

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA,
SITTING IN ITS OCTOBER TERM, A. D. 2024.

BEFORE HER HONOR: SIE-A-NYENE G. YUOH CHIEF JUSTICE
 BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE..... ASSOCIATE JUSTICE
 BEFORE HIS HONOR : YUSSIF D. KABAASSOCIATE JUSTICE
 BEFORE HIS HONOR : YAMIE QUIQUI GBEISAY, SR..... ASSOCIATE JUSTICE
 BEFORE HER HONOR: CEATNEH D. CLINTON-JOHNSON..... ASSOCIATE JUSTICE

Consolidated Group, Inc. represented by and thru)	
its CEO, Mr. Simeon Freeman, and the Provider of)	
subscriber Management Services to DStv)	
Subscriber in Liberia Appellant)	
)	
Versus)	Appeal
)	
SATCON Communication Services (SATCON) by and)	
thru its Board of Directors, CEO and others of said)	
entity of the City of Monrovia, Liberia 1 st appellee)	
)	
And)	
)	
K3 Telecommunication, by and thru its Board of)	
Directors, CEO and all Corporate Executive Officers of)	
said Entity of the City of Monrovia, Liberia)	
..... 2 nd Appellee)	

GROWING OUT OF THE CASE:

Consolidated Group, Inc. represented by and thru)	
its CEO, Mr. Simeon Freeman, and the Provider of)	
subscriber Management Services to DSTV)	
Subscriber in Liberia Plaintiff)	
)	
Versus)	Action of Damages
)	for Wrong by
)	Attachment.
)	
NANASAT, Digital Television Communication by and)	
thru its CEO, Board of Directors, and Corporate Officers)	
and all Managers in the employ of the said entity)	
..... 1 st Defendant)	
)	
And)	
)	
SATCON Communication Services (SATCON) by and)	
thru its Board of Directors, CEO and others of said)	
entity of the City of Monrovia, Liberia ... 2 nd Defendant)	
)	
And)	
)	
K3 Telecommunication, by and thru its Board of)	
Directors, CEO and all Corporate Executive Officers of)	
said Entity of the City of Monrovia, Liberia)	
..... 3 rd Defendant)	
)	
And)	
)	
Liberia Telecommunication Authority (LTA))	
..... 4 th Defendant)	

MR. JUSTICE YUSSIF D. KABA DELIVERED THE OPINION OF THE COURT

On November 4, 2019, Consolidated Group Inc., the appellant herein, by and thru its Chief Executive Officers, Mr. Simeon Freeman, instituted an action of damages for wrong by attachment against NANASAT Digital Television, SATCOM Communication Services, K3 Telecom Liberia, and Liberia Telecommunications Authority (LTA) as defendants, seeking to recover damages totaling US\$5.1 million for injury/losses it sustained as a result of the defendants' infringement of its content rights granted to it by Multi Choice Africa and Super Sports, to screen live broadcasts of the English Premier League and Spanish Football, La Liga Football games, in Liberia.

In its twenty-seven (27) counts complaint, the appellant substantially averred that it is a business corporation that offers Subscription Management Services to DStv subscribers in Liberia through a signed "Representative Agreement" entered into by and between MultiChoice Africa Limited on the one hand and the appellant on the other hand; that the agreement provides for the appellant to collect subscription fees from DStv customers and remit same to MultiChoice Africa, monitor and report to MultiChoice Africa any activities that may amount to infringement of its rights; that MultiChoice holds the right to broadcast the English Premier League, La Liga, and other European Leagues for Africa. The appellant further averred that SuperSport operates several dedicated Sports Channels, which it distributes on the DStv platform (a pay TV) satellite platform owned and operated by the MultiChoice Group of Companies; that the channels contain various acquired sports contents that are distributed in Sub-Sahara Africa, including Liberia; that BeIN Sports and MultiChoice are rights holders of the English Premier League (EPL) and other European Leagues, and that BeIN Sports' rights are for the Middle East and North Africa, while MultiChoice rights are for West Africa/Liberia.

The appellant averred that the English premier league, La Liga, and other European Leagues are referred to as "contents" and represent, in essence,

broadcast rights to such contents and are sold in various countries and categories divided into regions/zones and are generally further split in terms of pay-tv or free-to-air or other rights (such as radio, mobile or digital rights). The games are sold per category or region and to countries depending on the economic strength of those countries or regions; MultiChoice Africa, which has the right to distribute games over significant parts of West Africa, obtains proposals from institutions with registered broadcasting channels such as the SuperSport. MultiChoice Africa uses its distribution network to distribute these games in territories of South America, Nigeria, and the rest of Sub-Saharan Africa, including Liberia, through independent service providers such as the appellant to provide subscription collection services to DStv subscribers in respective countries throughout Sub-Saharan Africa. That on account of the appointment as a provider of subscription management services to DStv in Liberia, the appellant "Consolidated Group, Inc." was established; that the appellant and MultiChoice, on January 28, 2003, entered into a contractual agreement to provide subscription management services for DStv subscribers in Liberia in exchange for commissions to be paid to it by MultiChoice based on the subscription fees collected from DStv subscribers in Liberia. The appellant further averred that after its establishment in 2003, operations were viable with a satisfactory profit increase in sales of subscriptions to subscribers, which resulted in revenue growth; that in the face of the growth from 2003 to 2014, other companies, such as 1st, 2nd and 3rd defendants appeared on the Liberian market and the appellant discovered that the defendants were screening contents over which its principal had exclusive rights in breach of protocols, customs and law exclusive to the appellant's principal.

Additionally, the appellant submitted that the authority conferred on the appellee by the Liberia Telecommunication Authority authorized to operate television stations in Liberia does not extend to and include pirating the contents of a restrictive trademark and other intellectual property rights that are exclusively owned by another without the owner consent and approbation; that the appellant discovered that the appellant and other defendants were engaged in unfair competition; that is rather than the appellee and the other defendants obtaining legitimate licenses or broadcasts rights, they are, by deception, fraud, and other illegal means,

involved in the use of highly sensitive telecommunication devices to download contents or access satellite signals and feeds and/or engage in pirating signals and feeds of such contents and/or take such measures to circumvent any relevant contents protection and encryption and illegally make such contents available for themselves, with the acquiescence and approbation of the 4th defendant. The appellant alleged that the rights holders, i.e., BeIN Sport, Gulf DTH LDC, Super Sport, and La-Liga, wrote the LTA, bringing to its attention NANA SAT and SATCOM illegal act of broadcasting content not obtained legally and to disengage immediately from broadcasting any communication to the public of the audiovisual contents of La Liga competitions, live or on in whole or in part. The appellant also averred that despite these warnings, the LTA as regulator ignored all these concerns; that due to the entry into the market of the appellant and the other defendants and their illegal activities, the appellant experienced a significant downward trend of its financial incomes as follows:

- a) 1. In 2013, January – December, the subscription fees collected by the appellant were US\$5,047,845.82. The appellant received a commission of US\$706,695.31. The net revenue tax (NRT) remitted to the Government of Liberia was US\$380,270.27.
- b) 2. In the year 2014, January – December, the appellant collected as revenue for subscription the amount of US\$5,185,527.40, and the appellant received a commission of US\$717,0006.54
- c) 3. In the year 2015, the appellant began experiencing a sharp drop in the subscription revenue it collected from US\$5,185,527,40 in 2014 to US\$4,337,186.30 in 2015, thus giving a difference of US\$848,341.10
- d) 4. In 2016, a further drop in the subscription fees collected from US\$4,337,186.30 in 2015 to US\$3,688,202.14 in 2016.
- e) 5. In 2017, the subscription fees collected dropped further from US\$4,337,186.30 in 2016 to US\$3,368,826.73 and
- f) 6. In 2018, the subscription fees collected dropped even further from US\$3,368,826.73 in 2017 to US\$3,208,539.58.

The appellant also averred in its complaint that other than the decline in revenue, the number of subscribers also declined; that in the year 2013, the total subscribers were 6,472; in 2014, the total subscribers were 6,648; in 2015, the total subscribers was 5,561; in 2016 the total subscribers was

4,729; in 2017 the total subscribers was 4,319 and in 2018 the total subscribers was 4113. Due to these shortfalls, the appellant experienced the unfair competition occasioned by the pirating of contents legitimately owned by these foreign international bodies. As a consequence of the sustained piracy carried out by the defendants, the appellant's revenues eroded to the extent that the appellant has incurred a total loss of US\$2,625,971.98 as a consequence of the loss of income that the appellant experienced from 2015 up to 2018. The appellant, therefore, prays that it be awarded special damages of US\$2,625,971.98, general damages of US\$2,000,000.00, punitive damages of US\$500,000.00, and 25% as additional damages for any further period this case remains on the docket of any court of the Republic of Liberia undetermined to be paid to the appellant.

The appellant finally prayed that the three defendants, NANA SAT, SATCOM, and K3 Telecommunication, be enjoined, inhibited, and prohibited from televising any international Football matches on their screens; that each of the infringers is held to show where they derive their authority to televise, broadcast and transmit the contents of BeIN Sport, La Liga, EPL, Super Sports games; that the entities run by these defendants be shut down permanently from ever pirating or illegally accessing and or in any way using the intellectual property of football governing bodies; that the appellant be awarded the aggregate amount of US\$5,125,971.98. The appellant annexed to its complaint the following documentary evidence:

- a) P/1 in bulk containing business registration certificate and board resolution;
- b) P/2 in bulk appellant's contract with MultiChoice;
- c) P/3 Financial Statement;
- d) P4/4 Pen-Drive or flat drive;
- e) P/5 in bulk containing several communications from Li Laga, Gulf DTH LDC, BeIN Sport, and Super Sport, complaining of the illegal broadcasting of their contents by SATCON and NANA SAT in Liberia and that BeIN Sport does not have broadcasting rights in Liberia;

On November 8, 2019, the defendants jointly filed a twenty-one (21) count returns to the appellant's complaint. In their answer, they averred that the appellant did not show any wrongdoing by the appellees for damages to lie.

They averred that their entry into the telecommunication industry in Liberia is not directly linked to the drop in revenue intake by the appellant, nor is there any showing by the appellant that the LTA granted it an exclusive license to be the only entity to operate on the Liberian market to show football games, nor have the defendants violated any law or intellectual property right owned by appellant. That the authority of the appellee and the other defendants are the licenses they individually acquired from the Liberia Telecommunication Authority and that the LTA has not directly or indirectly cited the appellee and any of the defendants for any illegal or wrongdoing in the industry, nor has any of the defendants done wrong to the appellant for which a relief in damages can lie; that every equipment obtained and that is being used by the appellee and the other defendants have all been approved by the LTA, the issuer of their license to operate telecommunication business in Liberia and the defendants have followed and abided by all the laws of Liberia; that the appellant's exhibit "*p/5 Computer USB Flash Drives*" is concocted, irregular and the method used in producing an exhibit is fraudulent and cannot be traced to any act on the part of any of the defendants and the chain of custody of such exhibit is misleading; that the appellant's allegation that the LTA is a co-conspirator assisting the defendants in violating the laws of the telecommunication industry is not supported by any evidence. They averred that the appellant offered no evidence to substantiate its broad claim that co-defendant K3 Telecommunication was discovered screening football contents; that the appellant has not demonstrated or produced any evidence to indicate that the Government of Liberia through LTA has granted exclusive rights through the appropriate protocols to it as the only entity in Liberia to broadcast international matches in Liberia, hence, no wrong act of the defendants has been proved by the appellant before the national regulator, LTA.

They contend that the appellant has no authority to prohibit any of the appellees from doing its legitimate business for which they individually have a license and does not have any power to regulate what any defendants must or must not do. They traverse that they have not committed any piracy or any illegal act against the appellant in any form, manner, or shape and that the claim of US\$2,625,971.98 is illusive, without any basis in law or facts; that the appellant is suffering from substandard business practices that have

caused its income to shrink or the appellant may have invested its commissions into extra activities and the appellant must know there are thousands of reasons that can plunge or cause income generation to dive to rock bottom and suffered collapse, and not necessarily the fact that the appellees have entered and are participating into a healthy competition in the Telecommunication industry that would affect its income base. Also, the appellees stated that the appellant is not entitled to any damages as it has not shown any evidence that a wrong was committed to it by the appellees for which wrong an injury has been sustained and for which damages, be it special or general, may lie. Appellees further traverse that the appellant has miserably failed to demonstrate in any manner or form what entitles the appellant to US\$2,625,971.98 as special damages; without proof of special damages under the law, general damages cannot lie. Hence, the claim of US\$2,000,000.00 as general damages is without foundation in law. Appellee also stated that the appellant's prayer for damages of 25% as additional damages for any further period that this case may take is illegal because the court has fixed interest amount on every Judgment, and in the Commercial Court, the highest percentage of interest is 6% of the judgment sum and no more; that there is no legal basis for the plaintiff to claim US\$5,125,971.98. Finally, the entire complaint of the appellant is set aside, overruled, and dismissed.

We note from the transcribed records of this case that the appellees did not annex or exhibit any documentary evidence to their answer nor give notice to produce such documentary evidence to rebut the appellant's claim that the appellees are operating under a shady deed; that is, the appellees are not a legally established institution in Liberia; even if they are, their business dealing of broadcasting contents in Liberia is illegal.

The appellant filed an eleven-count reply in response to the appellees' answer. In its reply, the appellant substantially confirms all allegations in its twenty-seven (27) count complaint. The appellant further averred that the appellees' answer is nothing more than a general denial of the substantive claims made by the appellant against the alleged harmful conduct of the appellees, that the appellees' failure to show any instruments in themselves to justify their authority to operate in the confine of Liberia to carry on

telecommunication services, leaves the impression that the appellees' operation is a mafia operation; That none of the appellees has any standing as legal entities under the laws of Liberia. The appellant prays that the appellees' conduct of not showing any instrument(s) to justify their existence as entities that are duly registered under the laws of Liberia and the exhibition of a license from the LTA further establishes a perfect case for the appellant for which the appellant's complaint should lie.

The records in this case show that the court dropped co-defendant NANA SAT during the proceedings based on a joint stipulation filed by the parties for the reason of pendency. The LTA was also dropped as a party defendant. On February 16, 2023, Telecel Liberia filed a motion for a special appearance in which it averred that it acquired K3 Telecom through a sales agreement; therefore, it should be made a party defendant to protect its interest. The motion was heard and granted, and Telecel Liberia was made a party defendant, replacing K3 Telecom. The case proceeded and concluded with co-defendants SATCOM and Telecel Liberia. We will, therefore, limit our review on the contestation of the parties that are before this Court on appeal.

After the disposition of the pretrial motions, the court had a trial. Upon the conclusion of evidence production by the parties, the three-judge panel of the Commercial Court of Liberia unanimously ruled dismissing the appellant's suit. In its ruling, the trial court held that the appellant lacked the legal capacity to sue and failed to prove damages. We herein quote relevant excerpts of the trial panel ruling as follows:

“...In the Representative Agreement, the appellant was appointed on a non-exclusive basis, as MultiChoice Africa's agent in Liberia to perform the following duties:

- a. To offer subscriber management services to DStv subscribers in Liberia;
- b. To solicit new subscriptions and grow the base of DStv subscribers in Liberia and
- c. To establish and promote the MultiChoice name and image in Liberia.

It is clear from the duties enumerated above that the plaintiff is simply the commercial agent of Multi Choice/Super Sport in Liberia to sell its product in Liberia and promote the brand name. Nowhere in the Representative Agreement were the content rights Multi Choice/Super Sport acquired from the English Premier League and La Liga transferred or sub-licensed to the plaintiff.

This means that the plaintiff does not own the contents that it is broadcasting in Liberia. The owner or licensee of EPL and La Liga contents were Multi Choice/Super Sport and BeIN Sports in the case of the football contents that SATCOM transmits. None of these entities authorized the plaintiff, by a corporate Board Resolution and/or Power of Attorney) to institute this action on their behalf. Instead, the plaintiff has instituted this action in its own name as if it is the owner of the licensee of the contents that the defendants were allegedly broadcasting in Liberia. In making its argument on the capacity to sue, the plaintiff refers the court to clause 17.6 of its agreement with MultiChoice, which states that *'the representative shall, if it suspects or is notified of an instance of violation of any of the copyrights, trademarks, or channel marks set out above any other act of piracy enabling unauthorized assets to the service channel immediately advise MCA in writing of its information and grant to MCA of the copyright or trademark holder, as the case may be such assistance (including the institution of legal proceedings) as may be required to bring the infringement to an end. Any legal fees and other costs relating to the court's action in terms of the cost will be borne by MCA'*. Based on this clause found in MultiChoice and Consolidated Group's non-exclusive agreement, the plaintiff contends that it can sue for and on behalf of MultiChoice/Super Sports. We are not persuaded! In the language of the herein-mentioned clause 17.6 on which the plaintiff hinges its capacity to file this action on behalf of MultiChoice, you will note the designation of the plaintiff is that of a 'representative.' So, how can one who acts in a representative capacity, as the plaintiff clearly confirms, institute a suit on behalf of its principal?

...This court says that even if we were to agree for argument's sake that the plaintiff has the requisite legal capacity to sue, it still did not prove its claim of damages against the defendants. The plaintiff claims that it lost revenue amounting to US\$2,625,971.98 during the period 2015 to 2018 due to the illegal broadcast of its contents, specifically the wiring of EPL and La Liga football games, by the defendants. To prove its allegation, the plaintiff proffered and admitted into evidence a table containing the annual revenues it collected for the period 2013, 2014, 2015, 2016, 2017, and 2018. From its own table of revenue generation, the plaintiff claimed that its lost revenue totaled US\$2,625,971.98 as a direct result of the illegal broadcasting of its contents. The financial statement produced by the plaintiff is not an audited or verified financial statement of revenue generated but rather a financial statement generated by the plaintiff itself. The financial statement submitted to the Liberia Revenue Authority as revenue for the period 2015-2018 is clearly different from what the plaintiff submitted to this court as revenue for the same period. In the absence of a duly audited financial statement, coupled with the variance in the statements submitted to the Liberia Revenue Authority and the court, this court considers the table of revenue submitted by the plaintiff as a mere self-serving instrument which has no probative value and which this court cannot rely on..."

The trial court concluded that, considering the evidence adduced at the trial, the appellant failed to establish its legal capacity to maintain this suit; moreover, assuming it had the capacity to sue, the appellant failed to prove its claim of damages by a preponderance of the evidence. To this conclusion,

the appellant entered exceptions and filed a --- counts bill of exceptions for consideration by this Court.

In its bill of exceptions, the appellant averred that the trial court erred when it held that the appellant lacked the requisite legal capacity to institute this action in its name to recover damages for violation of content rights owned by MultiChoice and Super Sport when, in fact, the “Representative Agreement” between MultiChoice Africa and the appellant provided in clause 17.6 that the appellant can institute legal action against any violators of the rights; that the court passed upon the issue of capacity to sue in a motion to dismiss filed by co-defendant LTA and should not have been part of the final ruling of the trial court; that the trial court erred to overlook the laws governing Special Damages and that the plaintiff proved the special damage with a degree of certainty setting the basis of the injuries sustained for which special damages should lie.

Considering the summary of fact narrated herein above, the three-judge panel of the Commercial Court’s ruling and the appellant’s bill of exception, this Court identified two issues dispositive of this matter viz:

Did the trial panel of judges correctly rule that the appellant lacks the legal capacity to have instituted this action without express authorization from MultiChoice/Super Sport through "power of attorney" or "board resolution"?

Did the appellant establish by the preponderance of the evidence the damages prayed for?

The trial court held in the negative on the first issue. The court concluded that the appellant's failure to exhibit “power of attorney” or “board resolution” from its principle, MultiChoice, the owner or the right holder of the EPL and the La Liga, to institute this action rendered the appellant's action dismissible for want of capacity or standing to sue.

The issue of capacity to sue is not a novelty in this jurisdiction. This Court has set the standard to determine the capacity to sue in the case: Citizens Solidarity Council v RL, Supreme Court Opinion, March Term, A.D. 2016, and Morgan v. Barclay, et al., 22 LLR 259. This Court opined that:

In order to establish standing to sue, a party must show that: (1) the party has suffered an injury in fact - that is, the party has suffered or will suffer a concrete and particularized, actual, or imminent invasion of a legally protected interest or right if the party does not bring the suit; (2) the injury is a result of the defendant's conduct. In other words, there must be a causal connection between the injury allegedly suffered and the conduct complained of, and (3) a finding in the party's favor is likely to redress or remedy the injury. According to the doctrine of standing, a party seeking to demonstrate standing must assert his or her own rights and cannot raise the claims of a third party or third parties who are not before the court, nor can such a party make claims of generalized injury common to the body politic - the claimed injury must be individualized and unique or personal to the plaintiff.

"The standing to sue doctrine means that a party has sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy." Standing is a concept utilized to determine if a party is sufficiently affected so as to ensure that a justiciable controversy is presented to the court. The requirement of standing' is satisfied "if it can be said that the plaintiff has a legally protectable and tangible interest at stake in the litigation."

The records revealed, and it is captured in the trial court's ruling, that the appellant is an agent or representative of Multi Choice/Super Sport, the copyright holder of the content rights, and owner, or licensee of EPL and La Liga contents in West Africa. The judges reasoned that because MultiChoice did not expressly authorize the appellant by a corporate board resolution and/or a power of attorney to institute this action on its behalf, the appellant is without standing to institute the action against the appellees, and hence the action is dismissible. We disagree with the reasoning of the trial court.

Our search of the records shows that in the "Representative Agreement" consummated between Multi-Choice Africa and the appellant, MultiChoice appointed the appellant as its representative in Liberia and authorized the appellant under clause 17.6 of the said agreement to, among other things, institute legal action against any person situated as the appellees to protect the contents of Multi Choice/Super Sport.

Clause 17.6 of the "Representative Agreement" reads as follows:

"the representative shall, if it suspects or is notified of an instance of violation of any or the copy rights, trademarks, or channel marks setout above any other act of piracy enabling unauthorized assets to the service channel immediately advise MCA in writing of its information

and grant to MCA of the copyright or trademark holder, as the case may be such assistance (including the institution of legal proceedings) as may be required to bring the infringement to an end. Any legal fees and other costs relating to the court's action in terms of the cost will be borne by MCA."

The phrase in the clause "*including the institution of legal proceedings*" empowered the appellant to institute action against any violator of MultiChoice, the appellant's principal's content rights. In the face of this provision in the Representative Agreement, the appellant needed no other authorization ("board resolution" or "power of attorney"). The language of the clause is clear and unambiguous and does not need any critical or conjectural interpretation. There is no dispute that the appellant is the representative of MultiChoice in Liberia. *Black's Law Dictionary, ninth edition* at p.1110, defines representative as 'one who stands for or acts on behalf of another'. The agreement is not challenged, and the appellees' witnesses do not also challenge the expressed authority of the appellant in the agreement. Nowhere also in the pleadings of the appellees is the appellant's representative capacity challenged and refuted. The appellant alleged that as representative, it is being paid by its principal, the MultiChoice/Super Sport, through a commission basis and that the commission is determined by productivity. If an act affects the productivity of the appellant and, by extension, its revenue generation, does the appellant have the standing to institute action relying on clause 17.6 of the "Representative Agreement"? Again, we reaffirm that the clause empowered the appellant to do so. There is no disclaimer on the records from the appellant's principal concerning this current suit. We further note that BeIN Sport could not have authorized the appellant by board resolution or by power of attorney to institute an action for and on its behalf against the appellees as BeIN Sport is not a right holder or licensee of EPL and La Liga contents for broadcast in Liberia; and the appellant is not an agent of BeIN Sport in Liberia. The appellant needed no other board resolution in the face of clause 17.6; the only board resolution that the appellant required and which it produced was the board resolution of the appellant corporation. We, therefore, hold that the appellant has the capacity and standing to institute this action.

A collateral issue to be determined now is, having determined that the appellant could institute this action, do the appellees have equal right as the appellant to broadcast contents of football games from MultiChoice/Super Sport or BeIN Sport in Liberia? At trial, the appellant's witnesses took the witness stand and produced unchallenged evidence that the appellant's principal held the copyright for the distribution of the contents that are the subject of the controversy and that the appellant has the legal right to broadcast contents belonging to MultiChoice of Africa/Super Sport in Liberia. The appellant's witnesses' testimonies were further buttressed by documentary evidence testified to and admitted into evidence during the hearing of this case. Therefore, the issue of the legality of the appellant is not in dispute by either MultiChoice/Super Sport or the Liberia Telecommunication Authority (LTA).

When the appellant rested with the production of evidence, and in an effort to disprove the appellant's allegations against the appellees, co-appellee/Satcon's first witness, Abdullah Kamara, testified, among other things, that all of SACTON contents are from satellite and authorized by BeIN Sport and that SACTON Gabon is the parent company for SATCON Liberia and that Satcon Liberia secured the authorization from BeIN Sport for use of all of its subsidiaries Satcon Gabon. What is interesting to note here is that Co-appellee Satcon did not exhibit or produce during the entire trial of this case any document from BeIN Sport or its subsidiaries Satcon Gabon to support its allegation that it is operating in Liberia based on BeIN Sport authorization or Satcon Gabon assuming it has right to broadcast in Liberia. To make matters worse, the appellant produced communication from BeIN Sport, indicating that it has no subsidiaries or content broadcast rights in Liberia, as it is only limited to broadcasting in Asia and North Africa. How then can this Court take the lone testimony of witness Abdullah Kamara to be true that BeIN Sport or Satcon Gabon authorizes Satcon Liberia to broadcast its contents in Liberia? It is the law that mere allegations are not proof, and factual allegations must be proven at the trial, for it is evidence alone that enables the court to decide the matter in dispute with certainty. *American Life Insurance Co. Inc. v. Holder* 29 LLR 143, 167. The burden shifted to the Co-appellee Satcon, who had the *onus* to have produced written communication from BeIN Sport or Satcon Gabon to counter the

appellant's several communications proving that co-appellee Satcon was broadcasting contents in a shady deed. Co-appellee/Satcon's second witness testimony distances itself from the testimony of witness Abdullah Kamara. The witness testified, among other things, that Satcon receives its contents from satellite D 2219 19 mega height, which is used to broadcast their channel. This witness, who introduced himself as the technical supervisor of Satcon, did not know whether Satcon was broadcasting BeIN Sport content in Liberia. It is the law that when an allegation is made by a party requiring rebuttal, the failure to rebut will be deemed an admission of the allegation. *Liberia Material Ltd. V His Honor Gbeneweleh et al.* Supreme Court Opinion, October Term, A.D. 2014. It is also the law that oral testimony cannot vitiate written instruments. *Kpoto v. Kpoto* 34 LLR 371, 380 (1987).

The co-appellee/Satcon further argued that it is licensed by the Liberia Telecommunication Authority (LTA) to engage in broadcasting activities but failed to plead or annex to its responsive pleadings documentary evidence, i.e., business registration and or license to convince this Court that the appellee is engaged into a legal business in Liberia there violating the doctrine of notice which is a cardinal principle of law. Even assuming this argument is correct that the co-appellee Satcon is duly registered consistent with Liberian laws to engage in the communication business, the question is, does the LTA have the authority to authorize the broadcasting of contents belonging to the foreign corporation without reference to said foreign corporation?

Co-appellee's subpoena witness, Mr. Prince Robison, the Senior Policy Analyst at the Liberia Telecommunication Authority (LTA), testified that the LTA does not license content. The records show, and it is not disputed, that the appellant is an agent or representative of MultiChoice, one of the owners or right holders of the contents that co-appellee SATCON is broadcasting. It is also clear that co-appellee Satcon did not deny the allegation that it is broadcasting content belonging to BeIN Sport. The record is void of evidence to support the source of authority of co-appellee Satcon to screen contents allegedly belonging to BeIN Sport or Satcon Gabon. The only argument of co-appellee Satcon is that the appellant lacks the legal capacity to have

instituted this action simply because the appellant is not a direct licensee of EPL and La Liga but instead Multi Choice/Super Sport and BeIN Sport.

Having established that the appellant has the legal standing and capacity to institute the action by virtue of the authority bestowed upon it by the Representative Agreement it consummated with MultiChoice/Supersport and that MultiChoice has the content right for the broadcasting of the sporting channels that are the subject of this action, what are the legal implication of acquiring content right of this nature? When an entity acquires such content rights, it obtains exclusive control over its use, reproduction, and distribution. The exclusivity allows the right holder to prevent others from using the content without permission. This right is not the same as the right granted by a state to an entity to operate broadcasting facilities. It is a right of exclusivity to content that may be broadcast. In other words, such contents are intellectual properties protected by domestic and international law. Its violation constitutes an infringement with significant legal implications, primarily revolving around copyright infringement, trademark issues, and potential breaches of contract. The unauthorized reproduction, distribution, performance, or display of copyrighted content constitutes an infringement. *Harper & Row Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539 (1985) The holders of such right are entitled to a permanent injunction to avoid irreparable harm and may institute an action for damages. *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388 (2006), *Feltner v. Columbia Pictures Television, Inc.* 523 U.S. 340 (1998). From all indication, therefore, it is undisputed that the appellee herein without the pale of the law, infringed upon the content rights of the appellant's principal and therefore by the authority vested in the appellant by the Representative Agreement consummated with its principle, the appellant is entitled to a permanent injunction against the appellee for the unlawful broadcast of the content right of the appellant's principal.

Regarding the last issue, this Court says that the issue of assessing damages is an issue of fact that must be refer to a jury for determination. The Commercial Court, being a tribunal that sits without a jury, and considering its jurisdiction, lacks the legal competence to assess, grant, and enquire into the issue of damages. Such issues are properly venue before a

tribunal that is expressly empowered by law to handle them. Unless such an issue is referred to the proper tribunal, this Court cannot legally review any outcome touching it.

WHEREFORE AND IN VIEW OF THE FOREGOING, the final ruling of the Commercial Court is reversed, and the appellees are permanently enjoined from broadcasting the protected content rights of the appellant's principal. The Clerk of this Court is hereby ordered to send a Mandate to the court below, commanding the judge presiding therein to resume jurisdiction over this case and give effect to this Judgment of this Opinion. Costs are ruled against the 1st appellee. AND IT IS HEREBY SO ORDERED.

WHEN THE CASE WAS CALLED FOR HEARING, COUNSELLORS AMBROSE TAPLAH AND MORRIS M. DAVIS, JR. APPEARED FOR THE APPELLANT. COUNSELLORS EUGENE MASSAQUOI AND ANTHONY D. MASON APPEARED FOR 2ND APPELLEE. COUNSELLOR G. WIEFUEH ALFRED SAYEH APPEARED FOR THE 1ST APPELLEE.