

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

BEFORE HIS HONOR : YAMIE QUIQUI GBEISAY, SR.....CHIEF JUSTICE  
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE  
BEFORE HIS HONOR : YUSSIF D. KABA.....ASSOCIATE JUSTICE  
BEFORE HER HONOR: CEANEH D. CLINTON JOHNSON.....ASSOCIATE JUSTICE  
BEFORE HIS HONOR : BOAKAI N. KANNEH.....ASSOCIATE JUSTICE

Afriland Bank Liberia Limited by and thru its President & Chief )  
Executive Officer and all authorized officers of the City of )  
Monrovia Liberia.....Appellant )

Versus ) APPEAL

The Management of Kailondo, Inc. of the City of Monrovia Old )  
Peugeot Garage, Opposite LPRC, Clara Town, Bushrod Island )  
by and thru its President/Chief Executive Officer, Mr. George )  
B. Kailondo and all authorized officers operating under the )  
scope and authority of Kailondo Petroleum Inc. in the City of )  
Monrovia, Montserrado County, Republic of Liberia )  
.....1<sup>st</sup> Appellee )

And )

Mr. George B. Kailondo of the City of Monrovia, Republic of )  
Liberia.....2<sup>rd</sup> Appellee )

GROWING OUT THE CASE: )

Afriland Bank Liberia Limited by and thru its President & Chief )  
Executive Officer and all Authorized Officers of the City of )  
Monrovia, Liberia.....Movant )

Versus ) MOTION TO RESCIND

JUGDMENT

The Management of Kailondo, Inc. of the City of Monrovia Old )  
Peugeot Garage, Opposite LPRC, Clara Town, Bushrod Island )  
by and thru its President/Chief Executive Officer, Mr. George )  
B. Kailondo and all Authorized Officers operating under the )  
scope and authority of Kailondo Petroleum, Inc. in the City of )  
Monrovia, Montserrado County, Republic of Liberia )  
.....1<sup>ST</sup> Respondent )

And )

Mr. George B. Kailondo of the City of Monrovia, Republic of )  
Liberia.....2<sup>ND</sup> Respondent )

Heard: June 17, 2025

Decided: December 18, 2025

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

This appeal grows out of a petition for foreclosure of a mortgage deed filed by Afriland First Bank Liberia Limited, the appellant, in the Commercial Court of Liberia, on December 17, 2020, against the Management of Kailondo, Inc. and George B. Kailondo, 1<sup>st</sup> and 1<sup>st</sup> appellees respectively. The trial court ruled against the appellant bank and awarded the appellees Two Hundred Ninety-nine Thousand One Hundred United States Dollars (US\$299,100.00) and Thirty-three Million Three Hundred Forty-six Thousand Eight Hundred Thirty Liberian Dollars (L\$33,346,830.00) based on the report made by the committee set up for proper accounting. The appellant, Afriland First Bank Liberia Limited noted exceptions and announced an appeal from the lower court's ruling to the Supreme Court. Subsequently, the appellant filed a motion to rescind judgment which was heard and denied. The appellant then proceeded with its appeal to this Court.

The facts culled from the records of this case are that the 1<sup>st</sup> appellee, the Management of Kialondo Petroleum, Inc., with an overdraft loan facility with the appellant bank, wrote to the bank on April 16, 2019 the following letter:

*"Kailondo Petroleum, Inc.  
Importer of Petroleum Product  
Congo Town  
Monrovia, Liberia*

*April 16, 2019*

Mr. Roberts Nkous  
C. E. O.  
Afriland First Bank Liberia  
Monrovia, Liberia

*Dear Mr. Nkous:*

*I take this time to extend my sincere appreciation to your Bank for the level of cooperation that has existed between us and hope this will continue.*

*Following our discussion this morning, I write requesting for a restructure of my facility as follow; the amount of US\$437,000 at 12% interest rate for the period of 5 years and US\$40,000 at 10% interest rate for the period of 12 months. This is due to the contemporary trend of the Liberian economy and if considered, will provide easy repayment flow for me.*

*Therefore, I look forward to a flexible response.*

*Thanks*

*Best regards,  
Atty. George B. Kailondo*

President / CEO  
0886511406 / 0886876722”

The bank, in response to the 1st appellee’s letter of April 16, 2019, wrote the following letter on April 17, 2019:

“April 17, 2019

KAILONDO PETROLEUM INC  
Old Peugeot Garage, Opp. LPRC  
Clara Town, Bushord Island  
Monrovia, Liberia

Dear Sir:

FACILITY LETTER

With respect to your letter dated April 16, 2019 with specific reference to the restructuring of your credit facility in the amount of US\$437,000 for the period of Sixty (60) months; we appreciate your interest in banking with us and welcome any proposal that can strengthen our relationship.

We are pleased therefore to inform you that Afriland First Bank Limited has approved the renewal of your overdraft facility subject to the following terms and conditions:

BORROWER	KAILONDO PETROLEUM, INC.
ACCOUNT No.	0200832501-37
LENDER	AFRILAND FIRST BANK LIBERIA LIMITED (THE BANK)
FACILITY	Loan
AMOUNT	US\$437,000 (Four Hundred Thirty-Seven Thousand U.S. Dollars)
PURPOSE	Purchase of Petroleum Product
REPAYMENT	Sixty (60) months (20 quarters)
EXPIRY	April 30, 2024
ANALYSIS FEE	1% upfront
INTEREST RATE	12% per Annum
Probation & Registration	USD200.00

All legal fees, stamp duties and other expenses associated with the documentation, perfection and administration of the facility including expenses relating to valuation of assets pledged as security shall be for the account of KAILONDO PETROLEUM, INC.

Please indicate your agreement to the terms and conditions hereinabove by signing on the line below and returning to us a signed copy.

Kind regards

Mr. Robert Nkous  
Chief Executive Officer

Acknowledge: \_\_\_\_\_

KAILONDO PETROLEUM, INC.  
Name  
Title “

The restructured loan was subject to 1st appellee providing securities for the said loan. Amongst the said securities offered, were a personal guarantee signed by Mr. George B. Kialondo, and a Mortgage Agreement entered into with the appellant by Mr. George B. Kialondo for two lots of land situated in Sinkor Monrovia with an appraised value of US\$440,000 (Four Hundred Forty Thousand United States dollars).

The 1st appellee having defaulted in the repayment of the restructured loan, the appellant filed on December 17, 2020 a petition for foreclosure of mortgage agreement in the Commercial Court of Liberia, praying the court to grant its petition in an amount of US\$572,991.62 (Five Hundred Seventy-two Thousand Nine-hundred Ninety-one United States Dollars and Sixty-two Cents) ) with a 25% penalty along with 15% counsel fee on the unpaid restructured loan amount.

The 1st and 2nd appellees jointly filed their returns, basically confirming the loan granted to the 1st appellee and informing the court that while the appellant bank had exercised its option to proceed to court, the relationship between the parties had been cordial and there was absolutely no confusion between the parties that could not be resolved by them. The appellees prayed the court to give the parties a chance and the opportunity to enter negotiations as there had been efforts made by the 1<sup>st</sup> appellee to liquidate its obligation which efforts were seriously affected by the global economic constraints on all businesses including the 1st appellee, and especially considering that the expiry duration of the restructured loan payment had at least three more years remaining.

The appellant's bank in reply to the appellees' returns confirmed that the parties had had several discussions regarding the payment of the loan but these attempts had yielded no results which prompted the appellant bank to exercise the provision in the loan agreement which speaks to default; that the appellant bank was willing to negotiate with the appellees provided that the appellees satisfied some conditions and work with the appellant in good faith; that the appellees' argument regarding the global pandemic, though true, yet the 1<sup>st</sup> appellee was still in active business which income could pay off the loan and the global economy crisis should be no excuse for failure of the 1st appellee to pay off the loan; that the 1st appellee unwillingness to pay its debt to the appellant when due made it difficult for the appellant to recover.

The appellant therefore maintained its prayer for the court to dismiss the appellees returns and grant unto appellant any other relief that the court deemed equitable, praying that the mortgage property used as collateral be foreclosed and placed on public auction to fulfil the 1<sup>st</sup> appellee's debt obligation to the appellant bank.

The records revealed that upon the appellees request to the commercial court to give the parties time to negotiate and arrive at a resolution, the appellant interposed no objection to this request of the appellees; that on February 22, 2021, the legal counsel of the appellees, Counsellor Jallah A. Barbu, addressed a letter to Attorney Pape Suah, legal counsel of the appellant bank, subject: "PROPOSAL TO CONCLUDE KAILANDO PETROLEUM RECONCILIATION". The letter contended that from a review of the records of the loan documents, the appellees' principal amount reconciled and outstanding was Four Hundred Eleven Thousand Seven Hundred Eighteen United States Dollars and Thirty-six Cents (US\$411,718.36) and not Four Hundred Thirty-seven Thousand United States Dollars (US\$437,000.00) as the appellant had complained; that the Forty-two Thousand One Hundred Twelve United States Dollars (US\$42,112.00) said to be representing interests on the balance loan amount was set aside long before the appellant bank and the appellees had reached the US\$ 411,718.36 constituting the loan balance; that the balance loan therefore could not be considered along with the US\$42,112.00 interest amount and that even assuming the 25% default charge where to be placed on the total outstanding, it would be US\$32,254.65 and not US\$42,112.00; therefore, the unpaid amount is overstated by the US\$42,112.00 interest amount.

The appellees further stated that because of the stated impossibilities to perform, traceable to manifest necessity that was affecting businesses globally, it would be in the best interest of all parties to exercise restraints on penalties. The appellees therefore proposed the removal of the 25% default penalty and removal of the US\$61,624.40 of unpaid interest, and for the appellant bank to consider the appellees observations on the calculation made in 2017 to reach the amount that formed the loan basis from which a loan portfolio existed with the appellee and the appellant bank. In short, the appellees stated that they believed there was a reason to consider correcting any miscalculations in the figures.

We see further in the records, that on March 1, 2021, the 1st appellee, the Management of Kailando Petroleum, Inc. filed a petition for proper accounting to compel the appellant bank to properly account for appellee financial holdings with the bank; that the 1st appellee alleged that it acknowledged its indebtedness to the appellant bank but challenged the volume of the indebtedness so claimed by the bank, as the amount so claimed far exceeded the actual

indebtedness; that upon citation of the trial court the parties did agree to revert to a reconciliation process to establish the actual obligation of the 1st appellee and thereafter to return to the court with a stipulation on resolving the matter; that 1st appellee had done all to ensure a resolution between it and the appellant bank, but its reconciliation efforts failed; that the 1st appellee therefore prayed the trial court for proper accounting, for the parties to submit every record regarding the business relationship touching on the petition for mortgaged deed filed by the appellant bank.

The appellant bank conceded to the petition for proper accounting, stating that the 1st appellee had acknowledged its indebtedness to the appellant but had alleged that the amount that the bank was claiming was huge but the 1st appellee had provided no proof of payment sufficient to overturn the amount claimed by the appellant bank. The appellant bank prayed the trial court to proceed with the proper accounting speedily so as to have the court continue with the main suit of the foreclosure of mortgage.

The parties having reached an agreement to proceed with proper accounting, the court ruled on the appointment of an independent accountant that would conduct an independent review of the financial record from both parties, and provide an independent financial report as it relates to the transaction between the parties. The court noted that the parties had agreed to the findings of the independent financial report that would be submitted to the court by the accounting firm as the final judgement and would be binding upon the parties. The clerk of the court was ordered to communicate with Alliance Consulting Group, Inc. to conduct the audit, and the following terms of reference was submitted by the firm:

**“THE TERMS OF REFERENCE FOR THE PROVISION OF ACCOUNTING SERVICE:**

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**OBJECTIVE:**

the objective of the accounting service is to conduct an independent review financial statements from both parties (defendant and plaintiff) and provide an independent financial report **as it relates to the transaction(s) involved**, free of biases.

**SCOPE OF THE WORK:**

We will provide an independent review of the financial statements from both parties (defendant & the plaintiff) to determine whether the reports conform to Generally Accepted Accounting Principles and will include such tests and accounting procedures as we will consider necessary under the circumstances.

We will inspect documents such as books of accounts of the clients to ensure that the funds received from the partner(s) were received and recorded appropriately; we

will inspect agreements related to the transactions and to ensure that the terms were appropriately followed to the letter by both parties (defendant & the plaintiff).

**At the planning stage,** we will gain an understanding of the transactions between the parties to know the genesis of the transactions. This would aid us in preparing the financial statements. We will call for the following: journals, ledgers trial balances and financial reports and bank statements both hard and soft copies. We will take 14 days for planning.

**The following tests would be performed during the execution stage of the Review.**

As part of our independent review process, we will inspect source documents from both parties such as vouchers, receipts, agreements to establish whether or not the transactions really occurred and pertain to both parties. This would aid us in vouching the transactions and in determining the legality of the transactions in terms of completeness, accuracy, rights, and obligations.

We will inspect bank statements to ensure internal controls over cash disbursement and receipts. We will inspect the financial policy of both parties to determine whether transactions confirm the financial policy and other accounting principles. We will visit the sites of both parties to conduct interviews where necessary. The number of days required for execution is 7 days.

**Reporting stage.**

Compilation of evidence gathering following the review process and the preparing of an independent financial statement will take approximately 5 days.”

The panel of accountants submitted its final report on July 17, 2023 to the trial court, indicating that there had been many transactions on the appellees' accounts at the appellant's bank without a showing of any transactional documents to indicate that the transactions were authorized by the appellees, and that those transactions were valued at Two Hundred Ninety-nine Thousand One Hundred United States Dollars (US\$299,100.00) and Thirty-three Million Three Hundred Forty-six Thousand Eight Hundred Thirty United States Dollars (L\$33,346,830.00).

The audit report having been presented to the trial court, the appellees requested and subsequently obtained a clerk's certificate from the court, on August 7, 2023, indicating that there was no showing that an objection had been filed against the audit report.

On September 6, 2023, the trial court ruled on the findings of the audit report, and held the appellant bank liable to the appellees in the amounts of Two Hundred Ninety-nine Thousand One Hundred United States Dollars (US\$299,100.00) and Thirty-three Million Three Hundred

Six Thousand Eight Hundred Thirty Liberian Dollars (L\$33,346,830.00). The appellant noted exceptions to the final ruling and announced an appeal to the Supreme Court.

While the appeal was pending, the appellant filed a motion to rescind judgment contending that the panel did not give the appellant an opportunity to present additional documents; that the paramount issue of the outstanding amount of the loan, the subject of the petition for foreclosure of the mortgaged deed, was not addressed by the audit report; that the audit did not comply with general accounting standards and practices since the draft audit report was not presented to the parties for review, discussion and submission of response thereto; that the audit did not take into consideration existing claims that should have formed part of the final report but had only considered debit transactions on the appellees' accounts, excluding the issues of the restructuring of the loan facility, dated April 17, 2019, and appellant renewal of the appellees overdraft of US\$437,000.00 which was credited to the 1st appellee's account, and that the audit failed to consider other bank charges accrued throughout the period. Most importantly, the audit, the appellant said, went beyond and outside of the scope of the loan period to include the periods spanning 2014, 2015 up to and including the first half of 2016, i.e. from January 1 through July 12, 2016.

The appellees in response to the appellant's motion to rescind judgment contended that the appellant had failed, refused and neglected to object to the panel's report; that based on the appellant's failure to file an objection to the report, the appellees obtained a clerk's certificate on August 7, 2023, twenty-one days after the report was submitted to the trial court; that a draft audit report was submitted to the parties' accountants prior to a reconciliation meeting held on July 10, 2023; that the given of copies of the draft report to the parties' representatives was meant for the parties along with their auditors to resolve any impending disputed issues; that the motion to rescind the judge's ruling would not lie due to the appellant's failure to object to the report from July 17, 2023, up to and including September 6, 2023, when the motion to rescind was heard and subsequently denied on September 27, 2023.

Considering the facts, legal circumstances and contentions advanced by the parties, there is only a single determinative issue for consideration by this Court: whether the panel's report on the proper accounting was in line with the scope of work required under the terms of reference provided by the accounting services?

The appellant bank in assigning the ruling of the trial judge as a reversible error argued before the Court that the judge failed to consider that the report presented by the Alliance Consulting Group did not recognize the dispute which gave rise to the lawsuit and the need for an independent firm to conduct a review; that the scope of the report had absolutely

nothing to do with the dispute. The dispute amongst the parties was to establish the amount owed by the 1<sup>st</sup> appellee since the 1<sup>st</sup> appellee had admitted that indeed it owed the appellant bank but that the amount owed was lower, as the 1<sup>st</sup> appellee had made some payments; that in its report, the Firm did not even mention that a loan was granted the appellee; that it does not reflect anything related to the loan at all, and whether or not any payment was made or was not made, against the loan. Instead, the panel commenced its report by stating that “Alliance Consulting Group was commissioned to reconcile Kailondo Group of Companies account held with the Afriland Bank Liberia Limited for the period covering 2014, 2015, 2016, 2017, 2018, 2019, 2021, 2022, which was a complete absurdity.

It is the law in this jurisdiction that “*in an action pending before a circuit court, the court may appoint, on motion of any party or on its own initiative, a referee to take evidence, make findings, and **determine specific issues**, to report issues, to perform particular acts, or only to receive and report evidence....*” *Civil Procedure Law, Rev. Code: 1:24.1.*

From the records certified before us, and as have been narrated in this Opinion, it is undisputable that the appellant upon a request made by the 1<sup>st</sup> appellee restructured a loan agreement in the amount of Four Hundred Thirty-Seven Thousand United States Dollars (US\$437,000.00); that the 1<sup>st</sup> appellee in securing the loan, its CEO/President, the 2<sup>nd</sup> appellee, Mr. George B. Kailondo, entered a mortgage agreement with the appellant for two lots of land in Sinkor, valued at US\$440,000.00; that when the 1<sup>st</sup> appellee defaulted on the first instalment payment of the restructured loan, the appellant wrote a demand letter on September 20, 2019; and another thereafter on January 21, 2020 as a result of the continued default. In the demand letter, the appellant evoked Count 6.3 of the restructured loan agreement and declared the entire loan immediately due along with all charges and penalties.

A verbatim restatement of count 6.3 states: “...Upon the occurrence of an event of default, Afriland may, at its option without demand or notice, declare all indebtedness evidenced by this loan agreement to be immediately due and payable, whereupon the same shall become forthwith due and payable.”

The parties having agreed to have an accountant verify and reconcile the amount claimed by the appellant, and the actual debt owed, in accordance with the scope of work of the terms and reference of the provision presented by the accounting services, the parties agreed to inspect documents such as the books of accounts of the client to ensure that the funds received from partners were recorded appropriately. Further, the parties agreed that the auditor would inspect all source documents such as vouchers, receipts, agreements to

establish whether the transaction really occurred, and that they would also inspect banks statements to ensure internal control over cash disbursement and receipts.

The certified records before us reveal that subsequent to the submission of the report to the trial court, the parties were cited for an exit meeting on July 10, 2023, to review the final draft report. During that meeting, the appellant bank requested the panel to allow it to submit the original of other documents in their vault and requested time to submit same. However, the panel in responding to the appellant's request, wrote the Commercial Court on July 14, 2023, and we quote the relevant portion of the said letter verbatim: "The task assigned to us since 2021 is completed and awaiting your instruction to submit the final report. In the event the Afriland First Bank requires additional work/review beyond the nearly three years of this assignment, same will have to be paid for by the bank and a cost of Five Thousand United States Dollars (US\$5,000) is charged. Otherwise, we await your instruction to submit final report." We do not see in the records where the trial court address the appellant's contention on submitting additional documents to the auditors.

*Be what it may*, a careful review of the case file does not show anywhere wherein the appellant was served a notice of the filing of the final report by the clerk of court as the statute mandatorily requires - *Civil Procedure Law, Rev. Code: 1:24.7*. We opine that the failure to follow the statute requiring that the clerk of the trial court shall forthwith send a notice to the parties upon filing of the report constitutes a denial of the right to object to such report as the current situation in this case depicts. Hence, the judge of the trial court was in error, when, upon the filing of the report, he proceeded to rule on said report without giving the appellant the opportunity to be served by the clerk of the court to satisfy the notice requirement and to ascertain if any party had an objection thereto.

We also note with deep concern the contention of the appellant bank that if the notice had been served on it by the clerk, it would have had the opportunity to show to the auditors that the final report took into consideration transactions before the date of the mortgage agreement, that the audit did not primarily focus on the loan agreement, among none inclusion of other transactions.

More so, we must emphasize here that the appellees contentions of going into the conduct of the proper accounting was to determine the outstanding balance of the loan. In fact, the 1st appellee in its April 16, 2016 letter quoted supra, acknowledged its indebtedness, and fast forward, the only contention that stood in need of a fact-finding query was in respect to the balance, as the appellant bank sought to recover US\$437,000.00 along with interest and legal fees, whereas the 1st appellee stated that its outstanding was US\$411,718.36, based on a

compromise reached by the parties that the appellant bank would waive the twenty five percent (25 %) and remove US\$61,624.40 of unpaid interest.

Instead of undertaking a process that would establish the veracity of the claims, we have observed that the panel of auditors principally obligated itself with the review of general transactions on the appellees' accounts with the appellant bank, which included transactions that occurred prior to the restructuring of the loan from the appellant's bank in 2019. We are of the opinion that the panel did not address the contentions that gave rise to the need for a proper accounting, such as claim and counterclaim of the remaining loan amount arising from the loan entered between the parties on April 17, 2019, and in which the appellant bank lent to the 1st appellee the sum of US\$437,000 to import and sell petroleum products, and the accompanying transactions that followed the years during which the loan lingered. For example, was the waiver of loan interest and other fees, as alleged by the appellees, formally requested and accepted by the appellant bank?

Noting the argument of the appellees with respect to the appellant's failure to object, we take the position that such alleged failure must only be tested against the substance of the audit report. The appellant bank complained in its bill of exceptions that the paramount issue of the outstanding amount of the loan, the subject of the petition for foreclosure of the mortgaged deed, was not addressed by the audit report; the audit, the appellant said, went beyond and outside of the scope of the loan period to include the periods spanning 2014, 2015 including the first half of 2016, i.e. from January 1 through July 12, 2016; that the audit had only considered debit transactions on the appellees' accounts, excluding the issue of the restructuring of the loan facility, dated April 17, 2019, and the appellant renewal of 1st appellee's overdraft of US\$437,000.00 which was credited to the 1st appellee's account, and that the audit failed to consider other bank charges accrued throughout the period.

This Court says that the appellees in their returns to the appellant's petition for foreclosure, did not deny the 1st appellee's loan with the appellant bank, it however stated that its failure to make good its payments was due to the economic situation globally. Count 8 of its returns reads:

"8. Respondents say again that it is no secret that the world is in great depression and businesses have literally collapsed and this adverse business climate has really affected Liberia in general but most especially the petroleum industry, a business for which 1st Respondent procured the loan. With this attack on the industry which even affected the entire Republic including shortage of petroleum products on the market and great confusion throughout the country, one would think that there should be some tolerance on the part of all persons doing business in this line or related to this line. This

includes the parties hereto. Hence, respondents say again that the difficulties experienced now cannot even allow it to speak to the payment of interests and penalties, as it is struggling to raise funds to settle the principal. Consequently, petitioner prays that the questions of interest and penalties as well as attorney's fee as provided for in the agreement, no matter the amount should be laid aside as the repayment of the principal is focused on. Hence count seven (7) of petitioner's petition should be a subject modified to consider the principal, and even then, respondents say that a negotiated resolution is the way to go in the face of the bad business climate affecting the country; and respondents so pray." The appellees then pray the lower court to determine that the continuous application of interest and other charges against respondents will only compound their inability to conclude the loan repayment and therefore there is reason, by virtue of the very consent of petitioner to restructure, that respondents are unable to meet so great a demand if imposed on them.

The appellant bank being apathetic in its position of further reconciling with the appellees, the appellees proceeded to file a motion for proper accounting. In count 10 of its petition for proper account the appellant wrote:

"10. Petitioner is aware that as a business that has built its reputation and credibility over the years and a respecter of good business practice, **it admitted its indebtedness to respondent** (emphasis ours), but also bent on being treated honestly by its partners including respondent, resisted, and denied respondent's bloated, unmeritorious, and unsupported claim against it, and this is the reason petitioner petitions the court for proper accounting."

The appellees prayed the trial court to grant its petition for accounting and thereby order the appellant to make full accounting including submitting every record regarding the business relationship touching on the petition for mortgaged deed filed by the respondent herein as petitioner. Our question is every record as of when?

The specific issue was the balance of the restructured loan of which several securities were issued; i.e. a personal guarantee, and mortgage agreement signed by the 2<sup>nd</sup> appellee and dated on the same 17<sup>th</sup> day of April 2019. With this new restructured loan agreement, it was erroneous for the panel of auditor to have gone into any transaction precedent to the loan agreement of April 17, 2019. The proper accounting therefore was restricted to all businesses done on the parties' accounts relative to the loan agreement of April 17, 2019, which called for liquidating the principal amount of the loan in addition to all other payments as stipulated in the facility letter, within five years, that is from to payment plus April 17, 2019 to April 30, 2024.

Our review of the court's records confirms the appellant averment that the audit went beyond the period of the restructured loan, April 17, 2019, and we see that a lot of the documents reviewed by the accountancy firm goes as far back as far as 2014 and onward contrary to the

intent for the accounting. We are perplexed by this audit since the issue upon which the audit panel was formed was a dispute relating to a restructured loan agreement dated April 17, 2019 which the appellees initiated. It was erroneous for the panel of auditors to have gone outside of the scope of the loan period (April 17, 2019 to April 30 2024) to include a review of documents of transaction between the parties spanning 2014, and upward. The appellees' prayer to the court in its petition for proper accounting, to include a court order for a full accounting to include submission of every record regarding the business relationship touching on the petition for mortgaged deed filed by the appellant was limited to his mortgage of April 17, 2019 wherein the 2<sup>nd</sup> appellee pledged in count 3 of the Mortgage Deed Agreement the following:

“In the event of default as specified in the loan agreement executed by the borrower in favour of the mortgagee on the 17<sup>th</sup> day of April A.D. 2019, and as set forth in the mortgage deed, for the nonpayment of the principal amount or any instalment thereof when due, or for any other default mortgagee shall have the right to enter into foreclosure proceedings and cause this mortgage deed to be foreclosed according to the law of Liberia. “

The Court interprets the full accounting as a review by the accountants of all financial statements relating to the loan of April 17, 2019, and all other collateral documents signed on that date. The Terms of Reference for the Provision of Accounting Service states: “The objective of the accounting service is to conduct an independent review of the financial statements from both parties (defendant and plaintiff) and provide an independent financial report as it relates to **the transaction(s) involved**, (emphasis ours) free of biases.” The matter involved was the loan of April 17, 2019; therefore, any investigation relating to the accounts of the parties should have been limited to the 2019 loan agreement; that any review of accounts dated precedent was erroneous and null and void. *Appointed referees of courts are required to abide by specific instructions referred to it in the settlement of issues before the court, and avoid using its discretion otherwise .*

*We are even more at a lost following a careful examination of the final ruling of the trial judge. His ruling, dated July 17, 2023, reads:*

*“On July 17, 2023, after months of work, the accounting firm submitted its final report to this court. The said report was distributed to the parties concerned. Until this date, neither of the parties has registered any objection to nor question any aspect of the report as submitted. In the said report, the accounting firm has determined that the amount of LR\$33,346,830.00 and US\$290,100.00 was not accounted for. In that the said amounts represent portions of money deposited into the accounts of Kailondo Groups of Companies housed at Afriland Bank for which there were deposit records but that there were no records as to the withdrawal and/or transfer of the indicated amounts*

*from the accounts. The report concludes that the amount mentioned above are outstanding balance which would be reflected in the account in consideration of the documentations reviewed by the accountant. Given that, it is the stipulation by the parties that they will be bound by the outcome of the audit, and the audit or accounting having found that the mentioned amounts were removed from the accounts of Kailondo Groups of Companies housed at Afriland Bank without any record as to the withdrawal and/or transfer, this court adjudges the Management of Afriland First Bank liable to the respondents for the amounts mentioned in the report; that is to say, LRD33,346,830.00 and US\$290,100.00. And it is so ordered.*

*“... However, consistent with the statute controlling the operation of the commercial court, the petitioner is forthwith ordered to deposit the amount in the escrow account pending final adjudication of the final ruling.”*

The lower court's ruling is perplexing since the parties submitted themselves to the audit to ascertain the actual amount said to be owed by the appellees on the restructured loan. If the appellant bank claims US\$437,000.00 as the amount outstanding on the loan, and the findings of the audit proved otherwise, assuming that the audit was properly done, would not the appellant's petition for foreclosure of the mortgage be dismissed? For the court to insist that the amount assessed by the audit firm be paid into an escrow account begs the question, who is the appellee in such case that would be indemnified since the appellee made no countersuit?

In this regard, the Court says that the audit was contrary to the scope of work for which its service was contracted, and holds that the accountant firm's findings contained in its report being inconsistent with the Court's mandate, said report is erroneous and invalid.

WHEREFORE AND IN VIEW OF THE FOREGOING, the ruling of the Commercial Court is reversed, and the trial court ordered to authorize the conduct of another audit of the restructured loan spanning the period April 17, 2019, and up to the time the petition for the mortgage foreclosure was filed by the appellant bank, in a bid to ascertain the actual loan amount outstanding.

The Clerk of this Court is ordered to send a Mandate to the Commercial Court for Montserrado County, commanding the judges presiding therein to resume jurisdiction over this case and give effect to the Judgment deriving out of this Opinion. Costs to abide final determination of this matter. AND IT IS HEREBY SO ORDERED.

WHEN THE CASE WAS CALLED FOR HEARING, COUNSELLORS J. DAKU MULBAH AND ALBERT S. SIMS APPEARED FOR THE APPELLANT. COUNSELLORS M. WILKINS WRIGHT APPEARED FOR THE APPELLEES WHILE GEORGE B. KAILONDO, SR. APPEARED *PRO SE*.

