

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. 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

Novomatic Gaming Industry GmbH, an Austrian )  
Limited Liability Company, Weinerstrasee 158, )  
2352 Gpoldskirchen, Austria by and thru its )  
Attorney in Fact Counsellor Benedict F. Sannoh )  
of the City of Monrovia, Montserrado County, )  
Republic of Liberia.....Appellant )

Versus ) APPEAL

Palm Spring Gaming Company, Tubman Blvd of )  
the City of Monrovia, Montserrado County, )  
Republic of Liberia.....Appellee )

GROWING OUT OF THE CASE:

Palm Spring Gaming Company, Tubman Blvd of )  
the City of Monrovia, Montserrado County, )  
Republic of Liberia.....Movant )

Versus ) MOTION TO DISMISS

Novomatic Gaming Industry GmbH, an Austrian )  
Limited Liability Company, Weinerstrasee 158, )  
2352 Gpoldskirchen, Austria by and thru its of )  
Attorney in Fact Counsellor Benedict F. Sannoh )  
the City of Monrovia, Montserrado County, )  
Republic of Liberia.....Respondent )

GROWING OUT OF THE CASE:

Novomatic Gaming Industry GmbH, an Austrian )  
Limited Liability Company, Weinerstrasee 158, )  
2352 Gpoldskirchen, Austria by and thru its )  
Attorney in Fact Counsellor Benedict F. Sannoh )  
of the City of Monrovia, Montserrado County, )  
Republic) of Liberia.....Plaintiff )

Versus ) ACTION TO RECOVER

) CHATTEL

Palm Spring Gaming Company, Tubman Blvd of )  
the City of Monrovia, Montserrado County, )  
.....Defendant )

Heard: November 18, 2025

Decided: May 28, 2025

## MADAM JUSTICE CLINTON-JOHNSON DELIVERED THE OPINION OF THE COURT

This Court is call upon to decide the matter between these two corporate entities on the basis of an agreement entered into by the parties, so as to give interpretation to the law on the arbitration clause enshrined in the lease agreement, out of which this appeal grows from a motion to dismiss appellant/plaintiff's complaint. In deciding this matter, the constitutional mandate that we are called upon to do is to uphold the Constitution and laws of the Republic of Liberia. *Article 25 of the 1986 Constitution of Liberia* states that "*Obligation of contract shall be guaranteed by the Republic and no laws shall be passed which might impair this right.*"

The genesis of this case grows out of an agreement entered into and signed between the appellant/plaintiff, Novomatic Gaming Company (Novomatic) and the appellee/defendant Palm Spring Gaming Company. The review of the facts reveals that on Mach 30, 2022, the appellant/plaintiff, Novomatic Gaming Company (Novomatic), a legally registered Austrian Corporation under the name Novomatic A.G filed an action to recover a chattel thru its Attorney-In-Fact Counsellor Benedict F. Sannoh against the appellee/defendant, Palm Spring Gaming Company of Tubman Boulevard. The appellant/plaintiff in its complaint averred that Novomatic's Board of Directors authorized and empowered Counsellor Benedict Sannoh as an Attorney-In-Fact in a communication dated September 21, 2021 to institute an action of replevin on their behalf for the purpose of recovering chattels in the possession of the appellee/defendant; that the appellant/plaintiff further averred that those chattels in the possession of the appellee/defendant were 117 pieces of FV624 gambling machines, 117 pieces of FV830 gambling machines, servers for gambling machines and routers for gambling machines; that furthermore, the appellant/plaintiff alleged that on the 1<sup>st</sup> of November 2018, the parties entered into an agreement of lease for 234 pieces of gambling machines along with their routers and servers for the duration of 36 months commencing immediately after the installation of the machines and subject to terms and conditions as indicated in the lease; that appellant/plaintiff alleged also that the machines were delivered to the appellee/defendant FOB destination at Palm Springs Hotel gaming on Tubman Boulevard pursuant to section 7 of the lease agreement, which provision states, that the chattels shall remain the sole and exclusive property of the appellant/plaintiff and that the appellee/defendant shall have no rights or interest in the chattels leased, apart from the right to use it for its benefits on its premises (Palm Spring Hotel); that the appellant/plaintiff under sections 3.1 and 3.3 of the lease mandated the appellee/defendant to make payment for monthly participation fees for the chattels on or before the fifteen (15) day of the following month; and that the appellee/defendant was to make a monthly rental fee on the FV624

machines of 15% of the net win generated daily and on a flat rate \$7 (Seven United States Dollars) daily on the FV830 machines.

In consonance with the above contentions raised, the appellant/plaintiff further alleged that the appellee/defendant failed or neglected to make payment under the lease, pursuant to section 3.5 of said lease, which stated that, in the event appellee/defendant defaults and failed to comply with the terms and conditions as enshrined in the lease agreement, the appellant/plaintiff reserved the rights of entry on its premises to remove the machines (chattels) as enshrined under section 14.2(b) of the lease agreement, and that the appellee/defendant waived all claims for damages which may be caused by appellant/plaintiff re-entry and taking possession of the machines on their premises. Further, the appellant/plaintiff averred that the appellee/defendant failed and or neglected to comply with the terms and conditions of the lease agreement, including the monthly participation fees for the chattels; that the appellee/defendant as of March 30, 2021 was indebted to the appellant/plaintiff in the amount of US\$1,900,532.35 (One Million Nine Hundred Thousand Five Hundred Thirty-Two United States Dollars Thirty-Five Cent). According to the appellant/plaintiff; that the appellee/defendant has allegedly breached several agreements and obligations involving indebtedness in excess of One Hundred Thousand United States Dollars (\$100,000.00), including the Liberia Electricity Corporation that appellee/defendant had admitted owing One Hundred Thousand United States Dollars (\$100,000.00), which necessitated the appellant/plaintiff to assert the right to access to the chattels because the appellee/defendant had moved the chattels to third parties, Riviera Amusement Center on Gurley Street, Mainline Spin to Win on 16<sup>th</sup> Street and Afri-lodge on Carey Street according to the joint inspection conducted by the parties, which revealed that due to the closure of appellee/defendant, the machines were stored unwrapped in area of very high humidity, with water on the floor, causing the appellant/plaintiff serious risk of loss and damage. The appellant/plaintiff prayed the trial court for judgment against appellee/defendant.

Predicated upon the service of the writ of summons and complaint on the appellee/defendant, on April 14, 2022, appellee/defendant filed a seventeen (17) count answer along with a motion to dismiss appellant/plaintiff's complaint. In its answer, the appellee/defendant strongly contended that the appellant/plaintiff was not authorized and lacked legal standing to institute this suit in accordance to *section 15.15* of the agreement, which mandates the parties to the agreement to submit to the laws of the Republic of Austria and additionally, under *section 15.16 of their agreement, the parties had agreed to settle* disputes arising out of or in connection with the agreement under the rule of arbitration of the International Chambers of Commerce. Additionally, the appellee/defendant contended that the appellant/plaintiff also

lacked standing to sue without authorization from the board of directors of Novomatic by evidence of a lack of resolution of the Board, which rendered the Power of Attorney (POW) issued to Counsellor Sannoh invalid. The appellee/defendant averred that it deposited the amount of Four Hundred Fifty Thousand United States Dollars (US\$450,000.00) against the sale contract with a 30% discount which the appellant/plaintiff allegedly breached by the drafting and adoption of a lease agreement and the unceremoniously switching off the jack-spot, the brain of the gaming machines thereby causing a loss of Forty Thousand United States dollars (US\$40,000.00) daily to appellee/defendant for the past four years totalling Fourteen Million Eight Hundred Eighty Thousand United States Dollars (US\$14,880,000.00) and annually for the four years Fifty Nine Million United States Dollars (US\$59,000,000.00). The appellee/defendant also contended that parties consented for the transfer of the gaming machines in the possession of the appellee/defendant making a participatory deposit of US\$450,000.00 which the appellee/defendant was to retribute within a year and ensure that the said payment and profit from the machines be share on a fifty-fifty basis with the appellee/defendant's share going against the purchase of the gaming machines with respect to the sale contract which existed between the parties. The appellee/defendant also contended that the failure on the part of the appellant/plaintiff to install the entire machines, but demanded payment upon installation of few of the machines, automatically shut down the equipment, causing problems for the appellee/defendant, because after the appellant/plaintiff shut down the machines, appellant/plaintiff compelled appellee/defendant to lease the machines when a purchase contract was already executed by the parties without a cancellation while the sale contract was underway, which action incapacitated the appellee/defendant from making payment, considering the fact that the November 1, 2018 agreement could not supersede the May 2018 agreement. Finally, the appellee/defendant averred that, there never existed a lease agreement between the parties because there already existed sale agreements between the parties, which agreements, the appellant/plaintiff had breached with the intention of imposing a lease agreement while the sale contract was underway, which restrained the appellee/defendant from making payment by shutting down the machines; thereby praying the trial court to rule against appellant/plaintiff and ordered the restitution of US\$450,000.00 (Four Hundred Fifty Thousand United States Dollars).

In response to the motion to dismiss the appellant/plaintiff's' complaint filed along with its answer, the appellee/defendant prayed for the dismissal of said complaint on the basis that the appellant/plaintiff lacked standing to institute this action under section 15.16 of the agreement which calls for dispute resolution to be governed under the laws of Austria, and

that anything to the contrary, will be violative of Article 25 of the 1986 Constitution of the Republic of Liberia; and that the appellant/plaintiff also lacked standing to institute a suit because the Attorney-In-Fact was not authorized by Novomatic board of directors to institute this action, thereby rendering its power of attorney invalid. The appellee/defendant then prayed the court to deny the action to recover chattel and order appellant/plaintiff to restate US\$450,000.00 (Four Hundred Fifty Thousand United States Dollars) participation fees and also restate US\$59,000,000.00 (Fifty Nine Million United States Dollars) as loss income for shutting down of the jack-pot of the machines.

The appellant/plaintiff denied in its returns to the appellee/defendant's motion to dismiss, that it lacks standing to institute this suit, because it has sufficient stake or interest in this litigation due to fact the gaming machines are owned by Novomatic, leased to appellant/plaintiff, and that as attorney-in-fact, he is acting in a representative capacity for Novomatic, who has the standing to institute this suit and on whose behalf a resolution of Novomatic's board of directors appointed he, Counsellor Benedict F. Sannoh, Managing Director of Sannoh & Partners to sue.

While the matter was still pending final determination before the Sixth Judicial Circuit Court, the Management of Afrilodge by and thru its Administrator, Amara Fofana, 1<sup>st</sup> petitioner, and the Management of Mainland, by and thru its General Manager, Christopher Lewis, 2<sup>nd</sup> petitioner on the 18<sup>th</sup> of April A.D. 2022, filed a petition for the writ of prohibition before the Justice in Chambers against His Honor J. Kennedy Peabody, Resident Circuit Judge, Sixth Circuit Judicial Circuit Court for Montserrado County, and the Management of Novomatic Gaming Industry Gmbh by and thru its Attorney-In-Fact, Cllr. Benedict F. Sannoh so as to restrain and prohibit the unlawful shutdown and or closure of their legally registered businesses, which business entities are distinct and separate from the appellee/defendant's business center. In their petition, the petitioners averred that they were never named as parties to the case and the closure of their business premises was in violation of the *Article 20(a) of the 1986 Constitution of the Republic of Liberia*, which provides that no person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in this Constitution and in accordance with due process of law. The petitioners prayed the Chambers Justice for the issuance of the alternative writ of prohibition against 1st respondent, J. Kennedy Peabody, and place a stay on any further proceeding against the petitioners, and further ordered the respondent returned the trial to status quo ante.

Upon receipt of the petitioners' petition for the writ of prohibition, the Justice in Chambers cited the parties to a conference on April 11, 2022. Following the hearing of the conference,

on April 18, 2022, the Justice in Chambers declined the issuance of the alternative writ of prohibition and ordered the trial judge to resume jurisdiction and proceed in accordance with law. Thereafter, on April 25, 2022, the notice of assignment for the reading of the Supreme Court's Mandate, was read in open court, ordering the trial court to resume jurisdiction over the case, and the trial judge further mandated the Sheriff of the court to act in accordance with the order, and served on the petitioners so as to proceed immediately to seize the chattels. In furtherance of the parties' appearance for the reading of the Chambers Justice's Mandate, the appellant/plaintiff on April 25, 2022, the same date of the reading of the Supreme Court's Mandate, filed its reply to the appellee/defendant's answer.

In its reply, the appellant/plaintiff denied the allegations contained in the appellee/defendant's answer; that it lacked standing to institute this action because the appellant/plaintiff has sufficient stake in obtaining judicial resolution in protecting its tangible interest concerning its chattels, and furthermore, the action to recover chattel in this litigation, does not grow out of the dispute arising from the parties, as enshrined in section 15.16 of the lease agreement but rather, this action is not subject to the arbitration clause for it is a right reserve to the appellant/plaintiff that chattels shall be withdrawn from the premises of the appellee/defendant, in the event of default, and that all claims arising therefrom, are deemed waived, pursuant to sections 14.2(b) of the lease agreement which was consummated by the parties; that Novomatic Austria board of directors thru a valid power of attorney, had empowered or authorized its attorney-in-fact to institute this action to recover certain pieces of chattel in the possession of appellee/defendant on their behalf. Further, the appellant/plaintiff contended that there exist no sales agreement between the parties, but rather, a sales contract was just an offer that was valid until May 31, 2018 and the sales contract was never concluded and signed by the parties, but there existed a lease agreement that was signed by the parties to this suit and said lease agreement was never adopted after the alleged sales contract; that the appellee/defendant made an initial deposit of Four Hundred Fifty Thousand United States Dollars (US\$450,000.00) to the appellant/plaintiff for the shipment of the gaming machines to Liberia under the terms and conditions of the lease agreement. Also that for the appellee/defendant to have exercise the option to purchase these machines were contingent upon full compliance with the terms and conditions of payments or participation, which was not completed in that only a single initial deposit was made and the appellee/defendant failed to make further payment under the lease agreement, despite all efforts that were made to have the machines working and functional but the appellee/defendant acting in bad faith refused to live up to the payment terms under the lease agreement, though the parties are aware that the machines, a property of appellant/plaintiff

were delivered under the lease and that the said lease agreement defines the right of possession of the equipment and not the purported sales agreement;

The trial judge, in exercising the statutory obligation, that as it is a precedence in the legal practice in this jurisdiction for both courts of records and courts of limited records to first pass on pre-trial motions when there exist any before them., on the 19<sup>th</sup> of May A.D. 2022, ruled on the motion to dismiss the appellant/plaintiff's complaint, holding that the appellant/plaintiff lacked standing to institute this action because there is no showing of a board resolution issued to Counsellor Benedict F. Sannoh by Novomatic, authorizing him to file the replevin action. The trial court also held that it is without jurisdiction in light of the undisputed fact that the parties have signed an arbitration agreement under the law of Austria. The appellant/plaintiff, however noted exceptions to the trial court's ruling and announced an appeal to this Court *en banc*. Thereafter, on the 30<sup>th</sup> of May A.D. 2022, the appellant/plaintiff filed its bill of exceptions with the trial court in fulfilment of its statutory obligation in perfecting the appeal process.

We now consider the relevant portion as contained in the appellant/plaintiff bill of exceptions. Firstly, the appellant/plaintiff contends that the trial court's ruling of the motion to dismiss in the form and manner of a final judgment is not consistent with law and practice in this jurisdiction, as it overlooked and ignored a number of salient issues of both law and fact when the trial court ruled solely on the grounds that appellant/plaintiff lacks standing and that the trial court also lacked jurisdiction in the matter in the wave of the undisputed fact that the parties are bounded by an arbitration and governing law, which in the mind of the appellant/plaintiff, is a reversible error because the trial judge relied exclusively on the *Chicri Bros. Inc. v. Isuzu Motors* case, which is not analogous to the instant case, asserting that the trial judge also committed reversible error when he ruled that appellant/plaintiff lacks the standing and capacity to sue in the absence of a board resolution without providing any basis for this conclusion, especially when standing and capacity are separate and distinct principles of law; that a reversible error was further committed when the trial judge held that a board resolution was required even where a foreign corporation issued a power of attorney and cited no reliance in support of this conclusion, Further, that the fact that the trial judge overlooked the lease agreement consummated by the parties which agreement expressly states that Novomatic is the sole owner of the machine and granted Novomatic the right to repossess the machines. Finally, the appellant/plaintiff contends that the trial court judge erred when he relied on the arbitration clause in settling disputes in Austria in the event dispute arises, when the gaming machines are not in Austria but rather in Liberia and that the trial court judge further erred when he held that the petition to recover chattel is a violation of *Article 25 of the*

*Constitution of the Republic of Liberia* because the parties intended to settle all disputes by a way of arbitration.

Following the appellant/plaintiff's filing and subsequent approval of its bill of exceptions of May 30, 2022, the appellant/plaintiff in fulfillment of its statutory obligation in the perfection of the appeal process, on the 11<sup>th</sup> of July A.D. 2022, filed with the clerk of the trial court an appeal bond and notice of completion of appeal on the same date and time. It is the practice in this jurisdiction, the filing of an appeal bond along with the notice of completion of appeal ousts the trial court of its jurisdiction for the adverse lawyer to have the opportunity to challenge the bond. We see in the records that both the appeal bond and the notice of completion of appeal were filed on the same July 11, 2022, and the appellee/defendant on the next day, July 12, 2022, filed its exceptions to appellant/plaintiff's appeal bond. There exist no jurisdiction on the part of the trial judge, predicated upon the appellant/plaintiff's filing of its bill of exceptions and also the notice of completion of appeal. However, on July 12, 2022, the date of the filing appellee/defendant's appeal bond and the notice of completion of appeal, the appellee/defendant filed with the clerk of the trial court a request for a clerk's certificate ascertaining whether the appellant/plaintiff filed its appeal bond containing an article of incorporation. Following this request, the clerk of court, on the same day, same being July 12, 2022, issued to the appellee/defendant a clerk's certificate evidencing that the appellant/plaintiff appeal bond do not contain an article of incorporation.

The appellee/defendant filed its exceptions challenging the appellant/plaintiff's appeal bond and averred that the bond valued Eighteen Thousand Unites States Dollars (US\$18,000.00) but it lacked an article of incorporation to show that the entity was authorized to do life insurance and that the said bond is insufficient, inadequate and invalid because as of January 1, 2022 up to and including July 8, 2022, the surety, Sky International Insurance Company had issued Six Hundred Forty-Four Thousand Two Hundred and Twenty-Two United States Dollars (US\$644, 222.00) as recorded by Criminal Court "A" for the issuance of criminal appearance bond.

Following the appellee/defendant's exceptions to appellant/plaintiff's appeal bond, the appellant/plaintiff on July 13, 2022, filed its resistance to the appellee/defendant's exception to appellant/plaintiff appeal bond, contending that under our jurisdiction an insufficient bond may be made sufficient at any time during the period before the court loses jurisdiction of the action and relied on Civil Procedure Law, Revised Code:1.51.8; that the omission of the articles of incorporation of Sky International Insurance Company was an inadvertence because the articles of incorporation pleaded in the appeal bond filed on the 11<sup>th</sup> of July A.D.

2022, and in so doing, the appellant/plaintiff should be allowed to file the surety's articles of incorporation on the records since it was pleaded and more so, the sixty days statutory period had not lapsed; and that the Sky International Insurance Company is a registered entity authorized to conduct insurance business in Liberia, and that it has assets sufficient to cover the bond proffered as evidence of its audited financial statement. It is the practice in this jurisdiction when an appeal bond is challenged either based on the defectiveness of insufficiency, the proper action to filed in this concerning such challenge is a motion to justify, instead of a resistance.

Thereafter, on July 20, 2022, the appellee/defendant filed with the trial court a motion to strike appellant/plaintiff's resistance to its exceptions to appellant/plaintiff's appeal bond and further averred that said resistance should be stricken because the appellant/plaintiff would have moved the court to justify surety, instead of filing resistance to the exception of the appeal bond; that an insufficient bond can be made sufficient by justifying and annexing the defect rather than filing a resistance; and that the appellant/plaintiff bond is defective because it has no articles of incorporation of the insurance company that should indemnifies appellee/defendant. On the 25<sup>th</sup> of July A.D. 2022, the appellant/plaintiff filed its resistance to appellee/defendant's motion to strike its appeal bond and averred that it justified the alleged defect of the appeal bond by pleading the articles of incorporation of the surety, Sky International Insurance Company, and that the articles of incorporation was pleaded in the appeal bond filed before the court but it was inadvertently left out when filing the appeal bond; that our practice allows the correction of defective or insufficient bond at any time before the end of the 60 days statutory period for an appeal, which the appellant/plaintiff complied in keeping with law by attaching and filing the articles of incorporation of the surety, Sky International Insurance Company; that the averment of the pleadings matters over the caption of the case because the averment showed justification or insufficiency of the bond but not the caption; that the appellant/plaintiff averred that this motion was filed in bad faith aimed at delaying the appeal process and reasonable expenses which the motion or supporting paper caused them to incur, to include attorney fees and any offending party or attorney may be adjudged guilty of contempt.

The trial court, assigned the motion to strike for hearing October 7, 2022, and the parties argued pro et con and on the same date, the trial court ruled on the motion to strike appellant/plaintiff's resistance to the appellee/defendant's exceptions to appellant/plaintiff's appeal bond, and ruled granting the motion to strike due to failure of the appellant/plaintiff to present the surety under oath and for the court to examine and the surety be made to testify whether they have sufficient assets to offer an appeal bond and mandated the

appellant/plaintiff to file its motion to justify nunc pro tunc on October 10, 2022. The appellant/plaintiff noted exceptions and gave notice that they will take advantage of the law. Predicated upon the trial judge's ruling on the motion to strike appellant/plaintiff's resistance to appellee/defendant's exceptions to appellant/plaintiff's appeal bond, which ruling mandated the appellant/plaintiff to file its motion to justify appeal bond nunc pro tunc, in the appellant/plaintiff's motion to justify appeal bond nunc pro tunc, appellant/plaintiff averred that the person on whose behalf a bond was proffered can do so in three days by moving the court to justify surety; that the articles of incorporation was pleaded in the appeal bond filed on July 11, 2022, and it was an inadvertence not to attach the hard copy of the surety's articles to the appeal bond; that the appellant/plaintiff attached copies of said articles of incorporation and prayed that it be allowed to file the surety articles since it was pleaded and the 60 days statutory period has not lapsed; that the surety is a registered insurance company authorized to conduct insurance business in Liberia and that the surety financial statement showed it has assets, cash sufficient to cover the amount of the bond.

Upon the filing of the appellant/plaintiff's motion to justify its appeal bond nunc pro tunc, the trial court convened a hearing on October 10, 2022. In that hearing, on the direct examination, the appellant/plaintiff's witness, Albert Gaye, who was duly sworn in and took the stand to testify for and on behalf of the appellant/plaintiff and his entity, Sky International Insurance Company, surety to the appeal bond. During the hearing, Sky International Insurance Company, surety to the appeal bond, testified that he is the chief accountant of the surety's company and also a liaison officer of the Sky International Insurance Company; that the appeal bond proffered by Sky International Insurance Company was signed by its General Manager; that the Sky International Insurance Company was granted operation license by the Central Bank of Liberia (CBL) to conduct General Insurance activities within the Republic of Liberia because the CBL has the regulatory power on insurance companies that engaged in insurance businesses in Liberia as evidence of a certificate from the CBL with license # 009, Financial Business Registration and the Liberia Business Authority (LRA), Tax Clearance and the articles of incorporation with the financial statement constituting the entity's legal instruments that allowed it to operate insurance business in Liberia; and that the surety also obtained a business registration from the Liberia Business Registry. The appellee/plaintiff requested the trial court for a subpoena *ad testificandum* on the Director of the Liberia Business Registry and the insurance session of the Central Bank of Liberia (CBL) to produce records that authorized Sky International Insurance Company to operate general insurance business in Liberia.

In obedience to the subpoena *ad testificandum* prayed for by the appellee/defendant mandating the Director of the Liberia Business Registry and the insurance session of the Central Bank of Liberia (CBL) to produce records that authorized Sky International Insurance Company to operate general insurance business in Liberia, the Liberia Business Registry (LBR), Registrar General, Samson F. Dee was duly qualified, and took the stand, and testified that he was responsible at the LBR to ensure that businesses within the Republic of Liberia are registered pursuant to the Association and Business Laws of the Republic of Liberia; that the Sky International Insurance Company and the National Insurance Corporation are registered domestic resident corporation in Liberia registered to basically engage into life insurance as well as activity with court cases filed on them and that they registered subsequent branches with similar business activity for life insurance. The appellant/plaintiff's witness, Albert Gaye was recalled to the stand for the purpose of admitting documents testified to, identified and marked and confirmed by court to form part of the records in the proceedings. The practice in admitting evidence in this jurisdiction has been consistent in our practice in this legal profession and has never changed. In our practice, evidence has always been admitted when the witness is on the stand during direct examinations. It is a wrong rule to call a witness on the stand for the purpose of admitting documents, especially on the redirect. The appellant/plaintiff having rested with the production of evidence, the trial court did not entertain argument pro et con but reserved ruling into the matter for October 27, 2022. On the 27<sup>th</sup> of October, 2022, the trial judge in its ruling on the motion to strike appellant/plaintiff motion to justify its appeal bond, the trial judge in addressing the lone issue held as follows:

“Whether or not the Sky International Insurance Company is qualified to post a bond and serve as surety for the movant in these proceedings?”

“to address this issue, the court says that based on the testimonies given by the witnesses stated above, one can clearly see that the Sky Insurance Company, which posted the appeal bond and served as surety for the movant, was only authorized by its Business Registration Certificate from the Liberia Business Registry (LBR) to engage in Life insurance Activity and not in General Insurance Activity such as the posting of bonds on behalf of individuals or entities.”

“WHEREFORE AND IN VIEW OF THE FOREGOING, the movant's appeal bond is hereby set aside, and consistent with section 63.6(2) of 1LCLR, pages 268-269, the movant is hereby ordered to post a new and valid appeal bond. AND IT IS HEREBY SO ORDERED.” The appellant/plaintiff noted exception to the ruling of the trial judge.

In furtherance of the trial judge's ruling setting aside the appellant/plaintiff's appeal bond and ordering a new and valid appeal bond, the appellant/plaintiff on November 9, 2022 filed with the trial court a motion to rescind ruling and averred that at the hearing of the motion to justify the appeal bond, the Central Bank of Liberia (CBL) through it

representative confirmed that Sky International Insurance company is authorized to engage in Composite insurance business, as the result, the Liberia Business Registry (LBR) also appeared and testified that the Sky International Insurance Company is registered to engage in life insurance only; that the trial court in its October 27, 2022 ruling, set aside appellant/plaintiff's appeal bond on the basis of the LBR representative's testimonies that Sky International Insurance Company is authorized to engage in life insurance only, in which appellant/plaintiff averred further, that the trial court erred when it overlooked salient issues of law and facts raised in appellant/plaintiff's motion to justify its appeal bond; that the power and authority of a corporate body are determined by its articles of incorporation and certificate as approved by its Foreign Ministry and licensed issued by the CBL to engage in the business of general insurance, which includes, issuance of appeal bond/indemnity bond; that the LBR lacked the power or authority to regulate insurance companies, whereas, the Ministry of Foreign Affairs and the CBL issued to appellant/plaintiff articles of incorporation and insurance license, respectively; and the appellant/plaintiff prayed the trial judge to rescind its ruling setting aside its appeal bond. Thereafter, following the filing and service of the appellant/plaintiff's motion to rescind ruling, the appellee/defendant in its fourteen (14) count resistance contended that the entire motion to rescind should be set aside because the appellant/plaintiff was mandated to file a valid appeal bond and this does not constitute filing a motion to rescind because the court gave appellant/plaintiff the opportunity to justify its appeal bond during the determination of the motion to strike; that the appellant/defendant's surety does not have the license to engage into financial and other insurance activities; that it was established that the LBR which is the license that every business entity or corporation are required to obtain upon its establishment as a corporation or a sole proprietorship which was formally under the Ministry of Commerce, and that based on the line of business in your articles of incorporation that appellant/plaintiff intend to engage in; that the LBR is clothed with the authority to license business operating within the borders of Liberia but is it untrue that appellant/plaintiff's surety business registration does not in any way allow them to engage into general insurance activities as the business registration certificate restricts the movant to only life insurance; that the CBL license is purposely to monitor and determined the financial strength of insurance company to operate under the said certificate and that entity must have access and cash value of up to Five Hundred Thousand United States Dollars (US\$500,000.00) to be allowed to engage in insurance business, which is separate and distinct from LBR. Following the argument between the parties pro et con, the trial judge rescinded its ruling of October 27, 2022, on the motion to strike appellant/plaintiff's motion to justify its appeal bond that it inadvertently ruled to have granted the motion to strike

because the Supreme Court has repeatedly held that it is not the caption of the case that determines the cause of action but the averments. The appellee/defendant noted exceptions to said ruling.

We, in light of the contentions, claims and counter claims advanced by the parties in this matter before us, will only address issue(s) that are germane for the determination of this matter on appeal, as it is a precedent that this Court is not bound to pass on all of the issues raised before it, but rather, those issue(s) that are key to the determination of the case. *In re: GEC Report on Complaint filed by Mr. Ballah v. Yargbo against Counsellor Samuel Pearson, Supreme Court Opinion, March Term 2024; Tom Harris v. David Woah, Supreme Court Opinion, March Term, 2024; Ministry of Foreign Affairs v. Sartee et al., 41 LLR 285 (2002)*. The issue that is determinative of this litigation before us is whether or not the trial judge erred when he dismissed the action to recover chattel based on the arbitration clause enshrined in the lease agreement.

Considering the aforementioned contentions advance by the parties, with respect to the lone issue, whether or not the trial judge erred when he dismissed the action to recover chattel based on the arbitration clause, *section 15.16 of the lease agreement* consummated by the parties, states that “*All disputes arising out of or in connection with the present agreement shall be finally settled under the Rules of arbitration of the International Chambers of Commerce by one arbitrator appointed in accordance with the said Rules. Except as the parties may otherwise agree in writing, the place of arbitration shall be Vienna, Austria and the proceedings shall be conducted in the English language.*”

The contention of appellant/plaintiff that the right to enter on and take possession of the machines is not a dispute and cannot be considered a dispute since the contract clearly indicates it as a right and not an obligation, leads this Court to say that dispute is defined as “*A conflict or controversy, especially one that has given rise to a particular lawsuit*”. **Black’s Law Dictionary, 9<sup>th</sup> Edition, page 540**. The fact that the appellee/defendant did not give the right away for the appellant/plaintiff, caused a conflict or controversy which necessitated the appellant/plaintiff to have a right to redress. Moreover, there is no provision in the agreement between the parties that specifically says that the reservation/right of ownership was not the issue to be covered under the arbitration clause. So, this Court must take the agreement between the parties in a holistic mode and so bind them by their own agreement

In furtherance of the agreement between the parties, the parties chose arbitration in the event of any conflict or controversy and the law on arbitration binds parties to specific arbitration clauses that bind them. This common law doctrine is now integrated in our statutory laws and it is also recognized internationally as dispute resolution mechanism that parties have to consent to in writing to have their disputes resolve by choosing a designated venue and the language the parties may desire. It is in line with the Constitution and Statute Laws of Liberia, buttressed by international law practices that this Court, in a litany of cases, to include *the Chricri Brothers v. Isuzu Motors*, 40 LLR 128, 134 & 137 (1988), Mr. Justice Morris speaking for the Court, with reference to the *Civil Procedure Law, Rev. Code:1.64.1*, held that “A written agreement to submit to arbitration any controversy existing at the time of the making of the agreement or any controversy thereafter arising is valid, enforceable without regard to the justiciable character of the controversy, and irrevocable except upon such grounds as exist for the revocation of any contract.” See also, *Karen Maritime Ltd v Omar International, Inc.* 42 LLR 216 (2004); *Emirates Trading Agency Co v Global Import and Export Co*, 42 LLR 204 (2004); *Min of Lands, Mines and Energy v Liberty Gold and Diamond Co.* [2014] LRSC 5 (10 Jan 2014) *Berry v Intestate Estate of Bettie*, [2014] LRSC 8 (16 Jan 2014); and *Mawolo v Reeves*, [2010] LRSC 15 (14 Jan 2010).

Additionally, the *Civil Procedure Law, Rev. Code:1.64.2*, proceedings to compel or stay arbitration proceedings states as follows:

1. Proceedings to compel arbitration; grounds, form of hearing. A party making application to the court may obtain an order directing the parties to arbitrate by showing:
  - (a) The existence of an agreement described in section 64.1; and
  - (b) That he is a party to such an agreement; and
  - (c) The referability of the controversy to arbitration; and
  - (d) The refusal of another party to the agreement to arbitrate such controversy.

Where such issues are raised, the court shall proceed forthwith and summarily to hear and determine the issues raised upon the affidavits submitted in support of and in opposition to the application, except that the court may proceed to try the issues, with or without a jury, where it deems such procedure necessary, and shall order arbitration if the issues are found for the moving party.

And further, in the Chricri Brothers case, see page 35, arbitration is define as “An agreement to submit a dispute to arbitration under the law of a foreign state confers jurisdiction by consent which will be recognized either by the courts of the state of residence or the courts of the foreign state, or by the courts of a state in which the award resulting from the submission is sought to be enforced. Courts must give effect to freely negotiate forum selection clauses in arbitration agreements.” 4 AM JUR 2d., *Alternative Dispute Resolution*, § 91, page 146.

The parties in this litigation consented in the lease agreement by asserting the arbitration clause which binds them to settle their disputes under the laws of Austria using the Rules of Arbitration of the International Chamber of Commerce to settle disputes arising out of or in connection with the said agreement in the English language. The statutory provision of the law on arbitration proceedings found in the *Civil Procedure Law, Rev. Code:1.64.1*, incorporated this provision of the common law into the statutory laws of Liberia upholding the express consent of the parties as binding. In further support of this statutory provision, *Civil Procedure Law, Rev. Code:1.64.2* allows courts of competent jurisdiction to compel arbitration consistent with a hearing when the issues of arbitration are raised.

Furthermore, *Article 25 of the 1986 Constitution of the Republic of Liberia* guarantee the obligation of contracts consummated by the parties given the express consent thereto, which this Court, should at all times uphold, and that the Legislature shall not make laws to impair the obligation of contracts. The Constitutional Court in this jurisdiction, same being the Honourable Supreme Court, which is endowed with the interpretation of the laws of Liberia, in the *Chicri Brothers* case, upheld the common law doctrine on arbitration, which is an internationally acceptable principle of dispute resolution(s). Accordingly, the *Black's Law Dictionary, 9<sup>th</sup> Edition, p-119* defines arbitration as “A method of dispute resolution involving one or more neutral third parties who are usu. agreed to by the disputing parties and whose decision is binding.” Also, in the *Chicri Brothers v. Isuzu Motors, 40 LLR 128, 135 (1988)*, “Arbitration is a mode of settling differences through the investigation and determination, by one or more unofficial persons selected for the purpose of some disputed matter submitted to them by the contending parties for the decision and award, in lieu of a judicial proceeding. The object of the arbitration is the final disposition of differences between parties in, a faster, less expensive, more expeditious and perhaps less formal manner than is available in ordinary court proceedings” *5 AM JUR 2d., Arbitration and Award, § 80, page 579*. In the event, the parties by their expressed consent agreed to settle disputes arising out of an agreement consummated by them, in this case, the parties agreed to do so by arbitration, it must be accepted and respected by courts of law in helping them resolving their disputes.

According to the certified records in this case, the appellant/plaintiff and the appellee/defendant consummated a lease agreement for 234 pieces of gambling machines with their routers and servers for the duration of 36 months commencing immediately after the installation of the machines, the machines were delivered to the appellee/defendant and the appellee/defendant under sections 3.1 and 3.3 of the lease was mandated to make payment but appellee/defendant failed to make payment and under section 3.5 of the lease, the appellant/plaintiff is mandated to enter the appellee/defendant's premises, remove the

machines (chattels), without any claims of damages for such entry. We observe from the records a lease agreement signed by the parties. The appellee/defendant strongly resisted the appellant/plaintiff's contentions denying ever signing a lease agreement but rather, the appellee/defendant deposited the amount of Four Hundred Fifty Thousand United States Dollars (US\$450,000.00) against the sale contract with a 30% discount which the appellant/plaintiff allegedly breached by the drafting and adoption of a lease agreement, instead and removed the jackpot by shutting down the gambling machines. We note the appellee/defendant's contentions but from the review of the records, there exist a sale agreement which is not signed by the parties. The appellee/defendant counter claim that the arbitration clause in the agreement bars the appellant/plaintiff from instituting this suit because the appellant/defendant lacks the standing or capacity to institute this suit on behalf of the corporate entity, Novomatic due to the fact that the agreement between the parties calls for arbitration under the laws of Austria. The records reveal that the trial judge acting upon the motion to dismiss this suit on the arbitration clause in the agreement, dismissed the action of which this matter is now before us for determination. We like to restate for the records section 15.16 of the lease agreement which binds the parties to this agreement as follows:

*"All dispute arising out of or in connection with the present agreement shall be finally settled under the Rules of arbitration of the International Chambers of Commerce by one arbitrator appointed in accordance with the said Rules. Except as the parties may otherwise agree in writing, the place of arbitration shall be Vienna, Austria and the proceedings shall be conducted in the English language."*

The 1986 Constitution of Liberia requires courts of law to uphold the Constitution and its statutory laws. This Constitutional provision of Article 25 of the 1986 Constitution of Liberia restrains this Court, and all courts from interfering with contractual obligations between parties to said contract, and not even the Legislature, who is clothed with the authority of law making can enact legislation to impair the obligations of contract. The parties on their own, hold to themselves and design the mode and fashion by which their disputes should be addressed and resolve ensuing disputes by consenting to arbitration under the laws of Austria. This Court thinks, that the desire and aspiration of the parties should not be impaired since the parties expressly consented to that the appellant/plaintiff deserved the rights to enter on the premise of the appellee/defendant to recover their machines as per the agreement. We also recognized that the parties can revert to arbitration to resolve arising disputes by arbitration. This Court further says that it has both constitutional duty and statutory obligations to apply such law where necessary, and in this instant case, it is of no exception. We held in our line of precedent cases, to name the *Chricri Brothers v. Isuzu Motors*, 40 LLR 128, 134 (1988), where this Court when interpreting the statutory provisions of the *Civil Procedure Laws, Rev. Code:1.64.1* upheld this statutory laws on arbitration when the parties expressly consent in

writing to have their disputes resolve by arbitration. In the instant case, the parties so committed themselves in the agreement that appellant/plaintiff has the sole right to recover the gaming machines as agreed upon by the parties in the said agreement which consent is also separate and distinct from the arbitration clause. We hold, that when the parties hold themselves by an expressed consent to retrieve the gaming machines in violation of the said agreement bind the parties and courts of laws must always respect such constitutional obligation and contractual agreement, except upon such grounds as exist for the revocation of any contract.

The appellant/plaintiff in addressing the appellee/defendant's contentions that the matter be dismissed based on the parties consent to go arbitration, averred that it has a stake and interest in this litigation to institute this suit because this action is not subject to the arbitration clause for it is a right reserve to the appellant/plaintiff that chattels shall be withdrawn from the premises of the appellee/defendant, in the event of default, and that all claims arising therefrom, are deemed waived, pursuant to sections 14.2(b) of the lease agreement which was consummated by the parties, and besides, the machines are within the bailiwick of the Republic of Liberia and not Austria, as a consequence, the trial court has the jurisdiction to hear and make determination in this matter. We are of the opinion that if parties to this agreement expressly consent to resolving their disputes by arbitration, in Austria, in the English language, consistent with the Constitution of Liberia and statutory laws of this Republic, this Court must uphold the law. However, in the instant case, the parties also agreed to a specific clause that gives the appellant/plaintiff the right to recover their gaming machines due to violation of the agreement and as well agreed to arbitration in the event of disputes that may arise. We say that the trial court erred when it compelled the parties to arbitration in Austria and ignored section 14.2(b) of the lease agreement which gives the appellant/defendant the right to remove their gaming machines for violation of this section as In the mind of this Court, what is legally expedient is to allow the appellant/plaintiff remove their machine for such violation.

We are constrained to go beyond the arbitration clause enshrined in the agreement effectuated by the parties and address specific consent also agreed by the parties. The appellant/plaintiff filed this action to recover chattel due to the failure and neglect of the appellee/defendant to make payment for the 234 gambling machines pursuant to the agreement, for which this litigation grows to recover chattel in the possession of the appellee/defendant, which in the mind of this Court does not give rise to a dispute. We are of the opinion that such right must be accorded the appellant/plaintiff as agreed upon by the parties. This Court holds that when a party realize a breach in certain provisions of an

agreement and all efforts to have said breach resolve failed, and that the resolution of said matter rests solely within the courts of competent jurisdiction for determination thereof, it is evident that the court addresses such dispute as per the consent of the parties and the appropriate remedy available at law is for the court to address such violation. In the instant case, the parties' expressed consent to allow the appellant/plaintiff removes their machines due to non-payment because arbitration clause is separate and distinct to the agreement.

It is the decision of this Court, that the trial judge did commit a reversible error when he granted the motion to dismiss the action to recover chattel based on the arbitration clause expressly consented to by the parties in the agreement and ignored the clause granting the appellant/plaintiff the right to remove their machines from the possession of the appellant/defendant.

WHEREFORE AND IN VIEW OF THE FOREGOING, the Judgment of the trial court dismissing the appellant/defendant's action to recover chattel is hereby denied. 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. Costs are ruled against the appellant/plaintiff. AND IT IS HEREBY SO ORDERED.

When the Case was called for hearing, Counsellor Benedict F. Sannoh of the Sannoh & Partners appeared for the appellant. Counsellor Alhaji Swaliho A. Sesay of the Sesay, Johnson and Associates Law Chambers appeared for Appellee/defendant.