

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2025

BEFORE HER HONOR: SIE-A-NYENE G. YUOHCHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: YAMIE QUIQUI GBEISAY, SR.....ASSOCIATE JUSTICE
BEFORE HER HONOR: CEANEH D. CLINTON JOHNSON.....ASSOCIATE JUSTICE

APM Terminals Liberia Ltd., by and thru its Managing Director, Mr.)
Director, Mr. George Adjei of Freeport, Bushrod Island, Monrovia)
Liberia.....Appellant) APPEAL

Versus)
)

TRH Trading Corporation and Fresh Frozen Food Represented by and)
thru their duly and respectively authorized officer, Mr. Bailal Ibrahim, of)
the City of Monrovia, Liberia.....Appellees)

GROWING OUT OF THE CASE:)
)

TRH Trading Corporation and Fresh Frozen Food represented by and)
thru their duly and respectively authorized officer, Mr. Bailal Ibrahim, of)
the City of Monrovia, Republic of Liberia.....Petitioners)

Versus)

APM Terminal Liberia Ltd., by and thru its Managing Director, Mr.) PETITION FOR
George Adjei of Freeport, Bushrod Island, Monrovia, Liberia) DECLARATORY
.....Respondent) JUDGMENT
)

Heard: June 17, 2025

Decided: August 15, 2025

MR. JUSTICE GBEISAY DELIVERED THE OPINION OF THE COURT

The facts as culled from the records in this case reveals that TRH Trading Corporation and Fresh Frozen represented by and through their duly respectively authorized officer Mr. Bailal Ibrahim, appellees herein, filed before the Commercial Court of Liberia, a declaratory judgment action against APM Terminal Liberia Ltd., by and thru its Managing Director, Mr. George Adjei of Freeport, Bushrod Island, Monrovia, Liberia, appellant herein, alleging in its petition that the respondent, based upon a concession agreement with the Government of Liberia which was signed in September 2010, the respondent is responsible to provide among other things all marine services as well as perform all commercial container and general cargo storage on behalf of third parties, within the National Port Authority of the Republic of Liberia; that based upon the said concession agreement, which includes the management and operation of the NPA, the appellant issued a tariff guide which was captioned “Tariff of APM

Terminals Liberia Ltd.” The Tariff Guide specifically required the appellant to check and report the temperature of reefer containers stored at the container terminal operated and managed by the appellant only upon a written instruction to respondent from a carrier/owner of the reefer container and the acceptance thereto should be evidenced in writing, and the tariff guide also prohibited the appellant from connecting any reefer container to a power supply without an advance instruction from the carrier/owner; that based upon the 2010 concession agreement, appellant executed with the Government of Liberia, the appellant commenced management and operations of the National Port Authority with specific rights and obligations; the appellee further alleged in its petition that despite the concession agreement signed by the appellant with the Government of Liberia and its own tariff guide which was issued, the appellant decided to plug and began plugging each of the appellees’ imported containers immediately upon being offloaded from the vessel and billing appellees for the plugging services based solely on its discretion and without any basis or obligation established by Liberian Law or authority and without the consent of the appellees; the appellees further alleged that upon discovery of the unauthorized plugging of their containers and the invoicing thereof, the appellees approached appellants inquiring the legal basis for which the appellant was plugging appellees containers since appellees had not authorized appellant to plug its containers expressly; that the appellant clearly acknowledged that there was no particular law for which it plug the appellees containers without its consent but that it rather chose to do so to protect its reputation and also comply with what it described as industry practice and custom; the appellees further alleged that as a result of the appellant’s unauthorized conduct, it immediately requested the appellant to cease any and all further plugging of its containers and submission of its invoices for plugging services that it (appellees) did not authorize; the appellees also averred that its legal counsel, Heritage Partners & Associate (HPA) also served a cease and desist demand notice on appellant to stop its unauthorized plugging of appellees’ containers and that in the said notice, appellees accepted to hold appellant non-liable and indemnified against any and all injuries and or damages that would arise on the account of the cessation of the said plugging of the containers; that appellees also averred that the Ministry of Commerce & Industry (MOCI) also instructed the appellant to desist the plugging of appellees’ containers without the expressed authorization from appellees but appellant in total disregard to the respective requests and demands continue to plug appellees’ containers and send the appellees invoices; the appellees further contended that the appellant has no legal authority to withhold and prevent appellees from taking delivery of their containers for failure to pay the fees illegally imposed on it out of an unauthorized plugging of their containers for which reasons appellees have legal and factual basis to seek the declaration of their rights given the facts and circumstances.

The appellees then prayed the court to declare:

1. That appellant's unilateral plugging of appellees containers without authorization and the absence of any legal requirement and in the face of an explicit cease-and-desist request of the Government of Liberia by and through the Ministry of Commerce and the written protest of the appellees is illegal and also contrary to the appellants own published Tariff Guide.
2. That appellant's conduct violates appellees property right as provided for under the law, which right entitles appellees to exclude/prohibit respondent or anyone from doing any handling of the containers without their consent and are protected under the law to seek aid of court to protect such right.
3. That appellant should be prohibited from charging and compelling appellees to pay any fees charged solely by the appellant for the unilateral and unauthorized plugging in of appellees' containers, and that all fees paid to date by the appellees should be declared recordable by appellees from appellant.
4. That fees charged for plugging appellees' containers, if required, should be based on approved fees set and or authorized by the Government of Liberia and not unilaterally by the appellant.

The appellant on August 28, 2020, filed its answer to the appellees' petition arguing that: the its action is consistent with its concession agreement, specifically section 7.18 of the said concession agreement which puts it under obligation to put into place within its concession area and operating such health and safety measures in accordance with Liberian Law, international conventions, protocols, international agreement and food industry practices in order to maintain food industry standards in the handling of cargo containers and the appellant put into place in 2016, a system by which reefer containers that were not cleared by the consignee on the same day, is plugged in so as to maintain the integrity of the foods therein why the container is in the custody of the appellant; that the plugging of reefer containers is done to protect appellant from liability in the event the goods are cleared and found to have deteriorated while in custody of the appellant; appellant admitted that appellees had earlier objected to the plugging in of their containers when they are not cleared and warned appellant

to plug in their containers only and if when appellees do not cleared their containers after five (5) days as of the date of arriver of the containers at the Free Port of Monrovia; that while non-plugging of containers may have been a practice in the past, it was under obligation to maintain the health and safety standard as long as the containers remain in the custody of appellant; that it officially launched the plugging service in 2016 and appellees as well as other customers were informed and such action was not arbitrary as claimed by the appellees; that the charging of fees for plugging reefer containers was consistent with section 7.18 and 7.07 of the concession agreement which gave appellant the right to set rate for services provided and make such rate public and that its concession agreement, having been ratified by the National Legislature, is a law of special application and forms and legal basis for all appellant's operations and actions within the Republic of Liberia; that the meeting held at the HPA Law Firm during which meeting Sherman & Sherman Law Firm represented the appellant, the parties failed to have a meeting of the minds on the manner and form in which appellees reefer containers should be plugged, and that both parties engaged in an effort to resolve the contention of appellees but no further communication was received from appellees' legal counsel up to January 2020; that all communications from the Deputy Minister of Commerce & Trade Servies regarding the contentious plugging of appellees' reefer containers were responded to appropriately and that it maintained its position and justification on the plugging of appellees' containers and that copies of the said communication were sent to the appellees.

The appellees filed its reply basically reiterating its petition and further contending that: the appellant's concession did not give it right and authority to regulate health and safety or issue regulations having the force of law in the Republic of Liberia and that the appellant has failed to show any evidence of the best industry or law that it relied on to plugged appellees' reefer containers; that section 7.18 of the National Port Authority and A.P.M. Terminals concession is misinterpreted and does not in any way give right to the appellant to plug in appellees' containers without their expressed consent and approval and to do otherwise is a violation of its rights; that prior to the appellant introducing the plugging of appellees' containers, appellees' perishable goods that were handled by appellant never got damaged within the period of five (5) days as of arrival date at the port even though they were never plugged in by the appellant; therefore, the appellant had no compelling reason or duty to plug in appellees' reefer containers without its expressed consent and or approval; that reefer containers are specifically designed to store perishable goods and that is the reason appellees chose to have their goods shipped in reefer containers so as to preserve the integrity of the goods therein; additionally, the temperature in reefer containers are not

automatically transformed based on outside surrounding temperature as it takes more than five (5) days after the container is offloaded from the ship before any significant change can manifest and therefore, declaratory judgment will lie.

After pleadings were exchanged and rested, the matter was scheduled for pre-trial conference to which conference the appellant and its counsel failed to appear even though they were served. At the request of appellees' counsel, the matter was ruled to trial. Thereafter, full trial commenced on January 21, 2021. During the trial, the appellees paraded two regular witnesses and one rebuttal witness while the appellant paraded one witness.

After the appellees rested with production of oral and documentary evidence, it submitted into evidence certificates of business registration, communications between the parties and the Ministry of Trade and Commerce, Board Resolutions authorizing the institution of legal action against the appellant along with appellant's APM Tariff Guide Volume 7.0, dated February 1, 2019, all of which were testified, confirmed and re-confirmed by the witnesses and respectively marked by the Court.

The appellant, after resting with the production of oral and documentary evidence, submitted into evidence email exchanges between the parties and communications to the Deputy Minister for Commerce and Trade Services which were testified to and confirmed by the witness and marked by the court.

Based upon the facts and circumstances of this case, the issue that this Court must address judicially is:

Whether the appellant's action in plugging the appellees' reefer containers was done legally and properly in accordance with law so as to prevent the appellees from raising claims against the appellant.

To answer this question, we take recourse to the certified records before this Court. We note appellants contention that consistent with Section 7.18 of its concession agreement with the Government of Liberia, it was under obligation to put into place within its concession area and operation such health and safety measures as required by Liberian Law and international best practices. We deemed it necessary to quote the said provision:

Section 7.18 (a) provides: *The concessionaire shall be responsible to prepare and implement work and operational safety procedure to ensure health, safety and welfare of its workforce, users of its services and visitors of the concession area, where it perform marine service in*

accordance with the project requirement, the proposal, applicable laws, international convention, protocols, international agreements to which Liberia is a party and good industry practices and the guidelines promulgated by the concession entity.

Section 7.18 (b) also provides: “The concessionaire shall be responsible for the preparation and implementation of safety and security system in accordance with the project requirement, the proposal, applicable laws, ISPA Code, international convention, protocols, international agreements to which Liberia is a party and good industry practices for the concession area, and the cargo area including without limitation, perimeter fencing around the concession area, and the cargo area including without limitation, perimeter fencing around the concession area and which shall be subject to the concession entity’s prior written approval; such approval shall not be unreasonably withheld, provided that such approval or rejection must be given by the concession entity in writing ten (10) business days upon receipt of the request, the failure of which the concession entity shall be deemed to have given as approval.”

A clear reading of the above-quoted provisions of the concession agreement and a reasonable understanding and interpretation of the said concession agreement relied upon by the appellant to argue its position of unilaterally plugging in appellees’ reefer containers against the expressed refusal of the appellees does not show anywhere or in any way that the appellant has the authority to plug in reefer containers without the consent of the owner of the reefer container, in this case the appellees. The appellant’s emphasis on health and safety doesn’t concern storage of goods within containers but concerns the safety of employees and those coming in contact with the work and service area of the appellant. The provisions of the concession agreement quoted above cannot be reasonably interpreted in the widest stretch of legal reasoning to mean storage of goods within containers by the appellant without the consent and approval of the owner of the said container and or goods.

The appellant has also argued that Section 1.5.2, subsections J(i), J (ii) and J(iii) of its Tariff Guide gives it the authority to plug appellees’ reefer containers and to charge appropriate fees and that the said Tariff Guide was communicated to all customers including appellees.

Again, we take recourse to the sections of the said Tariff Guide for guidance in addressing this claim of the appellant. Section 1.5.2, subsections J(i), J(ii) and J(iii) provides:

REEFER CONTAINER:

The terminal will check and report upon the temperature of Reefer Containers stored at the Container Terminal Subject to instructions being given in writing to the Terminal at least two (2) working days in advance of receipt of a specific Reefer Container by the Terminal and

such instructions are accepted in writing by the Terminal, Terminal may check and report upon the temperatures of containers as mutually agreed;

(ii) the terminal shall not be responsible or liable in any way for any Reefer Container or the refrigeration of refrigerated cargo if the vessel agent fails to give written instructions, or provide wrong or inadequate instructions concerning handling thereof;

(iii) if the Terminal is instructed in writing in accordance with Clause J(i), the Terminal will, within a reasonable time of receipt, connect the Reefer Container to a main power supply. The Terminal shall not be obliged to maintain an auxiliary power supply and the Terminal shall under no circumstances be responsible for any failure or discontinuance or interference from time to time in the mains power supply howsoever arising.

Again, we are yet to see where in the law above quoted, that the appellant had the authority to plug in the appellees' reefer containers without the expressed consent of the appellees. If anything, the appellant needs an expressed consent from the appellees to plug in their containers. The records show that the appellees specifically requested the appellant to not plug any of their reefer containers but that the appellant deliberately refused to honor said request arguing that it needed to store the goods within the containers so as to ensure the health and safety of the Liberian public.

We find this argument and reasoning of the appellant untenable. Firstly, it is the sole prerogative of the Liberian government through its appropriate agencies to regulate the consumer market and the products that are sold thereof and to regulate and maintain public health safety, secondly, assuming that the said contents of the reefer containers deteriorated before the appellees could clear them from the port or from appellant's terminal, that loss will be solely borne by the appellees and whatever health and safety regulation that the government finds were violated by the appellees, will be punishable and the appellees will bear the said punishment. We cannot reasonably conjure how the appellant will be affected by the deterioration of the appellees' goods or the violation of health and public safety protocols by the appellant.

Subsection J(ii) is clear to this point, that the (Terminal) appellant shall not be responsible or liable in any way for any Reefer Container or the refrigeration or refrigerated cargo ***“if the vessel agent fails to give written instructions or provides wrong or inadequate instructions concerning the handling thereof.”***

This provision couldn't be clearer. The appellant had no authority to plug in appellees' reefer containers against its expressed wishes which was clearly communicated to the appellant.

Moreover, the appellees have argued that the goods within its reefer containers have the capacity to go five (5) days without electricity and still maintain its freshness and therefore, wrote requesting the appellant not to plug its reefer containers for five (5) days from discharge of the vessel.

The appellant would have been justified in its plugging of appellees' reefer containers had it plug in the containers after five (5) days of storage of said containers as the appellees letter of June 15, 2020, clearly provides this deadline to the appellant.

Moreover, the appellant was written two separate letters by the Ministry of Commerce and Industry, one on June 19, 2020 which we reproduce here verbatim:

“Dear Mr. Adjei:

Please accept my compliments.

I write in reference to a communication received from the TRH Trading Corporation (co-appellee herein), a frozen food company in Liberia. TRH Trading Corporation is importing Assorted Frozen Goods into Liberia at a very low price to help the Government promote its Pro-Poor Agenda.

Based on the above, I request that you please adhere to the request in the attached letter suspending the “PLUG IN” policies, to start five (5) days from drop off as requested by TRH Trading Corporation.

This request when granted will help keep the above importer goods at a minimum cost to the general public.

Sincerely Yours,

A.E. Nyema Wisner

Deputy Minister for Commerce and Trade Services

The contents of this letter were ignored by the appellant which prompted the then Deputy-Minster of Commerce and Industry to write yet another letter to the appellant dated June 19, 2020, which we re-produce here verbatim:

“Dear Mr. Adjei:

Please accept my compliments.

Your letter concerning TRH Trading Corporation “Plug In”, dated June 24, 2020 was received.

As per our records, TRH Trading Corporation in the past have been storing their containers in the terminal for one (1) week without electricity, and there have been no complaints from consumers or marketers regarding the quality of their frozen products.

In this regard, I insist you kindly suspend the Plug in policy by your entity for TRH Trading Corporation for five (5) days. The Ministry of Commerce will inspect the containers from TRH Trading Corporation.

As I stated before in my June 19, 2020 communication, TRH Trading Corporation is the only Frozen Food Company in Liberia that is supporting the Government Pro-Poor Agenda. Looking at their low prices of frozen products on the market, the Ministry would like to support them in any way possible.

Again, when this request is granted, it will help keep the above importer goods at a minimum cost to the general public in this critical time.

Sincerely Yours,

A.E. Nyema Wisner

Deputy Minister for Commerce & Trade Services

We find it difficult to comprehend the appellant's insistence on plugging the appellees' reefer containers in the face of the appellees' expressed request to the appellant not to plug its reefer containers and the Government of Liberia's order not to plug the appellees' containers. We are left as to what avail did the appellant insist on plugging the said containers as it is clear that it cannot be for health and safety reasons, as the Ministry of Commerce & Industry was clear that it would inspect appellee's containers before they leave the port or the appellant's terminal and the Government of Liberia through the Ministry of Commerce & Industry confirmation that the appellees' containers have gone a week in the past without electricity and still maintained its goods without deterioration.

Considering the facts and circumstances and the discussion herein, we hold that the appellant acted unilaterally and outside the scope of its own Terminal Agreement, against the expressed directive of the appellees and in contrast to the Liberian Government's order through its Ministry of Commerce & Trade to stop plugging its reefer containers immediately upon arrival and therefore declaratory judgment will lie.

Declaratory Judgment is binding adjudication that establishes the rights and other legal relations of the parties without providing for or ordering enforcement. BLACK'S LAW DICTIONARY, DELUXE 11TH EDITION.

It is the law in this jurisdiction that courts of record within their respective jurisdiction shall have power to declare rights, statutes, and other legal relations whether or not further relief is or could be claimed. The declaration shall be either affirmative or negative in form and effect; and such declaration shall have the force and effect of a final judgment and said power of declaring rights is discretionary by the courts. Rev. Code 1:43.1.

It is our holding that the appellant's unilateral action of plugging appellees' reefer containers without written instructions or approval from the appellees, especially in this case where the appellees expressly requested the appellant not to plug its reefer containers, runs contrary to its concession agreement and its tariff guide and as such declaratory judgment will lie against the appellant and it is the opinion of this Court that the appellees have the right to order/instruct appellant to cease and desist from plugging its reefer containers without their expressed consent.

WHEREFORE AND IN VIEW OF THE FOREGOING, the ruling of the trial judge being sound and in law, the same is affirmed. The Clerk of this Court is ordered to send a mandate to the judge presiding therein to resume jurisdiction and give effect to this ruling. AND IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLOR ALBERT S. SIMS OF THE JUSTICE ADVOCATES & PARTNERS, INC., APPEARED FOR THE APPELLANT. COUNSELLORS J. AWIA VANKAN AND KHADIJATU TALL NASSER OF HERITAGE PARTNERS & ASSOCIATES, LLC, APPEARED FOR APPELLEE.

Affirmed.