

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

BEFORE HER HONOR: SIE-A-NYENE G. YUOH.....CHIEF 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: CEATNEH D. CLINTON-JOHNSON.....ASSOCIATE JUSTICE

Hans Armstrong of the City of Monrovia, Republic of)
Liberia.....Appellant)
)
Versus) APPEAL
)

Citadel Mining Services & Construction Liberia LTD, by)
and thru its Managing Director, Deputy, Assistant)
Managers and all those acting his authority, of the)
City of Monrovia Liberia.....Appellee)
)

GROWING OUT OF THE CASE:)
)

Citadel Mining Services & Construction Liberia LTD, by)
and thru its Managing Director, Deputy, Assistant)
Managers and all those acting his authority, of the)
City of Monrovia Liberia.....Movant)
)

Versus) MOTION TO DISMISS
)

Hans Armstrong of the City of Monrovia, Republic of)
LiberiaRespondent)
)

GROWING OUT OF THE CASE:)
)

Hans Armstrong of the City of Monrovia, Republic of)
Liberia.....Plaintiff)
)

Versus) ACTION OF DEBT BY
) ATTACHMENT
)

Western Cluster (Iron Ore Mining Company operating in)
Bomi County, Republic of Liberia) by and thru its)
Management of the Cities of Monrovia and)
Tubmanburg Montserrado and Bomi Counties,)
respectively1st Defendant)
)

And)
)

Citadel Mining Services & Construction Liberia LTD, by)
and thru its Managing Director, Deputy, Assistant)
Managers and all those acting his authority, of the)
City of Monrovia Liberia.....2nd Defendant)
)

Heard: November 19, 2024

Decided: May 28, 2025

MADAM JUSTICE CLINTON-JOHNSON DELIVERED THE OPINION OF THE COURT

This appeal grows out of the final ruling of the Debt Court for Montserrado County, entered on July 20, 2023, by His Honor, James E. Jones, dismissing the action of debt by attachment filed by the appellant on the principle of *res judicata*. Dissatisfied with the final ruling, the appellant has come to this Court of final resort.

The certified records reveal, that after the May 12, 2023 ruling of the Debt Court, and on June 15, 2023, the appellant, Hans Armstrong, filed before the Debt Court for Montserrado County, another action, this time, an action of debt by attachment against Western Cluster Iron Ore Mining Company, 1st defendant, and Citadel Mining Services & Construction Liberia, Ltd, the appellee herein, 2nd defendant, referencing the same equipment rental agreement that was the crux of the action of debt that the trial court had ruled on, on May 12, 2023, alleging substantially that on July 1, 2022, it entered an equipment rental agreement with the appellee for a monthly operational hours of 240 at the rate of One Hundred Seventy-Five United States Dollars (US\$175.00) per hour giving an aggregate amount of Forty-Two Thousand United States Dollars (US\$42,000.00) per month, and a total sum of Eighty-Four Thousand United States Dollars (US\$84,000.00) for the initial two (2) months; that consistent with the equipment rental agreement, the appellee made an advance payment of Fifty Thousand United States Dollars (US\$50,000.00) with the balance payment of Thirty-Four Thousand United States Dollars (US\$34,000.00) due on August 15, 2022; that upon the request for the said balance payment, the appellee, through its legal counsel, on August 26, 2022 addressed a communication to it and averred that the equipment was not operational and did not serve the purpose, hence, it was terminating the equipment rental agreement; that as a consequence thereof, the appellant instituted an action of debt at the Debt Court for Montserrado County, and obtained judgment against the appellee for the unpaid balance. The appellant further averred that notwithstanding the termination of the agreement by the appellee, failed and refused to demobilize the equipment at its mining site in Bomi County and return same to the appellant in Monrovia as required by clause three (3) of the equipment lease agreement, however, it maintained possession of the subject equipment at its mining site for nine (9) consecutive months separate from the initial two (2) months; and that appellant averred further, that since the appellee had maintained possession of its equipment for nine (9) months, the appellee was indebted to the appellant in the amount of Three Hundred Seventy-Eight Thousand United States Dollars (US\$378,000.00); and that this second action of debt by attachment, which named the 1st defendant Western Clusters as the principal that hired and sub-contracted the appellee, Citadel Mining, who secured and

executed the equipment lease agreement, it should be held liable for the neglect of its agent, the appellee, under the doctrine of *respondeate superior*.

On June 22, 2023, the appellee, Citadel Mining Services filed along with its answer, and a motion to dismiss the action of debt by attachment against them, contending sternly that the equipment rental agreement entered into by the parties, was terminated and same was acknowledged by the appellant, and therefore, this suit cannot be used as a basis to claim debt for the alleged failure of the appellee to demobilize the subject equipment and return same to Monrovia to the custody of the appellant; that the said agreement was a subject of litigation in which the Debt Court for Montserrado County entered final ruling and adjudged the appellee liable for the amount of Thirty-Four Thousand United States Dollars (US\$34,000.00) and that the enforcement of said judgment is pending before the Chambers Justice undetermined, hence, the case is *res judicata* as a matter of law; that the appellant having acknowledged, consented and accepted the termination of the equipment rental agreement, which rendered its operational provisions, including the automatic renewal clause, null and void with no legal effect, and that if the appellant feels injured its remedy is not by an action of debt, but damages for wrong; and that the appellant got judgment from the Debt Court for Montserrado County in the amount of US\$34,000.00 against the appellee. The appellee's motion to dismiss the appellant's complaint in an action of debt by attachment filed along with its answer maintaining the averments contained in its answer and further contended that there is no agreement existing between the parties for which the appellee should pay the amount of Three Hundred Seventy-Eight Thousand United States Dollars (US\$378,000.00); that the appellant did not make demand for payment of any debt of such prior to the filing of the said suit, the current action of debt by attachment should be dismissed on the principles of *res judicata* and *lis pendis*.

On June 29, 2023, the appellant filed its resistance to the motion to dismiss its complaint and contended principally that the doctrine of *res judicata* will not attach in the instant case because at no time did it file a debt action against the appellee for consecutive nine (9) months it maintained possession of the equipment and obtained judgment, except the two (2) months; that notwithstanding the purported termination of the equipment rental agreement, the appellee maintained possession of the equipment for nine (9) additional months from September 1, 2022 up to and including May 30, 2023, therefore, the automatic renewal clause under the said agreement must apply; that it could not make demand for payment of the said amount because the agreement for the equipment rental was still in force and also under challenge; and that the appellant strongly contended that the principle of *lis pendens* is not applicable in as much as the parties are not the same and the period the debt action covers

is not the same. The appellant therefore, prayed the trial court to deny and dismiss the motion to dismiss its action.

On June 30, 2023, the 1st defendant, Western Cluster Limited, filed along with its answer a motion to drop miss joined party. In its answer, the 1st defendant contended that it has never had any contractual relationship with the appellant to warrant the filing of the current action of debt by attachment against it; that the 2nd defendant is an independent contractor and not its agent, hence, the doctrine of *respondeate superior* cannot lie against it; that though the 2nd defendant, appellee did take an Hitachi 850 equipment to its mining site in Tubmanburg to perform some task under the contract, it is unaware that the said equipment belongs to the appellant, neither is it aware of any equipment rental agreement between the appellant; that the 1st defendant and the appellee are two separate and distinct corporations and that the equipment rental agreement entered into by the appellant and the appellee did not name it as a party to the said agreement, neither is it assigned any responsibility thereunder, hence, should not be held for the default of the appellee on the implementation of the said agreement. The appellee, therefore, denies all the averments as contained in the appellant's complaint and prayed the Debt Court to drop it as a party to the said action of debt by attachment.

Pleadings having rested, the motion to dismiss the action of debt by attachment was heard as a matter of procedure. The trial court, on July 20, 2023, ruled and granted the motion, and dismissed the action of debt by attachment. The appellant noted exception and announced an appeal to the Supreme Court of Liberia, and on July 27, 2023, filed an eight count bill of exceptions

Hoary with age, in our jurisdiction, the Supreme Court has opined in litany cases that it will only address the issue(s) relevant to the determination of the matter, for it is a settled principle of law that the Supreme Court is not bound to pass on all of the issues raised by the appellant but those that are germane or meritorious or properly presented for the determination of the case. *Ministry of Foreign Affairs v. Sartee et al.*, 41 LLR 285, 290 (2002); *Lamco J.V Operating company v. Verdier*, 26 LLR 445, 448; *Tom Harris v. David Woah*, Supreme Court Opinion, March Term, 2024; *In re GEC Report on Complaint filed by Mr. Ballah v. Yargbo against Counsellor Samuel Pearson*, Supreme Court Opinion, March Term, 2024.

In view of the above, the issue determinative of this case is whether considering the factual circumstances the case is dismissable on the doctrine of *res judicata*, as a matter of law.

The appellant has argued in its bill of exceptions that the trial judge erred when he ruled and dismissed its action of debt by attachment on the principle of *res judicata* because its first

action of debt is separate and distinct from the current action of debt by attachment. Whereas, in the instant case, the appellant sued for the amount of Three Hundred Seventy-Eight Thousand United States (US\$378,000.00) for the consecutive nine (9) months the appellee was in actual and continuous possession of its equipment. The appellant also contended strenuously that the appellee's failure to demobilize and return its equipment consistent with clause three (3) of the equipment rental agreement upon appellee's service of notice of termination of the said agreement on the appellant in a communication dated August 26, 2022, yet, the appellee maintained the said equipment at its mining site for nine (9) additional months, which act invalidated the said termination and therefore gave effect to the automatic renewal clause contained therein. Hence, the agreement remained in full force. We quote clause 3 of the subject agreement for the benefit of this Opinion:

“CMSC [Citadel Mining Services & Construction] shall mobilize and demobilize the equipment to and from the site of CMSC (Western Cluster Iron Ore Concession, Bomi County)”.

Conversely, this Court notes from the records that the appellee does not dispute the fact that it maintained the appellant's equipment at its mining site for nine (9) additional months without payment; however, the appellee argued that in as much as it served the appellant notice of termination of the agreement on ground that the subject equipment was not operational and did not serve the purpose as per the equipment rental agreement, and the appellant did not counteract this assertion; that the appellant subsequently instituted a debt action against it and obtained judgment in amount of Thirty-Four Thousand United States Dollars (US\$34,000.00) representing the unpaid balance of Eighty-Four Thousand United States Dollars (US\$84,000.00) for the initial duration of the contract, that is, July to August 2022, which judgment was satisfied by it and as a consequence, the appellant could not institute another action of debt against it for the same equipment, hence, the doctrine of *res judicata* would lie. We think, that the appellee was under further obligation to have demobilized the equipment as enshrined in clause three (3) of the agreement consummated by the parties but in the absence of this, this Court do not see the legal reasoning of withholding said equipment for consecutive nine (9) months, especially where there is no showing that the appellee gave notice to the appellant concerning the un-operational conditions of the equipment.

Having taken due note of the contentions of the appellant and the appellee, we find ourselves unable to agree with the appellee. This Court has held, *that “a person relying upon the doctrine of res judicata as to a particular issue involved in the pending case bears the burden of introducing evidence to prove that such issue was involved and actually determined by the prior action and that the matter as to which the rule of res judicata is involved as a bar was, in fact, necessarily adjudicated in the former action.” Liberia Mining Company, Ltd. v. Keilee*

Lebbi, 29 LLR 237, 245 (1981); *Kiazolu v. Pearson* 35 LLR 550, 558 (1988); *Reynolds v. Garfuah*, 41 LLR 362, 369 (2003). Also, This Court in the case *Karpeh and Nagbe v. Fisher*, 23 LLR 91, 93 (1974) held that it is a fundamental principal of jurisprudence that material facts or question which were in issue in a formal action, and were there admitted or judicially determined, are conclusively settled by a judgment rendered therein, and that such facts or questions become *res judicata* and may not again be litigated in the subsequent action between the same parties or their privies. We do not see how *res judicata* will apply as contended by the appellee as to the facts of this case. The records certified to this Court show that the action of debt that was first instituted by the appellant against the appellee was to recover the unpaid balance of Thirty-Four Thousand United States Dollars (US\$34,000.00) under the equipment rental agreement entered by the parties for the initial two months, July to August 2022, to which the appellant obtained judgment.

In furtherance of the motion to dismiss which bring to an end the finality of the matter before the trial court, we now like to quote relevant portion of the trial court's ruling as herein below:

“Regarding the requirement of demand, this court says that the prior demand requirement is neither optional nor [matter of choice]. Before filing an action of debt, there must be evidence of a prior demand and failure to pay. Plaintiff's allegation that pendency of a matter in the Debt Court obviates the need to make demand for new accruals is without legal support, and is hereby rejected.

Regarding the defendant's contention that once the equipment lease agreement has been terminated, damages, and not debt, is proper. This court agrees with the defendant because firstly, there is no agreement between the parties after the termination which the plaintiff himself has well acknowledged. Secondly, to do what plaintiff would have the court do would result to multiplicity of suits if not endless which is consistent with count #3 of the plaintiff's resistance.

Wherefore, and in view of the foregoing, the motion to dismiss being sound in law and facts, must be, and same is hereby granted, and the complaint is hereby dismissed. And it is hereby so ordered”.

Culled from the records before this Court, the appellant in the first suit filed an action of Debt against the appellee in the debt Court for Montserrado County. On May 2, 2023, a final judgment was rendered against the appellee in the amount of thirty-four thousand United States Dollars (US\$34,000.00). The trial judge based the court's ruling on the conclusion that the appellee knew that the rented equipment was not operable and agreed to make repairs and deduct the cost of the repairs from the rental amount, but failed to do so. Further the judge opined that during the entire time of the contract, the rented equipment remained in the possession of the appellee and that he made no effort to repair or return the equipment.

We are in total disagreement with the ruling of the trial judge dismissing the action of debt

by attachment on the principle of *res judicata* because the first action filed by the appellant was an action of debt against the appellee and the second suit was an action of debt by attachment against 1st defendant, Western cluster Iron Ore Mining company and the appellee which make the both suits separate and distinct for which *res judicata* and/or *lis pendis* will not lie, that is to say, the parties and actions are different.

We must note here that on August 26, 2022, the appellee served on the appellant the notice of cancellation/termination relying on the termination clause of the agreement, which states “that there shall be an automatic renewal at the end of every month unless otherwise communicated in writing to either party within a period of one week before the contract is terminated.” In furtherance, of that cancellation/termination, the Debt Court awarded the balance of the contract sum for the two months. Subsequently thereafter, the appellant filed another action, an action of debt by attachment, relying on the termination clause as stated herein. In consideration of this, this Court is inclined to believe that it is on the account of this continuous possession of the machines by the appellee that the appellant instituted the current action of debt by attachment to recover the accumulated rental fees of Three Hundred Seventy-Eight Thousand United States Dollars (US\$378,000.00).

We must also note from the records that we do not see how Western Cluster Iron Ore Mining Company, 1st defendant was dropped in this case amidst its contentions to be dropped because it is not a party to the equipment rental agreement entered into between the appellant and the appellee. This Court is of the Opinion that since the 1st defendant has no privity of contract with the appellant, it should not be held liable for the act of the appellee. It is our opinion that the appellant’s current action of debt by attachment is separate and distinct from the action of debt earlier filed to recover the unpaid balance for the initial two months of the equipment rental agreement, and that, the doctrine of *res judicata* is untenable.

We hold that the trial judge erred when he dismissed the appellant’s action of debt by attachment on the principle of *res judicata*. We further hold that the debt action having been settled and this subsequent action being for debt by attachment to recover monies for the withholding of the rental equipment, the principle of *res judicata* is inapplicable.

WHEREFORE, AND IN VIEW OF THE FOREGOING, the final ruling of the trial judge dismissal of the appellant’s action of debt by attachment is hereby reversed and remanded to be tried on its merits. The Clerk of this Court is ordered to send a Mandate to the Debt Court for Montserrado County commanding the judge presiding therein to resume jurisdiction and

give effect to the Judgment of this Opinion. Costs to abide final determination in this matter.
AND IT IS HEREBY SO ORDERED.

Remanded

When this case was called for hearing, Counsellor Amara M. Sheriff appeared for the appellant. Counsellor J. Johnny Momoh appeared for the appellee.