

JUDGMENT

The background to this is that the Plaintiff now Respondent on this Appeal is a fishmonger and Businessman for over twenty-five years in the fishing industry. The 1st Defendant, DALIAN SHANGAI Fishing Company was incorporated in China with an incorporation certificate dated 5th May, 2014. This company was to undertake fishing activities in Sierra Leone through a Local fishing Agent or Partner in the form of a locally incorporated company registered in Sierra Leone. Prior to this the 1st Defendant/Appellant contacted a Chinese Businessman Mr. David Wei who was operating his own business in Sierra Leone about the venture asking him to conduct a testability studies as to the prospects of the business Mr. David Wei then introduced another Chinese national called MICHAEL WANG to the subject to help him out. Records has it that sometime in 2013 Mr. Wang introduced the fishing venture to his friend MR. MOHAMED BANGURA the Plaintiff/Respondent MR. WANG then told him he is an agent for 1st Defendant/Appellant a company operating a Fishing Business in the Peoples Republic of China. That he is Vice President of the said company. The Plaintiff/Appellant has it that Mr. Wang then appointed him to be their sole agent and promoter of the company that was to be incorporated in China. There was now an oral agreement between himself and Representatives of the said company. It was agreed as terms and conditions of the business for him to provide a local fishing storage facility, a conducive atmosphere for the operation of the business and protect the captain and crew during the operation of the fishing activities. He was then told that for the company to be incorporated in China these conditions agreed upon were to be satisfied and Chinese government was ready to provide a loan of 8 fishing vessels (trawlers) for the fishing activity if he can meet the said conditions. According to the Plaintiff/Respondent he then went in to action as per agreement. He then introduced the said Representative of the 1st Defendant to a MR.ALLIEU THORLU BANGURA owner and proprietor of a local fishing company called Union Fishing 2007Company Limited. He then told them that for the purposes of the business they shall be

utilizing the storage facilities of Union fishing 2007 company Limited and all correspondences shall be done in that regard through him which was accepted. So on the 17th day of January, 2014, he wrote a letter to the Director of Fisheries and Marine Resources on the letterhead of Union Fishing 2007 Company Limited. The said letter contained permission for fishing vessels to participate in the fishing Industry of Sierra Leone, the partnership between the Plaintiff/Respondent and 1st Defendant/Appellant a request for clearance and for the vessels to enter the ports of Sierra Leone.

By a letter of reply from the Director of Fisheries and Marine Resources dated 17th day of January 2014 the Ministry acknowledged receipt of the said letter. The Plaintiff/Appellant then took representatives of the Chinese economic and commercial bureau on a conducted tour of the facilities of Union fishing 2007 Company Limited. Which were in fulfillment of the condition precedent to the grant of the loan. As a result of the Plaintiff/Respondent consideration/effort, it was agreed that on the arrival of the vessels/trawlers in the Sierra Leone waters, the different species of fishes normally sold in the Sierra Leone markets (local markets) which form the catches during the fishing process would be handed over to the Plaintiff, sold by the Plaintiff/Respondent and the proceeds of sale be retained by the Plaintiff. At the same time all other species of fishes sold in international markets be retained by the 1st Defendant/Appellant. By the said agreement the Plaintiff/Respondent was to incorporate a company for the business. It was later understood that the storage facility at Union Fishing 2007 Company was unavailable. The Plaintiff/Respondent was later informed by the Ministry that 2nd Defendant/Appealant had applied for fishing for the 8 vessels. He then wrote a letter of protest to the Ministry, Plaintiff/Respondent then took the complaint to one **Honourable Alimamy Kamara** to find a solution. Honourable Alimamy Kamara who happens to be PW.2 called the Plaintiff/Respondent and 2nd Defendant/Appealant to a meeting in the presence of one FEREMUSU SESAY alias Baby and one MR. SAIDU O. JALLOH. Baby

then explained the matter between Plaintiff/Respondent and Michael Wang who was now residing on the premises of 2nd Defendant/Appellant ABIE ARUNA KOROMA. Mr. Wang then told PW.2 Alimamy Kamara he was a representative of 1st Defendant/Respondent Company and offered him his complementary card. At the end of the meeting, 2nd Defendant Abie Aruna offered to give Plaintiff/Respondent the sum of Le 50,000,000/00 to settle the matter as between brother and sister. The Plaintiff/Respondent later on learnt that fishing license has been granted to 2nd Defendant/Appellant as the local agent of the 1st Defendant/Appellant to carry on fishing activities with the 8 vessels without the consent of the Plaintiff/Appellant. It also turned out that Monza fishing Company, the 3rd Defendant in this action owned by Abie Aruna Koroma 2nd Defendant/Appellant has been granted license to operate the said fishing business with the 8 vessels. But before this time 2nd Defendant had met with Mr. Michael who it is alleged had been staying in a hotel in Freetown. Mr. Wang was introduced to the 2nd Defendant/Appellant by the Plaintiff/Respondent. Later in Mr. Wang ended up residing on the premises of 2nd Defendant/Appellant as a tenant. The nature of the tenancy was not clarified. Mr. Wang then introduced 1st Defendant/Appellant DALIAN SHANGHAI FISHING COMPANY for the first time to the 2nd Defendant/Appellant.

The Executives of 1st Defendant/Appellant company then came to Sierra Leone and then appointed 2nd Defendant/Appellant as an agent for the 1st Defendant/Appellant company by letter dated 12th day of January, 2015. A cooperation agreement was the executed between the 1st Defendant/Appellant and 3rd Defendant/Appellant dated 1st day of April, 2015. These arrangements were made for 2nd and 3rd Defendants/Appellants to proceed with the fishing enterprise in Sierra Leone. 3rd Defendant/Appellant meanwhile was then registered as a fishing company in the same 2015 by 2nd Defendant/Appellant.

The 3rd Defendant/Appellant then started operating the fishing business with 1st Defendant/Appellant's vessels.

The Plaintiff having had knowledge about the operation of the business by the Defendants/Appellants then opened legal proceedings against them. He instituted an action against them by writ of summons dated 24th day of July, 2015 before the High Court of Sierra Leone. An application was then made to the High Court for an arrest of the vessels which was granted but was later released on recognizance. The business was then put to a grinding halt. 1st Defendant/Appellant been disillusioned, disenchanted terminated the contract with 2nd and 3rd Defendants/Appellant dated 5th day of October, 2015.

The action against the 1st, 2nd and 3rd Defendants/Appellants by the Plaintiff/Respondent was for the court to declare him the sole agent and promoter of the 1st Defendant in respect of fishing business in Sierra Leone pursuant to an oral agreement entered into between the Plaintiff/Respondent and the 1st Defendant/Appellant in 2013 etc.

Against the 2nd Defendant/Appellant for inducing a breach of contract entered into between the Plaintiff/Respondent and the 1st Defendant/Appellant in the year 2013. A photocopy of the said writ of summons (statement of claim and particulars of claim) is contained at pages 660-665 Vol. II of the book of records on this matter. The 1st, 2nd and 3rd Defendants then filed in defences to the said writ of summons. The 1st Defendant/Appellant Company filed in a defence to the action. The substance of the Defence was that there is no oral agreement at any point in time between the 1st Defendant/Appellant or any representative whatsoever appointing the Plaintiff/Respondent as their partner, sole agent and promoter in Sierra Leone.

The 2nd and 3rd Defendants/Appellant in their defence denied knowledge of the existence of any oral agreement appointing plaintiff/Respondent as sole agent and promoter of 1st Defendant/Appellant Company talk less of a contract or agreement. That she did not induce a breach of any agreement neither procure it. So she cannot be held liable for any breach of an oral agreement nor any inducement of it. The said defence of

the three Defendants/Appellants are contained at pages 666-668 of the book of records on this matter.

The matter was then later on set down for trial or hearing after all the preliminaries had been done by both parties and their solicitors. The solicitor for the Plaintiff/Respondent was KAIFALA CONTEH & CO. the solicitors for the 1st Defendant/Appellant was UMARU NAPOLEON KOROMA and solicitors for the 2nd and 3rd Defendant/Respondents was TANNER LEGAL ADVISORY.

The evidence before the High Court adduced by both parties was twofold. They were both oral and documentary. In relating the Plaintiff/Respondent's case before the High Court. Three witnesses were called to testify. They were PW.1 - MOHAMED BANGURA Plaintiff/Respondent, PW.2 - ALIMAMY KAMARA of 147A Lower Kandeh Drive, Off Wilkinson Road, Freetown and PW.3 - SAIDU O. JALLOH of No.23 Guard Street, Freetown. The testimonies of the said three witnesses and documents tendered are contained at pages 794-809 Vol. II of the book of records on this matter. The Defendants stated their defence by two witnesses. DW.1 was MICHAEL WANG of a High Broad Street, Murray Town. DW.2 - ABIE ARUNA KOROMA of No. 54 Old Adonkia road, Bush Water, Goderich, Freetown. Their testimonies and documents tendered can be found at pages 810-820 of the record book on this matter. At the close of the Plaintiffs case and that of the Defendants, counsels representing both parties addressed the court on the merits of their cases based on established principles of law. The address of the plaintiff's case by counsel KAIFALA is contained at pages 821-833 Vol. II. The address of the 1st, 2nd and 3rd Defendants/Appellants are contained at pages 83-866 Vol. II of the book of records.

Having heard the addresses of both counsels with their respective parties, Honourable Justice Alusine Sesay, JA delivered a judgment on the 13th day of February, 2017 in favour of the Plaintiff case against the 1st, 2nd and 3rd Defendant/Appellants. The said judgment is contained at pages 867-899 Vol. II of the book of records.

Aggrieved by the decision of **Hon. A. Sesay, JA**, counsels for the Defendant/Appellants appealed to this honourable Court on a notice of appeal dated 16th day of February, 2017 contained at pages 972 - 975 of the book of record Vol. II. The said appeal was filed by solicitors of the 1st, 2nd and 3rd Defendants in the name UMARU KOROMA Esq., of Brewah and Co. chambers, 2 Siaka Stevens Street, Freetown for 1st Defendant/Appellant and AFRICANUS SESAY of Tanner Legal Advisory of Red Lion Building, 1st floor, 65 Siaka Stevens Street, Freetown for 2nd and 3rd Defendant/Appellants.

GROUND OF APPEAL:

1. That the learned trial judge erred in law and fact and failed to properly analyze and consider the evidence before him when he held that there was an oral agreement between 1st Defendant and plaintiff in 2013 which said agreement was made by MR. MICHAEL WANG who was never part of 1st Defendant company in 2013 and which said company was never formed in 2013.
2. That the learned judge erred in law and fact to hold that there was a contract of Agency between the 1st Defendant and the Plaintiff even though 1st Defendant had not given any actual authority to the plaintiff to Act on its behalf on 2013 when the 1st Defendant had not been incorporated as a company.
3. That the learned trial judge erred in law and fact by holding that a mere business card in the name of MICHAEL WANG was sufficient to show that the said WANG has ostensible authority of the 1st Defendant even though MICHAEL WANG denied to have ever issued such a business card to the Plaintiff and even though he stated clearly that he had no such authority to act on behalf of the 1st Defendant and that he never appointed the Plaintiff as an agent for 1st Defendant.

4. That the learned trial judge erred in law and fact by holding that a company law grant ostensible/Apparent authority and not actual authority as required for a juristic person like a company.
5. That the learned trial judge erred in law and fact and completely misapplied the rule in “**Thurguards Case**” which was developed in the case of **Royal British Bank v. Turguard** (1856) 6E and B 136 and failed to appreciate the modifications raised a concern about MR. ALLIEU THORLU BANGURA not coming to testify
6. That the learned trial judge failed to appreciate the evidence of the 1st Defendant and despite the inconsistencies in the evidence of the plaintiff held that he was correct in everything he stated without any document to support his claims against the 1st Defendant
7. That the judgment is against the weight of evidence
8. That the learned trial judge gave his judgment per incuriam

Reliefs sought by the Appeal:

- a. That the judgment dated 13th day of February, 2017 be set aside, dismissed or quashed.
- b. That judgment be entered for the 1st Defendant
- c. That the plaintiff pays the cost in this court and the court below.

EXAMINATION OF GROUNDS OF APPEAL:

Ground One -

The grounds of appeal filed by the 1st, 2nd and 3rd Defendant/Appellants especially the first and 2nd grounds of appeal seems to be the omnibus grounds of this appeal. They are whether there was an oral agreement in 2013 between the Plaintiff/Respondent and the 1st Defendant/Appellant Company, DALIAN SHANGAI through Mr. Wang DW.1, based on the evidence before the court below. The other grounds are also important and

shall be addressed accordingly. It should however be pointed out that grounds of appeal of the 2nd and 3rd Defendant/Appellant are damages for inducing a breach of contract entered into between the Plaintiff/Respondent and the 1st Defendant/Appellant in the year 2013. The grounds of appeal of the said 2nd and 3rd Defendant/Appellants are to a large extent dependent on the grounds of appeal of the 1st Defendant/Appellant, although the evidence before the lower court against the 2nd and 3rd Defendant/Appellants is different. According to counsel for the 1st Defendant/Appellant UMARU KOROMA there was no evidence before the court to show that there was an oral agreement between the Plaintiff/Respondent and 1st Defendant/Appellant which said agreement was struck by Mr. Wang - DW.1 in 2013. Who was never a part of the 1st Defendant/Appellant Company in 2013. Also that of the inconsistencies in the evidence of the Plaintiff/Respondent, in his evidence in chief and cross-examination viz a viz his witness statement. He went on to submit that in the evidence in chief and cross-examination of DW.1 - MR. WANG he categorically denied ever knowing the 1st Defendant/Appellant in 2013, the time the Plaintiff claimed he was appointed by the 1st Defendant/Appellant as its sole agent and promoter. That no evidence was led to correct MR. DAVID WEI that Plaintiff testified about. That the 1st Defendant/Appellant was incorporated in China on the 5th of May, 2014 and the 15th of June as their date of registration in Sierra Leone. That by incorporating the said company in Sierra Leone it gained the full capacity and a legal person capable of engaging in business in Sierra Leone. This he submitted is in compliance with the companies Act of 2009 Sections 484 and 485. But prior to the said registration in 2015 in Sierra Leone 1st Defendant/Appellant lacked the capacity to act. He then relied on a Sierra Leonean case of CIV.APP.31./2010 - CHRISTIAN OGOO AND HUAWEI TECHNOLOGIES, CELLCOM TELECOMMUNICATIONS (unreported). So it follows that Mr. Wang can never be appointed to act for 1st Defendant/Appellant in 2013, except when he was appointed in 2015 by 1st Defendant/Appellant to act as an interpreter.

Counsel for the Plaintiff/Respondent - KAIFALA submitted that the trial judge was right to hold that there was an oral agreement between the Plaintiff/Respondent and 1st Defendant/Appellant company on the grounds that the said Plaintiff/Respondent did certain acts in furtherance of the agreement between himself and 1st Defendant Company which was ratified by conduct of the 1st Defendant/Appellant.

These were as follows:-

- i. The formation of a the company
- ii. Search for a storage facility
- iii. He introduced them to Union Fishing 2007 Company Limited
- iv. Advising the 1st Defendant/Appellant as to what vessel they should build and the accepted his advice
- v. He introduced them to 2nd Defendant which was not denied by 2nd Defendant/Appellant.

Plaintiff/Respondents counsel went on to submit that the conduct of the 1st Defendant/Appellant was a sufficient ratification of an agency relationship created by Mr. Wang to a third party who happens to be the Plaintiff/Respondent on this appeal.

Now having looked at both submissions on this matter, what remains doubtful why should the Plaintiff had done all what he did and what the witnesses said of the Plaintiff and Mr. Wang engaging on a joint venture to do fishing business in Sierra Leone, although Mr. Wang and 2nd Defendant/Appellant had denied every bit of it or dismissed it as a farce. It is trite law that the onus is on the Plaintiff to prove his case on the balance of probabilities which is not a very high standard. If the Plaintiffs/Appellants case is such that he acted on the representations of Mr. Wang and relied on it, then so be it. The evidence of the Plaintiff/Respondent and two witnesses are contained at pages 793-809 of the book of records Vol.II. Their evidence seems to suggest that there were some arrangements between Plaintiff/Respondent and Mr. Wang for a fishing enterprise in Sierra Leone on behalf of 1st Defendant/Appellant. Let us turn out a little bit to what chitty on

contract says about such a situation. At paragraph at page 6, specific contracts, 24th Edition 2013 under the rubric “**creation of Agency**” which reads - *“The relationship between principal and agent is created by an express or implied agreement which may but need not be contractual, but ratification of the agents acts by the principal, and by operation of law. In the case of agency of necessity and in certain other situations. Furthermore, the principal may be bound under the doctrine of apparent authority or agency by estoppels”*

Yes it crystal clear that the 1st Defendant/Appellant Company was incorporated in China in 2014 and registered in Sierra Leone in 2015 according to the evidence of the 1st and 2nd Defendant/Appellants. But there is evidence to suggest that in 2013 Mr. Wang made some representations to the Plaintiff/Appellant with his complimentary card carrying the title “Vice President” of 1st Defendant/Appellant appointing Plaintiff/Appellant as Sole agent and promoter of 1st Defendant Company to be incorporated in China. In 2013 the undertakings or consideration given by the Plaintiff/Respondent in the formation of the said company befits the definition of a promoter under the company’s Act 2009. Section 49 of the Company’s Act 2009 defines a promoter as “Any person who undertakes to take part in the formation of a company with reference to a given project and to set it going and who takes necessary steps to accomplish that purpose or who with regard to a newly formed company undertakes a part. The relationship of principal and agent is created by an express or implied agreement which may but need not be contractual, by the ratification of the Agents Act by the Principal, and by operation of law in the case of Agency by necessity and in certain other situations. Furthermore, the principal may not be bound under the doctrine of apparent authority or agency by estoppels.

From the said quotation. It seems to suggests that principle of Agency depends on the facts in a given situation. That it can be implied or inferred by operation of law or estoppels. See the cases of (BRIAN WHITE VS. WORCESTER WORKS FINANCE LTD. 1969 1 AC 522,33 L.J. CH. 155, 161, 162). Chitty on contract 2017 under

the rubric "Implied Agreement" quotes "The most usual form of employment is by written request or by implication from recognition of the principal or from his acquiescence in the acts of his agents". See the case of Little v. Spread bury (1910) 2 K.B. 658 and other related cases on the same principles of law in raising capital for it shall prima facie be deemed promoter of the Company". It follows now however that the submission of counsel for 1st Defendant/Appellant that the 1st Defendant/Appellant was not in existence in 2013 and as a result did not instruct Mr. Wang to act on its behalf seems inappropriate and so the principles annunciated in OGOOS CASE can't be of any assistance to the instant case.

Ground Two -

It has also been submitted by counsel for 1st Defendant/Appellant, that there is no contract of agency between the Plaintiff/respondent and 1st Defendant/Appellant as the 1st Defendant had not given any actual authority to the Plaintiff to act on its behalf in 2013. When the 1st Defendant/Appellant had not been incorporated as a company in Sierra Leone. He then relied on the definition of agency as defined in a book called "**The Law of Agency and Partnership by Gregory William A. 2001. 3rd Edition St. Paul, Minn**which reads as follows -

"A consensual relationship created by contract or by law where one party, the principal grants authority for another party, the agent, to act on behalf of and under the control of the principal to deal with a third party. An agency relationship is fiduciary in nature and actions and words on an agent exchanged with a third party bind the principal".

So he submits that the Plaintiff/Respondent has no authority whether expressed implied or ostensible from the principal (1st Defendant/Appellant) to act on their behalf in 2013 as the 1st Defendant/Appellant was not in existence. Also from some portions of the evidence of the Plaintiff/Respondent, counsel submits it is clear that the Plaintiff/Respondent had never been in contact at any time prior to or after its registration in 2014 and

2015 in Sierra Leone with the 1st Defendant/Appellant. Neither did the Plaintiff/Respondent lead any evidence about Mr. David Wei the Chinese investor who was introduced to him by Mr. Wang.

Counsel finally submitted that at the time the Plaintiff/Respondent alleged he was appointed by the 1st Defendant/Appellant as sole agent and promoter, 1st Defendant/Appellant was not in existence. He then also relied on the case of **CHRISTIAN OGOO and HUWEI TECHNOLOGIES, CELLCOM TELECOMMUNICATIONS** unreported, the judgment of showers.

Counsel for the Plaintiff/Respondent in reply to this ground of appeal submitted that for the purposes of the principle of agency to arise it needs not be actual. It could be implied or ostensible agency as in the instant case. That Mr. Wang made representations on behalf of the 1st Defendant/Appellant emphatically appointing Plaintiff/Respondent as sole agent and promoter for their company in china. He then referred to exhibit J - complimentary card bearing the name of **Mr. Wang** as Vice President of the fishing company in China. He relied on the definition of ostensible agency on the definition in chitty on contracts specific contracts at page 23. Now the evidence before the court adduced by the Plaintiff and denied by the 1st and 2nd defendant/Appellant is to a large extent suggestive of the fact that Mr. Wang had acted under the implied ostensible authority of 1st Defendant/Appellant which the Plaintiff/Respondent had acted upon by doing all that he did in furtherance of the Fishing business enterprise in Sierra Leone. So it is not a matter of the company granting express actual authority to Mr. Wang. It is a matter of the Plaintiff acting on the representations of Mr. Wang and the subsequent arrival of the 8 vessels in Sierra Leone for the operation of the business. The arrival of the vessels appears to be clear indication on the part of the 1st Defendant/Appellant to ratify the ostensible agency of Mr. Wang by conduct. So it shall be difficult to apply strictly speaking the principle of law enunciated in the cases relied on by counsel for the 1st Defendant/Appellant which are **CHRISTIAN OGOO** or **HUWEI TECHNOLOGIES**. Let us

reference the evidence of the Plaintiff/Respondent at pages 794-795 Vol. II. Some extracts from it reads as follows:- “The Chinese called me from china and said they have completed the vessels from 6-8. I then agreed with Mr. David and Michael Wang to give me the Local fish agency fee. The local fish was Le 50,000,000 cartons per month. The agency fee was \$500.00 per boat every month totaling \$40,000/00 per month.

“After two days the Ministry of Fisheries called me. They gave me a letter and a document which said they have sent to the Chinese Embassy. They gave me one document”.

This piece of evidence from the Plaintiff/Respondent connotes an implied ratification of Mr. Wang’s ostensible agency by the 1st Defendant/Appellant from china. So by this said conduct of the 1st Defendant/Appellant the agency of Mr. Wang had been legitimized. The 1st Defendant to a large extent can be estopped from disputing the said agency created. This is where the rule in Turgards case comes in with its modifications. In that DW.1 **MICHAEL WANG** has acted like an executive officer of 1st Defendants Company to be registered in China.

So to canvas the point that the company was not in existence in 2013 and as such incapable of contracting is untenable under the law of ostensible implied agency. The Plaintiff/Respondent with respect to the case of the 1st Defendant/Appellants that the company was not in existence in China at that material time in 2013, when the said appointment of Plaintiff/Respondent occurred, cannot know that the said company was not yet incorporated in china. This can be illustrated by the evidence of Plaintiff/Respondent and his two witnesses contained at pages 794-809.

Counsel for the 1st Defendant/Appellant also contends that the Plaintiff/appellant did not adduce any evidence to show that he was indeed appointed by 1st Defendant/Appellant either expressly or impliedly.

He submitted that the burden of Prof rested on the Plaintiff/Respondent. He relied on the case of JOSEPH CONSTANTINE STEAMSHIP LINE LTD V. IMPERIAL CORPORAION 1942 AC 154 at page 174 cited in an academic article on shifting the burden of proof. It was held to be “ an ancient rule founded on good conscience, and it should not be departed from without strong reasons”. That the learned trial judge erred in law by

completely ignoring the evidence of 1st Defendant/Appellant by not looking at their incorporation certificate as shown at pages 602-616 of volume 2 of the records specially showing the incorporation of 1st Defendant/Appellant in Sierra Leone. Now looking at the submission of counsel on this point. I don't know the amount of evidence the Plaintiff/Respondent needs to lead or show to establish that he was so appointed let me say this, in all civil cases the burden of proof rests on the Plaintiff, but the said case should be proved on the balances of probabilities. Obviously it is not a very high standard. All the Plaintiff/Respondent needed to establish before the court below or this court is that he acted positively to the formation of a local fishing company in Sierra Leone on the representations of Mr. Wang on behalf of 1st Defendant/Appellant Company DALIAN SHANGHAI in China by them. And that by conduct 1st Defendant/Appellant ratified the said agreement between himself and Mr. Wang. By the evidence before this court in totality the plaintiff in proving his case has done just that. The court does not have to rely on the weakness of the Defendant case at all.

GROUND 3:

It had been submitted by counsel for 1st Defendant/Appellant that a mere complimentary card of Mr. Wang exhibit J and a private email and not an official email address on the complimentary card of Mr. Wang cannot amount to an ostensible authority as held by the trial judge. The said private email was posted by Mr. Wang to ALLIEU THORLU BANGURA owner of UNION FISHING 2007 COMPANY. Now the complementary card and email sent by Mr. Wang to Allieu Thorlu Bangura. Are they of any probative value as relevant to the issue or facts in issue? Looking at the evidence which has all the hallmarks of an implied agency the answer is yes. A complimentary (business) card. Carrying the title Vice President seems highly to convince any innocent third party in to action as in the instant case. MR. MICHAEL WANG had denied all testimonies of the Plaintiff/Respondent in his evidence in chief and cross-examination, but it would not suffice. The conduct of sending the 8 vessels to Sierra Leone for fishing activities as a

business implied knowledge on the part of 1st Defendant/Appellant about the sole agency and promotership of the Plaintiff/Respondent. So to plead or submit that all these transactions took place if ever by the 1st Defendant/Appellant. When the 1st Defendant/Appellant was not yet incorporated in 2014 in China and 2015 in Sierra Leone is untenable in law. For ostensible Agency to be inferred does not necessarily has to take place in the presence of the principal. I would state at this juncture that grounds 4 and 5 of this appeal has been dealt with under

grounds 1,2 and 3. I would just allude to 1st Defendant/Appellant's counsel definition of Agency which he defines as a relationship that exist between two persons one of whom, the principal, expressly or impliedly consents that the other the Agent, should represent him or act on his behalf. He cited the case of **Pole v. Leask v1 1861-73)ALLER rep at page 541. 8LT at 648** coating **Lord Cranworth** and reads thus "*No one can became the Agent of another person except by the will of that other person*". Now in the definition of Learned Counsel, there is included the word impliedly concerts. The word implied means deduce. So if on the evidence before the court it can be deduced by the judge that there are pieces of evidences to show that the transaction amounts to an implied ostensible agency, then the arguments that the 1st Defendant/Appellant was only incorporated in china in 2014 and the one in Sierra Leone in 2015 cannot hold. The Plaintiff/Respondent had acted on the representative of Mr. Wang. He met with Chinese diplomats at the Chinese embassy in Freetown who asked him to make certain conditions available, which he did according to the evidence. Subsequently thereafter the vessels arrived for operation o the fishing business. These facts seem to imply ratification from the principal who happens to be the 1st Defendant/Respondent in this case.

GROUND 4&5:

Now under grounds 4 and 5 learned counsel for 1st Defendant/Appellant expounded or exposted his grounds of appeal by stating some areas of concern as misdirection on the part of the learned trial judge below. Which are as follows:

*“In his examination in chief the Plaintiff stated he wrote a letter to the Ministry of fisheries and Marine Resources tendered as exhibit A. Exhibit A has a letterhead bearing the name **UNION FISHING 2007 COMPANY** incorporated under the Laws of Sierra Leone. It is signed by MOHAMED BANGURA. The owner of the company is one ALLIEU THORLU BANGURA. I do not think exhibit A is confusing upon careful examination. The Plaintiff MOHAMED BANGURA testified as the circumstances leading to the use of the letterhead of **Union Fishing 2007 Company**. In his evidence the Plaintiff (PW.1) testified that one of the pre-conditions for the grant of the loan to the 1st Defendant Company was to secure a storage facility obviously the Plaintiff had his own business enterprise but had no storage facility. I find it strange for the 1st Defendant to contend that the Plaintiff failed to brief MR. ALLIEU THORLU BANGURA to testify on his behalf “he who asserts must prove”.*

Now from the outset, the 1st Defendant/Appellant had strongly denied it doesn't know the Plaintiff/Respondent and had never appointed him as their Agent and sole promoter. But the Plaintiff in his evidence told the court at page 793 Vol. II of the records that. *“I do recognize Exhibit A - the letter written by me to the Ministry we agreed with the Chinese investor MICHAEL WANG to use the letter head of Union Fishing Company. We agreed to use it because of the security. Cold room and jetty. The facilities were owned by DALIAN FISHING CO. Exhibit B was a reply to my letter”.* So it is unequivocal to say that although Mr. Allieu Thorlu Bangura was the owner of the company. It was the Plaintiff who they had to deal with for the operation of the business directly and not Mr. Allieu Thorlu Bangura. It is not in dispute that Allieu Thorlu Bangura is not the owner of Union Fishing Company by the evidence. It is true that the email correspondences was between Michael Wang and Union Fishing Company. But exhibit A the letter written to the Ministry with the letterhead of Union Fishing

Company was signed by the Plaintiff MOHAMED BANGURA so it doesn't seem that the burden of proof on the part of the Plaintiff shifted at all on to the 1st Defendant/Appellant. Therefore it will be difficult to apply the principle in the case of **JOSEPH CONSTANTINE STEAMSHIP LINE LTD. VS. IMPERIAL CORPORATION 1942** AC 154 at page 174. Where "*it was held that the principle should not be departed from without strong reasons*". So for counsel to submit that work allegedly done by the Plaintiff should have been claimed by the Director of Union Fishing Company ALLIEU THORLU BANGURA as the Plaintiff never had a registered company is late in the day. Counsel for 1st Defendant/Appellant also submitted that the learned trial judge failed to appreciate the evidence of the 1st Defendant despite the inconsistencies in the evidence of the Plaintiff. The evidence of the 1st Defendant has no standard to satisfy at law. The burden and standard of proof in this case as in all civil cases rest on the Plaintiff. As long as the Plaintiff/Respondent can adduce evidence to show that he acted on the representation of MR. DAVID WEI and DW.1 MICHAEL WANG. And at the end the 8 vessels were sent to Sierra Leone for the operation of the fishing business impliedly by 1st Defendant/Appellant. Then the evidence has appreciated. The inconsistencies in the testimony of the Plaintiff/Respondent at pages 793-803 Vol. II of the records did not actually create suspicion.

Counsel for the 1st Defendant/Appellant finally submits that the learned judge gave his judgment per incuriam and that the judgment was against the weight of evidence. The said judgment according to critical evaluation of the evidence was not against the weight of evidence neither the said judgment given per incuriam. Indeed there is an **oral agreement** and the Plaintiff/Respondent acted on the representations of 1st Defendant/Appellant through Mr. Wei and Michael Wang in promoting the said company.

GROUND 6:

This ground of appeal was filed by TANNER LEGAL ADVISORY on behalf of the 2nd and 3rd Defendant/Appellant Company MONZA FISHING COMPANY against the judgment of the learned trial judge, Hon. Justice A.S. Sesay, JA, delivered on 13th February, 2017 found at pages 867-890 in volume II of the appeal records. This ground of appeal was based on the fact that the learned trial Judge erred in law to suggest that there was an oral agency agreement between the Respondent/Plaintiff and the 1st Defendant/Appellant and that the 2nd and 3rd Appellants induced a breach of the said agreement.

Learned counsel for the 2nd and 3rd Defendant/Appellant contended as a ground of appeal that the learned trial judgment erred in law to state that the Plaintiffs conduct as agent as opposed to the 1st Defendants conduct as principal constituted implied authority. That an agency agreement may be inferred from the conduct of the agent and not the ratification of the principal.

In canvassing this ground of appeal, counsel for the 2nd and 3rd Defendant/Appellants had submitted the learned trial judge contradicted himself on the definition on the creation of Agency in Chitty's law on contract "*specific contracts*" Vol.2 at page 2011. Where he held at page 880 in volume II of the records as follows "*However, I have stated that an agency relationship may be inferred from what the Plaintiff did in relationship to the 1st Defendant*".

Now the operative word in that statement of his judgment is the word may. He did not say must be inferred from what the Plaintiff did in relation to the 1st Defendant. Now the definitions in Chittys Law of contract "specific contract THE RUBRIC CREATION OF AGENCY which reads as follows. "*The relationship of principal and agent is created by an express or implied agreement which may but need not be contractual, by the ratification of the agents act by the principal and by the operation of law in the case of necessity and in certain other situations*".

Now by a critical examination of this definition. The ambit seems to be wide because at the end of it, it reads "*in certain other*

satiation” an agency can be inferred. So to suggest that the trial judge contradicted himself might seem difficult to understand.

They had also submitted that an agency relationship can only be ratified by the principal and not by the conduct of the Agent and therefore the agent is not in a position to do certain things that would constitute an implied agreement. So is learned counsel saying that there was no acceptance by 1st defendant/Appellant of the conduct of the Agents Mr. Wei and Michael Wang according to the evidence in this matter. Now let us look at the evidence in this matter. The Plaintiff/Respondent had told the court that Mr. Wei and Michael Wang asked him to become their sole agent and promoter of a company they were to register in China and a local company registered in Sierra Leone to operate a fishing enterprise.

He agreed. They asked him to provide or create the enabling environment and business atmosphere for the operation of the business including the provision of a storage facility which he did. That the Chinese government can only grant them a loan for some 8 vessels when all these conditions would have been met by the plaintiff. He wrote a letter to the Ministry of Fisheries about the business which is exhibit A and got a reply from the Ministry that he has satisfied the conditions for the establishment of the business. He met with Chinese officials at the Embassy who vetted his compliance to the conditions and approved it. Mr. Wei then went to his native China. Mr. Wei then called him to say that the Chinese government have granted the loan and has approved the 8 vessels instead of 6. Subsequently thereafter the vessels then arrived in Sierra Leone for the operation of the business. It was at that point that the Ministry informed him that 2nd Defendant/Appellant ABI BANGURA has applied for license to operate the vessels and 1st Defendant/Appellant has appointed her as their agent in Sierra Leone for the said fishing business. PW.2 HON. ADIKALIE KAMARA told the court that he knows Mr. Wei and Wang and that there was a fishing business between them on behalf of 1st Defendant and Plaintiff MOHAMED BANGURA. PW.3 SAIDU O. JALLOH also confirmed it. The

testimonies of these witnesses were denied by 1st Defendant Mr. Wang DW.1 and ABIE ARUNA KOROMA, 2nd Defendant. That at no point in time was plaintiff appointed by 1st Defendant as their sole agent and promoter. That it was 2nd Defendant who was their Agent. Now if the court is satisfied that the Plaintiffs case is such that agency of acceptance by conduct can be inferred then it was the right interpretation of that principle of law on agency. If you look at page 881 Vol. II of the records the judge said “The terms of the relationship between the Plaintiff and the 1st Defendant was never documented or drawn up. Against this background, one needs to consider the totality of the evidence adduced to consider whether the plaintiff claim is or has been proved entitling the plaintiff to reliefs as claimed. Indeed the nature of the plaintiff’s case is such that he was put at his own detriment by doing all that he did in furtherance of the oral agreement. The departure of Mr. Wei to china and the subsequent arrival of the 8 vessels in Sierra Leone seems to be an acceptance by conduct on the part of the 1st Defendant/Appellant company Dalian Shanghai; The Plaintiff said *“They called me and said they have completed the vessels from 6-8. I then left them at the embassy. I informed the 1st Defendant. They called me from china and they said they have increased the vessels to 8. I agreed with Mr. David Wei and Wang to give me the local fish and agency”*.

This piece of evidence of plaintiff is contained in page 795 of the records of appeal. So if we are to go by the definition of ratification which as stated “by HOWARD BENNET that “the doctrine of ratification enables the principal retrospectively to avail itself of an earlier unauthorized Act. It permits a principal unilaterally to arrogate to itself attribution of acts by agents beyond the scope of actual authority and persons who lack any agency status at all. Ratification is thus a source both of extended authority and agency itself. Then it is clear that there was implied ostensible agency by ratification in the instant case. Now from the foregoing position of the law it would be difficult to state that Mr. Wang lacked the requisite authority to have acted on behalf of 1st Defendant Company. So the principle enunciated in the case of

FREEMAN AND LOCKYER V. BUCKHURST PARK PROPERTIES (MANGAL) LTD. (1964) 2QB 480. Where it was held that *"The agent must have been held out by someone with actual authority to carry out the transaction and an agent cannot hold himself out as having authority"* is inapplicable here. It is clear from the evidence that 1st Defendant/Appellant did not hold out Mr. Wang as the agent expressly in writing. But there were some acts of ratification by conduct of the 1st Defendant/Appellant. So the principle made in the case of ING RE (UK) LTD VS. RE V. VERSICHERUNG AG 2006 2 ALL. ER 870 at p.99 on ostensible authority seems to support the evidence in the instant case *"The doctrine of apparent or ostensible authority is based on estoppels by representation. Where a principal represents or causes to be represented to a third party that an agent has authority to act on the principals behalf and the third party deals with the agent as the principal's agent on the faith of the representation, that principal is bound by the agents Act to the same extent as if the agent has the authority which he represented as having"*.

Counsel also raised the issue of the complimentary card of Mr. Wang and the issue of Mr. Allieu Thorlu Bangura not testifying as a witness for the Plaintiff/Respondent. The said issues had been addressed accordingly under the foregoing grounds of appeal.

The complimentary card of Mr. Wang as Vice President of the 1st Defendant Company portrays him as someone very important to the 1st Defendant Company. So to describe the said exhibit J the complimentary card as "mere complementary card is misleading". The rule in Targards case which actually is the case of ROYAL BRITISH BANK VS. TARGARD (1956) 6E AND B 13119 ER 886. The rule in this case with its modifications applies to some extent to the instant case by the conduct of the 1st Defendant towards Plaintiff. It would appear as it 1st Defendant by its conduct had given actual authority to Mr. Wang to act on its behalf. Now in addition to the complementary card is also exhibit C the email correspondence sent to Mr. Allieu Thorlu Bangura by Mr. Wang concerning the fishing business with the plaintiff. These are all evidences to support the Plaintiffs case. So the complementary

card is actually an explosive piece of evidence against the denials of Mr. Wang DW.1. Also to contend that the emails did not mention Plaintiff as an agent cannot hold as the creation of an agency depends on the circumstances of the transaction. So to submit that the trial judge failed to consider the probative value of the complementary card and emails on the balance of probabilities is bizarre, as by the totality of the evidence there was offer, acceptance consideration and intention to create legal relations. The elements of a binding contract and a subsequent ratification by conduct of 1st Defendant/Appellant Company.

Counsel submitted that Mr. Allieu Thorlu Bangura's name feature in the evidence of PW.1 and PW.2 HON. KAMARA. The evidence is very clear that Mr. Allieu Thorlu Bangura's name came up only as regards use of his company's letter head by Plaintiff MOHAMED BANGURA for the use of his storage facility, but not on every material particular of the facts or facts in issue of the oral agreement. It is obvious based on the evidence before the court that for the Plaintiff to prove his case, he only needed to adduce pieces of elements of a binding contract. Which to a large extent was done in this matter.

GROUND 7:

Learned Counsel for the 2nd and 3rd Defendant/Appellants submits that the learned trial judge misdirected himself when he held that the 2nd Defendant/Appellant had requisite knowledge of a contract which did not exist. When the standard of proof in the tort of inducement is actual knowledge of a contract and its terms. Now to know whether the 2nd Defendant/Appellant **ABIE ARUNA KOROMA** had the requisite knowledge (actual) of the existence of any fishing contract between the Plaintiff/Respondent and 1st Defendant/Appellant Company and furthermore whether 2nd Defendant/Appellant induced a breach of it, One needs to look at the evidence in totality of the matter before the court. All that the Plaintiff needed to prove is that 2nd Defendant knew of the

transaction with 1st Defendant Company and intentionally induced a breach of it.

Now let me look at the testimony of PW.2 - HON. ALIMAMY KAMARA at page 8-3-807 of the records of Appeal especially the evidence at page 805 which reads *"The first time I saw Mr. Wang, he gave me his complementary card in terms of document. The original agreement between MR. MOHAMED BANGURA and DALIAN SHANGHAI, Mr. Wang said his partner was Mr. Mohamed Bangura, and the company Mr. Wang was representing was also working with the Plaintiff Mohamed Bangura and Mr. Wang confirmed to me that they have agreed to do fishing business and that the company in China was coming to do the business with 8 trawlers and that Mohamed Bangura is their agent. I told them they have to put it in writing. It is common sense that if you do a business of that magnitude there must be an agreement. If drafting an agreement you write it. We agreed that myself, Mr. Wang, Abie Aruna Koroma 2nd Defendant, Feremus Sesay, Mr. Mohamed Bangura Plaintiff and Saidu Jalloh set up a company. The company was to work in collaboration with the Chinese company. We were going to enter in to shares. Abie Aruna called me and said she is no longer willing to work with Mr. Mohamed Bangura, Mr. Jalloh and Feremus. Being in the business Abie Aruna called me several times. After the mediation, a committee was set up by the court to mediate. Abie Aruna offered Mohamed Bangura the sum of Le 50,000,000.00. I was not present when she offered the money to the Plaintiff but Abie Aruna told me and Mohamed Bangura also told me"*.

Now from this pieces of evidence which was corroborated by Plaintiff/Respondent and PW.3 SAIDU O. JALLOH. The company that the agreed to be formed for the fishing venture was to be called life boat fishing company which was not eventually incorporated. There is evidence that the 2nd Defendant/Appellant informed the Plaintiff that she operates a fishing business in Sierra Leone and that she was in position to negotiate with a gentleman called MR. DAVIES for the use of a fishing facility at Wallace Johnson Street, Freetown formally known as **Bangso Fishing office**. In consideration for which she demanded 25%

shares in the company which was to be incorporated in Sierra Leone by the Plaintiff and 1st Defendant/Appellant. It is also in evidence that the 2nd Defendant knew through discussions between Plaintiff and 1st Defendant about the construction of the 8 vessels in china. Plaintiff agreed to grant the 2nd Defendant the 25% of the shares in the life boat fishing company SL Ltd. And that the company documents be prepared and presented to 2nd Defendant for her signature. She then out rightly refused to sign same. It is also in evidence that towards the end of 2014 the Plaintiff was reliably informed by Ministry of Fisheries that the 2nd Defendant had applied for entry clearance for the vessels of 1st Defendant Company. The Plaintiff according to the evidence wrote a letter of protest to the Ministry on the 23rd of February, 2015. The Ministry replied promising to investigate the matter. The clearance applied for by the 2nd Defendant/Appellant was granted on the 27th day of January, 2015 to the 3rd Defendant/Appellant Company for the 1st Defendant vessels to enter the shores of Sierra Leone. It is also in evidence that by letter dated 10th, 15th and 20th July, 2015 the Ministry of Fisheries and Marine Resources granted permission to the 2nd Defendant in her capacity as Managing Director to discharge frozen fish for sale in our local market totaling 26,600 cartoons. It should be stated however that in the evidence of the 2nd Defendant contained at pages 814-820 of the records Vol. II, she denied the whole testimony of Plaintiff/Respondent and witnesses. That she is unaware of any oral agreement between Plaintiff and 1st Defendant Company for a fishing company talk less of inducing a breach of it. What is strange about her denial is that there is evidence that she was privy to the actual facts of the agreement between plaintiff/Respondent and 1st Defendant/Appellant Company to set up the fishing company in Sierra Leone. There is evidence that the meeting between them presided by PW.2 HON. ALIMAMY KAMARA took place at her residence. Also Mr. Wang had to leave his Bintumani Hotel lodge to stay with her whilst this business of floating a fishing company was on going. So all these pieces of evidences against the 2nd Defendant tends to create a picture of procurement of a breach of contract knowingly or an

inducement to abrogate the said contract by the 1st Defendant Company. So with all the foregoing evidence before the court, can it be said that 2nd Defendant had no knowledge about the existence of a contract between Plaintiff/Respondent and 1st Defendant/Appellant Company? Certainly the answer is no. the test applied by Lord Devline in the case of ROOKES VS. BARNARD (1964) AC 1129 at page 1212 which states “*An act of inducement is not by itself actionable” the procurer must have the requisite knowledge of the existence of the contract and an intention to interfere with its performance a twofold requirement”*

It is in evidence that when the documents of Life boat Fishing Company SL Ltd. Was presented to her by the Plaintiff/Respondent for her to append her signature. She declined to sign it. But according to the evidence she actually ended up applying for clearance for the same vessels to the Ministry of Fisheries and Marine Resources which was subsequently granted.

I would now state that all the points raised by this appeal in one way or the other have been adequately addressed.

I therefore hold that by reason of the foregoing. The appeal filed by learned counsel UMARU KOROMA for 1st Defendant/Appellant Company DALIAN SHANGHAI FISHING COMPANY SL. LTD. coupled with the grounds of appeal filed TANNER LEGAL SERVICES on behalf of the 2nd and 3rd Defendant/Appellants against the judgment of HON. JUSTICE A.S. SESAY JA. delivered on the 13th day of February, 2017 are hereby **dismissed accordingly**.



IN THE COURT OF APPEAL OF SIERRA LEONE
CIVIL DIVISION

CIV.APP.11/17

BETWEEN:

DALLIAN SHENGAI OCEAN FISHING CO - 1ST
APPELLANT/DEFENDANT
THE OWNERS AND OR PERSONS INTERESTED
IN THE VESSELS SHENGAI 1-8
NO. 52 HAULE STREET
2 HONGSHAN DIST.
DALLIAN, 116001, CHINA

ABIE ARUNA KOROMA - 2ND
APPELLANT/DEFENDANT
52 BUSH WATER
GODERICH, FREETOWN

MONZA FISHING CO. - 3RD
APPELLANT/DEFENDANT
19 WILKINSON ROAD
FREETOWN

AND

MOHAMED BANGURA - RESPONDENT/PLAINTIFF
7 SECOND STREET, OFF MOUNTAIN CUT
FREETOWN

REPRESENTATION:

UMARU KOROMA ESQ.: COUNSEL FOR THE 1ST
DEFENDANT/RESPONDENT

KAIFALA/KANNEH, COUNSEL FOR THE FOR THE RESPONDENT
BAKARR ESQ., TANNER LEGAL ADVISORY, COUNSEL FOR THE 2ND &
3RD DEFENDANT/APPELLANT

HON. M.F. DEEN-TARAWALLY - JA
HON. J.B. ALLIEU - JA
HON. K. KAMANDA - J

