurisprudence that requires the splitting of hairs or extensive research into local and foreign law authorities.

A case in point with similar facts and controversy is *The Management of West Africa Resources Corporation v. Mathies, 40 LLR, 21, 26 (2000)* wherein the Supreme Court held that the judge of a specialized court (the Debt Court) cannot determine the issue of fraud even if the said issue was not raised at the beginning of the trial.

In the Management of West Africa Resources Corporation case, the petitioner was a defendant in an action of debt in the Debt Court, Montserrado County. Following the exchange of pleadings it requested for a jury trial after the statutory period of ten days, that is, the request was made ten days after pleadings had rested. In its request the defendant submitted that there were issues of fraud that had to be tried by a jury and not the trial judge. The presiding judge of the Debt Court, His Honor John H. Mathies denied the petitioner's request on grounds that the request was statutorily barred because the petitioner suffered waiver and lashes. The petitioner filed for a writ of prohibition before the Chambers Justice who heard the petition and denied same on grounds that the defendant suffered waiver and lashes. On appeal, the Supreme Court *en banc* reversed the ruling of the Chambers Justice stating that although the petitioner was negligent in making its request for a jury trial, Judge Mathies however by law could not hear and determine issues of fraud. The court cited the *Civil Procedure Law 1:22.1 (6)* and stated that:

"The general rule is that if you desire a trial by jury, you must specifically request it in the pleadings or by motion within ten days after pleadings rest or else the right is waived. But the exception is that even if the party fails to request a jury trial, the court in its discretion may order it and can do so even if the trial has already started." 1d 28 [Our Emphasis].

Applying these principles of law cited *supra*, to the present case, this Court takes judicial notice of counts 6, 7, and 8 of the petitioner's answer wherein it alleged dishonesty, extortion and unjust enrichment

all being attributes of fraud. And, the Supreme Court has defined fraud as:

"a generic term which embraces all the multifarious means which human ingenuity can desire and are resorted to by one individual to gain an advantage over another by false suggestions or by suppression of the truth. In its general or generic sense, it comprises all acts, omissions and concealment involving a breach of legal or equitable duty and resulting to damage to another. Fraud has also been defined as any cunning deception or artifice used to circumvent, cheat or deceive another." *Wilson v. Firestone, 34 LLR 134 134 (1986); Fayad v. Dennis, 39LLR 587, 595 (1999); Jallah v. Jallah, Supreme Court Opinion, March Term 2014.*

In the Jallah Case, this Court also stated that even though it is the general rule in this jurisdiction that a party alleging fraud is required to raise same with particularity and specificity, however, allegations of fraud made under certain peculiar facts and circumstances, as in the present case, fraud would be presumed from the prevailing circumstances presented as an exception to the general rigid requirement. In another case, this court opined thus:

"…even though fraud should be proven with every peculiarity,.. fraud will be inferred or reasonably presumed from the surrounding circumstances." *National Port Authority v. Wilson, 34LLR 52, 58 (1986).* We hold therefore that although the petitioner did not specifically mention the word "fraud" the surrounding circumstances of this case to which the respondent even made admissions as to the duplicity of some of the bonds, fraud is inferred.

As stated earlier above, the petitioner pleaded that the value of the 1,166 (One Thousand One Hundred Sixty-Six) saving bonds had been grossly inflated by the respondent from US$206,457.75 (Two Hundred Six Thousand Four Hundred Fifty Seven United States Dollars Fifty Seven Cents) to US$454, 672.51 (Four Hundred Fifty Four Thousand Six Hundred Seventy Two United States Dollars Fifty one Cents) and that the respondent intended to unjustly enrich itself by extorting and cheating the petitioner in that it duplicated the savings bonds from 454 (Four Hundred Fifty Four) to 1,166 (One Thousand One Hundred Sixty-Six). We take judicial notice that the respondent in count 6 of its reply denied these allegations and also challenged the petitioner to prove same by the preponderance of evidence. The fact that there were allegations and counter allegations on the issue of "dishonesty, extortion and unjust enrichment should have served as sufficient notice to Judge Chan-Chan Paegar to firstly determine whether he was clothed with the legal authority to hear and pass on the issue of fraud without a jury.

Additionally, the act of the trial court in suspending the trial for the purpose of the parties by themselves to conduct a verification exercise of the bonds which the petitioner alleged to be duplicated and their quantity and value inflated to extort the petitioner and unjustly enrich the respondent was an exercise in futility as same was ultra vires and a direct usurpation of the province of the jury which is legally clothed to determine factual issues pertaining to the bonds to establish fraud. *Lartey v. Corneh 18LLR 177, 179 (1967); King v. International Trust Company 20LLR 438, 441, (1971); Ketter v. Jones et al. 41LLR 81, 85 (2002).* We wonder how the Commercial Court would have utilized the findings from the verification process when the said findings were never initially pleaded that the trial court sits without a jury?

But more importantly, the fact that the parties conceded that the bonds were indeed duplicated should have served as sufficient notice to the trial court that fraud was an obvious issue and as such, Judge Paegar should have *sua sponte* refused jurisdiction and transferred the case to the Sixth Judicial Circuit Court, Montserrado County as requested by the petitioner. This Court says that by refusing to transfer the case, Judge Paegar acted in excess of the law when he stated in his September 13, 2016 ruling that *"the Commercial Court, like the circuit courts, has jurisdiction to entertain the allegation of fraud wherein evidence would be adduced and the determination made thereof,"* when in reality the issue of fraud can only be determined by a jury and the Commercial Court sits without a jury pursuant to Article VII (2) of the Act establishing the Commercial Court. Therefore, we affirm and confirm the principles of law cited herein above and hold that the Commercial Court being prohibited by law to empanel or sit with a jury, evidence could not have been taken in the said court to prove fraud as this issue must be passed upon by a jury, the sole judges of the facts. Accordingly, Judge Chan-Chan Paegar was under a legal obligation to transfer the case to the Sixth Judicial Circuit Court, Montserrado County for a jury trial on that aspect of the case.

WHEREFORE and in view of the foregoing, the alternative writ of certiorari is hereby affirmed and the peremptory writ ordered issued. The Clerk of this Court is ordered to send a Mandate to the trial court commanding the judge presiding therein to resume jurisdiction over this case and give effect to this Ruling. IT IS HEREBY SO ORDERED."

From the reading of the Chambers Justice's Ruling, we discerned that our colleague based her decision to grant the petition on the similarity between the Act Establishing the Commercial Court, and the Debt Court Act as it relates to the trial of issues that are triable by a jury. Under the Act Establishing the Commercial Court, that is, Article VII of the Act, it is provided that "cases brought before the

Commercial Court shall be tried without a jury." Similarly, under the Act creating the Debt Court, it is provided that "the Debt Court shall be a court of record and its cases shall be tried without a jury". Relying upon the case: *The Management of West Africa Resources Corporation v. Mathies, 40 LLR, 21, 26 (2000)*, in which the Supreme Court held that the judge of a specialized court cannot determine the issue of fraud even if the said issue was not raised at the beginning of the trial, our colleague reasoned that the principle enunciated in this case as it concern the Debt Court maybe similarly applicable to the Commercial Court. We are unable to agree with our colleague for reasons stated hereunder.

The Act establishing the Commercial Court distinctively provides at Article III for the procedure of the court as follows:

> "(1) Actions in the Commercial Court shall be commenced and regulated in the same manner as prescribed in the Civil Procedures for civil actions in the Circuit Court, *except as modified in this Act or the Rules of the Commercial Court as may be promulgated hereafter.*
>
> (2) Notwithstanding the provisions of Article III, Section (1), the procedures of the Commercial Court shall be structured to promote the prompt determination of commercial disputes in keeping with law." Emphasis supplied

The above quoted provisions of the Act establishing the Commercial Court distinguish the procedure of the court from other specialized courts including the probate and debt courts. The procedure in the Commercial Court is different from those of other specialized courts considering the provision of Article III, Section (1) in part provides that "the Civil Procedure Revised Code is applicable to the commercial court… 'except as modified in this act or the Rules of the Commercial Court as may be promulgated thereafter.'

Article VII of the Act, *ibid,*, a section of which our colleague based her decision on, provides some of the exceptions alluded to under Article III Section (1) referred to herein above. For the benefit of this Opinion, we herein quote verbatim the said article:

> "(1) The Commercial Court shall be a court of record.
> (2) Cases brought before the Commercial Court shall be tried without a jury.
> (3) ***The Court may conduct or order a trial by arbitration or with the assistance of experts, as provided for in the Commercial Code and/or the Rules of the Commercial Court as may be promulgated hereafter.*** Emphasis supplied

Article VII, section 3 quoted above leaves no shred of doubt on the path to be pursued by the commercial court in adjudicating issues which are typically presented to a jury for determination. The section expressly confers the power to try factual issues presented in a commercial dispute by either an arbitration panel or a body of experts endowed with the requisite knowledge and skills in a particular area. Unlike the Debt Court Act or the Act governing other specialized courts where the framers only stated that the courts shall sit without a jury, but provided no means by which factual issues such as fraud are to be resolved if presented in a case, the framers of the Act Establishing the Commercial Court deliberately provided the means for settling disputes involving factual issues bordering on fraud. This, in our mind, is in consonance with the overarching objective for the establishment of the Commercial Court, which is to promote the just and speedy disposition of commercial cases, and also in recognition of the fact that, unlike other civil cases, commercial disputes involve complex and complicated transactions that are discernible only by individuals with specialized knowledge and training.

The records in this matter show that the issue based upon which the respondents herein prayed the court to submit to a jury trial has to do with duplication of the amount of saving bond which grossly inflated the amount prayed for by the petitioner, and which the respondent interpreted as an act of extortion. In other words, this averment alleges conflict in the account presented by the petitioners. Under the commercial code, most especially the article just quoted, a dispute of this nature maybe resolved pursuant to subparagraph 3 of Article VII thereof which provides "*The Court may conduct or order a trial by arbitration or with the assistance of experts, as provided for in the Commercial Code and/or the Rules of the Commercial Court as may be promulgated hereafter".* To our mind, considering this unique provision of the Act Establishing the Commercial Court which constitute an exception to the procedure in other specialized courts and further considering that this is a matter of account which clearly demonstrate some exceptional conditions that a court sitting alone cannot be expected to resolve, it is only proper that the court proceed by adopting the Civil Procedure Law Revised Code 1:24 which empowers the court in circumstances as obtained in this matter to appoint referees or in accordance with chapter 64 the Civil Procedure Law, constitute a board of arbitration to try the issue of the account.

This Court says that the trial having commenced in the present suit and it having been noticed that there was duplication of the bonds, an exceptional condition, it would have been proper for the trial judge to order an arbitration in accordance with the Act Establishing the Commercial Court or the Rules of the Commercial Court, if any; or better still, *sua sponte*, order a trial by referee so as to receive evidence and

submit findings to the Commercial Court. However, based on an application by one of counsels for the appellee the trial curt halted the hearing and allowed the parties two weeks to sort out the bonds so as to determine duplications if any. It is at the conclusion of this review that the appellee again moved for the dismissal of the action due to fraud. This application having been dismissed by the court, the appellee filed a request for the issue of fraud to be referred to the Civil Law Court for determination by a jury, since according to him the Commercial Court does not and cannot sit with a jury.

To begin with, we agreed that a trial judge may allow parties to a dispute to meet and determine issue of controversy that exist between and amongst them. However, when the parties cannot not reach an amicable resolution of the dispute as in the instant case, it becomes incumbent upon the trial judge to revert to the relevant statutory provision for the disposition of the disputed matter, especially when it became clear that the issue could not be resolved in the absence of a judicial determination.

In essence, considering that Articles III and VII of the Act Establishing the Commercial Court provide for procedures by which the Commercial Court may try commercial disputes with the end purpose of prompt resolution, we do not see how the fraud or duplications alleged by the appellee in this case, could confer jurisdiction on the Civil Law Court, 6th Judicial Circuit Court for Montserrado County. It is trite law that "the intention and meaning of the legislature must primarily be determined from the language of the statute itself, and not from conjectures or aliunde. When the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning." *Koffah v. Republic 13 LLR 232, Richards v. Monrovia Brewerly 19 LLR 241 (1969)*.

WHEREFORE and in view of the foregoing, the ruling of the Chambers Justice is reversed. The alternative writ issued is ordered quashed and vacated; and the peremptory writ prayed for is denied. The Clerk of this Court is ordered to send a mandate to the court below commanding the judge presiding therein to resume jurisdiction over this case and enforce the Judgment of this Opinion. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellor Milton D. Taylor of the Law Offices Taylor and Associates appeared for the appellant. Counsellors Nyenati Tuah, Solicitor General and J. Adolphus D. Karnuah, II of the Ministry of Justice appeared for the appellee.