SC. CIV. APP 1/2018

BETWEEN:

MOHAMED BANGURA - APPELLANT

AND

DALIAN SHENGAI OCEAN FISHING CO - 1st RESPONDENT

ABIE ARUNA KOROMA - 2nd RESPONDENT

MONZA FISHING COMPANY - 3rd RESPONDENT

CORAM:

HONOURABLE MR. JUSTICE E. E. ROBERTS - JSC

HONOURABLE JUSTICE G. THOMPSON - JSC

HONOURABLE MR. JUSTICE A. B. HALLOWAY - JSC

HONOURABLE MR. JUSTICE M. S. KOROMA - JSC

HONOURABLE MR. JUSTICE E. TAYLOR-CAMARA - JA

Mr. E.T. Koroma for the Appellant

Mr. Umaru Napoleon Koroma for the 1st Respondent

Mr. Africanus Sesay and Ms. Sadia Bakarr for the 2nd and 3rd Respondents

**JUDGMENT OF THE HON. MR. JUSTICE E. E ROBERTS, JSC**

**Delivered on the 29th day of November, 2019**

The Appellant Mohamed Bangura is a fisherman who has been engaged in the fishing business for over 25 years. According to him, sometime in November 2013 he was approached by his friend one Michael Wang also known as Yang Wang ( who told him that his Chinese business counterparts were interested in engaging in fishing in Sierra Leone and were looking for a Sierra Leonean with the requisite knowledge of the fishing industry). Michael Wang then introduced him to one David Wei who claimed to be a representative of Dalian Shenghai Ocean Fishing Company (1st Respondent).

Acting as Representative of the 1st Respondent Company, Mr. Wang and David Wei commenced business discussions leading to the appointment of the Appellant as the sole agent of the 1st Respondent Company in Sierra Leone. They informed the Appellant that the 1st Respondent Company had applied for a loan from the Government of China for the construction of 10 (ten) fishing vessels and that as a condition for the granting of the loan the 1st Respondent Company was required to show some assurance that it will obtain the necessary clearance and licences from the Ministry of Fisheries and Marine Resources and that storage facilities were readily available.

They then requested the Appellant to go in search of a company or individual with the requisite fishing storage facility so as to facilitate the grant of the loan to the 1st Respondent Company.

The Appellant further alleges that it was orally agreed that once the loan was approved the 1st Respondent Company would bring the said vessels to Sierra Leone, commence fishing and the catch and proceeds would be shared as agreed by the parties.

The Appellant carried out his own side of the agreement by securing storage facilities as well as initiating contact with the Ministry of Fisheries and Marine Resources. The storage facilities that the Appellant secured later became unavailable and as result he contacted a friend to discuss possible alternative facilities. It was then that he met the 2nd

Respondent (Abie Aruna Koroma) who was residing in the same house as this friend at Goderich. The 2nd Respondent got involved in the discussion during which the Appellant told her that he was the sole agent of the 1st Respondent. The 2nd Respondent told him that she operated a fishing business and would be able to secure a fishing storage facility and for this she demanded 25% shares of the company to be incorporated in Sierra Leone by the Appellant and the 1st Respondent. The Appellant agreed and the documents were prepared for the incorporation of the company. Subsequently she failed to sign them but instead proceeded to enter into an agreement directly with the 1st Respondent after inducing the 1st Respondent to breach their agreement with the Appellant.

By Writ of Summons dated 23rd July, 2015, the Appellant brought an action in the High Court against the 1st, 2nd and 3rd Respondents praying for, among other things, damages for breach of contract, specific performance and damages for inducing a breach of contract.

The Respondents filed their defence denying the Appellant's claims and the matter proceeded to trial. At the end of the trial the Appellant's case was successful and by judgment delivered on the 13th February, 2017, the High Court granted the following orders:

1. Against the 1st, 2nd and 3rd Defendants a declaration that the Plaintiff is the sole agent and promoter of the 1st Defendant in respect of all fishing activities in Sierra Leone pursuant to oral agreement entered into between the Plaintiff and the 1st Defendant in 2013.

2. An injunction restraining the 1st Defendant whether by itself or its servants, agents or privies from carrying out fishing activities in Sierra Leone with the 2nd and 3rd Defendants to the [exclusion] of the Plaintiff is refused accordingly.

3. An Injunction restraining the 2nd and 3rd Defendants from engaging in any fishing business and/or activities with the 1st Defendant whether by themselves, their servants, agents or privies is refused.

4. I order specific performance against the 1st Defendant of the oral agreement entered into between the Plaintiff and the 1st Defendant in the year 2013.

5. Against the 1st Defendant recovery of the sum of US$126,000.00 (One Hundred an Twenty-Six Thousand Dollars) being promoter and agency fees incurred by the Plaintiff as agent and promoter of the 1st Defendant for engaging into discussion and negotiations with the Ministry of Fisheries and Marine Resources in Sierra Leone.

6. I order the 2nd and 3rd Defendants to account for the proceeds of sale of frozen and other fish obtained during fishing activities in Sierra Leone with the 8 vessels referred to as Shengai 1,2,3,4,5,6,7 and 8.

7. The Plaintiff shall recover against the 2nd and 3rd Defendants the value of 26,000 cartoons of fish (6,000 of which weighed 25 kilograms and 20,600 of which weighed 20 kilograms) sold by the 2nd and 3rd Defendants in the local market of Sierra Leone between the period 14th July 2015 to 20th July 2015.

8. Against the 2nd and 3rd Defendants recovery of the value of the total amount of cartoons of fish obtained from the fishing activities using the 1st Defendant's fishing vessel referred to above until payment.

9. Against the 2nd defendant damages for inducing a breach of contract entered into between the Plaintiff and the 1st Defendant in the year 2013 assessed at US$120,000.00.

10. US$10,000.00 and US$20,000.00 as Special Damages is refused.

11. Interest is awarded on the said amount of US$126,000.00 pursuant to the Laws of Sierra Leone to be assessed.

12. Cost of the Plaintiff's Solicitors if not agreed to be taxed.

The Respondents were dissatisfied with the judgment of High Court and as a result filed a Notice of Appeal to the Court of Appeal. This Appeal was heard and after hearings the

Court of Appeal (by a majority decision) delivered Judgment on the 28th December, 2017 reversing the decision of the High Court.

It is against that Judgment of the Court of Appeal (found at page 1027 of volume 3 of the Records) that the Appellant has brought an appeal to this court.

The Grounds of Appeal are as follows:

GROUND A

That the Court of Appeal having failed to draw the proper and or correct inferences from the facts established at the trial erred in law and wrongly overturned the decision of the Learned Trial Judge by holding that there was no oral agreement between the Appellant and the 1st Respondent as Mr. Wang and Wei were not the agents of the 1st Respondent herein.

GROUND B

That the Court of Appeal misdirected itself as to the law when it overturned the decision of the Trial Judge by holding that the 1st Respondent herein, could not have entered into a contract nor had an agency relationship with third parties prior to its incorporation.

GROUND C

That the Court of Appeal in overturning the decision of the Trial Judge erred in law and wrongly applied the principles set out in Christian Ogoo vs Huawei Technologies and Cellcom Telecommunications dated 3rd February 2012 (CC 215/2011 H. No 18) and between Huawei Technologies vs Comium (SL) Ltd and Comium Sierra Leone dated 9th July 2014 in that the said cases were clearly distinguishable from the case before the Court.

GROUND D

The Court of Appeal erred in law and misapplied the principles laid down in the case of Royal British Bank vs. Turquard (1856)6 E & B 327 E.R.886 by holding that the principle enunciated in the referred case was inapplicable simply because there was no agency relationship.

GROUND E

The Court of Appeal misapplied the principle of evidential burden of proof by wrongly holding that the burden was on the Appellant herein to call Mr. Allieu Thorlu-Bangura to testify on his behalf.

GROUND F

The court of Appeal failed to consider or adequately consider the facts and the applicable law by wrongly holding that the 2nd and 3rd Respondent herein had no knowledge of the agreement between Appellant herein and the 1st Respondent and therefore there was no inducement of breach of contract.

GROUND G

The ruling is against the weight of evidence.

I shall deal with grounds A, B, C & D together as this was how they were argued in the Appellant's Case filed in this Court.

I will start with the question of whether indeed there was an oral agreement between the Appellant and the 1st Respondent. In addressing this issue it is important to note that this Court (as an appellate court) is careful if not reluctant to review the factual evidence adduced and the conclusion drawn therefrom by the Learned Trial Judge, who had the unique privilege of hearing and observing the demeanour of the witnesses that testified. I shall bear this in mind as I address the issues before the Court.

In dealing with this issue of whether there was an oral agreement between the Appellant and the 1st Respondent, Justice Bosco Allieu JA had this to say in his majority decision (at page 1030 of the volume 3 of the Records).

*The Learned trial Judge noted that the 1st Appellant's Company was duly registered as a Company incorporated in China but he did not indicate the date of incorporation. It is Counsel for the 1st Appellant who indicated that his client's certificate of Registration in China is dated 5th May 2014 in effect, the 1st Appellant started operations in 2014.*

*Can it now be said that Mr. Michael Wang or Mr. David Wei, as the case may be, were lawfully acting for and on behalf of the 1st Appellant who accordingly was not in existence in 2013, I do not think so and I will come back to this issue when dealing with the doctrine of ostensible authority*".

From the above it is evident that the Court of Appeal (majority decision) came to the conclusion that there was no valid contract and this was based mainly on the conclusion that Michael Wang and David who purported to act for the 1st Respondent could not bind them into a contract as the 1st Respondent had not been incorporated at the time.

On this issue the LTJ in holding that there was indeed a valid agreement between the Appellant and the 1st Respondent had this to say (at page 884 vol 2 of the Records).

*From the evidence I fail to agree with the 1st Defendant's Counsel that Mr. Michael Wang never acted on behalf of the 1st Defendant. The doctrine of ostensible authority has been applied with some modifications by what is known as the rule in TURQUAND'S CASE. The rule was first developed in the case of ROYAL BRITISH BANK V TURQUAND (1856) 6 E AND B 327. In view of this principle or rule, the person holding himself as having the authority to act is not restricted to a board Director, Managing Director or Chairman of the Board of Directors. It is my considered view that in Exhibit J Michael Wang is the Vice President of the 1st Defendant's Company.*

In his testimony and arguments the Appellant claimed that the two representatives of the 1st Respondent engaged him to act as a promoter and sole agent pursuant to which he engaged in several acts and took various steps to perform his own side of the agreement. Of course this is denied by Michael Wang. However, I find a very curious if not interesting admission in Michael Wang's Witness Statement dated 21st December, 2015 (see page 590-592 vol. 2 of the Records). He stated as follows (at page 590)

*David asked me to look out for an agent for his company. Later David also contacted another company by the name of Whitepole and asked them to work with him. After a while, David told me to look out for an agent for Dalian Shengai Ocean Fishing Company. I recommended several companies to him. The Plaintiff with whom I had discussed this issue of David with, met with David and recommended one Mr. Thorlu Bangura the owner of Union Fishing 2007 to David.*

It is evident from Michael's own statement that David asked him "*to look out for an agent for Dalian Shengai Ocean fishing company*" and consequently if not supposedly he (Michael) introduced David to the Appellant. Furthermore Michael stated that David was acting as a representative of the 1st Respondent. If Michael introduced David (who told him he was looking for an agent for the 1st Respondent) to the Appellant, it is surely not difficult to come to the conclusion that the discussion which followed between David, Michael and the Appellant was for the appointment of an agent for the 1st Respondent. Otherwise why else would Michael Wang introduce David to the Appellant after David had told him he was looking for an agent for his fishing company?

Furthermore, even though Michael Wang denies representing the company, yet the testimony of Honourable Amara Akalie Kamara (PW2-at page 803-805 volume II of the Records) supports the Appellant's account that Michael Wang was acting as a representative of the 1st Respondent. He also stated that Michael Wang gave him a business card in which he was named as vice president of the 1st Respondent.

To crown it all, Michael Wang admitted sending an email (Exhibit L at page 699 Volume 2 of the Records) to Mr. Thorlu Bangura sent on 11th March 2014 in which he was urging

him to inform the Appellant to attend a meeting at the Chinese Embassy. In this email Michael Wang stated as follows:

*……pls stress to Mohamed when he tomorrow go see Counselor Zou explain how you worked with Dalian Shanghai Fishing Company Ltd. If he ask Mohamed how he know this company, Mohamed could tell Counselor, he know this company through one Chinese called Mike, Chinese name called: Wang Yang……*

*Last but not least, pls stress to Counselor, Union Fishing 2007 is the only fishing company has the jetty, cold room and office facilities at the downtown of Freetown……*

*Pls tell Mohamed don`t be late and pls be punctual, the appointment with counselor is at 9am tomorrow morning.*

*I`m looking forward to hearing a good news from you tomorrow.*

*Best Regards*

*Mike*

Indeed Michael Wang was clearly purporting to act for the 1st Respondent and this evidence contradicts his contention that he never represented the 1st Respondent in his discussions with the Appellant.

From the above there is sufficient evidence that Michael Wang was or held himself to be the agent of the 1st Respondent and perhaps the 1st Respondent allowed him to do so. Otherwise how could he hold a business card naming him as Vice President of the 1st Respondent? Furthermore Michael Wang seemed to possess a lot of information about the operations of the 1st Respondent including the plan to construct and bring a number of fishing vessels to Sierra Leone and this turned out to be accurate. And of course rather curiously he later claimed to have been subsequently employed by the 1st Respondent. How curious and how convenient. The above leaves me with the inescapable conclusion that Michael Wang was indeed acting as a representative of the 1st Respondent.

In coming to this conclusion I find the following passage to be very useful and instructive. In Chitty on Contracts: Specific Contracts, paragraph 2514 page 12 (under the rubric *creation of agency*), it is stated 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 agent's 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 estoppel.*

Also at page 14 paragraph 2518 under the rubric "*implied agreement*" the authors went on to state as follows:-

*There are cases in which agency may be implied, although no authority was ever specifically given in fact. "While agency must ultimately derive from consent, the consent need not necessarily be to the relationship of principal and agent itself (indeed the existence of it may be denied) but it may be to a state of fact upon which the law imposes the consequences which result from agency. The most usual way in which this occurs is by an unwritten request, or by implication from the recognition of the principal of, or from his acquiescence in, the act of others.*

In the light of the above authority as well as the evidence adduced, I find it disingenuous if not egregious for the 1st Respondent to contend that Michael Wang was not their agent when he had the company's business card and he possessed very accurate information about them. Perhaps one would conclude that the seeming acquiescence of the 1st Respondent would prevent or stop them from denying the agency. It certainly did not help that they employed him not long after (as he claims).

I agree with the LTJ who accepted to be credible the account of the Appellant that the 1st Respondent through their representatives engaged the Appellant to be their agent. The Appellant's account in this regard was confirmed and supported by the testimony (both in chief and in cross examination) of Honourable Amara Akalie Kamara. It is not

lost on me that Honourable Alimamy Kamara was a friend of 1st Respondent and that he stayed in her house where he met the Appellant and Michael Wang.

I have not failed to observe that the 1st Defendant were sued as a company incorporated in China. I also note the 1st Respondent's contention that the company sued was only incorporated in 2014 and so all the arrangements that the Appellant was relying on were purportedly entered into before the 1st Respondent was incorporated.

Indeed the Court of Appeal agreed with and upheld the 1st Respondent's submission in this regard. I am afraid I do not agree with the Court of Appeal (majority decision) in this respect.

It is the 1st Respondent`s assertion that they could not be held bound by the discussions between Mr. Wang and Mr. Wei and the Appellant as at the time of such discussions in 2013 the 1st Respondent had not been incorporated. I find it rather curious that upon making this assertion the 1st Respondent did not produce or tender any document confirming its date of incorporation in China. Such confirmation (or the lack thereof) is of significance for the following reasons:

Firstly, according to the evidence adduced, the discussions between Messrs. Wang, Wei and the 1st Appellant started in November 2013 but did not end in 2013. As the agreement is claimed to be oral it would stand to reason that its terms could have been discussed over several meetings perhaps leading up to 2014 as the case may be.

Secondly, in Michael Wang's email to Mr. Thorlu-Bangura sent in March 2014, he was holding out that the 1st Respondent was already in existence. And so at that time he was now acting as representative of a company already in existence.

Again even if I am wrong in this conclusion it would clearly appear that the email of March 2014 and the acts of Michael Wang in 2014 may well be acts of ratification on the part of the 1st Respondent of which he was vice president.

Also Counsel for the 1st Respondent contends that the 1st Respondent had no capacity under the provisions of the Company's Act to undertake any business activities in Sierra Leone. Counsel relied on the case of Civ. App 31/2010 CHRISTIAN OGOO – V- HUAWEI TECHNOLOGIES AND ANO. I am afraid I find the case to be completely irrelevant to the present matter before us. Indeed the passage in the Huawei case relied on by Counsel is in the judgment of Honourable Mrs. Justice A. Showers JA (as she then was) dated 3rd February, 2012 where she stated as follows:-

*In determining whether the said 1st Defendant can be considered a legal person with capacity to bring an action in Sierra Leone it is necessary to look at the provisions of our laws....*

*There is clear evidence that the 1st Respondent Company has not complied with any of the requirements stipulated in the said Act in respect of a Foreign Company intending to do business in Sierra Leone. Section 492 of the said Companies Act provides for the penalties where a foreign company fails to comply with these provisions. In particular subsection 2 of s.492 of the said Act provides as follows:*

***If a company defaults in delivery to the commission any document required under s.485 to be delivered for registration, its right under or arising out of any contract made in Sierra Leone during the time of the default shall not be enforceable by action or other legal proceedings.***

*The above provisions are quite clear and it is apparent that the 1st Respondent Company is caught by them. The 1st Respondent Company having defaulted in delivering to the Commission the required documents provided for in s.485 of the Companies Act 2005 cannot enforce its right under the contract by action. In other words it has lost its capacity to sue or take any other legal action proceedings to enforce its right under the said contract.*

It is evident that in that case the Court was dealing with the capacity of a foreign company who was *Plaintiff* and wanted to enforce their rights under a contract. In the present case

the company in question (the 1st Respondent) is a *defendant* in the action in the High Court. I therefore do not find it necessary or useful to say any more on the above cited authority.

In the light of the aforesaid considerations, I hold that there were an oral agreement between the Appellant and the 1st Respondent in which the latter through their representative (Michael Wang and David Wei) engaged the Appellant as their agent in Sierra Leone with reasonably clear terms as to the sharing of profits including the catch for every fishing operation conducted. Whilst the Appellant was to secure facilities on Sierra Leone and assist with the procurement of the relevant licences, the 1st Respondent was to bring the fishing vessels to Sierra Leone for the operations to commence.

As stated earlier this agreement was clearly breached by the 1st Respondent who went on to engage the 2nd Respondent thereby abandoning the Appellant.

I therefore hold that grounds A, B, C & D succeed.

I shall now turn to ground F that is the issue of whether the 2nd and/or 3rd Respondent's induced a breach of the contract between the Appellant and the 1st Respondent. Indeed the tort of inducing or procuring a breach of contract needs careful consideration. In CLERK & LINDSELL ON TORTS Sixteenth Edition Page 791 Paragraph 15-02, it is stated as follows:

*Knowingly to procure or, as it is often put, to induce a third party to break his contract to the damage of the other contracting party without reasonable justification or excuse is a tort.*

At page 795 the authors went on to state as follows:

*Where knowledge of the existence of a contract is proved on the part of a defendant who induces one party to break it, his intention to do damage to the other party is readily inferred.*

Furthermore at page 815 paragraph 15-08 the authors continued as follows:

*It is established that, where a third person with knowledge of a contract "has dealings with the contract breaker which the third party knows to be inconsistent with the contract, he has committed an actionable interference*

From the evidence of Appellant which was corroborated by that of Honourable Amara Akalie Kamara (PW 2), it was the Appellant who introduced the 2nd Respondent to Michael Wang when they met at the 2nd Respondent's house at Goderich.

Also, it is evident that Michael Wang first introduced the Appellant to David Wei, subsequently he introduced the 2nd Respondent to the 1st Respondent. It was then that the 2nd Respondent through her company (3rd Respondent) entered into an agreement with the 1st Respondent. The Appellant after entering into the agreement with the 1st Respondent proceeded to perform his own side of the contract. He secured a fishing facility and later lost same and in trying to secure alternative facility he went to see PW 2 Hon. Amara Akalie Kamara where he also met the 2nd Respondent. The 2nd Respondent offered to assist the Appellant. Subsequently she (through her company, the 3rd Respondent) proceeded to enter into an agreement directly with the 1st Respondent. The Appellant protested to the Ministry of Marine Resources who promised to look into the matter but later granted licence to the 3rd Respondent for the vessels to come into Sierra Leone. To my mind the conduct of the 2nd Respondent was to the effect as to constitute an inducement of a breach of contract as the case may be.

Indeed the LTJ had this to say on this issue:

*The conduct of the 2nd Defendant was to the effect that she had full knowledge of the contract and its terms. The meeting held at the house of the 2nd Defendant which was confirmed by herself in cross examination she was privy to the discussions held. The 2nd Defendant had knowledge of the relationship between the Plaintiff and the 1st Defendant through its representative Michael Wang..... There was a deliberate inducement of a breach of contract.*

I have no reason to disagree with the conclusions of the LTJ on this issue him having had the benefit of listening to and observing the witnesses who testified before him. I therefore hold that Ground F succeeds.

In the light of the above considerations and conclusions the appeal is accordingly allowed.

Having come to the conclusion that the appeal succeeds, I now turn to the orders that this Court would grant. I note that at the end of the Appellant's Case dated 20th May 2019 his Solicitors prayed that the "*Appeal ought to be allowed and the decision of the Trial Judge be resorted*". I therefore have had to carefully peruse the orders of the LTJ which I reproduced earlier in this judgment.

In the Appellant`s writ of summons, under "particulars of special damage", there is the claim for loss of agency and promoters fees for the period November 2013 to February 2015 at the rate of $6,000 per month which is a period of 16 months totaling $96,000. However in the testimony of the Appellant, he stated (at page 795 of volume 2 of the Records) that the agreed agency fee was $ 500 per boat for every month totaling $ 4000 per month. This evidence reflects a sum that is lower than what was claimed in the writ of summons. And so for this item of special damage in respect of the agency and promoter's fees, it will mean that the sum for which evidence adduced amounts to $64,000.

On the issue of damages for inducing a breach of contract I believe that the sum of $24,000 is indeed a reasonable sum.

The next order was in respect of a claim for an account for the proceeds of frozen and other fish obtained during fishing activities of the 8 vessels in Sierra Leone. This seems a reasonable order but it must stipulate a period for accounting and I think it should start from or around the date the vessels were permitted to come into Sierra Leone waters i.e. June 2015 on to the date the 3rd Respondent's agreement with the 1st Respondent was terminated i.e. 5th October, 2015. Additionally it is important to note that after such

account would have been presented it would have to be determined what percentage of the value of the fish catch the Appellant would be entitled to. This would require an assessment by a court, and I would direct same to be remitted to the High Court for such assessment.

On the order for specific performance of the contract between the Appellant and the 1st Respondent I do not believe that such an order is prudent or practicable in the instant case. I am fortified in this view by the following authority.

In **The Principles of Equitable Remedies** Fourth Edition by I.C.F Spry at page 101, it is stated as follows:

*Until recently unduly absolute statements were occasionally made to the effect that a court of equity will not as a rule enforce "contracts of personal service or any other contract the execution whereof would require continued superintendence by the court...*

*However the courts have gradually resiled from this unduly inflexible position. So it has been said by Lord Wilberforce, "Where it is necessary, and, in my opinion, right to move away from some 19th century authorities, is it to reject as a reason against granting relief, the impossibility for the courts to supervise the doing of work.....*

*The refusal of the courts to intervene in exceptional cases of this nature has thus been based not only on general considerations of hardship as between the parties, but also on considerations of policy, and in particular on a policy that the courts and the parties should not be excessively burdened by recurrent applications for orders and directions as to the performance of elaborate agreements or by the hearing of disputes as to alleged failures to perform obligations that are complex or ill defined. Accordingly, it is necessary to take into account the length of time over which performance may take place, the complexity of the acts of performance that are requirements and the extent of difficulty that may arise in establishing whether particular terms have been complied with, and to weigh these matters against hardship that might be caused through a denial of relief in specie.....*

I note that the fishing industry is complex and the performance of the terms and conditions of the oral contract in this case would require constant supervision by the courts. In the light of the above it would certainly not be prudent nor would it be in the interest of the parties to order specific performance.

Having come to the conclusion that specific performance would not be an appropriate remedy to award in the instant case, I would now have to consider whether damages in lieu thereof would be appropriate. Here, I note that the Appellant has claimed damages for breach against the 1st Respondent as well as damages for inducing the breach against the 2nd and 3rd Respondents. In awarding damages in such circumstances one will have to be careful not to over compensate the Appellant by awarding damages against the 1st Respondent who breached as well as the 2nd and 3rd who induced such breach. It may well be that the loss suffered by the Appellant as a result of the 1st Respondent's breach may be identical if not the same as that suffered as a result of the inducement by the 2nd and 3rd Respondents. Having awarded damages for breach against the 1st Respondent I am most careful in my considerations on awarding further damages in lieu of specific performance. However having had the benefit of reading the judgment of Justice G. Thompson I am persuaded by her considerations and I agree that the sum of $24,000 is adequate compensation in lieu of specific performance.

In the light of all of the above I now make the following orders:

1. That the Appellant shall recover from the 1st Respondent the Leone equivalent of the sum of $64,000 as agent and promoters fees.

2. That the order for specific performance is hereby refused. In lieu thereof the Appellant shall recover from the 1st Respondent the sum of $24,000 as damages.

3. The 2nd and 3rd Respondents shall within 30 days of this order render an account of the proceeds of sale of frozen and other fishes obtained during fishing activities

in Sierra Leone of the 8 vessels namely Shenghai 1-8 for the period June 2015 to October 2015.

4. Upon the rendering such account this matter is remitted to the High Court to inquire into the profit derived from all fishing activities as per order 4 above and what percentage is recoverable by the Appellant which shall not in any event exceed 35%.

5. Interests on the sum of $64,000 (Leone equivalent) at the rate of 9% from the date of commencement of this action until date of this judgment.

6. Costs to the Appellant to be taxed if not agreed.

7. All sums ordered shall be paid in Leones at the rate of exchange existing in February, 2015.

29/11/19

Hon. Justice E. E Roberts, JSC

Certified True Copy

Ag. Registrar

IN THE SUPREME COURT OF SIERRA LEONE

SC.CIV. APP 1/2018

BETWEEN:

MOHAMED BANGURA — Appellant

And

DALIAN SHENGAI OCEAN FISHING CO. — 1st Respondent
ABIE ARUNA KOROMA — 2nd Respondent
MONZA FISHING COMPANY — 3rd Respondent

CORAM:
Hon Justice E. E. Roberts JSC
Hon. Justice G. Thompson JSC
Hon. Justice A. B. Halloway JSC
Hon. Justice Sengu Koroma JSC
Hon. Justice E. Taylor-Camara JA

Mr. E.T. Koroma for the 1st Appellant
Mr. Umaru Napoleon Koroma for the 1st Respondent
Mr. Africanus Sesay and Ms Sadia Bakarr for the 2nd and 3rd Respondents

1. The Facts

1.1 My Lords the facts of this case and the Statements of Case filed by the parties are set out in the judgment of my brother Justice E.E Roberts JSC and I need not repeat them here. I agree with him that the Appeal should be allowed but wish to add my own reasons for allowing the appeal.

2. The Issues

2.1 The issues in this case are as follows:

a. Whether Mr Michael Wang was an Agent of the 1st Respondent and therefore authorised to enter into an agreement with the Appellant?
b. Whether there was an oral agreement between the Appellant and the 1st Respondent? If there was then;
c. Whether the 2nd Respondent induced the 1st Respondent to breach the agreement between the Appellant and the 1st Respondent in favour of the 3rd Respondent?

3. In the absence of a written agreement it was necessary for the trial judge (A. Sesay JA as he was then) to make findings of fact based on the oral and documentary evidence placed before him. He had the benefit of seeing the witnesses and was therefore best placed to assess their credibility and reliability. As such, his findings of fact should not lightly be interfered with in the absence of obvious error. This case therefore depends on an evaluation of the factual evidence presented to the High Court through oral and documentary evidence.

4. In order to determine whether Mr Wang and Mr Wei were agents of the 1st Respondent at all material times, the Trial Judge had to make findings based on the evidence of the two principle witnesses relied on by the opposing parties, namely the Appellant and Mr Wang, in addition to the other witnesses called by the various parties. The Learned Trial Judge did not find Mr Wang (DW1) a credible witness. His reasons for not finding him credible were inter alia the fact that Mr Wang presented a complimentary card to the Appellant in which he described himself as the Vice President of the 1st Respondent; the discussions emails and meetings between him and the Appellant whom he described as his friend and his failure to convince the court as to his reasons for moving into the home of the 2nd Respondent.

5. Having carefully considered the evidence before him the judge found as a fact that Mr Wang and Mr Wei represented themselves to the Appellant as Agents of the 1st Respondent, and that when they did so they had the requisite authority and that there was an oral agreement between the Appellant and the 1st Respondent acting through its Agent Mr Wang. He also found as a fact that the Appellant did certain acts in reliance of the agreement made with them as Agents of the 1st Respondent. In so far as the 2nd and 3rd Respondents are concerned, the Learned Trial judge was satisfied on the evidence that they had knowledge of the agreement between the Appellant and the 1st Respondent and that the 2nd Respondent induced the 1st Respondent to breach the agreement with the Appellant in favour of the 3rd Respondent.

6. The question for this court is therefore is whether this case is one in which it was right and proper for the Court of Appeal to interfere with the trial judge's assessment of the evidence he heard and the witnesses he observed. In order for an Appellate Court to properly do so, there must be compelling and substantial grounds. These will include:

a. That the court's conclusions on the facts are against the weight of the evidence.
b. The Judge misdirected himself on the law
c. That no properly directed tribunal could have arrived at the same findings of fact based on the same evidence.
d. The Trial judge failed to properly take into account material evidence.

**7. Ground A – Was there an oral agreement between the Appellant and the 1st Respondent.**

7.1 The Appellant's case is based on activities he undertook as a result of the representation made to him by Mr Wang acting for and as Agent of the 1st Respondent. The Learned Trial Judge found as a matter of fact that there was an oral agreement between Mr Wang as Agent of the 1st Respondent and that the Appellant undertook activities relying on this oral agreement. Both witnesses accepted that they are known to each other. Page 812 of the records (Cross Examination of Mr Wang by Counsel for the Appellant) is instructive. It establishes that Mr Wang had been in contact with the Appellant and that he was acting as a promoter (fishing agent) for the 1st Respondent. Based on the evidence placed for review before us I can see no proper basis for rejecting the assessment of the evidence by the Learned Trial Judge and his finding that there was an oral agreement between the Appellant and the 1st Respondent.

**8. Ground B– Could there have been an agency agreement prior to incorporation?**

8.1 It is common knowledge prior to formal incorporation promoters of a company may undertake certain tasks in furtherance of the business for which the company is to be incorporated. These decisions will subsequently be ratified by the Board of Directors. I note that the Court of Appeal on this point relied on the Court of Appeal decisions in Christian Ogoo v Huawei Technologies, Cellcom Telecoms 3rd February 2012 (Unreported) and Huawei Technologies v Comium (SL) Ltd and Comium Sierra Leone, 9th July 2014 (unreported) both on the capacity of non-registered companies to bring an action in Sierra Leone. Those decisions were overturned by the Companies (Amendment) Act 2014 section 60 (b) which states: *"Notwithstanding the requirements of registration under section 485, a company incorporated outside of Sierra Leone which is a part to a contract ordinarily to have been performed in Sierra Leone, with rights under or arising out of any contract shall be*

*enforceable by action or other legal proceedings."* I should add that as at the time the Court of Appeal heard this appeal and delivered its judgment, those cases had already been overturned. It is regrettable that that the parties did not draw this to the attention of the Court. I wish to remind counsel of their duty pursuant to Rule 46 (1) of the Legal Practitioners (Code of Conduct) Rules 2010 to assist the court with up to date and relevant authorities, whether it supports their case or not.

8.2 Contrary to the Trial Judge's findings, the Learned Justices of Appeal, found that neither Mr Wang nor Mr Wei could be an Agent of the 1st Respondent because at the time the 1st Respondent was not yet in existence. With respect to their Lordships, a finding of whether an Agency existed or not in this case is a question of fact which did not depend on the prior existence of a corporate entity. Further it appears that the Court of Appeal fell into error by failing to consider the Learned Trial Judge's findings on the distinction between apparent or ostensible authority and actual authority. In **Freeman & Lockyer (A Firm) v Buckhurst Park Properties (Mangal) Ltd and Another [1964] 2QB 480**, a case relied on by the Appellant, Diplock LJ stated as follows:

> *"An "apparent" or "ostensible" authority, on the other hand, is a legal relationship between the principal and the contractor created by a representation, made by the principal to the contractor, intended to be and in fact acted upon by the contractor, that the agent has authority to enter on behalf of the principal into a contract of a kind within the scope of the "apparent" authority, so as to render the principal liable to perform any obligations imposed upon him by such contract. To the relationship so created the agent is a stranger. He need not be (although he generally is) aware of the existence of the representation but he must not purport to make the agreement as principal himself. The representation, when acted upon by the contractor by entering into a contract with the agent, operates as an estoppel, preventing the principal from asserting that he is not bound by the contract. It is irrelevant whether the agent had actual authority to enter into the contract.*
>
> *In ordinary business dealings the contractor at the time of entering into the contract can in the nature of things hardly ever rely on the "actual" authority of the agent. His information as to the authority must be derived either from the principal or from the agent or from both, for they alone know what the agent's actual authority is. All that the contractor can know is what they tell him, which may or may not be true. In the ultimate analysis he relies either upon the representation of the principal, that is, apparent authority, or upon the representation of the agent, that is, warranty of authority.*

*The representation which creates "apparent" authority may take a variety of forms of which the commonest is representation by conduct, that is, by permitting the agent to act in some way in the conduct of the principal's business with other persons. By so doing the principal represents to anyone who becomes aware that the agent is so acting that the agent has authority to enter on behalf of the principal into contracts with other persons of the kind which an agent so acting in the conduct of his principal's business has usually "actual" authority to enter into".*

8.3 I have quoted extensively from this case because the distinction between actual authority and apparent or ostensible authority is an important one. In this case accepting that the 1st Respondent was not in existence in 2013, Mr Wang could obviously not get his authority from a Board of Directors. However, that does not mean that the Appellant could not be an Agent. As found by the Learned Trial Judge, it is permissible for promoters of a company to undertake certain activities before the incorporation of the company. If authority is needed for this proposition it is to be found in section 49 of the Companies Act 2009 which states: *Any person who undertakes to take part in forming a company with reference to a given project and to set it going and who takes the necessary steps to accomplish that purpose, or who, with regard to a or newly formed company, undertakes a part in raising capital for it, shall prima facie be deemed a promoter of the company.* The nature of the venture that these parties were embarking on made it necessary for the 1st Respondents to engage an Agent. As Diplock LJ stated in Freeman *"a corporation cannot do any act, and that includes making a representation, except through its agent".*

8.4 Having said that, I should add, that I find the assertion and subsequent finding that the 1st Respondent was not in existence at the time of the agreement between Mr Wang and the Appellant rather troubling. No evidence was adduced to support this. On the contrary, in the email between Mr Wang and Mr Thorlu-Bangura dated Tuesday 11th March 2014, (Ex L, page 699 of Volume II of the records), Mr Wang mentions the 1st Respondent company by name when giving instructions on what that the Appellant should say when he visited the Chinese Economic and Commercial Bureau. The inescapable inference is that the 1st Respondent was in existence in China prior to 2015.

8.5 Similarly, the Learned Trial Judge drew inferences from the evidence before him that there had been ratification. At page 793 of the records, the Appellant states that he was invited to the Chinese Embassy to be interviewed. He had been told by David Wei, prior to the interview that he should expect a call from the Embassy as he was going to China to

arrange the loan. There, the Appellant was interviewed by the Chinese Economic and Commercial Bureau about Dalian Fishing (the 1st Respondents herein), the facilities in Sierra Leone including office space, jetty and cold room. The Appellant stated that he was referring to the facilities of Union Fishing Company. The facilities were inspected by the same Bureau and he was told that they would call him back. When the Embassy did call him back, he was informed that approval had been given for 6 fishing vessels. From the records, this evidence, like most of his evidence, was not undermined in cross examination. I reject the argument of Counsel for the 2nd and 3rd Respondent that "it seems as though an agreement was being negotiated with the said Mr Thorlu-Bangura but the said agreement never materialised". The 2nd and 3rd Respondents proffered no evidence either in the High Court or in the Court of Appeal to support this assertion. The court cannot act on the premise of a supposition without more. I am therefore clear in my mind that the judgement of the High Court was correct.

9 **Ground C- That the Court of Appeal in overturning the decision of the Trial Judge erred in law and wrongly applied the principles set out in Christian Ogoo v Huawei Technologies, Cellcom Telecoms 3rd February 2012 (Unreported) and Huawei Technologies v Comium (SL) Ltd and Comium Sierra Leone, 9th July 2014 (unreported).** For the reasons which I have stated above, this ground was withdrawn by the Appellant and the 1st Respondent.

**10 Ground D - That the Court of Appeal erred in law and misapplied the principles laid down in the case of Royal British Bank v Turquand (1865) 6 E & B 136 E.R.886.**

10.1 The rule in Turquand's Case is that each outsider contracting with a company in good faith is entitled to assume that the internal requirements and procedures of the company have been complied with. The company will be bound by the contract even if the internal requirements and procedures have not been complied with. This is the "indoor management rule" or the "Rule in Turquand's Case". The exceptions are if the outsider was aware of the fact that the internal requirements and procedures have not been complied with or if the circumstances under which the contract was concluded on behalf of the company were suspicious. The Learned Justices of Appeal had no evidence before them that any of the exceptions applied here. In the end it is clear that having concluded that Mr Wang was not an agent for the 1st Respondents and because the 1st Respondents were not in existence at the time, the rule in Turquand's case was therefore redundant. This

was clearly a misdirection by the Learned Justices of Appeal. As I have upheld Grounds 1 and 2, Ground 4 is also upheld.

**11 Ground E - That the Court of Appeal misapplied the principle of evidential burden of proof by wrongly holding that the burden was on the Appellant herein to call Mr Alieu Thorlu-Bangura to testify on his behalf.**

11.1 This ground arose because in his evidence, the Appellant stated that he used the facilities of Union Fishing Company including the letterhead of the said company. This company belonged to Mr Alieu Thorlu-Bangura, who he says was aware of this transaction. He stated in cross examination by Counsel for the 1st Respondent that he had the authority to act for Union Fishing Company. This the Respondents dispute. The Learned Trial Judge found that the Union Fishing Company was being used as the Appellant had no storage facilities. He went on to state that he *"found it strange for the 1st Defendant to contend that the Plaintiff failed to brief Mr Allieu Thorlu-Bangura to testify in his behalf"*. In his Statement of Case the 1st Respondent stated that the assertion that Union Fishing Company gave the Appellant permission to use his business name to apply to the Ministry of Fisheries for Mr David Wei and Mr Michael Wang *"was vehemently denied by the 1st Respondent and the Appellant failed to bring the owner of Union Fishing Company to testify on his behalf."*

11.2 The issue here is who bore the evidential burden? In other words, on whose shoulders did the responsibility lie to adduce sufficient evidence to establish that the Union Fishing Company did or did not grant permission for the Appellant to use the company? Having stated that he had the authority to use the company there was no necessity for corroboration of the Appellant's evidence. It was open to him to call Mr Thorlu-Bangura as a supporting witness if he wished. However, given that the Respondents and each of them disputed this, the burden then shifted to them to prove the contrary. This was a very serious allegation by the Respondents, which ought to have been founded on a factual evidential basis. It was therefore for them to adduce the cogent evidence required to challenge the Appellant's assertion. It is trite law to state that there is no property in a witness. There was nothing preventing the Respondents from calling Mr Thorlu-Bangura as a witness if he was capable of giving evidence in their favour. I am at a loss as to how they expected the Trial Judge to rule on the basis of their denial and nothing more. The court would require an evidential basis for disregarding the Appellant's evidence on this matter. As the Learned Trial Judge stated *"He who asserts must prove."* On the basis of the material before this

court I am driven to the conclusion that the Learned Justices of Appeal misdirected themselves.

**12 Ground F - The Court of Appeal failed to consider or adequately consider the facts and the applicable law by wrongly holding that the 2nd and 3rd Respondents herein had no knowledge of the agreement between the Appellant herein and the 1st Respondent and therefore there was no inducement of breach of contract.**

12.1 I have already held that the Learned Trial Judge properly concluded that there was a valid agreement between the Appellant and the 1st Respondent. The question now is whether the termination by the 1st Respondent was induced by the 2nd Respondent in favour of the 3rd Respondent. As per **Lumley v Gye (1853) 2 E & B 216**, a person who knowingly induces another to breach a contract with a third party is liable to that third party. I adopt the necessary ingredients of the tort of ~~including~~ inducing a breach of contract stated by Livesey Luke JSC in **Agip v Abass Ali and Anor. [CIV. APP.10/72]** Supreme Court 1971-1974 at page 1-67. These are:

"(i) Knowledge (actual or constructive) of the existence of the contract by the defendant and intention to induce its breach

(ii) that the defendant induced the breach of contract.

(iii) breach of the contract by the person induced

(iv) that the breach of contract was the necessary consequence of the inducement.

(v) that the plaintiff has suffered damage or at least that damage can be inferred from the circumstances."

12.2 I will extend knowledge of the contract to include "reckless indifference" as per **Michael Fielding Wolff v Trinity Logistics USA Inc [2018] EWCA Civ 2765.** The Appellant relied on the evidence adduced at trial that the 2nd and 3rd Respondents were fully aware of the agreement between the 1st Respondent and the Appellant. The 2nd Respondent testified that she was introduced to the 1st Respondent by the Appellant. The Learned Trial Judge found as a fact that the 2nd ~~Defendant~~ Respondent was aware of the relationship between the Appellant and the 1st Respondent through its representation by Mr Wang and that she was privy to discussions held at her house. Hon. Alimamy Kamara (PW2) also stated in evidence that he met Mr Wang who presented himself as representing a Chinese company bringing 8-10 trawlers to carry out the fishing

business which was the subject of their agreement. Mr Wang had also given him his complimentary card, though that was not produced to the court. He stated that Mr Wang told him that the Appellant and the Respondent had a contract and that the 2nd Respondent was fully aware of this agreement. In contrast both the 2nd Respondent and Mr Wang denied that there was any agreement between the Appellant and the 1st Respondent or that the 2nd Respondent was aware of any such agreement. It was also their evidence that at the time the 2nd and 3rd Respondents entered into an agreement with the 1st Respondent, there was no agreement between the Appellant and the 1st Respondent. Having determined that Mr Wang (DW1) was not credible the Learned Trial Judge rejected his evidence that at the time that he introduced the 2nd Respondent to the 1st Respondent there was no agreement between the Appellant and the 1st Respondent. The Learned Trial Judge also found it significant that Mr Wang accepted emails he sent and referred to the Appellant as his friend. Mr Wang also subsequently moved out of his hotel to a room at the 2nd Respondent's home apparently because of the cost of the hotel. Mr Wang then became the lodger or house guest of the 2nd Respondent who referred to him as a son (at page 816 VolI).

12.3 As previously stated much of this appeal, turns on the court's assessment of the findings of fact made by the trial judge and the inferences he drew from them. I have heard nothing that persuades me that he was not entitled to make the findings of fact that he did or to draw the inferences that he did from them. I regard it as highly improbable that the 2nd Respondent was not aware that there was an agreement between the Appellant and the 1st Respondent as suggested by the evidence. This view is reinforced by the fact that the 2nd Respondent in her evidence stated that she had been trading in fish since 1996 (Page 819 of the records). Exhibit Q1-12 shows that the 3rd Respondent, of which she, the Chief Executive, was incorporated in 1997. She was not only capable of providing what the 1st Respondent wanted but was experienced in and familiar with the practices of the industry. It is my view that knowledge and experience in the industry is a relevant consideration when deciding whether the 2nd Respondent had the requisite knowledge, for the tort of inducing a breach of contract, of the existence and the terms of the agreement between the Appellant and the 1st Respondent. Familiarity with the industry in the way that the 2nd Respondent was, means that the 2nd Respondent's reckless indifference about the existence of a contract between the Appellant and the 1st Respondent would suffice. It is not in my view necessary to prove actual knowledge in these circumstances.

12.4 Counsel for the 2nd and 3rd Respondents urged the court to accept that the tort requires a "deliberate inducement of breach." I do not accept this proposition. Where the tortfeasor is as in this case experienced and familiar with the practices of the industry, it is enough that the breach was a necessary consequence of his actions whether deliberate or reckless. I therefore have no difficultly in coming to the conclusion that the 2nd Respondent knew or ought to have known about the agreement between the Appellant and the 1st Respondent and that her actions induced the 1st Respondent to breach the agreement with the Appellant.

12.5 On the issue of inducing a breach of contract generally, although actionable, it cannot be used as a tool to stifle competition in business. The fact is that businesses will always look for a better deal, more profit margin, latest innovation and the like and must be free to switch partners. Where a contract with a previous supplier or partner exists (the third party), it is incumbent on the party seeking a new partner to ensure that the contract is lawfully terminated. There can be no liability for inducing a breach of contract if a contract has been lawfully terminated.

13 **Conclusion**

13.1 On the facts of this case there is no proper basis for interfering with the Trial Judge's findings of fact. I am satisficd that no circumstances have been identified which warrant a finding that the learned judge was wrong in his assessment of the credibility and reliability of the witnesses bearing in mind that he had the advantage of seeing, hearing and appraising each witness. It is settled law that only in exceptional cases will this court interfere with the trial court's evaluation of oral evidence. This is not such a case. It is clear on a proper analysis of all the material placed before this court that the learned trial judge did not make any impermissible findings of fact, nor did he misapply the law or fall into error. I note the Learned Justice Allieu's assessment of the Respondents in his judgement. *He stated as follows "....it is my candid opinion that the Respondent was entangled in a web of deceit in which smart individuals used their wits to transact business with the 1st Appellant thereby completely leaving him in cold. At the end of it all those individuals turned against him and debunked his evidence."* This clearly shows that even he could not rely on the credibility of their evidence.

**14 <u>Remedies</u>**

14.1 The Appellants claim was for the following:

i. Specific Performance of the oral agreement entered into between the Plaintiff and the 1st Defendant
ii. Against the 1st Defendant recovery of US$126,000 being transportation, agency and promoter fees and other incidentals personal costs incurred by the Plaintiff as agent and "promoter" of the 1st Defendant for engaging into discussions and negotiations with the Ministry of Fisheries and Marine Resources in Sierra Leone, the Chinese authorities in Sierra Leone and other key stakeholders from November 2013 to the month of February 2013, all of which said discussion and negotiations led up to the approval of the grant of a loan to the 1st Defendant by the Government of the People's Republic of China for the construction of eight (8) fishing vessels which the Plaintiff and the 1st Defendant had agreed to setup a fishing business in Sierra Leone.
iii. Against the 1st, 2nd and 3rd Defendants, an account of proceeds of sale of frozen and other fish obtained during fishing activities in Sierra Leone with the eight (8) vessels referred to in 5 above and which are now in the shores of Sierra Leone registered as "Shengai 1-8"
iv. Against the 1st, 2nd and 3rd Defendants, recovery of the value of 26,000 cartoons of fish (6,000 of which weighed 25 kilograms and 20,600 of which weighed 20 kilograms) sold by the 2nd and 3rd Defendants in the "local market" of Sierra Leone between the period 14th July 2015 to 20th July 2015.
v. Against the 1st, 2nd and 3rd Defendants, recovery of the value of the total amount of cartoons of fish obtained from fishing activities using the 1st Defendants fishing vessels referred to above from the date of this Writ of Summons until judgment.
vi. Against the 2nd Defendant, damages for inducing a breach of contract entered into between the Plaintiff and the 1st Defendant in the year 2013 and as referred to above.

14.2 The Learned Trial Judge made the following orders:

i. Specific Performance against the 1st Defendant of the oral agreement entered into between the Plaintiff and the 1st Defendant made in the year 2013.
ii. Against the 1st Defendant recovery of US$126,000 being agency and promoter fees incurred by the Plaintiff as agent and "promoter" of the 1st Defendant for engaging into discussions and negotiations with the Ministry of Fisheries and Marine Resources in Sierra Leone

iii. That the 2nd and 3rd Defendants give account of the proceeds of sale of the frozen fish obtained during fishing activities in Sierra Leone with the 8 vessels referred to as Shengai 1, 2, 3, 4 ,5 6, 7, 8.

iv. Against the 2nd and 3rd Defendants recovery of 26,000 cartoons of fish (6000 of which weighed 25 kilograms and 20,600 of which weighed 20 kilograms) sold by the 2nd and 3rd Defendants in the "local market" of Sierra Leone between the period 14th July 2015 to 20th July 2015.

v. Against the 2nd and 3rd Defendants, recovery of the value of the total amount of cartoons of fish obtained from fishing activities using the 1st Defendants fishing vessels referred to above until payment.

vi. Against the 2nd Defendant, damages for inducing a breach of contract entered into between the Plaintiff and the 1st Defendant in the year 2013 assessed at US$120,000.

vii. US$10,000 and US$20,000 as Special Damages are refused

viii. Interest on the amount of US$126,000 pursuant to section 4 of the Law Reform (Miscellaneous Provision) Act Cap 19 of the Laws of Sierra Leone to be assessed

ix. Costs to the Plaintiff's Solicitors if not agreed to be taxed.

14.3 I will deal with each order separately:

14.3.1 **Specific Performance**: It is settled practice that orders which require a party to carry on a business should not be made in circumstances which would mean forcing two parties to work together. A court cannot order specific performance compelling parties in dispute to carry on a business together when the working relationship has self-evidently irretrievably broken down. It is not the function of the court to act as a supervisor of a properly run business. A distinction must be made between orders to "carry on an activity" and "orders to achieve a result" as per Lord Hoffman in **Co-operative Insurance Society Ltd v Argyll Stores (Holdings) Ltd [1998] A.C.1**. "With orders to achieve result the court only has to examine the finished work." In addition to the difficulties of supervision of orders to carry on activity, Lord Hoffman also referred to a number of factors such as *"heavy handed nature of the enforcement mechanism by proceedings for contempt....."*. For this reason, specific performance is not an adequate remedy in this case and is therefore set aside.

14.3.2 The question then is whether this is a case in which we should consider whether damages would be appropriate in lieu of specific performance? Where a principal (here, the 1st Respondent) breaches a contract with his agent (the Appellant herein), the agent can sue for the

commission owed to him, if the work is completed or is due in any event, sue for the value of the services already rendered or bring an action for damages. The measure of damages would be what the agent would reasonably have been expected to earn had the contract not been terminated (see McGregor on Damages 16 Ed at para 1255). Damages are designed to compensate the victim for their actual loss as a result of the wrongdoer's breach rather than to punish the wrongdoer. The Appellant did set out his claim of actual loss and it is not for this court to speculate. What we do know is that the 3rd Respondent entered into a Cooperation Agreement dated 1st April 2015 with the 1st Respondent. (Exhibit M1-6). Pursuant to Clause 6 of that agreement the 1st Respondent was to pay $500.00 per vessel per month to the 3rd Respondent as Agency Fee. This Agreement was in force until the 1st Respondent executed a Notice of Termination of Agent Cooperation Relationship dated 5th October 2015 (Exhibit BB1-3). This money totalling $24,000 should have been paid to the Appellant. I therefore award the Appellant the sum of $24,000 as damages in lieu of Specific Performance.

14.3.3 **US$126,000 for promoter and agency fees**: This amount stated is as pleaded in the particulars of Special Damage claimed in the Appellant's Writ of Summons and his witness statement. The breakdown is as follows: Promoter and Agency Fees at the rate of US$6000 per month = US$96,000; Transportation for the months November 2013 – February 2015 =US$10,000; Miscellaneous expenses =US$20,000. There are two difficulties I find with this amount. Firstly, the calculation totalling US$126,000 is wrong because the Learned Trial Judge disallowed the claims for transportation and Miscellaneous expenses. In his judgment he stated *"The Plaintiff has failed also to adduce evidence in relation to the expenses incurred under the rubric Miscellaneous expenses amounting to $20,000. The Plaintiff has not adduced evidence in relation to how much he spent on transport and other expenses. This court is constrained to award the amount as miscellaneous expenses to wit: $20,000"*. Further he made the following order: *"US$10,000 and US$20,000 as Special Damages are refused."* Having refused a total of US$30,000, the Learned Trial Judge clearly erroneously included it in the award of US$ 126,000. On the basis of his ruling the amount should have been US$96,000.

14.3.4 However, the second issue is the rate used for the calculation of the amount claimed for promoter and agency fees. In his writ of summons it is US$6000 per month totalling US$96,000. This is the same amount stated in his witness statement. But in his examination in chief, (page 795 of the records) the Appellant said the rate was US$500 per boat for

every month totalling US$4,000 per month. Similarly, under cross examination, by Counsel for the 2nd and 3rd Respondents (page 801) he stated *"We agreed $500 as fee per month."* I can find no record of any attempt to correct this anomaly between his writ of summons, witness statement and his oral evidence. I am therefore driven to the conclusion that the figure is US$500 per boat (x 8 boats) per month (x 16 months), giving a total of US$64,000.00 and this is the award that the Appellant is entitled to under this head of damage.

14.3.5 **Sale of the frozen fish obtained during fishing activities in Sierra Leone with the 8 vessels**: This is ordinarily recoverable. The question is by whom is it recoverable and at what percentage. By the Appellant's own evidence, the agreement was for a local company to be set up through which the fishing activities would be carried out. The Appellant tendered in evidence draft Articles of Association (Exhibit H1-3) of the proposed company Lifeboat Fishing Company ("Lifeboat"). This was a special purpose vehicle which was to be incorporated for the contract to be performed and in which the Appellant's proposed shareholding was to be 35%. That being the case, it stands to reason that if the contract had been performed as agreed, the proceeds of all fishing activities due to him would have in fact been due to the company "Lifeboat" and he would only have been entitled to dividend commensurate to his shareholding. I therefore conclude that he was not entitled to this in his personal capacity.

14.3.6 **Against the 2nd and 3rd Defendants recovery of 26,000 cartoons of fish (6000 of which weighed 26 kilograms and 20,600 of which weighed 20 kilograms):** This was pleaded by the Appellant. This loss flowing as it does from the breach is recoverable, but as stated above through the special purpose vehicle "Lifeboat" that was to be created. No evidence was led in court as to the true or estimated value of the 26,000 cartoons of fish. It is not for the court to play a guessing game in the absence of guidance through evidence of the value of the 26,000 cartoons of fish.

14.3.7 **Against the 2nd and 3rd Defendants, recovery of the value of the total amount of cartoons of fish**: It is clear that the beneficiary would not have been the Appellant in his personal capacity and for this reason this order should be set aside.

14.3.8 Having set aside the awards relating to the proceeds of all fishing activities including the 26,000 cartoons, I agree with My Learned Brother Roberts JSC, that the Appellant is entitled to some part of these proceeds. As stated above, this contract was to be carried out through the local company Lifeboat in which the Appellant was to be a 35% shareholder. The proceeds would therefore have gone to the Company and not to the Appellant directly. The Appellant would then have been

entitled to a share of the dividend paid out of the profits. I therefore concur that upon the 2nd and 3rd Respondents rendering an account of the proceeds of sale, the Appellant should be entitled to 35% of the profits of the sale of the frozen fish and all fishing activities using the 8 vessels including the 26, 000 cartoons of fish all from which the 2nd and 3rd Respondents benefitted from.

14.3.9 **Award of US$120,000.00 against the 2nd Respondent for inducing a breach of the contract between the Appellant and the 1st Respondent**: The Appellant is entitled to an award of damages for the inducement of the breach. However, I see no basis for the sum awarded by the Learned Trial Judge. It was not specifically pleaded by the Appellant nor did he give evidence capable of justifying that amount of money when he was in the witness box. The Learned Trial Judge also did not proffer reasons for awarding this amount of money. On the available facts, it is difficult to envisage any reasons that justify such an award and in the absence of reasons it is impossible to understand how it was arrived at. The award is manifestly speculative. As such I am driven to the conclusion that it is either erroneous, excessive or based on a wrong legal premise. Either way there is sufficient reason for this court to interfere with the award. The award of US$120,000.00 should therefore be set aside.

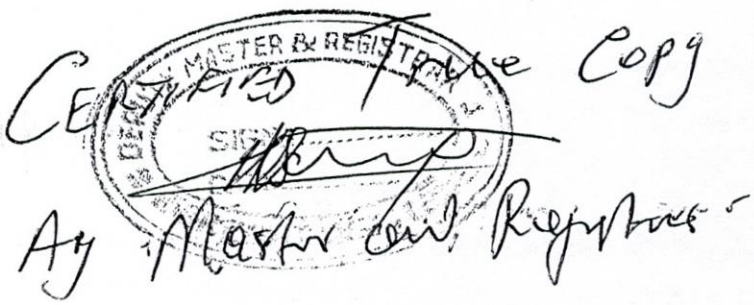
14.3.10 That said, the Appellant's claim for damages against the 2nd and 3rd Respondents is based on his expectation. That is to say what he expects he would have derived from the contract had the 2nd Respondent not induced the breach of the contract. The genesis of the law of inducing a breach of contract can be traced to the case of **Lumley v Gye** *supra.* The court held that where a third party interferes, either intentionally and or maliciously with the performance of the contract, they are liable for any loss (in the form of damages) that arises from the interference, either individually or jointly. Neville J in **Goldsoll v Goldman [1914] 2 Ch 603** said "*damage may be inferred that is to say, that if the breach which has been procured by the defendant has been such as must in the ordinary course of business inflict damage upon the plaintiff, then the plaintiff may succeed without proof of any particular damage which has been occasioned him*". The type of damage that may be inferred from this tort, arising as it does from business transactions, would be loss of profits, commission or salary. Such loss may be inferred from the terms of the contract breached.

14.3.11 The question then is what damage could be inferred from the breach of the contract between the Appellant and the 1st Respondent induced by the 2nd Respondent in favour of the 3rd Respondent. Clearly the Appellant has lost his agency fees and the possibility of a share in the profit of the fishing activities contemplated in the contract. However,

the Appellant has already been awarded damages for his loss of his Agency fees against the 1st Respondent and therefore any award of damages under this head will result in double recovery, albeit against different Respondents. He should therefore recover his share of the profits of the fishing activities as ordered above. This is profits he would have been entitled to but for the 2nd Respondent's inducement.

15. All sums ordered shall be payable in Leones as per the judgement of My Learned Brother E.E. Roberts JSC.

Hon. Justice Glenna Thompson JSC.

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SC. CIV. APP. 1/2018
IN THE SUPREME COURT OF SIERRA LEONE

Between: MOHAMED BANGURA - Appellant

And :DALIAN SHENGHAI OCEAN FISHING CO.
(The owners and or persons interested
in the vessels Shenghai 1-8) - 1st Respondent

ABIE ARUNA KOROMA - 2nd Respondent

MONZA FISHING COMPANY - 3rd Respondent

**CORAM**
Hon. Mr. JUSTICE EKUE. ROBERTS JSC
Hon. Ms. JUSTICE GLENNA THOMPSON JSC
Hon. Mr. JUSTICE ALLAN B. HALLOWAY JSC
Hon. Mr. JUSTICE M. SENGU KOROMA JSC
Hon. Mr. JUSTICE ELDRED TAYLOR-KAMARA JA

**COUNSEL**
E.T. KOROMA ESQ. for the Appellant
U. KOROMA ESQ. for the 1st Respondent
A.S. SESAY ESQ. for the 2nd and the 3rd Respondents

**JUDGEMENTDELIVEREDTHIS 29thDAYOF November 2019**

MOHAMED BANGURA the Appellant herein,being aggrieved by and dissatisfied with the majorityDecision/Judgement of the Court of Appeal, delivered by the **Hon. Mr JUSTICE J.B. ALLIEU JA** on the 28th December 2017, hereby on the 15th January 2018 appeal the said Decision/Judgement on the following grounds:

A. That the Court of Appeal having failed to draw the proper and or correct inferences from the facts established at the trial, erred in law and wrongly overturned the decision of the Learned Trial Judge by holding that there was no oral agreement between the Appellant herein and the 1st Respondent herein, as MESSRS WANG and WEI were not agents of the 1st Respondent.

B. That the Court of Appeal misdirected itself as to the law when it overturned the decision of the Trial Judge by holding that the 1st Respondent herein, could not have entered into a contract nor could it have an agency relationship with third parties prior to its incorporation.

C. That the Court of Appeal, in overturning the decision of the Trial Judge erred in law and wrongly applied the principles set out in the case between **CHRISTIAN OGOO** and **HUAWEI TECHNOLOGIES, CELLCOM TELECOMMUNICATIONS** dated 3rd February 2012 and the case between **HUAWEI TECHNOLOGIES & COMIUM (SL) LTD.** and **COMIUM SIERRA LEONE** dated 9th July 2014, in that the said cases were clearly distinguishablefrom the case before the Court.

D. That the Court of Appeal erred in law and misapplied the principles laid down in the case between **ROYAL BRITISH BANK** and **TURGUAND** (1865) 6E & B 136 E.R. 866, by holding that the principles enunciated in the referred case were inapplicable, simple because there was no agency relationship.

E. That the Court of Appeal misapplied the principle of evidential burden of proof by wrongly holding that the burden was on the Appellant herein to call MR ALLIEU THORLU BANGURA to testify on his, the Appellant's behalf.

F. That the Court of Appeal failed to consider or adequately consider the facts and the applicable law by wrongly holding that the 2nd and the 3rd Respondents herein had no knowledge of the agreement between the Appellant herein and the 1st Respondent herein and there was therefore no inducement of breach of contract.

G. That the Judgement of the Court of Appeal is against the weightof evidence.

Wherefore, MOHAMED BANGURA, the Appellant herein pray that the Appeal herein be allowed and that the majority Decision/Judgement of the Court of Appeal delivered by the **Hon. Mr JUSTICE J.B. ALLIEU JA** on the 28th December 2017 be overturned and for the costs of the appeal herein.

The majority Decision/Judgement of the Court of Appeal delivered by the **Hon. Mr. JUSTICE J.B. ALLIEU JA** on the 28th December 2017 itself upheld an appeal against the Decision/Judgement of the High Court delivered by the

**Hon. Mr. JUSTICE A.S. SESAY JA** (as he then was) delivered on the 13th February 2017,who **ADJUDGED** and **ORDERED** as follows:

1. A declaration that the Appellant herein is the sole agent and promoter of the 1st Respondent herein in respect of all fishing activities in Sierra Leone pursuant to an oral agreement entered into between them in 2013.

2. That specific performance of the oral agreement entered into between the said Appellant and the 1st Respondent herein in 2013 is ordered hereby.

3. That the Appellant herein recovers from the 1st Respondent herein, the sum of One Hundred and Twenty Six Thousand United States Dollars (US$126,000.00)being, promoter and agency fees incurred by the said Appellant as agent and promoter of the 1st Respondent herein, for engaging into discussions and negotiations with the Ministry of Fisheries and Marine Resources in Sierra Leone.

4. That the Appellant herein, recovers from the 2nd Respondent herein, damages for inducing a breach of contract entered into between the said Appellant and the 1st Respondent herein in 2013, assessed at One Hundred and TwentyThousand United States Dollars (US$120,000.00).

5. That the 2nd and the 3rd Respondents herein, are hereby ordered to account for the proceeds of sale of frozen and other fish obtained during fishing activities in Sierra Leone with the 8 vessels referred to as Shenghai 1, 2, 3, 4, 5, 6, 7 and 8.

6. That the Appellant herein recovers from the 2nd and the 3rd Respondents hereinthe value of the total amount of cartoons of fish obtained from fishing activities,using the 1st Respondent's fishing vessel referred to above, until payment.

7. That the Appellant herein recovers from the 2nd and the 3rd Respondents herein the value of Twenty Six Thousand (26,600) cartoons of fish, six thousand (6,000) of which weighed twenty five (25) kilograms, sold by the 2nd and the 3rd Respondents in the local market of Sierra Leone between the period 14th July 2015 to the 20th July 2015.

8. Interest pursuant to Section 4 of the **LAW REFORM (MISCELLANEOUS PROVISION) ACT CHAPTER 19 of the LAWS OF SIERRA LEONE** is hereby awarded on the sum of One Hundred and Twenty-Six Thousand United States Dollars (US$126,000.00) the same to be assessed.

9. Costs to the Plaintiff if not agreed to be taxed.

The orders aforesaid were granted further to the trial of an action at the High Court in which the principal issues for determination involved:

1. Whether the Appellant herein, is the sole agent and promoter of the 1st Respondent herein, in respect of fishing activities in Sierra Leone pursuant to an oral agreement between the Appellant herein and the 1st Respondent herein.

2. Whether the 1st Respondent herein, was in breach of the oral agreement aforesaid between the Appellant herein and the 1st Respondent herein.

3. Whether the breach of the oral agreement, that the Appellant herein, is the sole agent and promoter of the 1st Respondent herein, in respect of fishing activities in Sierra Leone was induced by the 2nd and the 3rd Respondents herein.

The issue for determination aforesaid arose out of the Appellant's claim at the High Court as follows:

1. A declaration that the Appellant is the sole promoter and agent of the 1st Respondent herein in respect of all fishing activities in Sierra Leone pursuant to an oral agreement entered into between the Appellant herein and the 1st Respondent in the year 2013.

2. Specific Performance of the oral agreement aforesaid.

3. Recovery of the sum of One Hundred and Twenty-Six Thousand United States Dollars (US$126,000.00) from the 1st Respondent herein, being transportation, agency and promoter's fees and other incidental presumed cost incurred by the Appellant herein as promoter and agent of the 1st Respondent herein.

4. An injunction restraining the 1st Respondent whether by itself, its servants, agents or privies from carrying out fishing activities in Sierra Leone with the 2nd and the 3rd Respondents herein to the exclusion of the Appellant herein.

5. An injunction restraining the 2nd and the 3rd Respondents herein, from engaging in any fishing business and or activity with the 1st Respondent whether by themselves, their servants, agents or privies.

6. Recovery from the 2nd and the 3rd Respondents herein,of the value of Twenty Six Thousand Six Hundred (26,600) cartons of fish,Six Thousand (6,000) of which weighed Twenty Five (25) kilograms and Twenty Thousand, Six Hundred (20,600) of which weighed twenty (20) kilograms sold by the 2nd and the 3rd Respondents herein, in the local markets of Sierra Leone between the period 14th July 2015 to 20th July 2015.

7. An account of the proceeds of the frozen and other fish obtained during fishing activities in Sierra Leone with the eight (8) fishing vessel brought into Sierra Leone by the 1st Respondent herein.

8. Recovery of the value of the total amount of cartons of fish obtained from fishing activities aforesaid from date of the writ of summons until judgement.

9. Damages for inducing the breach of contract entered into between the Appellant herein and the 1st Respondent herein.

10. Any further or other relief(s) as this court may deem fit and just.

11. *Costs*

It is evident that from the Decision/Judgement of the Learned Trial Judge the **Hon. Mr JUSTICE A.S SESAY JA** (as he then was) dated 13th February 2017 and the orders granted aforesaid, the issues outlined above, were determined in favour of the Appellant herein, the same which prompted an appeal against the Decision/Judgement aforesaid,the majorityDecision/Judgement of which, delivered by the **Hon. Mr. JUSTICE J.B. ALLIEU JA** is now being appealed against and under consideration.

E.T. KOROMA ESQ of Counsel for the Appellants herein, proceeded to argue together,Grounds A, B and D of the appeal herein, as contained in the Appellant's statement of case dated 25th May 2018 and filed herein. Grounds A, B and D aforesaid concerns the majority Decision/Judgement of the **Hon. Mr. JUSTICE J.B. ALLIEU JA** in overturning the Decision/Judgement of the Learned Trial Judge by holding, that there was no oral agreement between the Appellant herein and the 1st Respondent herein as MESSRSWANGand WEI were not the agents of the 1st Respondent herein, in overturning the Decision/Judgement of the Learned Trial Judge, holding that the 1st Respondent herein, could not have entered into a contract nor have an agency relationship with third parties prior to its incorporation andholding that the principle enunciated in the case between **BRITISH BANK** and **TURGUAND** (1865) 6E &B 136 E.R. 886 was inapplicable, simply because there was no agency relationship.

Clearly, in determining the issues concerned with and associated with Grounds A,B and D aforesaid, the concept of a relationship which in law is termed an agency relationship, is prevalent. In the 4th Edition of **FRIDMAN'S LAW OF AGENCY** by **G.H.L. FRIDMAN** on **'THE DEFINITION OF AGENCY'** under the rubric **'A tentative definition',** it is stipulated at page 8 as follows:

***'Though it is true that agency does not allow of a brief description and the whole law cannot be compressed into a sentence that is both short and significant, this does not render either impossible or useless an attempt to summarise succinctly what is involved in the concept of agency. Such a summary can provide a guide of the features which distinguishes agency from other legal relationships. A brief description of what agency is and what it involves, is the relationship that exists between two persons when one called the 'agent' is considered in law to represent the other called, the 'principal' in such a way as to be able to affect the principal's legal position in respect of strangers to the relationship, by the making of contracts or the disposition of property'.***

It is obvious that in so far as Grounds A, B and D are concerned, the most important actors include, MESSRS MICHAEL WANG and DAVID WEI of the first part, DALIAN SHENGHAI OCEAN FISHING CO., the 1stRespondent herein of the second part and MOHAMED BANGURA the Appellant herein of the third part. It is initially pertinent, that the relationship existing between and amongst them be considered.Firstly, there is need to consider the relationship which existed between the 1st Respondent herein, on the one hand and MESSRS MICHAEL WANG and DAVID WEI on the other hand, ifat all.

Secondly there is need to consider the relationship existing between MESSRS MICHAEL WANG and DAVID WEI on the one hand and the Appellant herein on the other hand, if at all, and thirdly there is need to consider the relationship existing between the Appellant herein on the one hand and the 1st Respondent herein on the other hand, if at all.

It cannot be disputed, that obviously the determination of whether there exists between the actors named aforesaid, the relationship in law which is termed an agency relationship, the evidence adduced at the High Court ought to have been evaluated and analysed in its entirety, first by the High Court and subsequently re-evaluated by the Court of Appeal. I am inclined to uphold the decision in the Nigerian case between **ELIZABETH IFEYINWA FRANCIS** and **MR MUSTAPHA SADIG & ALHAJI MUSA JA'AFAR YAR ADUA**, suit No. FCT/HC/CV/2610/10, that:

***'it is the position of the law, that for the Courts to arrive at any just decision,it has to evaluate the totality of the evidence and testimonies adduced'.***

Clearly, the matter herein is an appeal against the majority decision of the Court of Appeal delivered by the **Hon. Mr. JUSTICE J.B. ALLIEU JA** who, in his Judgement delivered aforesaid, as contained in pages 1028 to 1030 of the records of appeal herein, statedin summary and held as follows:

***'that there was no oral agreement between the Appellant herein and the 1st Respondent herein as MESSRS WANG and WEI were not the agents of the 1st Respondent herein'.***

Clearly, the majorityDecision/Judgement of the Court of Appeal aforesaid, ought to have been arrived at, after it had re-evaluated the evidence which were adduced at the High Court during the trial of the matter herein, since no evidence was adduced at the Court of Appeal itself. Likewise, this Court would only be able to reach a decision regarding the determination of whether there is in existence, an agency relationship upholding or overturning the majority Decision/Judgement of the Court of Appeal aforesaid by considering, the re-evaluated evidence adduced at the High Court by the Court of Appeal. This Court finds itself extremely constrained to make a determination of the above, as the Court of Appeal itself failed to show how it re-evaluated the evidence adduced at the High Court, for it to arrive at its decision, that there was no oral agreement between the Appellant and the 1st Respondent herein, as MESSRS WANG and WEI were not the agents of the 1st Respondent herein. In this

regard the submission as contained in Ground A of theNotice of Appeal herein, that the Court of Appeal, failed to draw the proper and or correct inferences from the facts established at the trial, to overturn the decision of the Learned Trial Judge by holding that there was no oral agreement between the Appellant herein and the 1st Respondent herein, as MESSRS WANG and WEI were not the agents of the 1st Respondent herein, is hereby upheld. Obviously, for this Court to consider whether or not the decision aforesaid, was wrongly overturned by the Court of Appeal because of its failure to draw the proper and or correct inferences from its facts established at the trial, itself would have to re-evaluate the evidence adduced before the trial Judge at the High Court.

Found at pages 638 to 639, pages 690 to 693 and pages 793 to 802, of the records of appeal herein, MOHAMED BANGURA, the Appellant herein who was PW1 at the High Court testified that in November 2013, he was summoned by MR. MICHAEL WANG who introduced him to MR. DAVID WEI, as his Chinese business counterpart representing DALIAN SHENGHAI OCEAN FISHING COMPANY, the 1stRespondent herein, who were interested in engaging in fishing activities in Sierra Leone and were looking for a Sierra Leonean with the requisite knowledge of the fishing industry to partner with and that he had recommended him, the said Appellant to the 1st Respondent herein and for him to act as promoter and agent of the 1st Respondent in Sierra Leone. He testified that the said MR. MICHAEL WANG informed him that the 1st Respondent herein, had applied for a loan from the Government of the People's Republic of China for the construction of Ten (10) fishing vessels, but as a condition precedent to the grant of the said loan the 1st Respondent must prove to the Government of China that it would acquire the requisite assurance from the Ministry of Fisheries and Marine Resources in Sierra Leone and that the 1st Respondent must prove that the necessary fishing infrastructure such as storage facilities etc. were readily available to the 1st Respondent in Sierra Leone before the referred loan could be approved. He testified that since the said MR. MICHAEL WANG knew fully well that he did not have such facilities, he was mandated to go in search of a company or individual with the requisite fishing and storage facilities and to make the necessary arrangements for the use of the facilities so that the loan referred to above could be approved. He testified that he carried out what was agreed upon above, using a company called UNION FISHING 2007COMPANY LTD the majority shareholder of the said company,MR ALIEUTHORLU-BANGURA being his friend. He testified that both MESSRS WANG and WEI agreed to the use of UNION FISHING 2007 COMPANY LTD because of its available security, jetty and cold room.

PW1, MOHAMED BANGURA, the Appellant herein,testified that he commenced negotiations and discussions with the Ministry of Fisheries and Marine Resources in Sierra Leone and tendered in evidence,Exhibits 'A' and 'B' which were documents tendered in evidence at the trial of this matter at the High Court,found at pages 669 and 670 of the records of appeal herein.Exhibit 'A' is a letter from UNION FISHING 2007 COMPANY LTD., written by the Appellant herein dated 17th January 2014 addressed to the Director of Fisheries in the Ministry of Fisheries and Marine Resources, on the subject **'Request for permission for fishing vessels to participate in the fishing industry in Sierra Leone'**, the said Appellant informing the Director that he is in partnership with DALIAN SHENGHAI OCEAN FISING COMPANY,based in China who are interested in sea food harvest processing, import and export in the light of which, they intend to bring in and operate Ten (10) industrial fishing vessels in Sierra Leone,kindly requesting for clearance of these vessels to enter the port of Sierra Leone, to observe the necessary procedures to obtain licenses to carry out fishing. Exhibit 'B' which is dated 17th January 2014 is a response to Exhibit 'A',from the Director of Fisheries stating that whereas the Ministry of Fisheries and Marine Resources do recognise the Appellants partnership with DALIAN SHENGHAI OCEAN FISHING COMPANY and the contribution such relationship will make to the fishing industry, he wishes to inform them, that before the vessels are issued with the entry clearance, they should submit detailed characteristics of each vessel.

PW1, MOHAMED BANGURA the Appellant herein,testified that both Exhibits 'A' and 'B' were taken to MESSRS WANG and WEI. He testified that three (3) days later, he was informed by MR DAVID WEI that he would be proceeding to China. He testified that five (5) days after he left, MR DAVID WEI called him on his phone and informed him that the 1st Respondent had been shown Exhibits 'A' and 'B' which had been taken to the Bank to secure the loan from the Chinese Government for the construction of the Ten (10) fishing vessels. He testified that MR DAVID WEI told him that he would be receiving a call from the Chinese Embassy in Sierra Leone. He testified that indeed he received a call from the Chinese Embassy in Sierra Leone who asked him to attend an interview with representatives of the Chinese Economic and Commercial Bureau in the Embassy. He testified that he attended the said interview and answered questions about his relationship with DALIAN SHENGHAI OCEAN FISHING COMPANY, about UNION FISHING 2007 CO. LTD and its facilities, including a cold room, jetty and office space and agreed to let them inspect these facilities which they will do in three (3) days. He testified that he took the representatives of the Chinese Economic and Commercial Bureau on a conducted tour of the fishing facilities of UNION

FISHING 2007 CO. LTD., in consequence upon which, the Chinese Economic and Commercial Bureau indicated that it would initially approve the loan aforesaid, granted to the 1st Respondent, forthe construction of Six (6) vessels which he informed MR DAVID WEI about and who was unhappy at the number of vessels, prevailing on me that I should take steps to have it increased to Ten (10). He testified that on the intervention of the Ministry of Fisheries and Marine Resources, and after attending a second interview with the representatives of the Chinese Economic and Commercial Bureau, the number of approved vessels tobe constructed was increased to Eight (8). He testified that he informed MESSRS WANG and WEI about the precise specifications of the vessels which he had informed the Ministry about to be constructed, for the carrying out of the referred fishing business in Sierra Leone. He testified that two days later the Ministry of Fisheries called him and showed him documents with a forwarding letter approving the entry of Eight (8) fishing vessels to participate in the fishing industry in Sierra Leone which said letter and documents, they had forwarded to the Chinese Embassy in Sierra Leone.

PW1, MOHAMED BANGURA, the Appellant herein, testified that it was also orally agreed between himself and MESSRS WANG and WEI acting for and on behalf of the 1st Respondent herein, that once he had made the necessary arrangements aforesaid for the 1st Respondent and the loan approved and granted for the 1st Respondent to construct the vessels, upon the arrival of the vessels in Sierra Leone waters, the different species of fishes normally sold in the local markets of Sierra Leone and which are obtained during the fishing process at every point in time would be handed over to him which he will sell and retain the proceeds of the sale whilst all the other species of fishes sold in international markets would be retained by the 1st Respondent herein and that a company would be incorporated in Sierra Leone through which the Appellant himself and the 1st Respondent herein, would carry out the referred fishing activities aforesaid himself who shall hold Thirty Five (35) percent of the shares in the said company. He testified also that MESSRS WANG and WEI agreed that the 1st Respondent shall pay him agency and promoters fees at the rate of Five Hundred United States Dollars (US$500.00) for each boat monthly, totalling the sum of Four Thousand United States Dollars (US$4,000.00) monthly.

Under cross examination of him at the High Court by U. KOROMA ESQ. of Counsel for the 1st Respondent herein, MOHAMED BANGURA, the Appellant herein, who was PW1 at the High Court testified that he had the authority to act for UNION FISHING 2007 CO. LTD. He agreed that UNION FISHING

2007 CO.LTD belongs to MR ALIEU THORLU-BANGURA. He testified that together with MESSRS WANG and WEI they had a meeting with MR ALIEU THORLU-BANGURA at his house and that it was himself who took both MESSRS WANG and WEI to the house of MR ALIEU THORLU-BANGURA.

Under cross examination of him at the High Court by S. BAKARR MS of Counsel for the 2nd and the 3rd Respondents herein, MOHAMED BANGURA, the Appellant herein who was PW1 at the High Court testified that he does not work for UNION FISHING 2007 CO. LTD., but used them because of the facilities they had. He testified that it was MR ALIEU THORLU-BANGURA himself who gave him the authority to use the letterhead of UNION FISHING 2007 CO. LTD. He testified that one MR SALIEU O. JALLOH witnessed the transaction between himself of the one part and MESSRS WANG and WEI of the other part. He testified that MR DAVID WEI was the representative of the 1st Respondent herein, but MR MICHAEL WANG was also a representative of the 1stRespondent herein, which is a company incorporated in China, the said MR MICHAEL WANG who stated his position in DALIAN SHENGHAI OCEAN FISHING CO., the 1stRespondent herein as Vice President. He testified that MR MICHAEL WANG gave him his complementary card, which was tendered in evidence and marked Exhibit 'J'. He testified that the sole agency agreement arrived at between himself of the one part and MESSRS WANG and WEI of the other part was to commence on the arrival of the fishing vessels in Sierra Leone and that he was told that the said fishing vessels would arrive in Sierra Leone within One (1) year and Six (6) months from the date of Exhibits 'A' and 'B' aforesaid.

From the testimony above and in particular the cross examination of the Appellant herein, the fact was established that the introduction of UNION FISHING 2007 CO. LTD.and MR. ALIEU THORLU-BANGURA, into all what transpired between the relevant actors herein took place after the meeting between the Appellant herein on the one hand and MESSRS WANG and WEI on the other hand and not before as seemed to have been insinuated by Counsel who cross examined the said Appellant.

It is the case,that there seemed to be and I find no evidence whatsoever contradicting the fact that indeed there was a meeting between the Appellant on the one hand and MESSRS WANG and WEI on the other hand. It is the case further, that there seemed to be and I find no evidence whatsoever, contradicting the fact that it was after the meeting aforesaid that Exhibits 'A' and 'B' were done, find no evidence whatsoever, contradicting the fact that it was after Exhibits 'A' and 'B' were done, that MR DAVID WEI allegedly

travelled to China, find no evidence whatsoever, that it was after MR DAVID WEI had allegedly travelled to China and whilst allegedly there that he called the Appellant herein and informed him that he shall be expecting a call from the Chinese Embassy. It is the case also, that there seemed to be and I find no evidence whatsoever, contradicting the fact that indeed the Appellant herein received a call from the Chinese Embassy in Sierra Leone, the said Appellant who thereafter led a team of representatives of the Chinese Economic and CommercialBureau in the Embassy to inspect the facilities of UNION FISHING2007 CO. LTD, find no evidence whatsoever contradicting the fact that it was after the inspection of the facilities of UNION FISHING 2007 CO. LTD.,by the representatives of the Chinese Economic and Commercial Bureau in the Chinese Embassy, that a loan to the 1st Respondent herein for the construction of Six (6) fishing vessels were approved, find no evidence whatsoever contradicting the fact that it was through the efforts made by the Appellant herein by getting the Ministry of Fisheries and Marine Resources to interfere that got the representatives of the Chinese Economic and Commercial Bureau in the Chinese Embassy to approve an increase for the construction of Six (6) fishing vessels to Eight (8). It is the case that there seemed to be and I find no evidence whatsoever, contradicting the fact that it was subsequent to all the above, that led to the Ministry of Fisheries and Marine Resources granting approval for the entry of Eight (8) fishing vessels owned by the 1st Respondent herein, to participate in the fishing industry in Sierra Leone.I hold the view that with such uncontrovertedevidence, there was indeed an agreement arrived at between the Appellant herein on the one hand and MESSRS WANG and WEI on the other hand. I find that the existence of the agreement aforesaid was substantially corroborated by the testimony of the witnesses who testified for and on behalf of the Appellantat the High Court.

Found at pages 694 to 696 and pages 803 to 807 of the records of appeal herein, HON.MR. AMARA AKALIE KAMARA who was PW2 at the High Court and who testified for and on behalf of the Appellant herein and in particular on issues regarding the claims made by the said Appellant against the 2nd and the 3rd Respondents herein, testified that when a report was made to him on the issue regarding the owner ofUNION FISHING 2007 CO. LTD., MR. ALIEU THORLU-BANGURA, he went to the office of one OSMAN YANSANNEH, the Secretary General of the APC Political Party and informed him of the issues aforesaid, in the presence of the Appellant, amongst others. He testified that the said OSMAN YANSANNEH contacted HON. MR. MOMODU ALLIEU PAT SOWE and enquired whether he was aware of any business dealings involving the Appellant herein and DALIAN SHENGHAI OCEAN FISHING

COMPANY, the 1st Respondent herein,whose response was in the affirmative. He testified that he went to the Chinese Embassy located at Spur Loop, Freetown together with the Appellant herein, amongst others toconfirm the relationship with the Appellant herein and DALIAN SHENGHAI OCEAN FISHING COMPANY, the 1st Respondent herein and had a meeting with the Counselor ZOU XIAO MING and the Third Secretary, ZHANG CHAO, both of whom confirmed that they knew MOHAMED BANGURA, the Appellant herein and that the Chinese Embassy is aware of the fact that MR MOHAMED BANGURA the Appellant herein is the agent of DALIAN SHENGHAI OCEAN FISHING COMPANY, the 1st Respondent herein. Since it seemed that MR MICHAEL WANG could not at the time be contacted, PW2, HON. MR. AMARA AKALIE KAMARA testified that Counsellor ZOU XIAO MINGand the Third Secretary, ZHANG CHAO assured him that efforts will be made to contact him.He testified that indeed later on in the following week they finally contacted MR MICHAEL WANG and that when he met him, MR MICHAEL WANG,told him that he was representing DALIAN SHENGHAI OCEAN FISHING COMPANY, the 1st Respondent herein, a Chinese Company who were bringing into Sierra LeoneEight (8) to Ten (10) fishing vessels. He testified that he learnt later that MR MICHAEL WANG was the Vice President of DALIAN SHENGHAI OCEAN FISHING COMPANY, the 1st Respondent herein, as he gave him his complementary card.

Found at pages 697 to 698 and pages 807 to 809 of the records of appeal herein, SALIEU JALLOH who testified as PW3 at the High Court for and on behalf of the Appellant herein, testified that the Appellant herein sometime in the month of November 2013 introduced him to MR MICHAEL WANG. He testified that after exchanging pleasantries the said MR. MICHAEL WANG gave him his business card on which it was stated that himself the said MR. MICHAEL WANG was the Vice President of DALIAN SHENGHAI OCEAN FISHING COMPANY, the 1st Respondent herein. He testified that the said MR. MICHAEL WANG told the Appellant herein that his business counterparts in China were interested in carrying out fishing business in Sierra Leone and that they were interested in entering into a partnership with a Sierra Leonean with the requisite knowledge of the fishing business. He testified that MR. MICHAEL WANG informed the Appellant herein that he had recommended him to the 1st Respondent herein. He testified that it was as a result of this that the Appellant commencedcommunications with the Ministry of Fisheries and Marine Resources, in order for them to grant fishing licenses to the 1st Respondent herein to enable them bring to Sierra Leone Ten (10) fishing vessels and search for fishing facilities equipped with 'cold room' which were vital in ensuring that the 1st Respondent herein secures funding in China for

the construction of the vessels, all of the above which were done by the said Appellant using the letterhead and facilities of UNION FISHING 2007 CO. LTD. He testified that he was personally present when the Appellant herein, took representatives of the Chinese Economic and Commercial Bureau on a conducted tour of the fishing facilities of UNION FISHING 2007 CO. LTD.

Cross examination of both PW2, HON. AMARA AKALIE KAMARA and PW3, SALIEU JALOH by U. KOROMA ESQ of Counsel for the 1st Respondent herein and by S. KABARR MS. of Counsel for the 2nd and the 3rd Respondents herein, did not any way impeach the fact of an agreement made between the Appellant herein on the one hand and MESSRS WANG and WEI on the other hand. If anything notwithstanding that cross examination aforesaid, brought out the fact that the said Agreement was not in writing, it did not impeach the fact that there was indeed an agreement, execution of which, by the Appellant herein was ongoing. I hold the view, that from the testimonies outlined above, not only was an agreement reached between the Appellant herein, on the one hand and MESSRS WANG and WEI on the other hand in the terms contained in the testimony of the Appellant herein as outlined above, the said agreement reached was made by MESSRS WANG and WEI for and on behalf of DALIAN SHENGHAI OCEAN FISHING COMPANY, the 1st Respondent herein.

I had stated above that it is initially pertinent that the relationship existing between and amongst the most important actors herein be considered. In so far as the relationship existing between the 1st Respondent herein on the one hand and MESSRS WANG and WEI on the other hand, from the testimony adduced at the High Court as outlined above by the Appellant herein together with witnesses who testified on his behalf, they being PW2, HON, MR. AMARA AKALIE KAMARA and PW3, SALIEU JALLOH, it has been established that the agreement reached with the Appellant herein was made by MESSRS WANG and WEI for and on behalf of DALIAN SHENGHAI OCEAN FISHING COMPANY, the 1st Respondent herein. But in order to conclusively answer the question regardingthe relationship existing between the 1st Respondent herein on the one hand and MESSRS WANG and WEI on the other hand andfollowing the decision in the Nigerian case between **ELIZABETH IFEYINWA FRANCIS**and**MR MUSTAPHA SADIG & ALHAJI MUSA JA'FAR YAR ADUA** cited above, that for the Courts to arrive at any just decision, it has to evaluate the totality of the evidence and testimonies adduced, I would, in this regard be required to re-evaluate the testimony of MR MICHAEL YANG WANG, being the only witness, whose testimony it would seem seek to refute my view held above.

Found at pages 727 to 729 and pages 810 to 814 of the records of appeal herein, MR MICHAEL WANG who testified for and on behalf of the 1st Respondent herein as DW1 at the High Court, testifiedthat at the end of 2013, a man by the name of MR DAVID WEI, a Chinese national came to Freetown, Sierra Leone and contacted him, the saidMR. DAVID WEI stating to him that his company named DALIAN SHANGHAI FISHERIES CO. LTD were building fishing boats in China and other friends of his were also building some other fishing boats. He testified that MR DAVID WEI asked him to look out for an agent for his company DALIAN SHANGHAI FISHERIES CO. LTD. but testified that later on MR DAVID WEI contacted another company by the name of WHITEPOLE and asked them to work with him. He testified that after a while MR DAVID WEI asked him to look out for an agent for DALIAN SHENGHAI OCEAN FISHING COMPANY the 1st Respondent herein. He testified that the Appellant herein who he knows as a fish monger had earlier met him and asked him whether he had any available jobs for him and whether he had any contacts in China stating that he was looking forward to doing business with the Chinese and also enquiring from him whether he had any contacts to bring a fishing boat to Sierra Leone. He testified that the Appellant herein whom he had discussed the issue of the request of MR DAVID WEI with,met with MR DAVID WEI and recommended one MR ALIEU THORLU-BANGURA, the owner of UNION FISHING 2007 CO. LTD. to MR DAVID WEI. He testified that MR DAVID WEI met with MR ALIEU THORLU-BANGURA at the house of MR ALIEU THORLU-BANGURA and had some discussions. He testified that MR DAVID WEI promised to go back to China and inform his principals, the owners of DALIAN SHENGHAI OCEAN FISHING COMPANY, the 1st Respondent herein and show them a draft Agreement, and if approved his principals would come to Freetown and sign a final Agreement. He testified that this never happened, and no contract was signed with the Appellant herein,nor was he ever appointed in any capacity to work for DALIAN SHENGHAI OCEAN FISHING COMPANY, the 1st Respondent herein and that the arrangement with UNION FISHING 2007 CO. LTD owned by MR ALIEU THORLU-BANGURA never materialised neither were any deals ever agreed upon with the said UNION FISHING 2007 CO. LTD or the Appellant herein.

I find from the entirety of the testimony of DW1, MR MICHAEL WANG that he seemed to be denying that he only came to work for the 1st Respondent herein in June 2015. He testified that he only started officially working for the 1stRespondentCompany as an interpreter, when they came to Sierra Leone in June 2015. Contrary to his testimony above that he contacted the Appellant herein,about the request of MR DAVID WEI to look for an agent for DALIAN SHENGHAI OCEAN FISHING COMPANY, the 1st Respondent herein, he

testified that he has never approached the Appellant herein to work for DALIAN SHENGHAI OCEAN FISHING COMPANY the 1st Respondent herein and that contrary to the testimony of the Appellant herein, he did not recommend the said Appellant to work for the 1st Respondent herein as he had no official contact whatsoever with them in 2013 and that all his contact was with MR DAVID WEI who was in Sierra Leone representing a different company all together, the said testimony which seems to contradict his own testimony in chief, in view of the fact that even though he testified above, that MR DAVID WEI came to Sierra Leone representing DALIAN SHANGHAI FISHERIES CO. LTD a different company from the 1stRespondent Company, it cannot be said that MR DAVID WEI was in Sierra Leone representing a different company all together, because the testimony of DW1, MR MICHAEL WANG above is that after MR DAVID WEI had contacted WHITEPOLE, another company to work for DALIAN SHANGHAI FISHERIES CO. LTD, he was again asked by MR DAVID WEI to look out for an agent for DALIAN SHENGHAI OCEAN FISHING COMPANY the 1st Respondent herein, the said testimony which perfectly corroborated the testimony of the Appellant herein outlined above in that regard.

I find from the evidence adduced at the High Court and outlined above, the uncontroverted sequence of events is that DW1, MR MICHAEL WANG was approached by MR DAVID WEI sometime towards the end of 2013. Notwithstanding his claim that the said MR DAVID WEI approached him regarding a different company from the 1st Respondent Company, I find that the true evidence adduced byDW1, MR MICHAEL WANG himself, suggests that MR DAVID WEI indeed requested him to look for an agent for the 1st Respondent Company towards the end of 2013. I find further that it was himself,DW1, MR MICHAEL WANG who introduced the Appellant herein to MR DAVID WEI and indeed it was thereafter that MR. ALIEU THORLU-BANGURA was introduced into the transaction,mainly by reason that his Companyhad the required fishing facilities.

Under cross examination of him by M. CONTEH MS of Counsel for the Appellant herein, DW1, MR MICHAEL WANG testified that he knows a company called UNION FISHING 2007 CO. LTD. and that the owner is MR ALIEU THORLU-BANGURA and that he has met with him. Considering the fact that the findings above cannot be disputed, the testimony of DW1, MR MICHAEL WANG under cross examination of him by M. CONTEH MS. of Counsel for the Appellant herein that he came into contact with the 1st RespondentCompany and started working for them in June 2015, but became aware of their existence only in December 2014 is completely untrue.The fact

that DW1, MR MICHAEL WANG was not saying the truth when he testified that he became aware of the existence of the 1st Respondent herein only in December of 2014 has been established by several other pieces of evidence adduced at the High Court. Under cross examination of him by M. CONTEH MS. of Counsel for the Appellant herein, DW1, MR MICHAEL WANG identified Exhibits'L' and 'M' which are documents tendered in evidence at the trial of this matter at the High Court, found at pages 699 to 701 of the records of appeal herein.

Exhibit 'L' is an email message dated 11th March 2014 sent to MR ALIEU THORLU-BANGURAfrom DW1, MR MICHAEL WANG, who statedtherein,that he has called the Chinese Counsellor that same morning of the date aforesaid,the Chinese Counsellor who told him that at the moment all fishing companies are required to apply for approval to send vessels to Freetown, Sierra Leone and that 'their agent' in Freetown had already goneto see him,the Chinese Counsellor and has asked him, 'their agent' to see him the next day at 9 am to understand the company of MR ALIEU THORLU-BANGURA, UNION FISHING 2007 CO. LTD., better. DW1, MR MICHAEL WANG went on to state in Exhibit 'L' that MR ALIEU THORLU-BANGURA stresses to MOHAMED,that when he goes to see COUNSELOR ZOU, he explains how he is ready to work for DALIAN SHANGHAI FISHING COMPANY LTD and that the said MOHAMED, should tell COUNSELLOR ZOU that he knew this company through him, the said MR MICHAEL WANG, but that it is very important that he ensures that the name of MR DAVID WEI is not mentioned to COUNSELLOR ZOU, if he asked and that there would be no need to mention it, if not asked. DW1, MR MICHAEL WANG went on to state in Exhibit 'L' that the last but not the least point is for MOHAMED, to stress to COUNSELLOR ZOU that the company of MR ALIEU THORLU-BANGURA, UNION FISHING 2007 CO. LTD. is the only fishing company in Freetown that has a jetty, cold room and office facilities. DW1, MR MICHAEL WANG ended up by stating in Exhibit 'L' that he look forward to hearing good news from MR ALIEU THORLU-BANGURA.

Exhibit 'M' is another email message dated 15th March 2014 sent to MR ALIEU THORLU-BANGURA from DW1 MR MICHAEL WANG who states therein, that he has spoken with the Chinese Counsellor asking what the exact situation was regarding the meeting with MOHAMED and that his response was that all what remains was for him to visit the company's facilities of MR ALIEU THORLU-BANGURA like the jetty, cold room and office building in Freetown before he issues a permission letter to them, their company. DW1, MR MICHAEL WANG stated in Exhibit 'M' that during the said visit the Chinese

Counsellor wants to personally ask MR ALIEU THORLU-BANGURA details about his company and the reasons why he wants to do this is because he can't understand the English of MOHAMED, and feels that the English of MR ALIEU THORLU-BANGURA is very perfect as he had gathered when he spoke to him. DW1, MR MICHAEL WANG stated in Exhibit 'M'that when he asked MOHAMED, when the visit aforesaid will be made, MOHAMED told the Chinese Counsellor that that he will get him, MR ALIEU THORLU-BANGURA to call the Chinese Counsellornext week when the said MR ALIEU THORLU-BANGURA feels better as he is now unwell with malaria. DW1, MR MICHAEL WANGstated in Exhibit 'M' that at the moment the Chinese Counsellor is waiting for him, MR ALIEU THORLU-BANGURA'S call to make an appointment for the visit of his company's facilities.

I hold the view that the repeated testimony above that MR DAVID WEI seemed to be an agent for a different company by the name of DALIAN SHANGHAI FISHERIES CO. LTD, from the 1st Respondent's company is clearly a hoax. It is seen that the company which is mentioned in Exhibit 'L' aforesaid is DALIAN SHANGHAI FISHING CO. LTD, the same as the company which in accordance with the testimony of DW1, MR MICHAEL WANG, MR DAVID WEI is the agent for. In view of the fact that DW1, himself testified that MR DAVID WEI had already asked WHITEPOLE to work for his company, the said DALIAN SHANGHAI FISHING CO. LTD, there would absolutely be no need for him to state to MR ALIEU THORLU-BANGURA in Exhibit 'L' for him to stress to MOHAMED that it is important that the name MR DAVID WEI is not mentioned to the Chinese Counsellor, if indeed it is DALIAN SHANGHAI FISHERIES CO. LTD. which he says MR DAVID WEI is the agent for, which he intends referring to in Exhibit 'L' aforesaid, unless he says that the introduction of MR DAVID WEI and his company aforesaid into this whole transaction herein seem to have been done in a bid to hide the fact that not only is DALIAN SHANGHAI FISHERIES CO. LTD a non-existent company but also to conceal the fact that MR DAVID WEI is a fraudster who was brought into this transaction covering up the fact that indeed it was the DW1, MR MICHAEL WANG who was the true representative of DALIAN SHENGHAI OCEAN FISHING COMPANY, the 1st Respondent herein rather than MR DAVID WEI, who from his testimony above requested him to look for agents for the 1st Respondent Company.

I hold the view that if thesupposition above were wrong, then there would absolutely be no need for MR MICHAEL WANG to state to MR ALIEU THORLU-BANGURA in Exhibit 'L' that MOHAMED, should tell COUNSELLOR ZOU that he, the said MOHAMED came to know DALIAN SHANGHAI

FISHING CO. LTD through himself MR MICHAEL WANG when his,MR MICHAEL WANG'S, testimony is that it is MR DAVID WEI who is the agent for that company and not him. In this regard, the testimony of DW1, MR MICHAEL YANG WANG under cross examination of him aforesaid that in Exhibit 'M'aforesaid he was referring to the company which MR DAVID WEI is agent for, is completely untrue. I hold the view that indeed the reference in Exhibit 'L' to DALIAN SHANGHAI FISHING CO. LTD was deliberately done to deceive and was meant to be DALIAN SHENGHAI OCEAN FISHING COMPANY, the 1st Respondent herein. It follows that the mention of 'their agent' in Exhibit 'L' was meant to be the agent ofDALIAN SHENGHAI OCEAN FISHING COMPANY, the 1st Respondent herein and that the person mentioned in Exhibit 'L' as 'their agent' is MOHAMED, the said MOHAMED who can be no other, than MOHAMED BANGURA, the Appellant herein. Clearly, if it were true, that reference toDALIAN SHANGHAI FISHING CO. LTD. In Exhibit 'L' were meant to be that Company whichMR DAVID WEI is the agent for, 'their agent' as mentioned in Exhibit 'L' should have been WHITEPOLE and not MOHAMED as stated in Exhibit 'L'.

From the analysis above,I conclusively find that the testimony ofDW1, MR MICHAEL WANG, under cross examination of him aforesaid that the company which MR DAVID WEI is agent for, is different from the 1st Respondent Company is so incorrect, by reason that the said company of which MR DAVID WEI is agent for is non-existent. I find further that the testimony of DW1, MR MICHAEL WANG that it was MR DAVID WEI who asked him to look for an agent for the 1st Respondent Company, cannot be true. I find thatthe testimonyof DW1, MR MICHAEL WANG, that the 1st Respondent herein became annoyed because MR DAVID WEI had lied that BANGSO FISHING COMPANY was not owned by MR ALIEU THORLU-BANGURA and that MR DAVID WEI was only helping the 1stRespondent herein and is not a shareholder nor a partner and had no agency with the 1st Respondent Company were completely irrelevant to the issues herein, creating a smoke screen meantto conceal the fact that MR DAVID WEI is a fraudster who was primarily, brought into this transaction to cover up the fact, that indeed it was the DW1, MR MICHAEL WANG who was the true representative of DALIAN SHENGHAI OCEAN FISHING COMPANY, the 1st Respondent herein.

It cannot be disputed that the contents of Exhibit 'L' corroborates the testimony of the Appellant herein that he was appointed as an agent by the 1st Respondent herein through DW1, MR MICHAEL WANG and MR DAVID WEI. It cannot be disputed further that Exhibit 'L' aforesaid, does not in any way, contradict his testimony that immediately upon being appointed as agent

aforesaid he wrote Exhibit 'A' aforesaid being a letter to the Ministry of Fisheries and Marine Resources and received a response from them which is Exhibit 'B' aforesaid. It cannot be disputed also that Exhibit 'L' aforesaid confirms the Appellant's testimony that he was interviewed by representatives of the Chinese Economic and Commercial Bureau in the Chinese Embassy in respect of fishing vessels which the 1st Respondent Company wanted to bring into Sierra Leone, in order to participate in the fishing industry in Sierra Leone. It cannot be disputed that notwithstanding the fact that Exhibit 'M' only confirms plans being made for the representatives of the Chinese Economic and Commercial Bureau for a conducted tour of the fishing facilities of UNION FISHING 2007 CO. LTD. the company owned by MR ALIEU THORLU-BANGURA, before approval for the construction of the fishing vessels which the 1st Respondent Company wanted to bring into Sierra Leone in order to participate in the fishing industry in Sierra Leone is done, the said Exhibit 'M' did not controvert the fact that indeed the conducted tour of the facilities of the UNION FISHING, 2007CO. LTD was done by the representatives of the Chinese Economic and Commercial Bureau aforesaid.

Consequent upon the above and by virtue of the fact that Exhibits 'L' and 'M' were dated 11th March 2014 and 15th March 2014 respectively, I find conclusively that MR MICHAEL WANG, was not saying the truth when he testified under cross examination of him by M. CONTEH MS. of Counsel for the Appellant herein that he first came into contact with DALIAN SHENGAI OCEAN FISHING COMPANY the 1st Respondentherein,when he was appointed as an Interpreter in July 2015, but became aware of its existence only in December 2014. I find that he was not saying the truth when he testified under cross examination aforesaid that he does not know whether the Appellant herein did work for the 1st Respondent herein and does not know whether DALIAN SHENGHAI OCEAN FISHING COMPANY,the 1st Respondent herein,instructed the said Appellant to write to the Ministry of Fisheries and Marine Resources on behalf of them, in view of his testimony under cross examination aforesaid that before a company can come to do fishing in Sierra Leone, it must obtain clearance from the Ministry of fisheries and Marine Resources. In view of his testimony that he knows a company called UNION FISHING 2007 CO. LTD and its owner MR ALIEU THORLU-BANGURA together with his testimony that it is a requirement that before a company can come to Sierra Leone to do fishing, it must engage a local fishing company with the requisite facilities and in view of the contentsof both Exhibits 'L' and 'M'aforesaid, I absolutely find, that DW1, MR MICHAEL WANG was not saying the truth when he testified under cross examination of him aforesaid, that he does not know whether MR ALIEU THORLU-

BANGURA owns fishingfacilities and that notwithstanding that the Appellant herein told him that indeed MR ALIEU THORLU-BANGURA does own fishing facilities, himself, DW1, MR MICHAEL YANG WANG was still not sure about that.

My findings above reveal the fact that the introduction of MR DAVID WEI and his company DALIAN SHANGHAI FISHERIES CO. LTD which he is agent for, into this transaction was done in a bid to hide the fact that not only is DALIAN SHANGHAI FISHERIES CO. LTD a non-existent company, but also to hide the fact that MR DAVID WEI is a fraudster who has brought into this transaction, primarily to conceal the fact that indeed it was DW1, MR MICHAEL WANG who was the true representative of DALIAN SHENGHAI OCEAN FISHING CO. the 1st Respondent herein.

It cannot be disputed, that it is the evidence above, that it was MR DAVID WEI who allegedly came to Sierra Leone from China and requested DW1, MR MICHAEL YANG WANG to look for experienced persons to act as promoter and agent for the 1st Respondent Company, said Company which DW1, MR MICHAEL WANG did not know about and had no dealings with but who went ahead and introduced the Appellant herein to MR DAVID WEI, the said Appellant herein who brought in MR ALIEU THORLU-BANGURA and his company UNION FISHING 2007 CO. LTD, into the transaction herein. In his testimony though, under cross examination of him above DW1, MR MICHAEL WANG did say that MR DAVID WEI was only helping the 1st Respondent Company and is not a shareholder nor a partner and had no agency with the 1st Respondent, why then would DW1, MR MICHAEL WANG, who claims to have, as at March 2014, no relationship with and had never met the 1st Respondent Company, send Exhibits 'L' and 'M' aforesaid to MR ALIEU THORLU-BANGURA for and on behalf of the 1stRespondentCompany, when it is MR DAVID WEI who was only helping the 1st Respondent Company who should be doing such.

Why is it that MR DAVID WEI, who should be testifying as to all the facts herein regarding him, has together with the company which he is agent for, suddenly disappeared. Clearly, the answer to this question is not one that could easily and readily be known. This notwithstanding, I hold the view that even though he is not obliged to, the fact that DW1, MR MICHAEL WANG, who testified for and on behalf of the 1st Respondent hereinand through whom MR. DAVID WEI was introduced into the transaction herein, has avoided adducing evidence which would giveanswers to these questions,puts a considerable dent on the Defence of the 1st Respondent. I hold the view

further, that of course, these are questions which Counsel representing the Appellant could have asked. It would seem though that the same was not asked, by reason of one golden rule of advocacy, that during cross examination, the answers to a question which Counsel cannot reasonably know should not be asked. Rather what Counsel should do is, put to a witness what hereasonably suspects would be an answer to an anticipated question. In this case, the testimony of PW1, MOHAMED BANGURA, the Appellant herein explains his last known dealings with MR DAVID WEI, being a phone call allegedly from China after submitting Exhibits 'A' and 'B' to him and DW1, MR MICHAEL WANG. I am absolutely sure that the Judge too would have wanted to have answers to question regarding the disappearance of MR. DAVID WEI and his company. But of course, the Judge knowledgeable as he is, would not ask such questions by reason that answers which would be unfavourable to the opposite side be given. Since it is DW1, MR MICHAEL WANG who raised issues regarding MR DAVID WEI, the same which should have been addressed by MR DAVID WEI himself, it is him who should give further and better particulars as to the reasons why MR DAVID WEI disappeared and cannot be available to answer certain questions himself. I find such evidence clearly non-existent and can only in a circumstance make conclusions as to its absence. In this regard, my conclusions as to the absence of evidence explaining the reasons why MR DAVID WEI has disappeared and cannot be available to answer certain questions himself is because as stated above, he wasbrought into this transaction primarily to conceal the fact that indeed it was DW1, MR MICHAEL WANG who was the true representative of DALIAN SHENGHAI OCEAN FISHING CO. the 1st Respondent herein.Consequently,I hold the view that MR DAVID WEI does not have any agency relationship with the 1st Respondent herein.

One very important conclusion, which I would need to make in this matter, is the determination of the question, whether the Appellant herein is the sole agent and promoter of the 1st Respondent herein, in respect of fishing activities in Sierra Leone, pursuant to an oral agreement between the Appellant herein and the 1st Respondent herein. In order to answer this question perfectly, it is particularly important that certain pieces of evidence are present. Clearly,ithas been always apparent that there seem to be no direct communication between the Appellant herein and the 1st Respondent herein. Indeed, I find that this is what the evidence herein suggests. I find though that itwas the 1st Respondent itself and no other person who were the principal beneficiary of all what the Appellant did, as outlined above in pursuance of his claim that he was appointed sole agent and promoter of the 1st Respondent herein in respect of fishing activities in Sierra Leone. It cannot

be disputed, that by virtue of the fact that it seems to be, that there has never been any direct communication between the 1st Respondent herein and the Appellant herein and the fact that it has been established that the 1st Respondent herein was indeed the beneficiary of all what the Appellant did, it must be the case that someone must have been acting for and onbehalf of the 1st Respondent herein. It cannot be disputed herein, that the evidence suggests that it was DW1 MR MICHAEL WANG who directly dealt with the Appellant herein, seemingly for and on behalf of the 1st Respondent herein. It cannot be disputed though, that there seem to be no evidence of any authority being given by the 1st Respondent herein to DW1, MR MICHAEL YANG WANG, to so act on their behalf, even though there is absolutely no evidence adduced herein that the benefits accruing to the 1st Respondent herein as result of the actions of the Appellant herein were rejected by the 1st Respondent herein. It stands to reason that in order to establish the fact that DW1, MR MICHAEL WANG was acting on the authority of the 1st Respondent herein, when he dealt with the Appellant herein, in the absence of any directevidence in that regard, I need to determine whether the 1stRespondentsat idly by and allowed DW1, MICHAELWANG to do all what this Court has found,he did.

Whilst making his submissions, A.S SESAY ESQ. of Counsel for the 2nd and the 3rd Respondents herein, was asked whether he can point to any evidence adduced herein, in its entirety that would controvert the fact that the 1st Respondent herein sat idly by and allowed DW1, MICHAEL WANG to do all what this Court has found that he did, the same which he failed to answer. His failure to answer the question aforesaid prompted me to state to him, that I can understand his predicament in not being able to answer the said question, being that as counsel representing the 2nd and the 3rd Respondents herein, it was not his business to submit that there was no agency agreement made between the Appellant herein and the 1st Respondent, but being that he ventured to make such a submission, I would require that he answers the questions aforesaid. A.S. SESAY ESQ of Counsel for the 2nd and the 3rd Respondents responded by saying that he is not in a position to answer the said question and that it was U. KOROMA ESQ of Counsel for the 1st Respondent herein that would be in the position to answer the same. U. KOROMA ESQ failed to offer an answer to the said question,notwithstandingthe fact that the said question was thrown to every Counsel present at the hearing, representing the respective parties herein. Of course, after reviewing the entirety of the evidence adduced at the High Court, I found absolutely no evidence contradicting the fact that the 1st Respondent herein sat idly by and allowed DW1, MICHAEL WANG to do all what this Court

found he did and contained in the evidence adduced at the High Court. In fact I hold the view that not only is there no evidence contradicting the above, the evidence adduced suggests, that the 1st Respondent was actively though quietly involved and took part in authorising all what DW1, MICHAEL WANG did to get the Appellant herein to act in certain ways, culminating in the 1st Respondent bringing into Sierra Leone, the fishing vessels aforesaid, they being requested for andpermission obtained from the Ministry of Fisheries and Marine Resources.

The testimonies of PW1, MOHAMED BANGURA, the Appellant herein, PW2, HON. MR. AMARA, AKALIE KAMARA and PW3, SALIEU JALLOH, is consistent in one important regard, that being the issue of a complimentary card by DW1, MICHAEL WANG, the said complimentary card, which was tendered in evidence as Exhibit 'J' found at page 688 of the records of appeal herein and its translation in Chinese found at page 689 of the records aforesaid. Exhibit 'J' bears the name MICHAEL WANG as Vice President of DALIAN SHENGHAI OCEAN FISHING CO. LTD. with an address in China Zhongshon District, Dalian, China with a telephone/fax number, mobile number and an email address.Notwithstanding the fact thatduring cross examination of him by M. CONTEH MS.,DW1 MICHAEL WANGtestified that he has never seen Exhibit 'J' and did not give it to anybody,this piece of testimony regarding its issue, was not controverted by any Counsel representing the respective Respondents, herein during cross examination ofPW1, MOHAMED BANGURA, the Appellant herein, PW2, HON. MR. AMARA, AKALIE KAMARA and PW3, SALIEU JALLOH. By reason of the fact that it has been established above, that DW1, MR MICHAEL WANG is a completely unreliable and untruthful witness in view of the so many inconsistencies and untruths found in his testimony above, the same which was exactly the same findings arrived at by the Hon. Mr. JUSTICE A.S. SESAY JSC (as he then was), his above denial,that he has never seen Exhibit 'J' and did not give it to anybody, is of no moment. The insinuation put forward, that Exhibit 'J' can be made by anyone is unreliable, in view of the fact that addresses in China, Telefax and telephone numbers, mobile phone number in China, email addresses cannot just pop up in one's heard particularly when DW1, MR MICHAEL WANG and or U. KOROMA ESQ., of Counsel for the 1st Respondent herein, took no steps to contradict these in evidence, by showing that they are fake address and numbers and do not relate either to the 1st Respondent Company or to himselfDW1, MR MICHAEL WANG. I find that his testimony under cross examination of him by M. CONTEH MS.,that he cannot remember his telephone number in China is very evasive and done in a bid to frustrate evidence being brought to show that it was indeed his telephone

number that was contained in Exhibit 'J' aforesaid. I find that indeed, it is probably true than not, that it was DW1, MICHAEL WANG who issued out Exhibit 'J' describing himself as Vice President of DALIAN SHENGHAI OCEAN FISHING CO., the 1st Respondent herein to not only PW1, MOHAMED BANGURA, the Appellant herein, but also to PW2, HON. AMARA AKALIE KAMARA and PW3, SALIEU JALLOH. If, as found above, that the 1st Respondent herein was actively through quietly involved and took part in authorising all what DW1, MICHAEL WANG did, then his issue of Exhibit 'J' is tantamount to the 1st Respondent herein, holding DW1, MICHAEL WANG out as their Vice President and indeed their appointed agent.

Authority for my view as held above could be found in the case between **NICOL** and **UNITED AFRICA COMPANY (MOTORS) LTD.** 1967-68 ALR S.L. 78, the facts of which are that the Plaintiff brought a claim against the Defendant for damages for breach of contract and a refund of the sum of Six Hundred and Eighty Sierra Leone Leones (SLL 680.00) which the Plaintiff claimed he had paid to the Defendant's company or its agent for the hire purchase of a Vauxhall 101 super car. The transaction took place at the Defendants' office in Rawdon Street, Freetown. One of the Defendants' employees by the name of FRED LAWSON treated with the Plaintiff and handed over to the Plaintiff, his business card which described FRED LAWSON as a Sales Representative, U.A.C MOTORS LTD, with an address at Rawdon Street, Freetown Sierra Leone. The Plaintiff deposited with FRED LAWSON the sum of Six Hundred and Eighty Sierra Leone Leones (SLL680.00) from which sum, FRED LAWSON gave the Plaintiff a temporary receipt with instructions to collect the official receipt the next day. The Plaintiff called at the Defendants' office at Rawdon Street the next day, but FRED LAWSON could not be found. The Plaintiff then reported the matter to the Manager of the section who told the Plaintiff he had nothing to do with it. The Plaintiff testified that after he had handed over the money over to FRED LAWSON, he saw him go into the office of the Manager and came out with some hire purchase forms which the Plaintiff filled out and which completed form, FRED LAWSON took back to the Manager's office, in consequence of which the Plaintiff asked back for a return of his money, but the Manager again said he had nothing to do with it. The Defendants admits that on the day in question FRED LAWSON was in their employment as a Salesman at their motor showroom. It however denied that FRED LAWSON was ever its Sales Representative. It says that all contracts on its behalf was made by its Sales Representative and not by its Salesman. It denies receiving the sum of Six Hundred and Eighty Leones (SLL 680.00) or any amount from the Plaintiff and says it knows nothing about the transaction between the Plaintiff and FRED

LAWSON. A witness testifying for and on behalf of the Defendants by the name of ABU NASSIRU DEEN said that the business card of FRED LAWSON aforesaid was freely used by him in the establishment. ABU NASSIRU DEEN explained that whenever FRED LAWSON contacted a prospective buyer, if he was not himself returning to the office, he would send the buyer to the Manager with the business card aforesaid so that the Manger would know that the buyer was sent by FRED LAWSON. Another witness though who testified for and on behalf of the Defendant by the name of EDWARD BRUCE WILLARD who is the Defendant's Acting Divisional Manager of the motors division testified that on the day in question he was not in Sierra Leone but as regards the business card of FRED LAWSON aforesaid, if it had come to his knowledge that a Salesman was described as a Sales Representative he would immediately withdraw all the cards and arrange for new ones to be printed with the proper description.

**DAVIES Ag. J** in his Judgement observed that according to ABU NASSIRU DEEN, the business card of FRED LAWSON aforesaid was freely used in the establishment and it had come to the notice of the Manager and supposedly other senior officials of the Defendant's company, yet no one took the precaution as suggested by the witness EDWARD BRUCE WILLARD, of withdrawing all the business cards from FRED LAWSON which would describe him as a Salesman and not a Sales Representative. **DAVIES AG. J** relied on the case between **POLE**and **LEASK** 1861-73 1 ALL ER 541 where **LORD CRANWORTH** had this to say:

***'No one can become the agent of another person except by the will of that other person. His will, may be manifested in writing, or orally or simply by placing the person ...in a situation in which, according to the ordinary rules of laws, or perhaps it would be more correct to say, according to the ordinary usages of mankind, that person is understood to represent and act for the person who has so placed him'.***

**DAVIES AG. J** in his judgement, stated that on the evidence above and the authority of the case between **POLE**and**LEASK**, according to the ordinary rules of law and to the ordinary usages of mankind, FRED LAWSON was understood to represent and act for the Defendants. **DAVIES AG. J** found that FRED LAWSON acted as agent of the Defendant and this being so, the contract made by FRED LAWSON with the Plaintiff is deemed to be made by the Defendant and held that there has been a breach of the contract and for this the Plaintiff is bound to succeed.

I hold the view that applying the facts and the decision of the case betweenNICOL and UNITED AFRICA COMPANY (MOTORS) LTD.cited above, to the matter herein,DW1, MR. MICHAEL WANG, is the appointed agent for DALIAN SHENGHAI OCEAN FISHING COMPANY, the 1st Respondent herein, who was so appointed to look for a Sierra Leonean with the requisite knowledge of the fishing industry to partner with the 1st Respondent herein and for him to act as promoter and agent of the 1st Respondent herein in Sierra Leone. The question posed above as to what was the relationship existing between the 1st Respondent herein, on the one hand being the principal of MR MICHAEL WANG on the other hand being the agent, having been answered, I would now turn my attention to consideringand determining the question regarding the relationship between MR MICHAEL WANG on the one hand and MOHAMED BANGURA the Appellant herein on the other hand.

Clearly and from the evidence adduced herein it cannot be disputed that pursuant to instructions given the agent, MR MICHAEL WANG, given to him by his principal, the 1st Respondent herein, to look for a Sierra Leonean with the requisite knowledge of the fishing industry to partner with the 1stRespondent herein and for him to act as promoter and agent of the 1stRespondent in Sierra Leone, MR MOHAMED BANGURA, the Appellant herein, was so approached and appointed. In so far as the tentative definition of the Agency relationship given above is concerned, it is seen that it is MR MOHAMED BANGURA, the Appellant herein who is the stranger called the third party to the relationship between the 1st Respondent herein, being the principal and MR MICHAEL WANG agent of the 1st Respondent herein, being the principal. In this case the relationship betweenMR MICHAEL WANG and the Appellant herein is agent and third party respectively, the saidMR MICHAEL WANG being the agent of the 1st Respondent herein, who in this case made a contract with the Appellant herein, being the third party on behalf of the 1st Respondent herein being the principal.In this regard, the question posed above as to what is the relationship existing between MR MICHAEL WANG and the Appellant herein having been answered, I now finally turn my attention to considering and determining the paramount questionposed herein, that being the relationship existing betweenDALIAN SHENGHAI OCEAN FISHING COMPANY, the 1st Respondent herein and MOHAMED BANGURA, the Appellant herein.

Having established that the relationship betweenMR MICHAEL WANG and the Appellant herein is agent and third party respectively, the saidMR MICHAEL WANG being the agent of the 1st Respondent who is his principal, it cannot be

disputed that DALIAN SHENGHAI OCEAN FISHING COMPANY, the 1st Respondent herein is a disclosed principal in the context of the Agency relationship existing herein as analysed above. In the 4th Edition of **FRIDMANS LAW OF AGENCY** by **G.H.L. FRIDMAN** on **'INTRODUCTION OF CONTRACTS BY AGENTS'** under the rubric **'Different kinds of principal'** at page 163 it is stipulated as follows:

***'A disclosed principal is one whose existence has been revealed to the third party by the agent but whose exact identify remains unknown. The third party knows that the agent is contracting as an agent'.***

Clearly, MOHAMED BANGURA the Appellant herein, who is the third party in this case knows of the existence of DALIAN SHENGHAI OCEAN FISHING COMPANY, the 1st Respondent herein and has been revealed to him by MR MICHAEL WANG, the agent of the 1st Respondent herein and also knows that the said MR MICHAEL WANG is contracting with him as an agent of his principal the 1stRespondent herein. In order to determine the relationship existing between the 1st Respondent herein and the Appellant herein it is necessary to consider the effects of an agency relationship as between principal and third party where the agent acts for a disclosed principal. In the 4th edition of **FRIDMAN'S LAW AGENCY** by **G.H.L. FRIDMAN**on **PART II** of **'CONTRACTS BY AGENTS'** on the **'EFFECTS OF AGENCY AS BETWEEN PRINCIPAL AND THIRD PARTY WHERE THE AGENT ACTS FOR A DISCLOSED PRINCIPAL'** under the rubric **'Contractual Liability'** at pages 164 to 169 it is stipulated thus:

***'the basic rule is that it is axiomatic that where the agent has made a contract with a third party on behalf of a disclosed principal, who actually exists and has authorised the agent to make such a contract, the principal can sue and be sued by the third party on such a contract. A direct contractual relationship is thereby created between principal and third party by the acts of the agent, who is not himself a party to that relationship. This indeed, is the very purpose and rationale of agency. It is important that the agent must have been acting with authority in making such contract. For a direct contractual relationship to result from the conduct of an agent, it must be shown that the principal expressly authorised the agent to make the contract, or the agent in making such contract was acting within the scope of some implied authority or the principal had held out the agent as having authority to make such contract or the gent was not authorised to make such contract but his actions were subsequently ratified and such ratification was valid or the***

*making of such contract was within the scope of the authority of an agent of necessity, the converse of which is that the principal would not be bound by (and cannot sue upon)any contract made by the agent outside the scope of his actual,apparent or presumed authority, the agent who will also not bind his principal to any third party with whom he contracts, if such third party has notice of the agents lack of authority, even if the agent appears to have authority. Except when the circumstances exclude the operation of the basicrule aforesaid, the result of an agent's making a contract between his principal and a third party is that the agent ceases to play any role in the relationship thus created and the rights and liabilities of principal and third party are determined irrespective of any right and liabilities on the part of the agent'.*

If, as stipulated above, I were to determine whether a direct contractual relationship was created between the 1st Respondent herein and theAppellant herein by the actions of MR MICHAEL WANG in appointing the said Appellant to act as promoter and agent for the 1st Respondent, it is important to know that MR MICHAEL WANG must have been acting with authority when he appointed the 1st Appellant thus. It must be shown that the 1st Respondent herein expressly authorised MR MICHAEL WANG to appoint the Appellant herein as its promoter and agent or that MR MICHAEL WANG in so appointing the Appellant herein was acting within the scope of some implied authorityor that the 1st Respondent had held out MR MICHAEL WANG as having authority to appoint the Appellant herein as its promoter and agent or that MR MICHAEL WANG was not authorised to appoint the Appellant herein as promoter and agent of the 1st Respondent but that his actions aforesaid was subsequently ratified and that such ratification was valid or that the appointment of the Appellant herein as aforesaid was within the scope of the authority given to MR MICHAEL WANG as an agent of necessity. Succinctly put, what is required to be shown by the stipulation above is,*whether* MR MICHAEL WANG had, if at all, actual authority, or apparent/ostensible authority or presumed authority, when he appointed the Appellant herein as promoter and agent of the 1st Respondent herein.

It must be pointed out immediately, that the authority, if at all, of MR MICHAEL WANG cannot be a presumed authority, simply by reason that the agency relationship between MR MICHAEL WANG as agent and the 1st Respondent herein as the principal is not an agency arising by operation of law, as in an agency of necessity,where from the obtaining circumstances the law confers an authority on one person to act as an agent for another without any regard

to the consent of the principal. Further, it cannot be said that the obtaining circumstances were such that initially MR MICHAEL WANG was not authorised to appoint the Appellant herein as promoter and agent of the 1st Respondent,but that his actions in appointing the said Appellant as promoter and agent of the 1stRespondent herein was subsequently ratified.At this stage, it is absolutely important that some clarifications be made, regarding certain submissions made by Counsel for the Appellant herein, suggesting the existence of the agency relationship between the 1st Respondent herein and the Appellant herein as determined above, to be that of an agency by ratification, the said submissions which ought to be immediately dispelled. It cannot be disputed that with ratification in law, what the agent and in this case, MR MICHAEL WANG, in appointing the Appellant herein, as promoter and agent for the 1st Respondent herein, does with the third party as above and in this case the Appellant herein, on behalf of the principal and in the case, the 1st Respondent herein, is done at the time when the relationship of principal and agent between the 1st Respondent herein and MR MICHAEL WANG does not exist. The agent, in this case MR MICHAEL WANG, has no authority to appoint the Appellant herein, as promoter and agent for the 1st Respondent at the time he did it but that subsequently, however, the principal, in this case the 1stRespondent herein, on whose behalf though without his authority, his agent MR MICHAEL WANG has acted, accepts his acts and adopts it just as if there had been a prior authorisation by his principal, the 1st Respondent herein, to do exactly what his agent, MR MICHAEL WANG has done.

In law, ratification by the principal does not merely give validity to the agent's unauthorised act as from the date of the ratification, it is antedated so as to take effect from the time of the agent's act, hence the agent is treated as having been authorised from the onset to act as he did. Clearly the submission of Counsel for the Appellant herein, suggesting an agency by ratification aforesaid seems to support the arguments of Counsel for the 1st Respondent that MR MICHAEL WANG had nothing to do with the 1st Respondent Company, until he was appointed an interpreter in June 2015. Clearly the evidence adduced herein does not in any way suggests the 1st Respondent herein ratifying the acts of MR MICHAEL WANG subsequent to the prior relationship of the principal and agent between them coming into existence. I hold the view thatoverwhelmingly and in its entirety, the evidence adduced herein is that the relationship of principal and agent between the 1st Respondent herein and MR MICHAEL WANG was created before anything had been done by the said MR MICHAEL WANG for and on behalf of the 1st Respondent. I find absolutely nothing which MR MICHAEL WANG did, for and on behalf of the 1st Respondent herein before he became the agent of the 1st

Respondent, which it ratified. It should be noted that from the onset and as the evidence adduced herein overwhelmingly suggest, the objective of the 1st Respondent Company was to engage in the fishing industry in Sierra Leone which said objective was clearly there, before the actions of MR MICHAEL WANG. It cannot be said that the objective of the 1st Respondent Company to engage in the fishing industry in Sierra Leone came after MR MICHAEL WANG had done all what he did for and on behalf of them. As regards the contrary arguments above,to the arguments that the agency relationship between MR MICHAEL WANG and the 1st Respondent herein was created by ratification,I hold the view that the authority of MR MICHAEL WANG,if at all, was granted before the exercise of that authority. Indeed, this is precisely what I seek to do herein, in other words whether MR MICHAEL WANG as agent, in appointing the Appellant herein as promoter and agent for the 1st Respondent herein, for and on its behalf was done with the requisite authority.

Having established as above, this narrows down my determination of establishing the authority which MR MICHAEL WANG had, if at all, to actual authority, in other words whether the 1st Respondent expressly authorised MR MICHAEL WANG to appoint the Appellant herein as its promoter and agent or that MR MICHAEL WANG in so appointing the Appellant herein was acting within the scope of some implied authority or that the 1st Respondent herein held out MR MICHAEL WANG as having authority to appoint the Appellant herein, as its promoter and agent and or whether MR MICHAEL WANG had, if at all, some apparent/ostensible authority.

The circumstanceobtaining herein, is that at the material time, the 1stRespondentCompany was a foreign company and allegedly,subsequently incorporated in China which said company decided to engage in the fishing Industry in Sierra Leone. As submitted by U. KOROMA ESQ. of Counsel for the 1st Respondent herein, in order for it to achieve its objective, the company needed to do some market assessment and feasibility studies to ensure that Sierra Leone was a better place to operate and that in line with this, MR DAVID WEI who had come to Sierra Leone to promote his own company decided to assist and that while in Sierra Leone he met with MR MICHAEL WANG a Chinese national who volunteered to help with the feasibility studies and assessment of the Sierra Leone fishing market. I find that the uncontroverted evidence is that the Appellant herein was summoned by MR MICHAEL WANG who introduced him to MR DAVID WEI as his Chinese counterpart, representing the 1st Respondent herein, who were interested in fishing activities in Sierra Leone and were looking for a Sierra Leonean with the requisite knowledge of the fishing industry to partner with and that he had

recommended him, the Appellant herein to the 1st Respondent herein and for him to act as promoter and agent of the 1st Respondent in Sierra Leone, pursuant to which, the said Appellant was so appointed. The pertinent question is, **'was this appointment of the Appellant herein by MR MICHAEL WANG done with the actual authority given to the said MR MICHAEL WANGby the 1st Respondent herein'**. In the 4thEdition of **FRIDMAN'S LAW OF AGENCY** by **G.H.L. FRIDMAN** on **'THE AGENT'S AUTHORITY'** under the rubric **'Actual Authority'** it is stipulated at pages 90 to 91 thus:

***'Such actual or real authority may be subdivided into three categories viz express authority, implied authority and usual or customary authority. The agent's authority may be express that is, it may be specifically created and limited by the terms of the agreement or contract which gives rise to the agency relationship. It may be implied from the nature of the business which the agent is employed to transact, the important feature of which is that the consent of the principal is a necessary part of. The agent's actual authority may include what is often called his usual or customary authority. This is the authority which an agent in the trade, business profession or place in which the particular agent is being employed would usually, normally or customarily possess unless something was expressly said by the principal to contradict it. It is the authority which persons dealing with the agent, with the knowledge of the trade etc would expect him to have. Such authority is really a variety of implied authority, in the sense in which that expression has been explained above, and for the same reasons, and not an independent kind of authority'.***

Clearly, there is no evidence adduced herein substantiating that the 1st Respondent herein expressly authorised MR MICHAEL WANG to appoint the Appellant herein as its sole agent and promoter. However, it cannot be disputed that from the evidence adduced herein as outlined above, the 1st Respondent herein being a foreign company, would never had achieved its aims and objective of doing fishing business in Sierra Leone without having a Sierra Leonean and a local fishing company to partner with. Obviously, the Ministry of Fisheries and Marine Resources would have to be informed and its permission obtained, the loan for the construction of and approval for the fishing vessels which the 1st Respondent herein intended bringing into Sierra Leone would have to be done in collaboration with the Chinese Embassy in Sierra Leone, who will have to confirm from the Sierra Leonean and local fishing company, that the requisite fishing facilities are in existence. In other words, it cannot be disputed that the 1st Respondent would be unable to have

these done by itself,in so far as the fishing industry in Sierra Leone is concerned. Having established above that MR MICHAEL WANG, is the agent of the 1st Respondent herein and there being no evidence adduced that the 1st Respondent herein did not consent, it would certainly be implied from the nature of the fishing business as outlined above, that MR MICHAEL WANG had the authority to appoint a Sierra Leonean with the requisite knowledge of the fishing industry in Sierra Leone and a local fishing company to act for and on behalf of the 1st Respondent herein. It is also the case that by virtue of the fact that it is MR MICHAEL WANG who is the one on the ground knowledgeable of the fishing industry in Sierra Leone and not the 1st Respondent herein who were based in China, it is expected that he would be the one whose knowledge of the fishing industry in Sierra Leone, is relied on to choose a Sierra Leonean with the requisite fishing knowledge of the fishing industry in Sierra Leonetogether with a local fishing company with the required facilities. There being no evidence adduced herein contradicting it, it can be said that the authority to appoint a Sierra Leonean with the requisite knowledge of the fishing industry in Sierra Leone, is what MR MICHAEL WANG who is involved in the fishing industry in Sierra Leone would usually, normally orcustomarily possess, as an agent of the 1st Respondent herein, when such authority is not expressly shown. It is also the authority which any Sierra Leonean with the requisite knowledge of the fishing industry in Sierra Leone would expect MR MICHAEL WANG tohave, in the absence of any express authority shown.Consequently, I hold the view that the appointment of the Appellant herein,as the promoter and agent for the 1st Respondent herein by MR MICHAEL WANG as agent for the 1st Respondent herein and his subsequent authorisation to the said Appellant herein, for him to search for a local fishing company with the requisite fishing facilities, as testified above by PWI, MOHAMED BANGURA, the Appellant herein, was done not only within the scope of the implied authority which MR MICHAEL WANG had, but also within his usual or customary authority which he possessed in the fishing industry in Sierra Leone which, he was involved in.

Having established that MR MICHAEL WANG, being the agent of the 1st Respondent herein who in his principal,appointed the Appellant herein as promoter and agent of the 1st Respondent herein, was acting not only within the scope of his implied authority, but also within his usual or customary authority aforesaid, it would have been unnecessary to consider whether the said MR MICHAEL WANG, so acted within an apparent or ostensible authority given to him by the 1st Respondent herein. However, I hold the view that in the very unlikely situation, that it is said, that he relied outside the scope of his implied usual or customary authority aforesaid, it becomes necessary that a

consideration be made as to whether he acted with some apparent or ostensible authority given him by the 1st Respondent herein. Ostensible authority involves a situation where the principal may by words or conduct, create an inference that an authority has been conferred upon an agent, even though no authority was ever given in fact. In such a case, if the agent contracts within the limits of his apparent authority, although without any actual authority, the principal will be bound to the third party by his agents acts. In the 25thEdition of **ANSON'S LAW OF CONTRACT** edited by **A.G. GUEST** on **'CREATION OF AGENCY'** under the rubric **'Ostensible Authority'** at pages 598 to 500 it is stipulated as follows:

***'This doctrine of apparent authority or ostensible authority as it is usually called, is really an application of the principle of estoppel, for estoppel means only that a person is not permitted to resist an inference which a reasonable man would draw from his words or conduct. Thus, where one person expressly or impliedly represents another to have authority to act on his behalf so that a third party reasonably believes him to possess that authority and deals with him in reliance on the representation so made, the person making the representation will be bound to the same extent as if actual authority had in fact been conferred. He is estoppedfrom denying the ostensible authority which he has created. It is however extremely important to note three things. Firstly the representation must be made by or with the authority of the principal. Ostensible authority cannot be created simply by a representation of the agent himself. Secondly the third party must rely on a representation of the agent's authority to act as agent. The doctrine cannot apply where the third party does not know or believe him to be an agent, for example if the existence of the principal is unknown to him. Thirdly the agent's want of authority must be unknown to the third party'.***

It has been established above that MR MICHAEL WANG, issued out a complimentary card to not onlythe Appellant herein, but also to PW2, HON. MR. AMARA AKALIE KAMARA and PW3, SALIEU JALLOH, the said complimentary card which was tendered in evidence and marked Exhibit 'J' and which described the said MR MICHAEL WANG as Vice President of DALIAN SHENGHAI OCEAN FISHING COMPANY, the 1st Respondent herein. I hold the view that the issue of Exhibit 'J' aforesaid is a representation madenot only to the Appellant herein, but also to PW2, HON. MR. AMARA AKALIE KAMARA and PW3, SALIEU JALLOH, that MR MICHAEL WANG is the authorised agent of the 1st Respondent herein. Even though it cannot be said that the representation aforesaid was made by the 1st Respondent

herein,I hold the view that the same was made by MR MICHAEL WANG with the authority of the 1st Respondent herein by reason of my holding above that there is absolutely no evidence contradicting the fact that the 1st Respondent herein sat idly by and allowed DW1, MICHAEL YANG WANG to do all what this court found he did, which will include the issue of the complementary card aforesaid, the fact aforesaid, together with the evidence adduced, which suggests that the 1st Respondent was actively, though quietly involved and took part in authorising all what this Court found, MR MICHAEL WANG did. In this regard, it can be said that the representation, beingthe issue of the complementary card aforesaid, byMR MICHAEL WANG, was done with the authority of the 1st Respondent herein.

The evidence adduced herein does not show at what precise date Exhibit 'J' aforesaid was respectively issuedto not only the Appellant herein, but also to PW2, HON. MR. AMARA AKALIE KAMARA and PW3, SALIEU JALLOH. However it cannot be disputed that in so far as the matter herein is concerned, the Appellant herein first met with MR MICHAEL WANG, sometime in November of 2013 and at the said meeting, it was MR DAVID WEI who he introduced to the Appellant herein as the agent for the 1stRespondent herein and not himself. It cannot be disputed further that MR DAVID WEI disappeared from the ongoing transaction being done for and on behalf of the 1st Respondent herein. I find absolutely no evidencesuggesting thatin contemplation of the planned disappearance from the ongoing transactions being done for and on behalf of the 1stRespondent herein, it is MR MICHAEL WANG who it would have to be as acting for and on behalf of the 1st Respondent herein, so that the Appellant herein continue to have confidence that he was indeed dealing with the 1stRespondent herein. Indeed, the evidence itself suggests that since the 17th January 2014 when Exhibits 'A' and 'B' were issued, they being the letters to and from the Ministry of Fisheries and Marine Resources, the Appellant herein believed and has relied on the representation aforesaid made by the authority of the 1st Respondent herein that MR MICHAEL WANG is their Vice President, his assertions and utterances regarding all what was done as being done by the 1st Respondent through MR. MICHAEL WANG. Clearly there is no evidence adduced suggesting that the Appellant does not know or believe, MR MICHAEL WANG to be the Vice President of the 1st Respondent's company, the existence of the 1st Respondent itself which as shown by the evidence adduced herein, is known to the said Appellant. Clearly, if at all, it is the fact that MR MICHAEL WANG had no authority and was not in fact the Vice President of the 1st Respondent's company, there is no evidence adduced herein that the Appellant herein had knowledge of it.

Having established as above, that the 1st Respondent herein authorised MR MICHAEL WANG to represent to the Appellant herein, that the said MR MICHAEL WANG was its Vice President, the said representation which caused the said Appellant to deal with MR MICHAEL WANG as such, reasonably believing it and placing reliance of it, the 1st Respondent herein cannot in the circumstance be permitted to resist the inference which a reasonable man would draw from its conduct and MR MICHAEL WANG was its agent. The 1st Respondent herein would be bound to the same extent. that in view of the fact that MR MICHAEL WANG was involved in the fishing industry in Sierra Leone, he had the authority of the 1st Respondent herein to act not only within the scope of his implied authority but also within his usual or customary authority which he possessed in the fishing industry in Sierra Leone. In other words the 1st Respondent herein is estoppedfrom denying the ostensible authority which it has created hereby.

It has been established above, that MR MICHAEL WANG is the agent of the 1st Respondent herein, who is his principal. It has been established further, that the said MR MICHAEL WANG who appointed the Appellant herein, who is the stranger and called the third party to the relationship between MR MICHAEL WANG and the 1st Respondent herein, was indeed appointed by MR MICHAEL WANG to act as promoter and agent of the 1st Respondent herein. It has been established also that in so appointing the Appellant herein, MR MICHAEL WANG acted within the scope of his authority given to him to so appoint the Appellant herein, as the promoter and agent of the 1st Respondent herein,be the said authority being implied, usual or customary or with the apparent or ostensible authority which was created when the 1st Respondent herein, held out MR MICHAEL WANG as having the authority to appoint the said Appellant. This being the case and applying the above principle to the facts herein, I hold the view that a direct contractual relationship was created between the 1st Respondent herein and the Appellant herein by the actions of MR MICHAEL WANG in appointing the said Appellant to act as promoter and agent for the 1st Respondent herein. Consequently, the relationship now existing between the 1st Respondent and the Appellant herein is that the said Appellant is no longer a stranger called the third party to the relationship between the 1st Respondent herein and MR MICHAEL WANG, the Appellant now becomes an agent and a promoter of the 1stRespondent herein, by the actions of MR MICHAEL WANG aforesaid.

I hold the view that at this stage it could well determine the answer to the question, whether the Appellant herein is the sole agent and promoter of the

1st Respondent's company in respect of fishing activities in Sierra Leone pursuant to an oral agreement made between the Appellant herein and the 1st Respondent herein, in the affirmative but refrain from so doing without addressing the only ground advanced in the Decision/Judgement of the Court of Appeal delivered by the **Hon. Mr. JUSTICE J.B. ALLIEU JA**on the 28th December 2017, the same being that the 1st Respondent's Company was not in existence at the time when the Appellant herein was so appointed as sole agent and promoter of the 1st Respondent herein. I hold the view that the phrase **'coming into existence'** in the context in which it is used aforesaid, connotes the time when the 1st Respondent Company was incorporated and registered. I hold the view further that reference to the **'coming into existence'** of the 1st Respondent's company seems to make no differentiation as to when they were incorporated and registered in China or in Sierra Leone. In this regard, I hold the view also that **'coming into existence'** in the context in which it is used aforesaid,means the date on which the 1st Respondent Company, first became incorporated and registered.

As contained in his synopsis of arguments dated 20thJune 2018 and submitted herein, U. KOROMA ESQ of Counsel for the 1st Respondent herein, stated that the 1st Respondent herein,is a privately-owned company, that was duly incorporated in China with an incorporation certificate dated the 5th May 2014. In other words,by his own submission aforesaid, the 1st Respondent came into existence on the 5th May 2014. I find this to be completely untrue, primarily by reason that the records of appeal herein, does not reveal anyincorporation certificate dated the 5th May 2014. This fact was confirmed by the **Hon. Mr. JUSTICE J.B. ALLIEU JA** himself, when he stated in the majority Decision/Judgement of the Court of Appeal at page 1030 of the records of appeal herein as follows:

***'The Learned Trial Judge noted that the 1st Respondent Company was duly registered as a company incorporated in China, but he did not indicate the date of incorporation. It is Counsel for the 1st Respondent who indicated that his client's certificate of registration in China is dated 5th May 2014. In effect the 1st Respondent started operations in 2014'.***

Cleary, the Learned Trial Judge would have indicated an incorporation date of the 1st Respondent Company if an incorporation and registration certificate had been available and or tendered in evidence. It cannot be disputed also, thatthe **Hon. Mr. JUSTICE J.B. ALLIEU JA,**would not have made the statement above thatthe Learned Trial Judge noted that the 1st Respondent Company was duly registered as a company incorporated in China, but he did

not indicate the date of incorporation if an incorporation and registration certificate had been available and or tendered in evidence. In this regard, I hold the view that there is absolutely no evidence adduced herein showing that the 1st Respondent Company was incorporated in China on the 5th May 2014. Therefore, it cannot be said that the 1st Respondent started operations in 2014.

In addition to the above another factor which needs to be addressed, confirming that the 1st Respondent Company was in existence well before the 5th May 2014, when it claimed to have been incorporated and registered,is the submission made by U. KOROMA ESQ of Counsel for the 1st Respondent herein, as stated in the synopsis of arguments dated 28th June 2018,that after their incorporation, the 1st Respondent Company decided to engage in the business of fishing in Sierra Leone.Notwithstanding the fact that his submissions aforesaid, furthersuggests that the Appellant herein is inconsistent as to the exact date, the first meeting between the Appellant herein, on the one hand and MR MICHAEL WANG and MR DAVID WEIon the other hand, on the issue herein, occurred, it cannot be disputed that the overwhelming evidence is that the said meeting took place sometime towards the end of 2013 and in November 2013. Even DW1, MR MICHAEL WANG in his testimony as outlined above, confirmed this. From the testimonies as outlined above, it cannot be disputed that it was at the meeting aforesaid, that MR MICHAEL WANG informed the Appellant herein, that the 1stRespondent herein, had applied for a loan in China to construct ten (10) fishing vessels which they intend bringing into Sierra Leone to take part in the fishing industry in Sierra Leone. It is not disputed, that in a bid to ensure the grant of the loan aforesaid and to show proof that the 1st Respondent herein would acquire the requisite assurances and licences from the Ministry of Fisheries and Marine Resources and proof that the necessary fishing infrastructure such as storage facilities etc were available to the 1st Respondent in Sierra Leone to engage in the fishing industry in Sierra Leone, the Appellant herein, for and on behalf of the 1st Respondent herein, engaged the UNION FISHING 2007 COMPANY LTD, the said company which had the necessary fishing infrastructure aforesaid and commenced negotiations with the Ministry of Fisheries and Marine Resources and wrote Exhibits 'A' aforesaid in response to which Exhibit 'B' was written by the Ministry of Fisheries and Marine Resources, the said letters dated 17th January 2014 respectively. It cannot be disputed further, that it was sometime between January 2014 aforesaid and the end of March 2014. that steps were taken for the Appellant herein to meet with representatives of the Chinese Economic and Commercial Bureau for an interview and inspection of the fishing infrastructure of UNION FISHING 2007

COMPANY LTD and it was on the 11th March 2014 and the 15th March 2014 respectively that Exhibits 'L' and 'M' were sent by DW1, MICHAEL WANG to ALLIEU THORLU-BANGURA, the owner of UNION FISHING 2007 COMPANY LTD.,facilitating the meeting between the Appellant herein and representatives of the Chinese Economic and Commercial Bureau for the inspection of the fishing infrastructure aforesaid, all of which culminated in the grant of the loan to the 1st Respondent herein to construct Eight (8) fishing vessels and the grant of the permission by the Ministry of Fisheries and Marine Resources for the fishing vessels aforesaid to be brought into Sierra Leone to participate in its fishing industry. Clearly, if the above cannot be disputed then it cannot be true,that all the above can be done in the name of a non-existent company, particularly when it would be absolutely true to say that therepresentatives of the Chinese Economic and Commercial Bureau would never deal with the Appellant herein and do all that it did aforesaid includingthe grant of the loan to the 1st Respondent herein to construct Eight (8) fishing vessels, if the 1st Respondent Company were not in existence at the dates it did so aforesaid.

It cannot be disputed that the above would substantiate a dismissal of the only ground advanced in the Decision/Judgement of the Court of Appeal delivered by the **Hon. Mr. JUSTICE J.B. ALLIEU JA**on the 28th December 2017, that the 1st Respondent's Company was not in existence at the time when the Appellant herein was so appointed as sole agent and promoter of the 1st Respondent herein. I would however refrain from so doing at this stage and prudently consider the assumption that it is true that the 1st Respondent came into existence on the 5th May 2014 when it was incorporated. If that is the case, then all what the 1st Respondent herein,actually did was that when they decided to take part in the fishing industry in Sierra Leone, their actions amounted to them takingsteps to put themselves in a state of preparedness and to obtain all necessary requirements for it to do so, before being incorporated and coming into existence.It is strange then, that they seem to have accepted all what was done by the Appellant herein as outlined above to put them in that state of preparedness andobtained all necessary requirements for it to be part of the fishing industry in Sierra Leone, but reject that part which gave the Appellant herein the necessary tool to proceed and to do all what he did aforesaid, the 1stRespondent herein, claiming that they were not in existence when MR MICHAEL WANG, its agent appointed the Appellant herein as promoter and agent for it, for and on its behalf. It cannot be disputed that the appointment of the Appellant herein as promoter and agent of the 1st Respondent herein cannot be divorced from the steps outlined above taken by him to put the 1st Respondent herein in that state of preparedness together

with the obtaining of all necessary requirements for it to be part of the fishing industry in Sierra Leone. It cannot be disputed further, that these steps outlined above and taken by the Appellant aforesaid, were done basically in execution of his appointment as a promoter of the 1st Respondent Company. Section 49 of the **COMPANIES ACT 2009** provides as follows:

***'Any person who undertakes to take part in forming a company with reference to a given project and to set in going and who takes the necessary steps to accomplish that purpose, shall prima facie be deemed a promoter of the company'.***

Clearly if as stated above, it is true, that the 1st Respondent Company first came into existence and was formed on the 5th May 2014, in China in order to get itself engaged in a given project, that being to engage itself in the fishing industry in Sierra Leone, then it cannot be disputed that the Appellant herein is a promoter within the context of Section 49 of the **COMPANIES ACT 2009**aforesaid, by reason that the steps taken by him as outlined above were indeed necessary steps taken by him to set the 1stRespondent's project aforesaid going and accomplished same, which placed the said 1st Respondent herein in that state of preparedness in addition to him obtaining all necessary requirements for it to be part of the fishing industry in Sierra Leone. It cannot be disputed that by accepting his appointment as a promoter, the said Appellant undertook to take part in forming the 1st RespondentCompany in China,in order for it to engage itself in the fishing industry in Sierra Leone. In this regard it cannot be disputed that the actions of MR MICHAEL WANG in appointing the Appellantherein as promoter,which said action was done before the 1st Respondent Company came into existence and his subsequent actions in ensuring that the Appellant herein successfully execute his duties as promoter of the 1st RespondentCompany in Sierra Leone, would himself be regarded as a promoter of the 1st Respondent Company in accordance with Section 49 of the **COMPANIES ACT 2009** aforesaid, the action itself of the said MR MICHAEL WANG, which were done in Sierra Leone.

It cannot be disputed that all the actions of both MR MICHAEL WANG and the Appellant herein as promoters of the 1st Respondent herein were actions done between and on behalf of the 1st Respondent herein and done before they first came into existence, was formed, incorporated and registered in China on the 5th May 2014. It follows that one pertinent issue which cannot be avoided in this regard, is the adoption or otherwise of these actions of MR MICHAEL WANG and the Appellant herein by the 1st Respondent herein when it came

into existence. I hold the view that notwithstanding the fact that the 1st Respondent first came into existence, was formed, incorporated and registered in China on the 5th May 2014, the applicable law regarding the issue of the adoption or otherwise of these actions of MR MICHALE WANG and the Appellant herein ought to be Sierra Leonean law, by reason that all these actions as outlined above were done in Sierra Leone in compliance with Sierra Leonean law regarding a project which was to be conducted in Sierra Leone, in compliance with Sierra Leonean law. In this regard Section 50(3) of the **COMPANIES ACT 2009** provides as follows:

***'Any transaction between a promoter and the company may be rescinded by the company unless, after full disclosure of all material facts known to the promoter, the transaction shall have been entered into or ratified on behalf of the company by the company's board of directors independent of the promoter, by all the members of the company or by the company at a general meeting at which neither the promoter nor the holder of any shares in which he is beneficially interested shall vote on the resolution to enter into or ratify that transaction'.***

It cannot be disputedthat the evidence in its entirety does not contradict the fact that the 1st Respondent herein by its board of directors independent of both MR MICHAEL WANG and the Appellant herein or by all the members of it or by it at a general meeting at which neither MR MICHAEL WANG and the Appellant herein nor the holder of any shares in which he is interested in voted on the resolution to enter into or ratify the actions of MR MICHAEL WANG and the Appellant herein, actually entered into the aforesaid actions and ratified it for and on behalf of the 1st Respondent when it came into existence aforesaid, after it was formed, incorporated and registered in China on the 5th May 2014. In fact, it has been established above that it was the actions of both MR MICHAEL WANG and the Appellant herein that culminated in the grant of the loan and the grant of the permission by the Ministry of Fisheries and Marine Resources for the fishing vessels aforesaid to be brought into Sierra Leone to participate in its fishing industry. I hold the view that the fact that the 1st Respondent accepted the loan to construct the Eight (8) fishing vessels aforesaid, there being no evidence adduced herein contradicting same, the said fishing vessels which it cannot be disputed are now in Sierra Leone participating in the fishing industry in Sierra Leone, conclusively establishes the fact that indeed, the actions of both MR MICHAEL WANG and the Appellant herein aforesaid, done between and on behalf of the 1st Respondent herein were entered into or ratified by the 1st Respondent herein.

I find no evidence adduced herein contradicting the fact that full disclosure of all material facts known to both MR MICHAEL WANG and the Appellant herein were made to the 1st Respondent's company before the actions aforesaid, were entered into or ratified by the 1st Respondent herein. For instance it cannot be disputed that the 1st Respondent were unaware of the fact that all what the Appellant herein did to achieve the 1st Respondent's goal in participating in the fishing industry in Sierra Leone was in execution of his appointment as promoter and agent of the 1stRespondent herein, by MR MICHAEL WANG. I hold the view, that if as stated above, it cannot be disputed that the appointment of the Appellant herein as promoter and agent of the 1st Respondent herein cannot be divorced from the actions of the Appellant herein, taken to put the 1st Respondent herein in a state of preparedness and in addition tohim obtaining all the necessary requirements for the 1st Respondent to take part in the fishing industry in Sierra Leone, then the entering into or the ratification of both the actions of the MR MICHAEL WANG and the Appellant herein, would,notwithstanding the fact that such entering into or ratification was done in Chinawould include the entering into or the ratification of the appointment of the Appellant herein as promoter and agent of the 1st Respondent herein.

It should be pointed out that ratification by the 1st Respondent herein in this sense is quite different from ratification in the previous sense above, when I held that the agency relationship between the 1st Respondent herein and the Appellant herein was not an agency relationship created by ratification, in that MR MICHAEL WANG had authority to appoint the Appellant herein as promoter and agent for the 1st Respondent herein, before he did so. Clearly a distinction ought to be made as to the different context in which the term ratification is applied because in the former sense it would seem that the actions of MR MICHAEL WANG in appointing the Appellant herein as promoter and agentfor the 1st Respondent was subsequently ratified by the 1st Respondent herein, but in the latter sense ratification of the actions of MR MICHAEL WANG aforesaid were inapplicable. Having established the fact thatMR MICHAEL WANG acted within the scope of his authority given to him to so appoint the Appellant herein as promoter and agent of the 1st Respondent herein,be the said authority being implied, usual or customary or with the apparent or ostensible authority which was created when the 1stRespondent herein held out MR MICHAEL WANG as having the authority to appoint the said Appellant, then ratification in the later sense is concerned with acts performed without authority by an agent, in this case MR MICHAEL WANG in the name of the principal in this came the 1stRespondent herein. In

this case there were no such unauthorised acts and so ratification was inapplicable. On the other hand,ratification in the former sense concerns the adoption of authorised acts of an agent, in this case both MR MICHAEL WANG and the Appellant herein by their principal, in this case the 1st Respondent herein, such acts being performed by them as promoters of the 1st Respondent's company when they were not in existence, ratification of which will bar the 1st Respondent herein from rescinding all the actions of both MR MICHAEL WANG and the Appellantherein, before they came into existence, was formed, incorporated and registered.

Having established that by virtue of the ratification by the 1st Respondent herein of all the acts of the Appellant herein and MR MICHAEL WANG as outlined above, inclusive of the actions of MR MICHAEL WANG in appointing the Appellant herein as promoter and agent for the 1st Respondent's company for and on behalf of the 1st Respondent herein, the same which effectively bars the 1st Respondent herein, from rescinding all the actions aforesaid, done by MR MICHAEL WANG and the Appellant herein, before they came into existence, was formed, incorporated and registered, the submission of U. KOROMA ESQ of Counsel for the 1st Respondent herein, that it cannot be said that the Appellant herein was appointed as sole agent and promoter of the 1st Respondent herein, by reason that they were not in existence at the time he was so appointed and the upholding of it by the Court of Appeal as contained in its majority Decision/Judgement delivered by the **Hon. Mr. JUSTICE J.B. ALLIEU JA** on the 28th December 2017, is hereby overturned and overruled. Accordingly I hold the view and conclusively find that the Appellant herein is the sole agent and promoter of the 1st Respondent herein in respect of fishing activities in Sierra Leone pursuant to an oral agreement made between the Appellant herein and the 1st Respondent herein, having established as above that the said agreement was made by MR MICHAEL WANG as agent for and on behalf of their principal the 1st Respondent herein.

I find that the terms of the agreement aforesaid, were that pursuant to the 1st Respondent's goal of participating in the fishing industry in Sierra Leone and its application for a loan to bring to Sierra Leone ten (10) fishing vessels, the Appellant herein should take steps assisting the 1st Respondent prove to the Government of China that it would acquire the requisite assurances from the Ministry of Fisheries and Marine Resourcesacquire the necessary clearance and permits to engage in the fishing activities in Sierra Leone and assist the 1st Respondent prove to the Governmentof China that the necessary fishing infrastructure such as storage facilities etc. were readily available to the 1st Respondent before the referred loan aforesaid would be approved. The

uncontroverted evidence adduced herein was that after all necessary arrangements aforesaid had been executed by the Appellant herein, the loan approved and granted to the 1st Respondent herein for the construction of Eight (8)vessels aforesaid and upon the arrivalof the said vessels in Sierra Leone, the different species of fisheries normally sold in the local markets of Sierra Leone and which are obtained during the fishing process at every point in time would be handed over to the Appellant herein, which he will sell and retain the proceeds of the sale thereof whilst all the other species of fishes sold in international markets would be retained by the 1st Respondent herein. The uncontroverted existence adduced herein also reveal that a company would be incorporated in Sierra Leone through which the said Appellant herein and the 1st Respondent herein would carry out the referred fishing activities aforesaid, the said Appellant who shall hold thirty five (35) percent of the shares in the said company. The uncontroverted evidence adduced herein also reveal that the 1st Respondent herein shall pay to the Appellant herein his agency and promoter fees at the rate of the Five Hundred United States Dollars (US$ 500.00) for each boat monthly.

The uncontroverted evidence adduced herein,reveals that further to the agreement aforesaid, the Appellant herein went in search of a company or individual with the requisite fishing and storage facilities so that the loan referred to above would be approved using a company called UNION FISHING 2007 COMPANY LTD. owned by MR ALIEU THORLU-BANGURA. The controverted evidence adduced herein reveals that the Appellant herein commenced negotiations with the Ministry of Fisheries and Marine Resources and assisted the 1st Respondent herein in assuring the Chinese government that the necessary fishing infrastructure was available by granting an interview with representatives of the Chinese Economic and Commercial Bureau in the Chinese Embassy in Sierra Leone and leading this team to inspect the fishing facilities of UNION FISHING 2007 COMPANY LTD., all of which culminated in the grant of the loan to the 1st Respondent herein to construct the fishing vessels aforesaid and the grant of the permission by the Ministry of Fisheries and Marine Resources for eight (8) fishing vessels of the 1st Respondent's company to come into Sierra Leone to participate in its fishing industry. Clearly then, and in accordance with the agreement aforesaid, the Appellant herein had done all what he was required to do, leaving an outstanding obligation on the part of the 1st Respondent herein when the fishing vessels aforesaid were constructed and brought into Sierra Leone. The uncontroverted evidence adduced herein reveals that when the fishing vessels aforesaid came into Sierra Leone in June 2015, nothing absolutely was done by the 1st Respondent herein in fulfilment of its obligations aforesaid. I hold the view that

the 1st Respondent herein was absolutely in breach of the agreement aforesaid.

Having established as above that the Appellant herein is the sole agent and promoter of the 1st Respondent herein, in respect of fishing activities in Sierra Leone pursuant to an oral agreement between them and entered into for and on behalf of the 1st Respondent by MR MCHAEL WANG as its agentand that the 1st Respondent herein was in breach of the said agreement and having established as above that by virtue of the ratification by the 1st Respondent herein of all the acts of the Appellant herein and MR MICHAEL WANG inclusive of the actions of MR MICHAEL WANG in appointing the Appellant herein as promoter and agent of the 1st Respondent's company for and on behalf of the 1st Respondent herein, effectively barring the 1st Respondent herein from rescinding the said action(s) before they came into existence, was formed, incorporated and registered, Grounds A and B of the Appeal hereby succeeds in its entirety.

As regards Ground C of the Appeal herein, the **Hon. Mr. JUSTICE J.B. ALLIEU JA** in the majority decision of the Court of Appeal applied the principles set out in the case between **CHRISTIAN OGOO** and **HUAWEI TECHNOLOGIES CELLCOM TELECOMMUNICATIONS**, Civ. App 31/2010 in the Court of Appeal in Sierra Leone and the case between **HUAWEI TECHNOLOGIES** and **COMIUM (SL) LTD & COMIUM SIERRA LEONE** CC 215/2011 in the High Court of Sierra Leone, stating that the said cases are relevant to the aspect of whether it can be said that MR MICHAEL WANG or MR DAVID WEI were lawfully acting for and on behalf of the 1st Respondent herein who was not in existence when they so acted in so far as the registration and non-registrationof companies incorporated in Sierra Leone, having the capacity to sue or be sued. I hold the view that clearly the principles set out in the cases aforesaid were misapplied to the case herein, as this case involves the determination of whether the authorised acts of an agent acting as a promoter after ratification of it when it came into existence, was formed, incorporated and registered as opposed to registration and non-registration of a company having the capacity to sue or be sued. Having established as above that the ratification of the actions of MR MICHAEL WANG in appointing the Appellant herein as promoter and agent of the 1st Respondent herein effectively barring them from rescinding the same, Ground C aforesaid succeeds.

As regards Ground D of the Appeal herein, the **Hon. Mr. JUSTICE J.B.ALLIEU JA** held that the principles established in the case between

**ROYAL BRITISH BANK** and **TURGUAND** (1865) 6 E & B 136 ER 886 was inapplicable simply because MR MICHAEL WANG was not acting for and on behalf of the 1st Respondent herein and there was no agency relationship in existence. Having established clearly as above that indeed MR MICHAEL WANG was the agent of the 1st Respondent herein and acted within the scope of his implied, usual or customary authority and or within the apparent or ostensible authority created by the 1st Respondent herein, I hold the view that the Decision/Judgement of the Appeal Court holding that the **TURGUAND'S** case cited above is inapplicable to the case herein is an error in law. In this regard Grounds D of the Appeal herein succeeds.

Ground E of the appeal herein involves the Appellant's claim that the **Hon. Mr. JUSTICE J.B. ALLIEU JA,** in the majority Decision/Judgement of the Court of Appeal, misapplied the principle of evidential burden of proof by wrongly holding that the burden was on the Appellant herein to call MR ALIEU THORLU-BANGURA to testify on his behalf. It cannot be disputed that in the first place, it was the Appellant herein who brought in MR ALIEU THORLU-BANGURA into this transaction, by reason that forthe 1stRespondent to achieve its aim of participating in the fishing industry in Sierra Leone, it must prove to the Chinese Government that the requisite licenses would be obtained and the required facilities were there. I find abundant evidence adduced in this regard, the same which remains uncontroverted. Exhibit 'A' for instance was signed by the Appellant herein using the name of UNION FISHING 2007 COMPANY LTD. whose owner is ALIEU THORLU-BANGURA. Exhibits 'L' and 'M' were emails sent by DW1, MICHAEL WANG, the agent of the 1stRespondent herein to MR ALIEU THORLU-BANGURA,facilitating meetings to be held with the Chinese authorities to inspect the fishing facilities of MR ALIEU THORLU-BANGURA, which said meeting was geared towards the grant of the loan to construct the fishing vessels intended to be used in Sierra Leone for fishing activities. U. KOROMA ESQ of Counsel for the 1st Respondent herein, submitted that the Appellant asserted that it was MR ALIEU THORLU-BANGURA, the owner of UNION FISHING 2007, who gave him permission to use his business name to apply to the Ministry of Fisheries and Marine Resources for entry clearance but that the Appellant failed to bring in the said ALIEU THORLU-BANGURA to testify. In this regard, I hold the view that statement of the **Hon. Mr. JUSTICE A.S.SESAY JA** (as he then was) contained in the judgement of the High Court on this matter, that he finds it strange for the 1st Respondent herein to contend that the Appellant herein failed to brief MR ALLIEU THORLU-BANGURA to testify on his own behalf, was absolutely proper in the circumstance.

In support of myview held aforesaid, it cannot be disputed that it is MR ALIEU THORLU-BANGURA who is owner of UNION FISHING COMPANY LTD. If Exhibit 'A' aforesaid bearing the name UNION FISHING COMPANY LTD is signed by the Appellant herein, it follows that the Appellant herein could have only signed Exhibit 'A' aforesaid with the permission of MR ALIEU THORLU-BANGURA. I hold the view then that the tendering of Exhibit 'A'in evidence would be the Appellant's evidence adduced in proof of his assertion that it was MR ALIEU THORLU-BANGURA the owner of UNION FISHING 2007 who gave him permission to use his business name to apply to the Ministry of Fisheries for entry clearance. Being that the 1st Respondent only generally denied all the assertions made by the Appellant as contained in their Defence delivered and filed at the High Court, found at pages 588 to 589 of the records of appeal herein, it would be for that Court to assess the contents of Exhibit 'A' and determine whether sufficient proof of the Appellant's assertion aforesaid was adduced. In this regard the **Hon. Mr. JUSTICE A.S. SESAY JA** (as he then was) was clear on this point, indicating the reasons why it was the Appellant herein who signed Exhibit 'A' aforesaid. I hold the view that if, as submitted by U. KOROMA ESQ of Counsel for the 1stRespondentherein, it is true that the Appellant's assertion aforesaid was vehemently denied by the 1st Respondent herein, this would be tantamount to the 1st Respondent positively asserting that the Appellant herein obtained the letterhead of UNION FISHING COMPANY LTD., otherwise than by it be given to him by MR ALIEU THORLU-BANGURA himself whoauthorised him to sign same. Clearly, the burden of proof of such assertion would be the 1st Respondent's. Consequently, I hold the view that Ground E of the Appeal herein succeeds.

Ground F of the Appeal herein involves the determination of the third and final issue which the High Court was faced with, that being whether the breach of the oral agreement between the 1st Respondent herein and the Appellant herein, as determined above was induced by ABIE ARUNA KOROMA, the 2nd Respondent herein and MONZA FISHING COMPANY, the 3rd Respondent herein. The substance of the arguments put forward by the 2nd and the 3rd Respondents herein is that there was no agreement between the 1st Respondent herein and the Appellant herein and as a result they could not have induced a breach of a non-existent agreement. A.S. SESAY ESQ of Counsel for the 2nd and the 3rd Respondents herein submitted that the Appellant herein failed to prove that there was an actual contract between him and the 1st Respondent herein thereby making the claim for an inducement of a breach, futile. He submitted further that as a matter of common sense you cannot induce a breach of contract that simply does not exist. Having determined as above that indeed the Appellant herein is the sole agent and

promoter of the 1st Respondent herein in respect of fishing activities in Sierra Leone, pursuant to an oral agreement between them entered into for and on behalf of the 1st Respondent herein by MR MICHAEL WANG as its agent, the submissions of A.S. SESAY ESQ of Counsel for the 2nd and the 3rdRespondents herein is clearly untenable. The arguments of the 1st and the 2nd Respondents herein, in that regard cannot in any way be sustained. On this note, it is necessary that the alternate argument put forward by the 2nd and the 3rd Respondents herein, be adequately considered.

The submissions of A.S. SESAY ESQ of Counsel for the 2nd and the 3rd Respondents herein, all of which I uphold, is that an inducement of a breach of contract is also referred to as procuring a breach of contract and that according to **LORD DELVINE** in the case between **ROOKES** and **BERNARD** (1964) A.C 1129 at page 1212, **'an act of inducement is not by itself actionable'**. He referred to the case between **MERKUR ISLAND SHIPPING CORPN** and **LAUGHTON** (1983) 2 AC 570 where it was stated at pages 608 that **'the procurer must act with the requisite knowledge of the existence of the contract and intention to interfere with its performances, a two-fold requirement'**. He submitted that the Appellant herein must show that there was an intentional invasion of his contractual rights and not merely that the breach was the natural consequence of the 2nd and the 3rd Respondents conduct. He referred to the case between **BRITISH INDUSTRIAL PLASTICS** and **FERGUSSON** (1964) 1 ALL ER 479 where at page 483 it was held that **'knowledge is an essential ingredient to the cause of action. To be liable for an inducement of a breach of contract, the individual must have knowledge of the existence of the contract'**.

The substance of Ground F of the Appeal herein is that the Court of Appeal failed to consider or adequately consider the fact and the applicable law by wrongly holding that the 2nd and the 3rd Respondents herein had no knowledge of the agreement between the Appellant herein and the 1st Respondent herein and therefore there was no inducement of breach of contract. Again and as stated above, the majority Decision/Judgement of the Court of Appeal delivered by the **Hon. Mr. JUSTICE J.B. ALLIEU JA** in this regard, ought to have been arrived at after it had re-evaluated the evidence which was adduced at the High Court during the trial of the matter, since no evidence was adduced at the Court of Appeal itself. Likewise,this Court would only be able to reach ajust decision regarding the determination, whether the 2nd and the 3rd Respondents herein had knowledge of the agreement aforesaid and therefore induced a breach when it considers the re-evaluated evidence adduced at the High Court by the Court of Appeal. Again, I am extremely constrained to make

a determination of the above as the Court of Appeal itself failed to show how it re-evaluated the evidence adduced at the High Court, in this regard, for it to arrive at its decision aforesaid. Consequently, I would have to again re-evaluate the evidence adduced before the Trial Judge of the High Court.

PW1, MOHAMED BANGURA, the Appellant herein testified that after it turned out that the facilities of UNION FISHING 2007 COMPANY LTD were no longer available for use, he paid a visit to PW2, Hon. Mr. AMARA AKALIE KAMARA so as to hold a meeting with him to chart a way forward in securing alternate fishing facilities for the fishing venture with the 1st Respondent's company. He testified that it transpired that PW2, Hon. Mr. AMARA AKALIE KAMARA was residing at the residence of ABI ARUNA KOROMA, the 2nd Respondent herein, who was present at the said meeting and became privy to all the information touching and concerning the contractual relationship between himself and the 1st Respondent herein. He testified that the 2nd Respondent herein informed him that she operated a fishing business in Sierra Leone and that she was in the position to negotiate with one MR DAVIES for the use of the fishing facilities of the former BANGSO FISHING COMPANY at Wallace Johnson Street, Freetown in consideration for which she demanded a twenty five (25) percent share in the company which he and the 1st Respondent herein were to incorporate in Sierra Leone. He testified that after consulting with the 1st Respondent herein, it was agreed that the 2ndRespondentherein, be granted the twenty five (25) percent share in the company aforesaid which she had demanded and that he holds the same thirty five (35) percent share in the same. He testified that the company documents in the name of LIFEBOAT FISHING COMPANY (SL) LTD be prepared and handed over to the 2nd Respondent herein which she failed, refused to sign but proceeded to wrongfully and deliberately induce and procure the breach of the agreement between himself and the 1st Respondent herein.

PW1 MOHAMED BANGURA, the Appellant herein, testified that towards the end of 2014, he learnt that through the 3rd Respondent herein, the 2nd Respondent had applied to the Ministry of Fisheries and Marine Resources in Sierra Leone for entry clearance for the vessels which the 1st Respondent herein were to bring into Sierra Leone. Hetestified that he wrote several letters protesting to the Ministry of Fisheries and Marine Resources not to grant the entry clearances aforesaid to the 2nd and the 3rd Respondents herein by reason that he was the first who had sought entry clearance which had been approved by the Ministry of Fisheries and Marine Resources as is seen in Exhibit D which is a letter dated 23rdFebruary 2015 addressed to the Appellant herein from the Director of Fisheries and Marine Resources, the same which

acknowledged the said Appellant informing the Ministry of Fisheries and Marine Resources of the relationship with MR MICHAEL WANG, Vice President of the 1st Respondent's Company which said relationship culminated in the request and permission for ten (10) Industrial fishing vessels to sail from China to Sierra Leone for the purpose of fishing and which said letter requested the said Appellant to consume patience, whilst the Ministry conducts an investigation into the matter. He testified that after further protests made, the Ministry of Fisheries and Marine Resources addressed another letter to him dated 10th March 2015 urging him to show understanding whilst it continues to conduct investigations in the matter. He testified that to his utter surprise,the Ministry had already proceeded to grant entry clearances on the 27th January 2015 to the 3rd Respondent for the 1st Respondent's vessels to enter the shores of Sierra Leone, notwithstanding the letters from the Ministers of Fisheries and Marine Resources aforesaid dated 23rd February 2015 and the 10th March 2015 aforesaid assuring him that investigations were ongoing and that he should exercise patience.

PW1, MOHAMED BANGURA, the Appellant herein testified that by reason of the above and in breach of the agreement aforesaid, the 1stRespondentsent the fishing vessels to Sierra Leone in the name of the 3rd Respondent and has completely failed and or refused to have any communications and or dealings with him. He testified that he has been maligned and side-linedby the 2nd and the 3rdRespondents herein from doing business with the 1st Respondent herein, notwithstanding several attempts made at contacting the 1st and the 2nd Respondents herein, to arrive at an amicable settlement of the matter and have refused to have audience with him. He testified that he spoke with the Secretary General of the APC Party about the dispute who in turn spoke with the Minister of Fisheries and Marine Resources and confirmed that he knows about the matter. He testified that the Minister sent him to one CHIEF S.A.V. SESAY who invited himself, ABIE ARUNA KOROMA and others at 51 Bathurst Street, Freetown. He testified that he honoured the invitation, the 2nd Respondent who was also present together with PW2, Hon. Mr. AMARA AKALIE KAMARA. He testified that all parties explained and a settlement arrived at for the sharing of the vessels was proposed, the same which was rejected outrightly by the 2nd and the 3rd Respondents.

Under cross examination of him U. KOROMA ESQ. of Counsel for the 1st Respondent herein,PW1, MOHAMED BANGURA, the Appellant herein testified that he had always dealt with the 1st Respondent Company through MR. MICHAEL WANG. He testified that MR. MICHAEL WANG was at the meeting at Bathurst street aforesaid.

PW2, Hon. Mr. AMARA AKALIE KAMARA who testified at the High Court for and on behalf of the Appellant herein, testified that sometime in the year 2014 one FEREMUSU SESAY called him on his phone requesting an appointment with him regarding a man engaged in fishing business whohad issues with another Sierra Leonean and would like him to resolve the issues amicably since it involved a potentially huge investment with a Chinese company. He testified that he eventually agreed for her to meet with him at the residence of the ABIE ARUNA KOROMA, the 2nd Respondent herein. He testified that the next day the said FEREMUSU SESAY met him at the residence aforesaid, together with the Appellant herein and PW2, SALIEU JALLOH explaining that the said Appellant had an issue with MR ALIEU THORLU-BANGURA and his company UNION FISHING 2007 COMPANY LTD. whose fishing facilities they had agreed was to be used by the 1st Respondent herein, but that the Appellant herein was of the conviction that MR ALIEU THORLU-BANGURA wanted to work directly with the 1st Respondent herein to the exclusion of the Appellant herein, which said conviction was formed on the grounds that MR MICHAEL WANG now refused to have any form of direct contact with the Appellant herein. He testified that apparently ABIEARUNA KOROMA, the 2nd Respondent herein was present at the said meeting, who did not only plead, that he assist the Appellant herein but sometime later at a subsequent meeting suggested that they all set up a company to be named LIFEBOAT FISHING COMPANY LTD to be used as vehicle through which the Appellant herein and the 1st Respondent herein can operate their fishing business successfully. He testified that at this subsequent meeting MR MICHAEL WANG was present and indicated that he was looking for a house to rent. He testified that the 2ndRespondenturged MR MICHAEL WANG not to rent a house and offered him her basement at her office located in Aberdeen.

PW2, HON. MR. AMARA AKALIE KAMARA testified that the Appellant later informed him that the 2nd Respondent had persuaded MR MICHAEL WANG the 1st Respondent to work with her and appoint her as the 1stRespondent'sagent, instead of the Appellant herein. He testified that he immediately summoned a meeting with the Appellant herein, MR MICHAEL WANG, PW2, SALIEU JALLOH and FEREMUSU SESAY. He testified that they all met at the residence of the 2ndRespondentherein. He testified that at the meeting he actually confirmed the information given to him by the Appellant from the 2nd Respondent herself who told him that he had already started dealing with the 1stRespondentCompany. He testified that he told the 2nd Respondent that it was most unjust for her to hijack the business from the

Appellant, in response to which the 2nd Respondent stated that she cared less and that the said Appellant does not have the requisite fishing infrastructure to set up the fishing business and act as agent for the 1st Respondent herein and would also not be willing to work with the Appellant herein. He testified that MR MICHAEL WANG confirmed all what the 2nd Respondent said to be true. He testified that he informed MR MICHAEL WANG that this was wrong and advised them to abide by the terms of the agreement, the 1stRespondent had with the Appellant herein. He testified that an argument ensued and that he advised all to leave.

PW2, HON. MR. AMARA AKALIE KAMARA testified that after they had all left the 2nd Respondent's residence, he called her on the phone and again admonished her that she did not do right. He testified that he informed her that he will never support or condone her actions as she had only deliberately taken advantage of the Appellant and took away his business and his business partners. He testified that five (5) months thereafter, all the parties concerned,including the Appellant herein and the 2nd Respondent herein met at the LimbaChief's residence at Bathurst Street, Freetown to chart a way forward. A committee was set up by the Limba Chief and they came up with a written resolution to the effect that the Appellant herein should get thirty (30) percent of the profits from the business ventures between the 2nd Respondent herein and the 1st Respondent herein, which was outrightly rejected by the 2nd Respondent and in return offered the Appellant herein the sum of Fifty Million Sierra Leone Leones (SLL50,000,000.00) as a way of compensation, the same which the Appellant rejected.

I find that the testimony of PW2, HON. MR. AMARA AKALIE KAMARA above, very compelling. Overwhelmingly,it does not only corroborate the testimony of PW1, MOHAMED BANGURA, the Appellant herein as regards the fact that the 2nd Respondent herein had knowledge of the agreement between the said Appellant and the 1st Respondent herein, regarding his, the Appellant's appointment as the sole agent and the promoter of the 1st Respondent herein, I hold the view that the above testimony clearly establishes the fact that the 2nd Respondent herein with such knowledge of the agreement aforesaid intentionally took steps to interfere with the execution of the said agreement culminating in procuring its breach. The testimony of PW2, HON. MR. AMARA AKALIE KAMARA remained intact and was not in any way impeached by cross examination of him by both U. KOROMA ESQ of Counsel for the 1stRespondent herein and S. BAKARR MS. of Counsel for the 2nd and the 3rd Respondents herein.

I conclusively find thatthe testimony adduced at the High Court by both DW1, MR MICHAEL WANG and DW2, ABIE ARUNA KOROMA, the 3rd Respondent herein,in its entirety does not in any way controvert the testimony above of PW1, MR MOHAMED BANGURA the Appellant herein and particularly the testimony of PW2, HON. MR. AMARA AKALIE KAMARA. DW1, MR MICHAEL WANG and DW2, ABIE ARUNA KOROMA, the 2nd Respondent herein did not deny the meetings and in one of which, the 2ndRespondent suggested setting up LIFEBOAT COMPANY LTD. to replace UNION FISHING 2007 COMPANY LTD. and deal with the 1st Respondent herein, whereby the 2nd Respondent would have twenty five (25) percent of the shares and profits. The 2nd Respondent in her testimony never denied that PW2, HON. MR. AMARA AKALIE KAMARA,told her to her face, that he was angry with her for procuring the breach of the agreement between the Appellant herein and the 1st Respondent and thereafter hijacking the said business in her favour, DW1,MR MICHAEL WANG in his testimony neither confirmed or denied that PW2, HON. MR. AMARA AKALIE KAMARA solicited and obtained confirmation from him as to the actions of the 2ndRespondent herein. Both DW1, MR MICHAEL WANG and DW2, ABIE AMARA KOROMA never denied and in fact confirmed that the meeting at CHIEF S.A.V. SESAY'S residence, never denied the proposal that the Appellant herein benefits from the business venture hijacked from him by the 2nd Respondent, being thirty (30) percent of the profits, the 2nd Respondent never denied that such proposal was reached which she rejected and instead offered Fifty Million Sierra Leone Leones (SLL50,000,000.00) in compensation.

I find that in its entirety, the testimonies of both DW1, MR MICHAEL WANG and DW2, ABIE ARUNA KOROMA, the 2nd Respondent herein, confirms the fact that it was DW1, MR MICHAEL WANG who introduced the 2nd Respondent herein to the 1st Respondent herein, the 2nd Respondent herein, who collaborated with the 3rd Respondent and got appointed as the 1st Respondent's agent on the 12th January 2015 as is seen in Exhibit 'R' tendered in evidence at the High Court, found at page 758 of the records of appeal herein, the introduction aforesaid which could only have apparently been done before 12th January 2015, at a time when as repeatedly testified by him DW1, MR MICHAEL WANG, had no business dealings with the 1st Respondent Company until he was appointed by them as an interpreter when they came into Sierra Leone which clearly was after the agency appointment aforesaid, the same which only goes to confirm how untruthful, DW1, MR MICHAEL WANG was.

The testimonies of both DW1, MR MICHAEL WANG and DW2, ABIE ARUNA KOROMA, the 2nd Respondent herein, confirms the fact that not only was the appointment of the 2nd Respondent herein,as agent of the 1st Respondent herein, regarding fishing activities in Sierra Leone, a breach of the agreement made between the Appellant herein and the 1st Respondent herein, the said breach was procured by the 2nd Respondent herein in collaboration with the 3rdRespondentherein, with the active participation of both MR MICHAEL WANG as the agent with his principal the 1st Respondent herein. If it were otherwise, why then would the said MR MICHAEL WANG sit by and allow the 2nd Respondent herein to offer the sum of Fifty Million Sierra LeonesLeones (SLL50,000,000.00) to the Appellant as compensation, after they had been accused of procuring the breach of the agreement between the said Appellant and the 1st Respondent herein. I do not believe that such an offer was made only because she was asked to do so by the committee set up by the CHIEF S.A.V SESAY, to resolve the issue between the Appellant herein and the 2nd Respondent herein, when her testimony, in its entirety does not reveal a denial that the proposal of the committee aforesaid was for the 1st Appellant herein to be given thirty (30) percent of the profits obtained from the fishing business between the 2nd Respondent herein and the 1st Respondent herein. I find that the most compelling evidence however, not only shows the complication of introducing a third party in this transaction being SABCO FISHING COMPANY, it also conclusively show that both MR MICHAEL WANG and the 1st Respondents' complicity in the 2nd Respondents procurement of the breach of the agreement between the Appellant herein and the 1st Respondent herein,is that one contained in the testimony of DW2, ABIE ARUNA KOROMA, the 2nd Respondent herein during examination in chief of her by S. BAKARR MS. of Counsel for the 2nd and the 3rd Respondents herein.

As contained at page 817 of the records herein, DW2, ABIE ARUNA KOROMA, the 2nd Respondent herein testified that in addition to the fact that she had a cooperation agreement with the 1st Respondent's company and that the said vessels which they had brought into Sierra Leone were operating and had received permission from the Ministry of Fisheries and Marine Resources to discharge fish, she also had an agreement with SABCO FISHING COMPANY LTD for them to buy proceeds of fish catch from five (5) of the fishing vessels aforesaid the said agreement which was tendered in evidence as Exhibit AA 1-2. She tendered in evidence Exhibit BB 1-3 which she says is a notice of termination of the cooperation agreement aforesaid with them, the 2nd and the 3rd Respondents herein and the 1st Respondent herein. Notwithstanding the fact that Exhibit BB1-3 is clearly spells out other reasons for the termination of the cooperation agreement aforesaid, DW1, ABIE

ARUNA KOROMA, the 2nd Respondent herein testified that the 1st Respondent herein told her that the reasons for the termination of the cooperation agreement aforesaid was because the 2nd Respondent herein, was unable to stop the Appellant herein, from taking them to Court thereby causing them considerable loss of money and time. I hold the view that this piece of evidence is a compelling one by reason that obviously,it definitely suggests that even before the 1st Respondent herein breached their agreement with the Appellant herein and appointed, as their agents the 2nd and the 3rd Respondents herein, the 2nd Respondent must have convinced the 1st Respondent herein to appoint her in breach of the agreement aforesaid between the Appellant herein and the 1st Respondent and that she would in return ensure that no legal consequences would ensue against them, the 1st Respondent herein. Clearly it was because she had failed to ensure this, that caused at least one of the reasons why the 1st Respondent herein,terminated the cooperation agreement aforesaid.

Clearly and by reason of the above, I hold the view that the breach of the oral agreement between the 1st Respondent herein and the Appellant herein, that being the agreement appointing the Appellant herein as sole agent and promoter of the 1st Respondent's company as determined above, was procured and or induced by the 2nd and the 3rd Respondents herein. I conclusively find, that on a proper and adequate consideration of the evidence adduced at the High Court, the 2nd Respondent herein, with the 3rd Respondent herein, collaborating with her, not only had knowledge of the agreement between the said Appellant and the 1st Respondent herein, regarding him the Appellant's appointment as the sole agent and promoter of the 1st Respondent, re-evaluation of the evidence above clearly establishes the fact that the 2nd and the 3rd Respondents herein with such knowledge of the agreement aforesaid intentionally took steps to interfere with the execution of the said agreement, culminating in procuring its breach. In this regard Ground F of the Appeal herein succeeds in its entirety.

It is clearly evident that from the above in its entirety, the Court of Appeal in reaching its majority Decision/Judgement delivered by the **Hon. Mr. JUSTICE J.B. ALLIEU JA** failed to properly and adequately, consider and re-evaluate the entire evidence which was adduced at the High Court during the trial of the matter herein, the same which should have been done since no evidence was adduced at the Court of Appeal. I am particularly inclined to hold this view,when consideration is given to an excerpt from the Decision/Judgement aforesaid found at page 1041 of the records herein as follows:

*'I really sympathise with the Respondent and in this case the Appellant herein who went all out to do, act and fulfil certain conditions in order to ensure that he works with the 1st Respondent (and in this case the 1st Respondent herein). However, the law, from my view point cannot help him now. It is my candid opinion that the Appellant herein was entangled in a web of deceit with the 1st Respondent herein thereby completely leaving the Appellant herein in the cold. At the end of it all, those individuals turned against him and debunked his evidence'.*

Clearly, the excerpt above mentions the fact that the Appellant herein was engaged in a web of deceit. It cannot be disputed that the only persons who the said Appellant was engaged with in this matter include MESSRS WANG and WEI, together with all the Respondents herein, MR DAVID WEI who later surreptitiously disappeared by reason that as established above, he only came to the scene to cover up the fact that it was MR MICHAEL WANG who was acting for and on behalf of the 1st Respondent herein. The excerpt above is correct as the fact that the Appellant herein was engaged in a web of deceit with the above-mentionedpersons but calling them 'smart' individuals is clearly a misnomer. I hold the view that the statement that those so called 'smart' individuals used their wits to transact business with the 1st Respondent herein leaving the Appellant in the cold is a very unfortunate statement, by reason that had the evidence adduced at the High Court been properly considered and evaluated such a statement would not have been made. I have found that these individuals were far less than smart and had no wits about them. Their actions in its entirety were puerile attempts made to prevent the Appellant herein doing business with the 1st Respondent herein leaving him in the cold. In this regard and had the evidence adduced at the High Court herein, properlyre-evaluated, the statement that these so called smart individuals debunked the Appellant's evidence would not have been made, clearly because as contained in the aforesaid excerpt, it has been acknowledged that the Appellant herein went all out to do, act and fulfil certain conditions, in order to ensure that he works with the 1st Respondent herein and in my view all done in accordance with the agreement he reached with the 1st Respondent herein and within the law. I hold the view that this being the case, then the statement contained in the excerpt aforesaid that the law cannot now help the said Appellant is outrageously, unfortunate. It cannot be said that the law cannot help those who abide by it, but help those so called 'smart' individuals who used their so called wits to breach and induce a breach of contract together with those who were complicit in it.

On the whole, I hold the view that the majority Decision/Judgement of the Court of Appeal delivered by the **Hon. Mr. JUSTICE J.B. ALLIEU JA** on the 28th December 2017 is against the weight of the evidence adduced at the High Court, which said evidence as found, was not properly re-evaluated and considered by the Court of Appeal. In this regard, Ground G of the Appeal herein succeeds, the Appeal herein is allowed and the said Decision/Judgement against the Appellant herein, is hereby wholly set aside.

Having wholly set aside the majority Decision/Judgement of the Court of Appeal delivered by the **Hon. Mr. JUSTICE J.B. ALLIEU JA** on the 28th December 2017, the immediate obvious consequences that should follow is to restore the Decision/Judgement of the High Court delivered by the **Hon. Mr. JUSTICE A.S. SESAY JA** (as he then was). Clearly his Decision/Judgment aforesaid was based on his own interpretation of the law as applicable to the facts of the case analysed by him. In that regard, I have been careful in my own re-evaluation of the facts adduced before him, so as not to have same distorted as can be seen from the above, only that vital additional findings have been made by me which will aid me reaching a decision as to whetherthe Decision/Judgement of the High Court delivered by the **Hon. Mr. JUSTICE A.S. SESAY JA** (as he then was)should be wholly restored. However, notwithstanding the fact that the analysis of facts adduced before him were not distorted by my own re-evaluation of it, his own interpretation of the law as applicable to those facts aforesaid would not have to be necessarily the same as mine. In the circumstance, I hold the view that it is necessary that I consider and determine whether the Decision/Judgement of the High Court aforesaid be restored in its entirety or that the same be substituted by another.

Clearly and by reason of the above, the grant of the Declaration that the Appellant herein is the sole promoter and agent of the 1st Respondent herein in respect of all fishing activities in Sierra Leone pursuant to an oral agreement entered into between the said Appellant and the 1st Respondent herein, in the year 2013, pursuant to the Appellant's claim in that regard, cannot in any way be distorted.It cannot be disputed, thatas regards his claim for specific performance of the oral agreement aforesaid, the same which was granted by the High Court in its Decision/Judgement aforesaid, the same was granted by reason of it being held that the oral agreement as declared above entered into between the said Appellant and the 1st Respondent herein, in the year 2013 was breached by the 1st Respondent herein. An order for specific performance is one by which the Courts direct the Defendant to perform the contract which he made and in accordance with its terms.

The justification of the grant of the said award is found in an excerpt of the Decision/Judgement of the **Hon. Mr. JUSTICE A.S. SESAY JA** (as he then was) at page 889 of the records of appeal herein, as follows:

***'The Plaintiff (the Appellant herein) testified that he undertook certain steps which were required for the commencement of the fishing business by the 1st Defendant (the 1st Respondent herein). The circumstances of the Appellant's case is that the negotiations, meetings, interviews, errands, incidental to the securing of the necessary loan, assurances by the said Appellant cannot be satisfied by the award of damages. Damages would not put the Appellant herein in a situation as beneficial to him had the agreement he had with the 1st Respondent herein specifically performed. The Appellant's contribution towards ensuring that the 1st Respondent operates a fishing business in Sierra Leone cannot be quantified'.***

It cannot be disputed that the decision above to order specific performance of the agreement aforesaid which the 1st Respondent herein breached was in compliance with the principle that since the jurisdiction to order specific performance was supplementary to the common law remedy of damages, it has traditionally been said that specific performance will not normally be granted where damages provide adequate relief.It has been said, that in modern law however, there is no absolute rule to this effect. Nevertheless, in exercising its discretion whether or not to order specific performance, it has been held in the case between **SOUTH AFRICAN TERRITORIES LTD** and **WALLINGTON** (1898) A.C 309 as follows:

***'The Court will be disposed to refuse the remedy if, in the particular case before it, damages will give a Plaintiff the full compensation to which he is entitled and will put him in a position as beneficial to him as if the contract had been specifically performed'.***

It cannot be disputed, that the above, being that specific performance will not be granted by the Courts where damages provide an adequate relief is an issue which has to be considered, by reason that, specific performance was granted herein, indicative that damages will not be an adequate remedy, favourable to the Appellant herein. Obviously, I will at this stage, suspend consideration of this until I consider whether there are other situations in which the remedy of specific performance may not be granted. Indeed, there exists a number of situations in which the Courts will refrain from granting specific performance. In the 25th Edition of **'ANSON'S LAW OF CONTRACT'** edited

by A.G. GUESTon'REMEDIES FOR BREACH OF CONTRACT' under the rubric **'contracts of personal service'** at page 582, it is stipulated thus:

***'The Court will not, as a general rule, compel the performance of contracts of employment, nor to those which involve personal service. This exception seems to be based on grounds of policy: that it would be improper to make one man serve or employ another against his will'.***

It must be stated that one shouldrecall, the circumstances under which the Appellant herein was appointed as sole agent and promoter of the 1st Respondent herein. It cannot be disputed that MR MICHAEL WANG who also was engaged in the fishing industry could have searched for and obtained any other person or fishing company as agent for the 1st Respondent herein. The uncontroverted evidence is that MOHAMED BANGURA, the Appellant herein who had been in the fishing business for over Twenty Five (25) years, was appointed by reason that he was the only one who they believed had a vast experience in the fishing industry in Sierra Leone. In other words he was appointed principally because it was him personally that MR MICHAEL WANG believed would have what it takes to get done what the 1st Respondent herein wanted, in order that they participate in the fishing industry in Sierra Leone and no other person and or fishing company. It cannot be disputed though, that since the inception of the breach of the agreement herein, so much negative things have happened as between the parties herein, including the suit herein, that would militate against getting them to work with each other ever again.The undisputed fact aforesaid leads me to hold that in some other related situation, it would be unsuitable for the Courts to grant specific performance. The possibility exists that the obligations in an agreement which it is sought to enforce, may be so ill defined, or what has to be done in an order to comply with the order of the Court, may not be capable of sufficient definition, that specific performance would in the circumstances be an unsuitable remedy. In the 25th Edition of **'ANSON'S LAW OF CONTRACT'** edited by **A.G. GUEST** on **'REMEDIES FOR BREACH OF CONTRACT'** under the rubric **'unsuitability'** at pages 582 to 583, it is stipulated thus:

***'Even though it has been stated in the case between C.H. GILES & CO LTD and MORRIS (1972) 1 WLR 307 at page 318, that the impossibility for the Courts to supervise the execution of a contract has been rejected as a ground for denying the relief of specific performance, if those difficulties can be overcome, the case between RYANandMUTUAL TONTINE WESTMINSTER CHAMBERS ASSOCIATION (1893) 1 Ch. 116, establishes that at one time it was said that an order for specific***

*performance would not be granted if the Court would be required constantly to supervise the execution of the contract'.*

I hold the view that the fishing industry all over the world and not only in Sierra Leone, is one industry that is so complex, that only those involved in it, do know what happens on the inside. I am confident that if in this instance, specific performance were granted in a situation where there seems to be 'bad blood' existing between the 1st Respondent herein and the Appellant herein, things are bound to happen that would require the intervention of the courts at every given time. Admittedly, I cannot tell all the instances that might happen but the evidence itself gives an instance of what might happen between the Appellant herein and the 1st Respondent herein, if specific performance is granted, when there is already 'bad blood' existing between them as in 2nd Respondent's case aforesaid, when the 1st Respondent herein told her that the reasons for the termination of the cooperation agreement between them aforesaid was because the 2nd Respondent herein, was unable to stop the Appellant herein, from taking them to Court thereby causing them considerable loss of money and time. The 1st Respondent herein having displayed such tendencies before, would always unjustifiably be looking for reasons to terminate its agreement with the Appellant herein, which would constantly require the Court's supervision in the execution of the said agreement.

In another instance which might occur, is that one, whereby the fishing vessels sail to sea and fish outside of the zone where Sierra Leone lacks jurisdiction to control, in such a case where, they cannot be penalized for so doing, by virtue of the fact that they might have been registered in some other country or might be fishing in some other zone where no country has jurisdiction over. The 1st Respondent herein, in such situation might stay outside of Sierra Leone for a considerable length of time and sell their catch in some other foreign county and make lots of money, which they will never declare to the Appellant, come back to Sierra Leone with nothing claiming that their vessels had breakdowns. It cannot be disputed that even if such were in breach of Sierra Leone law, it is not the Appellant who would benefit out of the said breach. The 1st Respondent would be fined certain amounts of money which they could readily pay to the Sierra Leone Government leaving them with profits and leaving the Appellant out in the cold with nothing. Clearly, if the possibility exists for thisand so many other things which might happen, the Appellant would constantly be left out in the cold, a situation which would then require the constant supervision and intervention of the Courts to prevent such

amounting to the sum of Seventy Two Thousand United States Dollars (US$ 72,000.00).

Clearly, the award ofthe sum of Seventy Two Thousand United States Dollars (US$ 72,000.00) aforesaid, was granted by reason that the Appellant herein, when the breach occurred, had already done part, of what he was bound to do under the said agreement,the value of which he was entitled to claim. This notwithstanding, the grant ofthis award, does not answer the question whether damages would provide an adequate reliefto the grant of specific performance, an answer in the affirmative which in this regard, in addition tothe situations outlined above would conclusively determine, that the remedy of specific performance, in this case cannot be granted.I hold the view then, that contrary to the Decision/Judgement of the High Court delivered by the **Hon. Mr. JUSTICE A.S. SESAY JA** (as he then was), the facts above and several others which will be considered below show that damages would be an adequate remedy to the grant of Specific Performance. In the 25th Edition of **'ANSON'S LAW OF CONTRACT'** edited by **A.G. GUEST** on **'REMEDIES FOR BREACH OF CONTRACT'** under the rubric **'Compensatory Nature of Damages'** at page 549 to 551, it is stipulated thus:

***'Damages for breach of contract are designed to compensate the Plaintiff for the damage, loss or injury he has suffered through that breach. Difficulty in assessing damages does not, however, disentitle a Plaintiff from having an attempt made to assess them unless they depend altogether on remote and hypothetical possibilities. Damages for breach of contract are given by way of compensation for loss suffered, and not by way of punishment for wrong inflicted. Damages may be recovered for substantial physical inconvenience or discomfort arising from a breach. In the case between ADDIS and GRAMAPHONE LTD. (1909) A.C. 488, it now appears to be established that in appropriate circumstances, damages can be given for the disappointment, the distress, the upset and frustration caused by the breach'***.

It has been established above that the 1st Respondent herein, was in breach of the agreement aforesaid between them and the Appellant herein, for which specific performance of the said agreement was demanded. By reason that it has been held above that specific performance of the said agreement cannot be granted, this should not in any way, disentitle the Appellant herein, from being awarded Damages, by reason of my holding above that it is trite law that every breach of contract entitles the injured party to damages for the loss he has suffered. This being the case, it cannot be disputed that what needs to be

determined is the loss, if at all, which the Appellant herein, has suffered as a result of the breach and how that loss or damage as the case may be, is assessed. As stated above that the general principle that damages are compensatory in nature, is nevertheless only a starting point and the question which must still be asked is ***'when a contract is broken and action is brought upon it, how are we to arrive at the amount which the Plaintiff if successful, is entitled to recover'***?. In the case between **ROBINSON**and**HARMAN** (1849), 1 Exch. 850 at page 855 it was held as follows:

***'The object of an award of damages for breach of contract is to place the Plaintiff in so far as money can do it, in the same situation with respect to damages as if the contract had been performed. He is thus enabled to recover damages in respect of the loss of gains of which he has been deprived by the breach'.***

It cannot be disputed that from the above, when once it has been determined that an injured party has suffered loss,it is mandatory on the Court to assess damages resulting from such loss. I hold the view that the time at which the Damages are assessed, is dependent on the distinction between liquidated Damages on the one hand and unliquidated Damages on the other hand. In Volume II of the 3rd Edition of **'HALSBURY'S LAWS OF ENGLAND'**, Part I **'Definition and Descriptions'** on **'DAMAGES'** under the rubric **'Liquidated and Unliquidated Damages'** at pages 219 to 220 and under the rubric **'ASSESSMENT'** at page 306 it is stipulated thus:

***'By the term liquidated damage, is meant in the first place, a sum assessed by the parties to a contract and agreed upon by them to be paid as damages by the party who is in default. Damages are termed unliquidated when they have not been assessed beforehand by the parties in which case, the jury are at liberty, subject to the rules governing the measure of damages, to award such damages as they think appropriate to the injury which the Plaintiff has sustained. In a case where liquidated damages are recoverable, the Court is not called upon to assess the damages but must find for the agreed sum. If however the Plaintiff does not specifically claim the agreed sum he will be deemed to be suing for unliquidated damages.Where the Plaintiff claims relief by injunction or an order for specific performance, the High Court has a discretion under its general jurisdiction to award damages, either in addition to or in substitution for the remedy claimed and whether or notdamages are specifically claimed. The Court in such cases, assess***

*the damages without ordering an inquiry where there is sufficient evidence of the damage and it does not appear to be substantial or difficult to assess. Questions of law arising as to the assessment of damages are for the Judge alone and it is the duty of Judge to direct a Jury as to any rule of law as to the measure of damages to be awarded, since an omission so to do may render a new trial necessary. The Court may adjourn the case for argument on the assessment of damages'.*

It is clear that from the above, the claims of the Appellant herein are partly liquidated damages and partly unliquidated damages. It is clear from the above excerpt that in so far as the liquidated damages are concerned, the Judge is bound to award damages in the figure which he finds is the figure recoverable in accordance with the agreement. It should be pointed out that the awardof the sum of One Hundred and Twenty-Six Thousand United States Dollars (US$126,000.00), the said award which has now been reduced to thesum of Seventy Two Thousand United States Dollars (US$ 72,000.00) should have been an amount payable only on the arrival of the 1st Respondent's vessels in Sierra Leone. The award aforesaid was granted by reason of the fact that on the breach of the agreement herein, the same became immediately due because the said Appellant herein,when the breach occurred, had already done part, though not all, of what he was bound to do under the contract, the said award,being the figurewhich I find is the figure recoverable, in accordance with the agreement herein.The **Hon. Mr. JUSTICE A.S. SESAY JA** (as he then was) did not award any other figure against the 1st Respondent herein as liquidated damages in this regard, apparently by reason that he did in fact grant an award of specific performance. However, considering that he did not grant the relief by injunction claimed and the fact that I have held above that damages would be an adequate remedy to specific performance claimed, I should in the circumstance and indeed this Court ought to make an award of a figure which it finds is the figure recoverable in accordance with the agreement aforesaid.

Further to his entitlement to the aforesaid amount ofSeventy Two Thousand United States Dollars (US$ 72,000.00), the Appellant would have continued earning, the agreed amount of Four Thousand United States Dollars (US$4,000.00) monthly if the agreement between himself and the 1st Respondent herein was as breached as determined aforesaid. The uncontroverted testimony of PW1, MOHAMED BANGURA, the Appellant herein was that as its agents and on the arrival of the fishing vessels in Sierra Leone, some of his duties would have been to ensure that he secures and protect the lives and properties of the Captains and those who operate the

fishing vessels, protect and advise the Captains of those vessels, not to fish outside of a particular fishing zone and not to fish with the wrong fishing nets, continue to liaise with the Ministry of Fisheries and Marine Resources and ensuring that at each time the vessels go out to fish, an observer is on board, ensure that the Captains of the vessels do have VMS communication on board. He testified that as an agent, when the Captains and those who operate the fishing vessels come on board, he would ensure that they go through immigration and have their passports stamped, provide vehicles for them and if they got arrested, would go to their aid to secure their release. He testified that he was prevented from doing all this and earn the sum of Four Thousand United States Dollars (US$ 4,000.00) monthly, by reason of the breach aforesaid. Since the breach itself occurred on the 25th June 2015, the Appellant herein would have earned from July 2015 to the date of this Judgement, which spanned a total of Fifty Two (52) months, the sum of Two Hundred and Eight Thousand United Stated Dollars (US$208,000.00). I hold the view that the Appellant herein is entitled to the said amount by reason of the breach aforesaid.

The **Hon. Mr. JUSTICE A.S. SESAY JA** (as he then was) awarded that the Appellant herein recovers from the 2nd Respondent herein damages for inducing a breach of contract entered into between the said Appellant and the 1st Respondent herein in 2013 assessed at One Hundred and Twenty Thousand United States Dollars (US$120,000.00). It would seem that the claim for and the award of such damages was an unliquidated one and ought to have been assessed and an award made after an inquiry is ordered as stipulated above. However and as stipulated above, it might have been that the**Hon. Mr. JUSTICE A.S. SESAY JA**(as he then was),in this case, assessed damages under this head without ordering an inquiry because in his view,there was sufficient evidence of the damage and it did not appear to him to be substantial or difficult to assess. I hold the view that the fact that it was not indicated what the Appellant herein, actually lost and or suffered, is by no means sufficient reason why the award aforesaid should be set aside.In the case between **OBERE** and **BOARD OF MANAGEMENT EKU BAPTIST HOSPITAL** (1973) 1LRN 246 in the Supreme Court of Nigeria, **FATAYI-WILLIAMS JSC** held as follows:

***'An Appellate Court is not justified in substituting a figure of its own for that awarded by a lower Court simply because it would have awarded a different figure if it had tried the case at first instance. Before the Appellate Court can properly intervene it must be satisfied either thatthe Judgein assessing the damages applied the wrong principle of law such***

*as taking into account some irrelevant factor or leaving out of account some relevant factor or that the amount awarded is either so ridiculously low or so ridiculously high that it must have been a wholly erroneous estimate of the damage'.*

It should be pointed out that the award of damages is at the absolute discretion of the Judge who tried the matter herein. This being the case and that as heldin the case between **ADDIS** and **GRAMAPHONE LTD.**cited above, it now appears to be established, that in appropriate circumstances, damages can be given for the disappointment, the distress, the upset and frustration caused by the breach, it cannot be said thatthe**Hon. Mr. JUSTICE A.S. SESAY JA**(as he then was), in assessing the damages applied the wrong principle of law such as taking into account some irrelevant factor or leaving out of account some relevant factor, in view of the overwhelming evidence adduced herein, how unfairly the Appellant herein, was treated by the parties herein, including the Ministry of Fisheries and Marine Resources who continued to encourage him to write letters of protest about the 2nd and the 3rd Respondents' inducing the breach of the agreement aforesaid, up to the 10th March 2015, on the pretext that it was still conducting investigations into the matter, when in fact it had already proceeded to grant entry clearances on the 27th January 2015 to the 3rd Respondent for the 1st Respondent's vessels to enter the shores of Sierra Leone.It cannot be said further thatthe**Hon. Mr. JUSTICE A.S. SESAY JA**(as he then was), in assessing the damages, applied the wrong principle of law, such as taking into account some irrelevant factor or leaving out of account some relevant factor, in view of the overwhelming evidence adduced herein about the immense pressure put on the 2nd Respondent herein, by several imminent persons, to stop her from hijacking business from the Appellant herein, to the extent that the said Appellant was prepared to forgo the business in return for just Thirty (30) percent of the profits which the2nd and the 3rd Respondents would earn from the business which they had hijacked. I hold the view thatthecircumstances above, isan appropriate one justifying the award aforesaid. Here is a situation whereby, it is uncontroverted that the Appellant herein, had been in the fishing business for a period of over Twenty Five (25) years and apparently it cannot be disputed that it was because of his vast experience in the industry that MR. MICHAEL WANG thought it fit to have him appointed as the 1st Respondent's agent. I hold the view that if as the evidence clearly reveal and because he subsequently collaborated and assisted the 2nd Respondent to induce a breach of the agreement herein, referring to the Appellant herein as a fish monger who normally harasses him for jobs and as we normally refer to them in those days as 'SHANGHAI JOE' being a young

man looking for a job or a jobless man, it cannot be disputed that surely and as a result, the Appellant is bound to be immenselydisappointed, distressed, upset and frustrated.

Considering the facts aforesaid, it cannot be said, that the amount ofOne Hundred and Twenty Thousand United States Dollars (US$120,000.00) awarded is ridiculously high, when it was obvious that the Appellant herein, rejected the offer ofthe sum of Fifty Million Sierra LeonesLeones (SLL50,000,000.00) as compensation because, it was ridiculously low when compared to the proposal aforesaidmade by the mediation committee set up to resolve the issue between the Appellant herein and the 2nd and the 3rd Respondents herein, being Thirty (30) percent of the profits which the2nd and the 3rd Respondents would earn from the business which they had hijacked. It should be pointed out that the business venture herein, as the evidence reveals, was a potentially, huge investment as acknowledged by very imminent persons in society, all of whom went all out to ensure that the Appellant is not denied the opportunity of being part of that business venture. Surely, it cannot be denied that had the agreement herein, not been breached and or its breach induced, the Appellant herein, would have put food on the table of hundreds of Sierra Leoneans.The offer ofthe sum of Fifty Million Sierra LeonesLeones (SLL50,000,000.00) as compensation aforesaid,would definitely notput food on the table of hundreds of Sierra Leoneans. Infact in my view, I consider such an offer an insult.By reason of the above, the grant bytheHon. Mr. JUSTICE A.S. SESAY JA(as he then was), in its Decision/Judgement of the amount ofOne Hundred and Twenty Thousand United States Dollars (US$120,000.00) will not be disturbed.

I hold the view that the award of damages in the sum ofSeventy Two Thousand United States Dollars (US$ 72,000.00) andthe sum of Two Hundred and Eight Thousand United Stated Dollars (US$208,000.00)aforesaid was readily due because it was the figure which was agreed upon as revealed by the evidence adduced herein and found to be recoverable in accordance with the agreement herein. I hold the view further thatthe award of damages for inducing a breach of contract entered into between the said Appellant and the 1st Respondent herein in 2013 assessed at One Hundred and Twenty Thousand United States Dollars (US$120,000.00) was donewithout ordering an inquiry because in his view,theHon. Mr. JUSTICE A.S. SESAY JA(as he then was), saw sufficient evidence of the damage and it did not appear to him to be substantial or difficult to assess. It cannot be disputed that in the case of that part of the damages claimed which could be regarded as unliquidated, I would, and indeed this Court would be unable to readily assess the same if the

evidence of the damages adduced herein and at the High Court is insufficient or would appear to be substantial or difficult to assess. It follows that this being the case, an inquiry would have to be ordered and it would be perfectly lawful for the Court to adjourn the case for arguments on the assessment of damages.Clearly and in his wisdom, this was precisely whattheHon. Mr. JUSTICE A.S. SESAY JA(as he then was) did when in his Decision/Judgement aforesaid he ordered the recovery of the value of Twenty Six Thousand Six Hundred (26,600.00) cartons of fish sold by the 2nd and the 3rd Respondents in the local market of Sierra Leone, when he ordered for an account of the proceeds of sale of frozen fish obtained during fishing activities in Sierra Leone with the 1st Respondent's fishing vessels and when he ordered that the Appellant herein recovers the value of the total amount of cartoon of fish obtained from the fishing activities using the 1st Respondent's fishing vessels.

It has been established above that apart from the agreement appointing the Appellant herein as sole agent and promoter of the 1st Respondent's company, it was also agreed between them that upon the arrival of the fishing vessels in Sierra Leone waters, the different species of fishes normally sold in the local markets of Sierra Leone and which are obtained during the fishing process at every point in time would be handed over to the said Appellant which he will sell and retain the proceeds of sale. Clearly, as established above, the 2nd and the 3rd Respondents induced the breach of the same. The Decision/Judgement of the High Court delivered by the **Hon. Mr. JUSTICE A.S SESAY JA.** (as he then was) on the 13th February 2019 adjudged and ordered that the Appellant recovers from the 2nd and the 3rd Respondents herein the value of Twenty Six Thousand (26,000) cartons of fish, Six Thousand (6,000) of which weighed Twenty Five (25) kilograms and Twenty Thousand Six Hundred (20,600) of which weighed Twenty (20) kilograms, sold by the 2nd and the 3rd Respondents herein, in the local markets of Sierra Leone, between the period 14th July 2015 to the 20th July 2015. It cannot be disputed that had the agreement aforesaid not being breached, it is the Appellant who would have earned the proceeds of the sale aforesaid and is therefore entitled to the same, only that even though there is no evidence of the value, the same which will have to be assessed, there is sufficient proof as established by Exhibits H1-3 dated 14th July 2015, 15th July 2015 and 20th July 2015 found at pages 685 to 687 of the records herein, permission was given by the Ministry of Fisheries and Marine Resources to the 2nd and the 3rd Respondents herein, to have discharged, the aforesaid amounts of frozen fish for sale to the local markets in Sierra Leone. Accordingly, the grant of this award will not be disturbed.

It cannot be disputed, that pursuant to the agreement aforesaid, there is still one head of damages which the Appellant would be entitled to, that being value of the total amount of fish sold in the local markets in Sierra Leone obtained during fishing activities in Sierra Leone with the eight (8) vessels brought into Sierra Leone by the 1st Respondent herein. Clearly, had the agreement aforesaid not being breached, it is the Appellant who would have earned the same and is consequently entitled to the same. Clearly, from the above, damages up to the 20th July 2015 has been assessed under this head to be paid by the 2nd and the 3rd Respondents herein. It cannot be disputed that, it was the 2nd and the 3rd Respondents who had induced the breach aforesaid and it was them that continued to benefit from the proceeds of the sale of frozen fish aforesaid, such benefit which was subcontracted to SABCO FISHING CO. as seen in Exhibit A1-2 found at pages 786 to 788 of the records herein. The evidence further reveals that the said 2nd and the 3rd Respondents herein continued to benefit from the proceeds of the sale of frozen fish aforesaid pursuant to Exhibit AA1-2 until October 2015 when the cooperation agreement between the 1st Respondent herein on the one part and the 2nd and the 3rd Respondents herein on the other part was terminated. Accordingly the Decision/Judgement of the High Court delivered by the HON. MR JUSTICE A.S SESAY JA (as he then was) ordering that the Appellant herein recovers from the 2nd and the 3rd Respondents herein the value of the total amount of cartoons of fish obtained from fishing activities using the 1st Respondent's fishing vessels referred to above until payment cannot be maintained. I hold the view that this order should be substituted with one ordering that the Appellant herein recovers from the 2nd and the 3rd Respondents herein the value of the total amount of cartons of fish obtained from fishing activities using the 1st Respondent's fishing vessels referred to above from the 20th July 2015 to the 30th October 2015, the same to be assessed.

By virtue of the fact that there is nothing disputing that the eight (8) vessels are still operating in Sierra Leone, it follows that the Appellant herein would still be entitled to the value of frozen fish sold in the Sierra Leone markets obtained during fishing activities using the eight (8) vessels brought into Sierra Leone between the 30th October 2015 to date of this Judgement.It cannot be determined from the evidence adduced at the High Court, who benefited from the sale of frozen fish from the 1st April 2016 when the cooperation agreement between the 1st Respondent herein on the one part and the 2nd and the 3rdRespondents on the other part was terminated. It cannot also be determined from the evidence that the subcontracting of the benefits to

SABCO FISHING CO. as per Exhibit AA1-2, which the 2nd and the 3rd Respondents herein, continued to reap until the 30th October 2015, is still existing or has been reviewed and or determined. Consequently and by virtue of the fact that the eight (8) vessels of the 1st Respondent here are still in operation and benefits being accrued from frozen Fish sale, it is the 1st Respondent herein who should make good, the value of the total amount of cartoon of fish obtained from fishing activities using their fishing vessels aforesaid from the 1st April 2016 to the date of Judgement. Accordingly, the Appellant herein is entitled to an order in this regard, the same to be assessed.

It cannot be disputed that the **Hon. Mr. JUSTICE A.S. SESAY JA** (as he then was) refrained from assessing the unliquidated damages aforesaid, by reason that there was simply insufficient evidence of the above. Clearly, notwithstanding the fact that there was evidence that Twenty Six Thousand Six Hundred (26,600) cartons of fish were sold by the 2nd and the 3rd Respondents in the local markets of Sierra Leone, there was no evidence of the value of such which was adduced. It cannot be disputed that it cannot be the Appellant who should get the value adduced in evidence by cross examination of the 2nd Respondent herein because she would certainly give a figure which would not be representative of actual value sold in the local markets. Moreover, there is no way the Appellant or the **Hon. Mr. JUSTICE A.S. SESAY JA** (as he then was), would have known before giving Judgement, the amount of fish obtained from fishing activities using the 1st Respondent's fishing vessel within a certain period of time and definitely would not have known what the value of the fish obtained during that period was. I hold the view that had the **Hon. Mr. JUSTICE A.S. SESAY JA** (as he then was) attempted to put figures to these unliquidated damages in order to liquidated it, the same would have amounted to him manufacturing evidence and being speculative as to his assessment of damages which might entail a breach of a rule of law, as to the assessment of damages, rendering a new trial necessary. In this regard his orders aforesaid, effectively amounted to him adjourning the matter for arguments on the assessment of those unliquidated damages. The correctness of what the **Hon. Mr. JUSTICE A.S. SESAY JA** (as he then was) did when he ordered the adjournment of the matter for arguments on the assessment of those unliquidated damages aforesaid, can be substantiated by the fact that even when a matter subsequently comes up for assessment of the unliquidated damages aforesaid, adjudication of it can be further postponed. In the 16th Edition of **'McGREGOR ON DAMAGES'**, by **HARVEY McGREGOR** on **'ASSESSMENT OF DAMAGES'** under the rubric 'Postponement of awards' at pages 1344 to 1345, it was stipulated thus:

*'It may be exceptionally possible to make an award in respect of part of a claim and postpone adjudication on the remainder. This was done in the case between DEENY and GOODA WALKER, (1995) 1 WLR 1206, where the damages here sought by the Plaintiffs were in respect of losses on both existing and future claim and the Defendants' application was granted to have the assessment of that portion of damages which represented future claims postponed'.*

It is obvious that from the above, the orders of the **Hon. Mr. JUSTICE A.S. SESAY JA** (as he then was), adjourning the matter so that unliquidated Damages claimed be assessed was justifiable in the circumstance and done in accordance with the law as propounded above. This being the case, myself and indeed this Court, cannot in this regard, do anything other than uphold the Decision/Judgement of the **Hon. Mr. JUSTICE A.S. SESAY JA** (as he then was) aforesaid. Any attempt to do so and or by so doing will obviously be tantamount to a dismissal of the obligation put on him by law, exercising his powers to assessDamages which the Appellant herein is entitled to after determining that the agreement which the Appellant herein had with the 1st Respondent was breached by it. Even though an award of unliquidated damages is yet to be made, the overrule of the trial Court's decision to adjourn adjudication of a matter for the assessment of damages, would by itself amount to the setting aside of an award of damages, by reason that this Court would have, even before an assessment is done, deny the Appellant herein for an award which he might be entitled to and breach of the rule that the object of an award of damages for breach of contract is to place the Plaintiff in so far as money can do it, in the same situation with respect to damages as if the contract had been performed, established in the case between **ROBINSON**and**HARMAN,** cited above. In the case between **SAIDU H. AHMED & OTHERS** and **CENTRAL BANK OF NIGERIA** (2012) LDELR – 934 in the Supreme Court of Nigeria, **OLUFUNLOLA OYELOLA ADEKEYE JSC** delivering the leading Judgement held in respect of the setting aside of damages awarded by the lower Court as follows:

*'Award of damages is an exercise of discretion by the trial Court. An appellate Court will not interfere with an award of damages by a trial Court unless it is made under certain peculiar circumstances which include – where the exercise of discretion by the trial Court is perverse, where the Court acted under wrong principles of law or the Court acted in disregard of applicable principles or where the Court acted in misapprehension of facts where the Court took into consideration*

***irrelevant matters and disregarded relevant matters whilst considering its award or where injustice will result if the Appellate Court does not act or when the amount awarded is ridiculously low or ridiculously high, that it must have been an erroneous estimate of the damages'.***

It cannot be disputed that the **Hon. Mr. JUSICE A.S. SESAY JA** (as he then was) adjourned the matter for a proper assessment of the unliquidated damages aforesaid, because he was avoiding acting in disregard of the applicable principles or was avoiding acting in misapprehension of the facts before him or was avoiding taking in consideration irrelevant matters and disregarding relevant matters whilst considering the award of unliquidated damages it should arrive at or was avoiding injustice resulting or was avoiding awarding a ridiculously low or a ridiculously high figure of the amount to be awarded. In this regard, myself and indeed this Court cannot in the circumstance assess the unliquidated damages due the Appellant herein neither can myself and indeed this Court interfere with the order of the **Hon. Mr. JUSTICE A.S. SESAY JA** (as he then was) to adjourn the matter for a proper assessment of the unliquidated damages due the Appellant herein.

The question which needs to be determined is whether after upholding that this matter should be adjourned for a proper assessment of the unliquidated damages due the Appellant herein, can this Court assess the same. An answer could be found in Volume II of the 3rd Edition of **'HALSBURY'S LAWSOF ENGLAND'** on **'DAMAGES'** under the rubric **'ASSESSMENT'** at page 306 where it is stipulated thus:

***'Where in an action tried without a jury, Judgement has been given for the Defendant and on appeal the Court of Appeal holds that the Plaintiff is entitled to recover damages, the Court of Appeal has power itself to assess the damages in order to save costs'.***

Applying the above to the case herein, it can be said that Judgement was given for the Respondents herein at the Court of Appeal and on appeal to this Court, being the Supreme Court, I have held and indeed this Court should hold that the Appellant herein be entitled to recover damages, by virtue of the fact that the 1st Respondent herein breached the agreement between them and the Appellant herein, such breach which was induced by the 2nd and the 3rd Respondents herein. Accordingly, this Court has power to assess damages, assessment of which has been adjourned.

By the Decision/Judgement of the High Court delivered by the Hon. Mr. JUSTICE A.S. SESAY JA (as he then was) interest was awarded to the Appellant herein on certain amounts contained in the said Decision/Judgement. As has been held above, the Appellants herein are entitled to payments ofthe sum ofSeventy Two Thousand United States Dollars (US$ 72,000.00) andthe sum of Two Hundred and Eight Thousand United Stated Dollars (US$208,000.00) due him, even before the breach of the agreement between himself and the 1st Respondent herein and subsequent to the breach respectively, in respect of the payment of agency and promoters fees at the rate of Four Thousand United States Dollars (US$4,000.00). On the issue of interest, it is trite law that the trend of all cases and in accordance with the case between **B.P EXPLORATION CO. (LIBYA) LTD** and **HUNT (No. 2)** 1979 1 WLR 785 at 843 is that:

***'Interest is not awarded as a punishment but simply because the Plaintiff has been deprived of the use of the money which was due to him'.***

It cannot be disputed that all of the sum ofSeventy Two Thousand United States Dollars (US$ 72,000.00) did not became due in November of 2013. It started with Four Thousand United States Dollars (US$ 4,000.00) becoming due in November 2013, Eight Thousand United States Dollars (US$ 8,000.00) becoming due in December 2013, Twelve Thousand United States Dollars (US$12,000.00) becoming due in January 2014 and so on until the amount reached the sum ofSeventy Two Thousand United States Dollars (US$ 72,000.00). Likewise all of the sum ofTwo Hundred and Eight Thousand United Stated Dollars (US$208,000.00) did not became due in July of 2015. It started with Four Thousand United States Dollars (US$ 4,000.00) becoming due in July 2015, Eight Thousand United States Dollars (US$ 8,000.00) becoming due in August 2015, Twelve Thousand United States Dollars (US$12,000.00) becoming due in September 2015 and so on until the amount reachedthe sum of Two Hundred and Eight Thousand United Stated Dollars (US$208,000.00).In this regard, interest would be calculated accordingly from the amount due respectively on a monthly basis and they added up to get the total interest. I hold the view that, it is as a result of the difficult and lengthy method involved in calculating interest in this way that the **Hon. Mr. JUSTICE A.S. SESAY JA** (as he then was) ordered interest to be assessed, the same which I shall maintain.

It must be pointed out that as stipulated in Volume II of the 3rd Edition of **'HALSBURY'S LAWS OF ENGLAND'** on **'DAMAGES'** under the rubric **'Foreign Currency'**, when a Judgement is given for the recovery of a sum

of money payable in foreign currency, the amount of the Judgement must be expressed in Sierra Leone Leones as the Court has only jurisdiction to award damages in Sierra Leone money pursuant to Section 26 of the **BANK OF SIERRA LEONE ACT 2019** which provides in part as follows:

***'The currency of Sierra Leone shall continue to be the Leone. The Leone shall be the currency for all accounting financial reporting and official purposes in Sierra Leone and all transactions in Sierra Leone shall be indicated in Leones. Except as otherwise provided in this Act any person or Institution who contravenes the abovecommits an offence'.***

It must be pointed outfurther that it is stipulated in Volume II of the 3rd Edition of, **'HALSBURY'S LAWS OF ENGLAND** on **'DAMAGES'** under the rubric **'Foreign Currency',** in actions for breach of contract, the rate of exchange prevailing at the date of the breach and not at the date of the Judgement has to be taken in calculating the damages payable in Sierra Leonean currency.

By reason of the above the Decision/Judgement of the High Court delivered by the **Hon. Mr. JUSTICE A.S. SESAY JA** (as he then was) is hereby substituted and I hereby ADJUDGE and ORDER as follows:

1. A declaration that MOHAMED BANGURA, the Appellant herein, is the sole agent and promoter of DALIAN SHENGHAI OCEAN FISHING CO., the 1st Respondent herein in respect of all fishing activities in Sierra Leone pursuant to an oral agreement entered into between them in November 2013, the same which was breached by the 1st Respondent herein, on the 25th June 2015,after ABIE ARUNA KOROMA and MONZA FISHING COMPANY the 2nd and the 3rd Respondents herein, had induced it.

2. That the Appellant herein, recovers from the 1st Respondent herein,the sum of Seventy Two Thousand United States Dollars (US$ 72,000.00)being, promoter and agency fees incurred by the said Appellant as agent and promoter of the 1st Respondent herein,after taking steps in assisting the 1st Respondent herein, prove to the Government of China that it would acquire the requisite assurances from the Ministry of Fisheries and Marine Resources, that it will acquire the necessary clearances and permits to engage in fishing activities in Sierra Leone, assist the 1st Respondent prove to the Government of China that the necessary fishing infrastructure such as storage facilities

were readily available to the 1st Respondent before the referred loan to construct the fishing vessels were approved, the said sum to be payable in Sierra Leone Leones at the rate of exchange on the date of the breach aforesaid.

3. That the Appellant herein, recovers from the 1st Respondent herein,the sum ofTwo Hundred and Eight Thousand United Stated Dollars (US$208,000.00), for loss of earningsof promoter and agency fees as agent and promoter of the 1st Respondent hereinfrom July 2015 to the date of this Judgement, which spanned a total of Fifty Two (52) months,the said sum to be payable in Sierra Leone Leones at the rate of exchange on the date of the breach aforesaid.

4. That the Appellant herein, recovers from the 2nd Respondent herein, damages for inducing a breach of agreement, entered into between the said Appellant and the 1st Respondent herein in November 2013, assessed at One Hundred and TwentyThousand United States Dollars (US$120,000.00),the said sum to be payable in Sierra Leone Leones at the rate of exchange on the date of the breach aforesaid.

5. That the Appellant herein recovers from the 2nd and the 3rd Respondents herein, the value of Twenty Six Thousand, Six Hundred (26,600) cartoons of fish, six thousand (6,000) of which weighed twenty five (25) kilograms and Twenty Thousand, Six Hundredof which weighed Fifty (50) kilograms, sold by the 2nd and the 3rd Respondents in the local market of Sierra Leone between the period 14th July 2015 to the 20th July 2015, value of which is to be assessed.

6. That the 2nd and the 3rd Respondents herein, are hereby ordered to account for the proceeds of sale of frozen and other fish obtained during fishing activities in Sierra Leone with the 8 vessels referred to as Shenghai 1, 2, 3, 4, 5, 6, 7 and 8and that the Appellant herein recovers from them,the value of the total amount of cartoons of fish obtained from fishing activities, using the 1st Respondent's fishing vessel referred to above, from the 20th July 2015 to the 30th October 2015,value of which is to be assessed.

7. That the1st Respondent herein,is hereby ordered to account for the proceeds of sale of frozen and other fish obtained during fishing activities in Sierra Leone with the 8 vessels referred to as Shenghai 1, 2, 3, 4, 5, 6, 7 and 8and that the Appellant herein recovers from them, the

value of the total amount of cartoons of fish obtained from fishing activities, using the 1st Respondent's fishing vessel referred to above, from the 30th October 2015, to the date of Judgement, value of which is to be assessed.

8. Interest pursuant to Section 4 of the **LAW REFORM (MISCELLANEOUS PROVISION) ACT CHAPTER 19 of the LAWS OF SIERRA LEONE** is hereby awarded on the sums ofSeventy Two Thousand United States Dollars (US$ 72,000.00) andTwo Hundred and Eight Thousand United Stated Dollars (US$208,000.00), the said sumswhich are to be payable in Sierra Leone Leones at the rate of exchange on the date of the breach aforesaid, at the rate of Nine (9) percent per annum,the same to be assessed.

9. Costs of and occasioned by the action herein from the Courts below to the Court herein, be borne by the Respondents herein, jointly and severally, the same to be taxed, if not agreed upon.

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Hon. Mr. JUSTICE ALLAN B. HALLOWAY JSC

MASTER & REGISTRAR

CERTIFIED TRUE COPY

Ag Master and Registrar

IN THE SUPREME COURT OF SIERRA LEONE

SC.CIV.APP.1/2018

BETWEEN:

MOHAMED BANGURA - APPELLANT

AND

DALIAN SHENGAI OCEAN FISHING CO. - 1ST RESPONDENT
ABIE ARUNA KOROMA - 2ND RESPONDENT
MONZA FISHING COMPANY - 3RD RESPONDENT

CORAM:
Hon. Justice E.E. Roberts, JSC
Hon. Justice G. Thompson, JSC
Hon. Justice A.B. Halloway, JSC
Hon. Justice Sengu Koroma, JSC
Hon. Justice E. Taylor-Camara, JA

REPRESENTATIONS:
MR. E.T. KOROMA Esq., counsel for the 1st Appellant
MR. UMARU NAPOLEON KOROMA ESQ., counsel for the 1st Respondent.
MR. AFRICANUS SESAY & MS. SADIA BAKARR, counsels for the 2nd and 3rd Respondents.

# JUDGMENT

## DELIVERED ON THE 29TH NOVEMBER, 2019.

1. My Lords, for the reasons given by my noble and learned friends, Roberts JSC and Thompson JSC. **I TOO, WOULD ALLOW THE APPEAL.** I also agree with their narration of the facts and treatment of the issues in this appeal' I would, however like to add my thoughts on the principles governing the assessment of damages for breach of an agency agreement and inducing a breach of contract.

A) **The Agency Agreement:** The principle is that where an agent (as in this case), makes a contract which is not reduced to writing, the question of whether he contracted personally, together with his principal or solely in his capacity as an agent is a question of fact. See. Bowstead and Reynolds on Agency, paragraphs 9 - 041, Article 103, PAGE. 585. An Appellate Tribunal may be more reluctant to interfere with the findings of facts as to oral contracts, and in many cases an appeal only lies on point of law (supra paragraph 9 - 042).

2. In the instant case, the Learned Trial Judge found that there was an agency relationship between the Appellant and the 1st Respondent. This conclusion was rejected by the Court of Appeal for reasons I cannot easily discern. As I have stated earlier, the findings of the Trial

Judge as to the existence of an oral agreement can only be appealed against on a point of law which was not the case in the Court of Appeal. What the Court of Appeal, with respect, failed to appreciate was that the reasoning behind the doctrine of apparent authority involves the assumption that there is in fact no authority at all. This statement was given judicial fiat in the case of RAMA CORPORATION -V- PROVED TIN and GENERAL INVESTMENTS (1952) 2 Q.B. 147 AT 149. This doctrine dictates that where a principal represents, or is regarded by law as representing, that another has authority, he may be bound as against a third party by acts of that persons within the authority which that person appears to have, though he had not in fact given that person such authority or by instructions not made known to the third party. This ostensible or apparent authority has been defined in HELY - **HUTCHIN SON -V- BRAY HEAD LIMITED** (1968) 1 Q.B. 549 at page 583. These principles were aptly applied by Lord Diplock in the case of FREEMAN & LOCKYER -V- BUCKHURST PARK PROPERTIES (MANGAL) LTD & ANOR (1964) 2 Q.B. 2 Q.B. 480.

3. Thus apparent authority is not concerned with the full consequences of the principal - agent relationship rather it is primarily concerned with question whether the principal is bound.
4. Of importance to note is that, the doctrine of apparent authority is often said to be based on estoppel which generally operates only between two parties and their privies.
5. In this case, the first Respondent was the principal, Mr. Wang the agent and the Appellant the third party. Mr. Wang as agent of the 1st Respondent created an agency relationship between the said 1st Respondent and the said Appellant.

6. I am also in agreement with the findings of the Learned Trial Judge that there was a ratification of the agency agreement by the 1st Respondent. The reasoning for the inference that there was ratification was competently dealt with by Thompson JSC in her judgment and would therefore need not repeat them here.
7. Having agreed with the Learned Trial Judge that there was an agency agreement between the Appellant and the 1st Respondent created by the apparent or ostensible authority of Mr. Wang, I shall now consider whether the Learned Trial Judge was right to order specific performance of the said agency agreement. It should be noted that the Learned Trial Judge also awarded damages.

8. Specific performance is a specialised remedy used by the courts when no other remedy (such as money) will adequately compensate the other party. If a legal remedy will put the injured party in the position he or she would have enjoyed had the contract been fully performed, then the court will use that option instead. The common reason courts grant specific performance is that the subject of the contract is unique, when it is not merely matter of money or where the amount of the damage is unclear. Where a contract is for the sale of a unique property, for instance, mere money damages may not remedy the purchaser's situation.
9. An order for specific performance is at the discretion of the court.
10. In the instant case, the Learned Trial Judge made Orders for both specific performance and damages. This is not, with respect, the correct approach. Damages are

usually ordered in lieu of specific performance. The reason for this is that damages are a "substitutional" remedy, while specific performance is a 'specific remedy'. The remedy for specific performance is granted by way of exceptions. The rule is based on the uncertainty of calculation of damages, in cases where they cannot be based on anything, but conjecture or surmise. Thus, where A agrees to buy, and B agrees to sell, a picture by a dead painter and two rare Chinese vases, A may compel B specifically to perform this contract, for, there is no standard for ascertaining the actual damage which would be caused by non-performance. By claiming damages for breach of contract, the plaintiff disentitles himself, on account of his own election, from claiming specific performance of the same contract as an alternative case.

11. In the Sierra Leone High Court decision in CHARAF (Trading as C.J. CHARAF -V- MICHEL, Beoku-Betts J (as he then was) had this to say: ''In an action for specific performance, the court. would not make an order which cannot be carried out". This principle has some support in the decision of the Supreme Court of Sierra Leone in AGIP V ABASS ALIE & CIV.APP.10/73 In the instant case, the 2nd and 3rd Respondents were alleged to have induced a breach of the contract between the Appellant and the 1st Respondent. In fact there was a new Agency agreement between the 1st Respondent and the 2nd and 3rd Respondents to the exclusion of the Appellant. The agreement took effect and so ordering the specific performance of the agency agreement would lead to confusion. The contract would have involved the performance of a continuous duty which the court cannot supervise. The difficulty of supervision by the court is the main reason why due

performance of this type of contract cannot be specifically enforced.

12. Having held that specific performance is not an appropriate remedy; can damages be awarded in lieu?

13. Where a breach is by the Principal, the measure of damages will be the amount that the agent might reasonably have earned under the contract had he not been prevented from continuing to act. Further and additionally, the agent can claim to be indemnified and reimbursed for outlays, expenses and losses incurred in the performance of his agency. Although the amount and the extent of this indemnity may be difficult to calculate, it is not to be classified as damages; it is implied contractual indemnity, an implied liability on the contract - MCGREGOR ON DAMAGES, 18TH ED, PARAGRAH 30 - 003 and foot note 3 of page 1125.

14. This passage is in effect providing for two related claims, to wit:

    i. Loss of earnings; and
    ii. reimbursement.

15. It can be concluded from the foregoing analysis that the Appellant is entitled to damages for breach of contract in lieu of specific performance. This can be assessed based on the cooperation agreement dated 1st April, 2015 between the 1ST Respondent and the 3rd Respondent. By clause 6 of the said agreement, the 1ST Respondent was to pay $500 per vessel per month to the 3rd Respondent as agency fee. The said agreement was in force until 5th October, 2015. Had there not been any inducement by the 2nd and 3rd Respondents, the Appellant would have earned $24,000 from the 1st Respondent. As I have rejected the Order for specific performance made by the Learned Trial Judge, I shall Order that the 1ST

Respondent pays to the Appellant the sum of $24,000 as damages in lieu.

16. As regards loss of earnings/remuneration, it is imperative to note that an agent is only entitled to remuneration for his services as an agent by either the express or implied terms of the agency contract, if any so provide or he has a right in restitution to claim remuneration on a quantum merit. Secondly an agent cannot claim remuneration other than in accordance with the terms of the agency contract and thirdly, in deciding what terms are to be implied, the court will have regard to all the circumstances of the case, inter alia, the nature and length of the services, the express terms of the contract and the customs and usages of the particular trade.

17. In the light of the above, it is evident that an agent's claim to remuneration emanates from a contractual claim. In the case of REEVE -V- REEVE (1858) 1 F & F, 280, it was held that apart from claims of restitution, the rendering of services, however long continued, creates no right to remuneration unless the agency expressly or impliedly makes provision for such payments. If no such provision exists, terms providing for remuneration will only be implied where the circumstances are such as to indicate that the parties intended that there should be remuneration. This was what was referred to as Agency and promoter fee in both the pleadings and the Judgment of Alusine Sesay, JA.(as he then was)

18. In the said judgment, Sesay JA had this to say:

> "Loss of Agency and Promoter fee for the months of November, 2013 - February, 2016

At the rate of US $6,000 per month:
= US $96,000''

19. His Lordship continued "In respect of the loss of agency and promoter fee for the months of November, 2013 to February, 2015, the Plaintiff - PW.1 testified that this was what was agreed between himself and the 1st Defendant. This was the term of the agreement. The Courts are not reluctant to hold that binding contracts have been made despite the lack of final written and signed documents. I shall refer counsel to the case of AIR STUDIO (LYNDHURST) LIMTED T/A ENTERTAINMENT GROUP -V- LOMBARD NORTH CENTRAL PLC (2002) EWHC 3162 U.B. The Plaintiff is entitled to claim this amount as loss of agency and promoter fees against the 1st Defendant."

20. The Court of Appeal on the other had rejected the existence of an agency agreement and could therefore not have allowed any claim for Agency fees.

21. Having agreed with the Learned Trial Judge that an agency agreement existed between the Appellant and first Respondent, I uphold his award of the Promoter and Agency fee. The Learned Trial Judge awarded US$126,000. However, a perusal of the pleadings would reveal that the Appellant claimed US$96,000 as Promoter and Agency fees and additionally claimed US$30,000 as incidental expenses. The Learned Trial Judge disallowed the later. In his testimony, the claim of the Appellant amounted to US$ 64,000.00.Following the principle that an award should be based on pleadings and evidence, I will award US$ 64,000 as Promoter and agency Fees.

B. INDUCEMENT:

22. I agree with my Learned Sister and brothers in upholding the Learned Trial Judge's judgment that there was an inducement by the 2nd and 3rd Respondent but would add the following:-

23. The origin of the tort is often given as LUMLEY -V- GYE C118 ER 784 (1853) in which one theatre owner induced a performer to breach her contract with a competitor and sing instead, at his venue. The English Court (Justices Erle and Wightman) described the tort thus:

> "It is clear that the procurement of the violation of a right is a cause of action in all instances where the violation is an actionable wrong, as in violations of a right to property, whether is a joint wrongdoer, or to personal security: he who procures the wrong is a joint wrongdoer, and may be sued, either alone or jointly with the agent, in the appropriate action for the wrong complained of… It was undoubtedly prima facie an unlawful act on the part of Miss Wagner to break her contract, and therefore a tortuous act of the defendant maliciously to procure her to do so".

Justice Macnaughten, over 100 years ago, in Quinn v Leathem (1970) AC 495 wrote:

"(A) violation of a legal right committed knowingly is a cause of action…. It is a violation of legal right to interfere with contractual relations recognised by law if there be no sufficient justification for the interference."

24. In TORQUAY HOTEL V. COUSINS (1969) 1 ALLER 522 at 530, Denning J. suggested an expansion of the tort when he wrote:

"The time has come when the principle should be further extended to cover deliberate and direct interference with the execution of a contract without that causing any breach."

25. In POSLUNS V. TORONTO STOCK EXCHANGE (46 DLR 2d) 210 (1964) Gale J. of the Ontario High Court of Justice wrote:

"While a contract cannot impose the burden of an obligation on one who is not a party to it, a duty is undoubtedly cast upon any person, although extraneous to the obligation, to refrain from interfering with its due performance unless he has a duty or a right in law to so act. Thus, if a person without lawful justification knowingly and intentionally procures the breach by a party to a contract which is valid and enforceable and thereby causes damage to another party to the contract, the person who has induced the breach commits an actionable wrong. That wrong does not rest upon the fact that the intervener has acted in order to harm his victim, for a bad motive does not per se convert an otherwise lawful act into an unlawful one, but rather because there has been an unlawful invasion of legal relations existing between others".

26. In the 2007 OBG Ltd. V. ALLAN (2007 UKHL 21 The House of Lords held:

"To be liable for inducing breach of contract, you must know that you are inducing a breach of contract. It is not enough that you know that you are procuring an act which, as a matter of law or construction of the contract, is a breach. You must

actually realize that it will have this effect. Nor does it matter that you ought reasonably to have done so."

27. Based on these principles, I am clear in my mind that the Learned Trial Judge was correct in holding that the 2nd Respondent was liable for inducing a breach of contract between the Appellant and 1st Respondent. The issue is how the Learned Trial Judge arrived at an award of $120,000/00. In determining this; I shall dwell on the law governing the assessment of damages for inducing a breach of contract.

28. According to **MCGREGOR ON DAMAGES** paragraph 40 - 004 page 1634. Although damage is the gist of the action (inducing breach of contract) little exact detail can be given as to the measure of damages, as the courts have consisting endorsed Lord Esher's pronouncement in **EXCHANGE TELEGRAPH Co -v- GREGORY** (1896) 1 Q.B. 147 C.A. at 153 that "it is not necessary to give proof of special damage" because "the damages are damages at large"

29. Neville J in **GOLDSOLL -V- GOLDSOLL** (1914) 2 Ch. 603 stated the position in somewhat more details. The "damage" he said,

> "May be inferred, that is to say that the breach which has been procured by the defendant has been such as must in the ordinary course of business inflict damage upon the Plaintiff, then the Plaintiff may succeed without proof of any particular damage which has been occasioned him"

30. The type of damage that is likely to be inferred by the Court is loss of profits. This may be the profit

in Sierra Leone by the eight vessels namely Shengai 1-8 for the period 1st June, 2015 when the inducement was instigated to October, 2015 when the cooperation contract between the 1st Respondent and the 2nd and 3rd Respondent terminated. This will in effect be damages to be paid by the 2ND and 3RD Respondent to Appellant for inducing the breach of contract between the said Appellant and the 1ST Respondent

34. I have rejected the award of U$120,000. As damages for inducing breach of contract not only because it is supported by both law and fact but it is unconscionable and in the nature of punitive damages. The law on awarding punitive was clearly not followed by the Learned Trial Judge.

**JUDGMENT IN FOREIGN CURRENCY:**

Having upheld part of the judgment of the Learned Trial Judge stated in the United States Dollars, the question arises as to the law governing judgments in foreign currencies.

35. The law is that English Courts and Mutatis Mutand is the Courts of Countries which have inherited the common law of England, can only give judgment in their own currencies. This has however been somewhat modified in England and Wales in recent times.

36. In **SCHORSCH MERIR GMbH -V- HENNIN** (1975) QB 416 at 423, Lord Denning M.R. pointed out that as early as 1605 English Courts had held in **RASTELL -V- DRAPER** (1605) Yelv. So that:

> "The debt ought to be demanded by a name known and the judges are not apprised of Flemish

money: and also when the Plaintiff has his judgment, he cannot have execution by such name, for the Sheriff cannot know how to levy the money in Flemish."

37. His Lordship went on to say'

"For that time forward it has always been accepted that English Court can only give Judgment in Sterling..."

38. Lord Denning himself in 1961 said in **RE-: UNITED RAILWAYS OF HAVANA and REGLA WAREHOUSE LIMITED** (1961) A C. 1061 at pp. 1068, 1069 "And if there is one thing clear in our law, it is that the claim must be made in Sterling and the judgment given in Sterling."

39. Almost as equally well established was the accompanying rule that a debt in foreign currency should be converted into English currency as at the date on which the debt was payable, or in the case of damages arising from breach of contract or tort, as at the date the breach occurred or the damages in relation to which compensation claimed were suffered. This principle, known as the "breach - date" rule was of relatively more recent origin. This rule was first laid down authoritatively by the English Court of Appeal in **DI FERNINANDO -V- SIMON, SMITS and COMPANY LIMITED** (1920) 3 KB 409 in relation to damages for breach of Contract, was affirmed by the House of Lords in SS **CELIA -V- SS VOLTURNO** (1921) 2 AC 544 in relation to damages for tort.

40. The two related principles were applied by the Supreme Court of Sierra Leone in the case of **CASTROL OIL LIMITED -V- JOHN MICHAEL MOTORS** (supra) where the

Learned Chief Justice, Renner-Thomas JSC delivering the judgment of the Court remitted the matter to the High Court to determine the exchange rate of the Pound Sterling to the Leones at the time the breach complained of occurred. Since the time of this Judgment, the Banking system has become more sophisticated and so the Bank of Sierra Leone should be in the position to provide the exchange rate of the Leone to the Dollar at the time of the breach

41. The principle established in the CASTROL OIL case is that though a party could claim in foreign currency, the Court in delivering judgment would have to determine the Leone equivalent of that currency and state the award in Leones. I have found no reason to depart from this principle and would accordingly apply it.

INTEREST.

For completeness, I agree with Roberts and Thompson, JJCS, that interest should be paid on the Agency and Promoter fee of U$ 64,000.00 at the rate of 9% from the date of commencement of this action until Judgment.

Hon. JUSTICE SENGU MOHAMED KOROMA JSC.

COUNTY MASTER & REGISTRAR SUPREME COURT SIERRA LEONE

Certified True Copy

Ag Master & Registrar

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IN THE SUPREME COURT OF SIERRA LEONE

SC.CIV. APP 1/2018

BETWEEN:

| | |
|---|---|
| MOHAMED BANGURA | Appellant |
| And | |
| DALIAN SHENGAI OCEAN FISHING CO. | 1st Respondent |
| ABIE ARUNA KOROMA | 2nd Respondent |
| MONZA FISHING COMPANY | 3rd Respondent |

CORAM:

Hon Justice E. E. Roberts JSC

Hon. Justice G. Thompson JSC

Hon. Justice A. B. Halloway JSC

Hon. Justice Sengu Koroma JSC

Hon. Justice E. Taylor-Camara JA

*Mr. E.T. Koroma* for the 1st Appellant

*Mr. Umaru Napoleon Koroma* for the 1st Respondent

*Mr. Africanus Sesay and Ms Sadia Bakarr* for the 2nd and 3rd Respondents

JUDGMENT OF THE HON.MR JUSTICE E TAYLOR-CAMARA, JA

DELIVERED THE 29th DAY OF NOVEMBER 2019

1. My Lords, the facts of this matter have been set out in the severally judgments of my fellow Justices and I refer to them in this Judgment only to the extent relevant to the issues.

2. In its Judgment dated 13 February 2017, the High Court (A S Sesay, JA, as he then was) held that Mr Michael Wang was the Vice–President of the 1st Respondent company, Dalian Shenghai Ocean Fishing Company Limited, and that in that capacity he was an authorised representative of the 1st Respondent, as was Mr David Wei. The Judge found that Mr Wang in particular, had ostensible authority to enter into agreements which bind the company and that in 2013 he did enter into an agreement with the Appellant pursuant to which, the Appellant agreed to act as the local agent for the 1st Respondent and in pursuance thereof, undertook certain activities in furtherance of the establishment and development of the 1st Respondent's fishing business. The judge held further, that Mrs Abie Aruna Koroma, the 2nd Defendant, who is the chief executive officer of her company, Monza Fishing Company, the 3rd respondent, with full knowledge of the agreement between the Appellant and the 1st Respondent, induced the 1st Respondent to breach its contract with the Appellant resulting in loss and damage to the Appellant.

3. By its decision of 28 December, 2017, the Court of Appeal, by a majority, reversed the decision of the High Court. The Court of Appeal held that:
   a) There was no consensual agreement between Messrs. Wang and Wei on the one part, and the 1st Respondent on the other, under which Messrs Wang and Wei could have agreed to act as agents for the 1st Respondent company, because the said company was not incorporated or doing business in 2013, the period during which the Appellant claims the agreement between he and the 1st Respondent company took place.
   b) For the same reason, the Court held that neither Mr Wang nor Mr Wei could have had ostensible authority to, nor did they enter into the alleged agreement on the 1st Respondent's behalf so as to bind the 1st Respondent.
   c) It followed from the above, that the 2nd and 3rd Respondents could not have induced a breach of a contract that did not exist, and so they were not liable.

4. The principles governing the review of findings of fact by appellate courts are well known. They were set out in English cases such as *Watt (or Thomas) v Thomas* [1947] SC (HL) 45; [1947] AC 484, *and Benmax v. Austin Motors Co. Ltd (1955) 1 ALL E.R. 326.*

5. In a statement that has become the classic enunciation of the principles upon which an appellate court can interfere with decisions of the trial judge, Lord Thankerton, in *Thomas v Thomas*, said:

> "(1) Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses could not be sufficient to explain or justify the trial judge's conclusion. (2) The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence. (3) The appellate court, either because the reasons given by the trial judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court."

6. This statement was adopted by this Court in the case of *Dr. Seymour Wilson v Musa Abess* Civ. App. No 5/79 (Unreported), which case has been subsequently cited in our courts in cases like *Wurie v Shomefun and Another* (CIV. APP. No. 8/81) [1983] SLSC 9 (29 December 1983), *Okekey Agencies Ltd v Lahai and Another* (CIV-APP 32/2005) [2007] SLCA 7 and *Bangura and Another v Kamara* (Civ. App. 44/05) [2009] SLCA 12. In these latter cases, the Court (Tejan-Jalloh JSC, and Hamilton JSC respectively) quoted Livesely Luke CJ in the *Seymour Wilson* case, where, after considering *Watt (or Thomas) v Thomas* [1947] AC. 484 and *Benmax v. Austin Motors Co. Ltd (1955) 1 ALL E.R. 326* he said:

> " There is no doubt that an appellate court has power to evaluate the evidence led in the court below, reach its own conclusions, and in a suitable case to reverse the finding of fact of the Trial Judge. But these powers are exercisable on well-settled principles, and an appellate court will not disturb the findings of fact of a trial judge unless those principles are applicable. The appellate court is, however, free to

reverse his conclusion if the grounds given by him, therefor, are unsatisfactory by reason of material inconsistencies or inaccuracies, or if it appears unmistakably from the evidence that in reaching them he has not taken proper advantage of having seen or heard the witnesses, or has failed to appreciate the weight and bearing of circumstances admitted or proved".

7. In *Wurie v Shomefun and Another,* Tejan JSC, referring to the *Thomas* case principles said:

> "The above propositions make it abundantly clear that before an Appellate Court can properly reverse a finding of fact by a trial judge who has seen and heard the witnesses and can best judge not merely of their intention and desire to speak the truth but of their accuracy in fact, it must come to an affirmative conclusion that the finding is wrong. There is a presumption of its correctness which must be displaced."

8. The *Thomas* principles have been restated and developed in several cases since. In the recent English Supreme Court case of *In the matter of B (a Child) (FC)* [2013] UKSC 33, Lord Neuberger said:

> "where a trial judge has reached a conclusion on the primary facts, it is only in a rare case, such as where that conclusion was one (i) which there was no evidence to support, (ii) which was based on a misunderstanding of the evidence, or (iii) which no reasonable judge could have reached, that an appellate tribunal will interfere with it.

Lord Reed in another Supreme Court case, *Henderson v Foxworth Investments Ltd.* [2014] UKSC 41, similarly said:

> " .....in the absence of some other identifiable error, such as (without attempting an exhaustive account) a material error of law, or the making of a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence, an appellate court will Interfere with the findings of fact made by a trial judge only if it is satisfied that his decision cannot reasonably be explained or justified. "

9. The Court of Appeal appears to have accepted and premised its decision on the arguments advanced by the 1st Respondent herein, to wit, that the 1st Respondent did not, and could not have entered into agreement with the Appellant on the terms claimed by the Appellant because the 1st Respondent company had not been incorporated nor had it otherwise come into existence until 2014, whereas the Appellant's claim was that the alleged agreement was entered into between the Appellant and the 1st Respondent sometime in 2013. In effect, the Court of Appeal made a critical finding which ran counter to that found by the trial judge and proceeded to hinge its decision on that one finding. The question this Court has to ask and answer, is whether the Court of Appeal was correct to do so.

10. In dealing with this matter, the Court of Appeal, in its majority judgment, said (at P3):

> "The Respondent says that he came in contact with the 1st Appellant through a Chinese National named Michael Wang in January 2013. That same night in January 2013, Mr Michael Wang introduced the Respondent to a certain Mr David Wei who in turn told the Respondent that he is representing Dalian Shenghai Ocean Fishing Company..... However, Dalian Shenghai Ocean Fishing (SL) Limited was incorporated on 9th June 2015.
>
> "The Learned trial Judge noted that the 1st Appellant Company was duly registered as a Company incorporated in China but he did not indicate the date of incorporation. It is Counsel for the 1st Appellant who indicated that his client's certificate of Registration in China is dated 5th May 2014. In effect, the 1st Appellant started operations in 2014.
>
> "Can it now be said that Mr Michael Wang or Mr David Wei as the case may be, were lawfully acting for and on behalf of the 1st Appellant who accordingly was not in existence in 2013? I do not think so..."

11. On the question whether the Appellant had established that there was in law and in fact, an agency agreement between the Appellant and the 1st Respondent, the Court of Appeal said that what needed to be established was that there was consent (consensual agreement) between the principal and the agent. In this case it considered whether there was such agreement between Messrs. Wang and Wei on the one part and the 1st Respondent on the other part. The Court asked itself whether Messrs. Wang and Wei were appointed as agents by the 1st Appellant to act for and on its behalf, and if so, did they consent to so act and

conduct themselves such that their actions could be perceived as being those of the 1st Appellant? The Court concluded that they could not,

> "for the simple reason that it was not established that the 1st Appellant was in existence prior to 2013."(P6)

12. The Court went on to say that:

> "Even if agency is to be implied, it is still defeated by arguments that the appellant was not in existence as at the time Mr Wang or Mr Wei made representations to the Respondent in 2013."

13. On the question whether Mr Wang had ostensible authority to enter into a binding agreement with the Respondent on the 1st Appellant's behalf, the Court said that

> "for the principle of ostensible authority to be effective, it is imperative that the 1st Appellant's company should have been in existence prior to 2013 when Mr Wang and Mr Wei made representations to the Respondent.
>
> "If that had been the case, the 1st Appellant would have been bound by the acts of Messrs. Wang and Wei in the application of the principle of ostensible authority."

14. The Court concluded that in the circumstances of the case, it failed to see how that could be the case here.

15. The Court of Appeal reversed the High Court decision on the ground that the first Respondent was not in existence when the agreement was said to have been made i.e. 2013. This was a critical finding of fact on its part. The trial judge whilst finding that the agreement was entered into in 2013, did not appear to consider the actual date on which the contract was made an issue or primary fact on which to base his decision. What was important from his point of view was that there was an agreement between the parties which the Appellant says was breached by the 1st Respondent, such breach being induced by the 2nd and 3rd Respondents. The Defendants did not raise the issue of the date as part of their pleaded Defence. They simply denied or declined to admit the claims and put the Plaintiff/Appellant to strict proof of his case. It was only in their closing address at the end of the trial, and subsequently in their grounds of appeal, that the Defendants raised this as an issue. The Court of Appeal proceeded to view this issue of the date as a critical finding,

indeed the lynchpin on which to base its majority decision. Was the Court of appeal correct?

16. The evidence is that the 1st Respondent, Dalian Shenghai Ocean Fishery Co. Ltd (hereafter "Dalian China") is a company incorporated and registered in China. No direct evidence was led as to when it was incorporated or who it was established by, but Mr Wang, in evidence did say:

> *"I know the actual owners/shareholders of the 1st Defendant. The shareholders are Mr Shidong…..the second shareholder is Yugon Chu, I cannot remember the name of the 3rd defendant shareholder. I am not the third shareholder."*

17. Dalian China is different from Dalian Shenghai Ocean Fishery (SL) Ltd. (hereafter "Dalian SL"), which is a Sierra Leonean registered company that was incorporated in Sierra Leone on 9 June 2015 and established by two Chinese businessmen by the names of Yang Yufeng and Ying Shidong. Whilst the names of the two companies may be similar, they are not identical and there was nothing before the Court which should have led anyone to assume that Dalian China and Dalian SL are one and the same company. Indeed it is palpably clear that they are not the same and cannot be the same. Whilst it is possible that there was/is some co-ownership of the two companies, no direct evidence was led on this and no such suggestion was advanced in argument. There is no evidence either that Dalian SL is Dalian China (a foreign company) registered in Sierra Leone, or a wholly–owned subsidiary of Dalian China. If Dalian SL were a foreign registered company, then its Certificate of Registration would have indicated as much and it would be registered under its own name - Dalian Shenghai Ocean Fishery Co. Ltd. This is not the case here. (see Exh. A at pages 543 and 544 of the court record). If Dalian SL was a subsidiary of Dalian China, then Dalian China should have appeared as a subscribing member of Dalian SL. This is not to say that Dalian China could not have subsequently become a member of Dalian SL, but the fact is that on incorporation, there was no evidence of Dalian China being a member of Dalian SL and so there was no basis for concluding that Dalian China is in any way connected to, let alone the same as Dalian SL.

18. Despite the fact no evidence was led as to the date of Dalian's incorporation, the Court of Appeal was nonetheless content to accept the statement of counsel for the 1st Appellant as evidence that the company was registered on 5 May 2014. As stated earlier, the Court said that:

"It is Counsel for the 1st Appellant who indicated that his client's Certificate of Registration in China is dated 5th May 2014.

19. The Court appeared to regard that statement from counsel as evidence and accepted it as a fact. That in my view, was an error, for reasons I will shortly explain.

20. Dealing first with the Court of Appeal's reference to Dalian SL however, it is clear that the Court made a mistake in referring to Dalian SL, appearing to confuse it with the 1st Respondent. Indeed it appears to have been a confusion shared by others including counsel for the parties, leading to unnecessary arguments about whether the Appellant was a promoter of "the 1st Defendant" or not. It is correct that Dalian SL was incorporated in Sierra Leone on 9 June 2015, some two years after the agreement between the parties is said to have been entered into. This however, has no bearing on the issues at hand. Dalian SL is not Dalian Shenghai Ocean Fishery Co. Ltd, a party to the litigation, nor do any of the allegations made by the Plaintiff touch and concern it. The Plaintiff's action was not against Dalian SL but against Dalian China. Nowhere in his pleadings or in the evidence, does the Plaintiff mention Dalian SL, and for the good reason that it was not, as the Court of Appeal rightly said, in existence at the time of the events. If therefore the Court of Appeal was confusing Dalian SL with Dalian China, and thus basing its decision on the fact that Dalian SL was not incorporated in 2013, then whilst it may have been correct from a factual point of view, it would be a totally irrelevant fact because there was no claim or allegation levied by the Plaintiff against Dalian SL i.e. it did not matter that Dalian SL was not in existence in 2013 because the Plaintiff was not claiming against it. The claims are against Dalian China and there was therefore no reason to mention Dalian SL.

21. Turning now to the Court's acceptance of counsel's statement regarding the date of incorporation of Dalian China. In my view, this was an error. Statements from the bar by counsel and not made under oath, in an affidavit, or in a Witness Statement, are not admissible evidence of the facts stated. So counsel's statement ought never to have been accepted by the Court as a fact. There was no Certificate of Incorporation or other documentary evidence submitted or admitted into evidence by the 1st Defendant establishing that Dalian China was incorporated or registered in 2014, nor did Mr Wang, the only witness for the 1st Defendant, make such statement in his oral evidence or in his tendered Witness

Statement. The statement by counsel was therefore inadmissible and ought not to have been accepted, much less relied upon by the Court of Appeal as a basis for making a finding of fact that the 1st Respondent company was not incorporated or in existence at the material time.

22. But even had this not been the case, and the statement was properly before the court as evidence, I question whether that statement, upon analysis, was in fact true, or, if it was true, whether much can be taken from it. This is because it is clear from the letter dated 17 January 2014, addressed by the Appellant to the Ministry of Fisheries and Marine Resources (Exhibit A), that he wrote, in the name and on behalf of Union Fishing 2007 Co. identifying himself "as agent" and claiming that he/Union Fishing were in partnership with the 1st Respondent, naming it as *"Dalian Shenghai Ocean Fishery Company Limited based in China"*. In that letter he was requesting Ministerial clearance for Dalian's fishing vessels to enter Sierra Leonean waters. The Director of Fisheries replied that same day, acknowledging Union Fishing 2007 as partners of the 1st Respondent. This was in January 2014. It is clear then that the 1st Respondent was in existence two weeks into the year 2014. That the Appellant knew what name to state in the letter is highly suggestive that he knew, or had been given by someone, the name of the company on whose behalf he was applying. The Appellant says he was asked to apply to the Ministry by Mr Wang who he says was the authorised agent of the 1st Respondent. He buttresses this claim with the complimentary business card given to him by, and bearing the name of Mr Wang, which card describes Mr Wang as the Vice President of Dalian Sheng Hai Ocean Fishery Co. Ltd. i.e. Dalian China. (Exh.J)

23. In March 2014, Michael Wang was writing email correspondence to Mr Alieu Thorlu Bangura of Union Fishing 2007 Co (Exhs. L and M) from an email address that appears on the complimentary business card given to the Appellant by Mr Wang (Exh.J). Mr Wang does not dispute he wrote the correspondence. In that correspondence, Mr Wang mentions Dalian China by name and the content of the email appears to confirm the Appellant's evidence that he, the Appellant, attended an interview with the Chinese Counsellor at the Chinese Economic and Commercial Bureau, to confirm he was working in partnership with Dalian China and that he had arranged for Mr Thorlu-Bangura to do likewise.

24. In cross-examination, Mr Wang denied knowing Mr Thorlu-Bangura had a fishing facility, yet he agreed that he sent the two emails (Exhs. L and M) to Mr Thorlu-Bangura detailing the arrangements for the Chinese Counselor's visit to Mr Thorlu-Bangura's facility and his visit to the Chinese Economic and Commercial Bureau and what should be said by Mr Thorlu-Bangura thereat. In particular, in Exh L, Mr Wang tells Mr Thorlu-Bangura a) that he should say that he had worked with Dalian China, and b), that he should *"stress to the Counselor, Union Fishing 2007 is the only fishing company has the jetty, cold room and office facilities at downtown of Freetown."*

25. These pieces of evidence support the view that in March 2014, Mr Wang was very much involved in arrangements with the Appellant and Mr Thorlu-Bangura about Dalian China's fishing business. Indeed the emails, in particular the one dated 11 March 2014 (Exh. L), clearly show that Mr Wang was not only aware of, but also supportive of, the work the Appellant was doing on behalf of Dalian China and indeed he appeared in that email, to be actively promoting the interests of Dalian China as its local representative and was in effect, giving instructions to both the Appellant and Mr Thorlu-Bangura as to what to say at the interviews with the Chinese Counselor.

26. The correspondence from the Ministry (Exh. B) also referred to Dalian China, and according to the Appellant, that letter was given or shown to the Chinese Counsellor who in turn accepted it as evidence that Dalian China was on its way to obtaining the requisite authorisation to fish and do business in Sierra Leone which in turn led to the Chinese Government approving the loan to Dalian China. This was in March 2014, and this, together with the letter to the Ministry, would suggest that Dalian China was in existence way before 5 May 2014 which is the date when counsel for the 1st Respondent says Dalian China was incorporated in China. It is highly unlikely therefore that that statement by counsel was accurate.

27. Over and above this, both the Appellant and Mr Wang in their respective Witness Statements, agree that they both met in November 2013 and discussed Dalian China, although they each have different accounts of what the nature of the discussions were. In his Witness Statement, Mr Wang says that:

"I know the plaintiff in this matter as we met in November 2013 at the Sierra Fishing Company....

"At the end of 2013, a man by the name of David Wei, a Chinese National came to Freetown, Sierra Leone....David told me that his company by the name of Dalian Changhai Fisheries Co Ltd was building fishing boats in China...

"David asked me to look out for an agent for his company... After a while, David told me to look out for an agent for Dalian Shenghai Ocean Fishery Company. I recommended several companies to him. The Plaintiff with whom I had discussed this issue of David with, met with David and recommended one Mr Thorlu Bangura the owner of Union Fishing 2007 to David."

28. This evidence indicates that Dalian China, or an entity bearing its name, was in existence in the tail end of 2013, and Mr Wang and the Appellant were actively promoting its affairs between November 2013, through January and March 2014, prior to the date stated by counsel to be the date of its incorporation in China - 5 May 2014.

29. The view of the trial judge, after reviewing the evidence, was that Mr Wang was the Vice President of Dalian China and that he was acting as a representative and agent of the 1st Respondent when in 2013, he entered into the oral agreement with the Plaintiff/Appellant as claimed. Having seen and heard the witnesses, he found that "the evidence of Mr Wang was not credible" and that the 2nd Respondent (and through her, the 3rd Respondent) "had full knowledge of the contract" between the Appellant and the 1st Respondent and that the 2nd Respondent had deliberately induced the 1st Respondent to breach its contract with the Appellant in order for the 3rd Respondent to take over the agency.

30. The Court of Appeal rejected the judge's findings and without applying the *Thomas* principles to determine whether the judge had been found wanting in his approach to the law and/or the evidence, drew its own conclusion that Messrs Wang and Wei could not have been agents for the 1st Respondent, and could not therefore have entered into any agreement with the Appellant on the 1st Respondent's behalf in 2013, because the 1st Respondent was only established in May 2014. Having so found, it then erroneously concluded, on its reasoning, that as no contract was or could have been in existence between the 1st Respondent and the Appellant, there could not therefore be any contract, the breach of which the 2nd and 3rd

Respondents could have induced, and therefore the 2nd and 3rd Respondents were not liable.

31. In my view, this was an error on the part of the Court of Appeal, not only for failing to consider and apply the *Thomas* principles, but equally, for making a critical finding of fact that was not based on any evidence in the proceedings. Absent counsel's statement, there was no evidence before the High Court that Dalian China was incorporated in May 2014 and to that extent, there was no evidence on which the Court of Appeal could properly have drawn the conclusion that it did.

32. This is a case where there was credible evidence before the judge that the 1st Respondent was in existence in 2013, that Mr Wang, at least, was a representative of the 1st Respondent, who had ostensible authority to enter into agreements with third parties on the 1st Respondent's behalf, and that in 2013 he did so enter into agreement with the Appellant, which agreement the 2nd Respondent induced a breach of. The judge evaluated the evidence before him and made the findings that he did.

33. It seems to me, that the Court of Appeal failed to apply the correct principles to be adopted by an appellate court stated earlier. The Court of Appeal appears to have reviewed the matter and proceeded to make its own findings of fact without averting its mind to the *Thomas* principles. To borrow the words of Lord Hope in the case of *Thomson v Kvaerner Govan Ltd* [2003] UKHL 45; 2004 SC (HL) 1 at para 16:

> "The rule which defines the proper approach of an appellate court to a decision on fact by the court of first instance is so familiar that it would hardly be necessary to repeat it, were it not for the fact that it appears in this case to have been overlooked."

34. The Court of Appeal appears to have overlooked the findings of fact made by the trial judge and reviewed the evidence as if it were a court of first instance. The Court proceeded to draw its own conclusions therefrom without consideration as to whether, as the *Thomas* principles require, the judge had made a material error of law, or made a critical finding of fact which had no basis in the evidence, or had misunderstood the evidence, or had failed to consider relevant evidence.

35. On this basis, I am of the strong view that the Court of Appeal erred in failing to apply the correct principles when overturning the findings of fact made by the trial judge, and in admitting and relying on the statement by counsel as proof that the 1st Respondent could not have entered into and breached the agreement with the Appellant. In light of the above, I would allow the appeal on Grounds A, B and F.

36. In view of my conclusion, I do not think it necessary that I consider Grounds C, D and E.

**Reliefs**

37. Having found in favour of the Plaintiff/Appellant on the facts and as to liability, the judge then went on to award him certain reliefs which appear in the Court's order dated 13 February 2017. The Appellant asks that the decision of the High Court be restored and it falls on this Court to consider whether the Court's order is still appropriate.

38. Having looked at the orders made by the judge, I think it important to briefly highlight some that require further review. In doing so I am conscious of the test to be applied in the case where the appellate court is considering interfering with an award of damages by the trial judge as set out in *Davies v Powell Duffryn Associated Collieries Limited* [1942] AC 601, 616-617, where Lord Wright, adopting the test originally stated by Greer LJ in *Flint v Lovell* (1935) 1 KB 354, said:

> "An appellate court is always reluctant to interfere with a finding of a trial judge on any question of fact, but it is particularly reluctant to interfere with a finding on damages which differs from an ordinary finding of fact in that it is generally much more a matter of speculation and estimate. No doubt, this statement is truer in respect of some cases than of others. It is difficult to lay down any precise rule which will cover all cases, but.....the court, before it interferes with an award of damages, should be satisfied that the judge has acted on a wrong principle of law, or has misapprehended the facts, or has for these or other reasons made a wholly erroneous estimate of the damage suffered."

39. The Privy Council adopted a similar stance in *Nance v British Columbia Electric Railway Co Ltd* [1951] UKPC 19, [1951] AC 601, [1951] 2 All ER 448, where Viscount Simon said that where the appellate court is minded to disturb the lower court's award, it :

> "...must be satisfied either that the judge, in assessing the damages, applied a wrong principle of law (as by taking into account some irrelevant factor or leaving out of account some relevant one); or, short of this, that the amount awarded is either so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage."

*Agency fees*

40. The judge ordered the 1st Respondent/Defendant to pay the Appellant the sum of $126,000 being agency and promoter fees. The Plaintiff's claim was for $96,000 being agent's fees together with $20,000 as miscellaneous expenses and $10,000 by way of transportation costs etc. Together the sums claimed amounts to $126,000. However the High Court disallowed the two sums of $20,000 and $10,000, thereby leaving a claim in the sum of $96,000. However, having discounted the $30,000 figure, the judge proceeded to award the original $126,000. It appears the Judge mistakenly included the $30,000 which he had already said was not recoverable.

41. The $96,000 was composed of agent and promoter's fees from 2003 to 2005. The evidence was that the 1st Respondent's fleet consisted of eight vessels and that the fees payable were $500 per vessel per month, so the amount payable should have been $4000 per month ($500 x 8 vessels) and not the $6000 claimed and awarded. The Appellant himself confirmed this in his evidence when he said that *"The agency fee we agreed on $500 per boat for every month totaling $4000 per month."* The award should not therefore have been calculated on the $6000 per month claimed. On that basis, the amount the judge should have awarded should have been $64,000 and not the $126,000 he did. Of course, the fact the fees were payable "per boat" would suggest that the fees were payable only when the vessels arrived and were operating in Sierra Leone waters, but this was not challenged or taken up during the trial or on appeal.

42. In light of the above, I am of the view that the judge made an error in his calculations and erroneously awarded the sum of $126,000. In such circumstances I think it appropriate case, applying the *Davies* principles, for this Court to intervene to amend the High Court's order

so that the Plaintiff recovers the correct amount that the Court should have awarded, which is the sum of $64,000.

*Reliefs against the 2nd and 3rd Respondents.*

43. The judge ordered the 2nd and 3rd Respondents to pay to the Plaintiff the value of the 26,000 cartons of fish sold by them on the local market between the period 14 July 2015 to 20 July 2015 i.e. the proceeds of the catch by the eight vessels over that period as appear in Exhs.H 1-3. He also ordered recovery of the value of all hauls of fish obtained by the 2nd and 3rd Respondents from the 1st Appellant's fishing activities until 'payment', although looking at the Plaintiff's Statement of Claim, I believe that should have read 'judgment'.

44. The evidence given by the Plaintiff is that the 1st Respondent would "give" him all the local catch. Taken at face value, it might appear that the Appellant was entitled to be given this as his own share under the agency agreement. The Plaintiff also says that he, Mr Wang and the 2nd Respondent would have shares in Lifeboat Fishing Company Ltd, ("Lifeboat"), which was the company to be set up by the Appellant and through which the agency would be operated. It is clear from the evidence that the agency was to be operated by Lifeboat, which company was to have several shareholders, including the 2nd Respondent and Mr Wang. Interestingly, although the Appellant said that Mr Wang was to be a shareholder, his name does not appear on the draft Memorandum and Articles of Association prepared by the Appellant. So there is a serious inconsistency here with the Plaintiff's claim that they were to form the company jointly. Whilst this fact could have given rise to several questions about exactly what role Mr Wang would have played in a company which was to act as agent for another company of which he was Vice President, that was not an issue investigated by the parties at trial, and it is not for this court to conduct such investigation. The important thing to note however, is that on the Plaintiff's own evidence, the agency would not be personal to the Plaintiff himself, but rather would be with his company, Lifeboat. If so, then the Appellant would personally only be entitled to, at best, a 35% share of the value of the company, and ironically, the 2nd Respondent would have been entitled to a 25% share in the company. Either way, the Appellant would not be personally entitled to all the local catch as he claims, only Lifeboat would, and Lifeboat did not and does not exist and is not the Appellant in this action and the Appellant is not suing in a representative capacity.

45. Even assuming the Plaintiff/Appellant was entitled to the whole of the local catch, it is clear

that he would have had to pay the 1st Respondent for the fish in much the same way as Monza, the 3rd Respondent would under the Dalian-Monza agreement (Exh.'M'). It is clear from clause 11 of that agreement, that the agent only has a first option to buy the local catch from the 1st Respondent at a price to be agreed, failing which the 1st Respondent is free to sell the catch to any other third party. I am conscious that the terms of the Monza agreement cannot be regarded as evidence of what the agreement with the Appellant would have looked like, nevertheless, it is noted that the Appellant did give an indication of to what he meant when he said the 1st Respondent would give him the local catch. By his own evidence under cross-examination by counsel for the 2nd and 3rd Defendants, the Appellant said "*I was going to pay them for the fish. If I am supplied the fish, they will give me an agency to which I will pay.*" (see P 802 of the court record) To my mind therefore, a true interpretation of the evidence would indicate that the Appellant would not have personally been entitled to be 'given' the entire local catch. He/Lifeboat would only have been entitled to buy the catch and retain the profit from the re-sale. He would not have been entitled to the entire gross proceeds of the sale. At best, even assuming the Appellant was personally entitled, he would only have been entitled to 35 % of the catches (assuming no other costs, disbursements or expenditure). In light of the above, the conclusion must be drawn that the judge misunderstood the evidence and made a mistake in ordering that the Plaintiff personally could recover the full value of the entire local catch against the 2nd and 3rd Respondents, I am of the view that in the circumstances, this is an appropriate *Davies v Powell Duffryn* situation where this Court can intervene and amend the order of the trial judge in respect of both orders. For my part, I would amend orders 7 and 8 so that the Plaintiff is entitled to no more than 35% of the profits the 2nd and 3rd Defendants/Respondents made from the sale of the 26,000 cartons of fish and subsequent sales of fish from the Dalian fleet. This figure takes into consideration that even if Lifeboat had come into existence, the Plaintiff as a shareholder would only have been entitled to a 35% share of any profit dividend which the company may have made after deducting expenses and allowing for re-investment in the company.

*Damages against the 2nd and 3rd Respondents.*

46. The judge ordered the 2nd and 3rd Respondents to pay the Plaintiff the sum of $120,000 by way of damages for inducing the breach of contract by the 1st Respondent. The judge did not say a single word to explain why, having made orders for them to give an account of proceeds of sale and payment of the profits to the Appellant, he found it necessary to make

a further order by way of damages, especially one of such magnitude. It seems clear that the effect of the orders for an account and payment of profits was to disgorge the 2nd and 3rd Respondents of all the profits they may have made under their contract with the 1st Respondent, and have them pay the profits to the Appellant, thereby penalising them for their wrongdoing and placing the Appellant in the position he would have been had the contract not been breached due to the 2nd Respondent's actions. Indeed the claim under this head was against all three Defendants, but the judge made the orders against the 2nd and 3rd Respondents only. Whether this was a mistake also or deliberate is not clear as the judge did not again state why he made that order.

47. Such loss as was claimed by the Appellant against the 1st Respondent was awarded to him in orders for damages, as was his claim for an account for profits against the 2nd and 3rd Respondents. The damages award was compensatory in nature. The order for an account of profits was restitutionary i.e. it was intended to remove from the 2nd and 3rd Respondents any gain made from their unlawful act and hand them over to the Appellant. No evidence was led as to any additional loss the Appellant suffered as a result of the inducement. There therefore seems to be no reason why the judge should have awarded additional damages, especially of such high value.

48. The judge did not say he was awarding the $120,000 as exemplary (punitive) damages, and indeed he could not have awarded such damages as they are not recoverable if they were not specifically claimed. Under HCR Ord.21 R8(3), a claim for exemplary damages must be specifically pleaded and particularised. But even if the judge was minded to order punitive damages he should have made it very clear that that was what he was doing, why he was doing it, and how he came about the figure that he ordered. Yet the judge did not say anything to explain that award. He did not do so, and they were not claimed so it cannot be said that the damages were ordered as exemplary damages.

49. Whilst the courts aim to ensure that successful litigants are properly compensated for their loss, the courts also have to protect unsuccessful parties against double payment. The Court needs to ensure that litigants are not over compensated. Many of the reliefs claimed in litigation are alternative remedies even if they are not pleaded in the alternative. Some remedies are awardable as of right. Others are discretionary. They need to be applied for, but it is in the Court's discretion whether to award them.

50. In this case the Plaintiff claimed several reliefs all but a few of which the judge granted. But it appears to me that in ordering the account and payment of profits as well as ordering high damages, there was an element of double compensation going on. The award of damages, when looked at in relation to the other awards made against the 2nd and 3rd Respondents is difficult to understand. It was, in my view, inordinately high as to be a wholly erroneous estimate of the damage. In my view, if damages are awardable, such damages should be nominal given that the Appellant's loss has already been compensated for by the other orders of the court.

.....

**Justice E Taylor-Camara, JA**

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REGISTRAR

CIV. APP 1/2018

IN THE SUPREME COURT OF SIERRA LEONE
CERTIFICATE OF THE ORDER OF THE COURT

BETWEEN:

MOHAMED BANGURA - APPELLANT

VS

DALIAN SHENGAI OCEAN FISHING CO
ABIE ARUNA KOROMA
MONZA FISHING COMPANY - RESPONDENTS

.....
*Presiding Justice*

This Civil Appeal coming up for hearing on divers date and on today's day for Judgment before the Hon. Mr. Justice E. E. Roberts -Justice of the Supreme Court, (presiding), the Hon Mrs Justice G. Thompson -Justice of the Supreme Court, the Hon Mr Justice A. B. Halloway-Justice of Supreme Court, the Hon Mr Justice Sengu M. Koroma- Justice of the Supreme Court and Hon Mr Justice E. Taylor-Camara Justice of Appeal in the presence of E T Koroma Esq for the Appellant, Umaru N. Koroma Esq for the 1st Respondent and Africanus Sesay for the 2nd and 3rd Respondents.

I HEREBY CERTIFY that the following Orders were made:

1. That the Appellant shall recover from the 1st Respondent the Leone equivalent of the sum of $64,000 as agent and promoters fees.
2. That the order for specific performance Is hereby refused. In lieu thereof the Appellant shall recover from the 1st Respondent the sum of $24,000 as damages.
3. The 2nd and 3rd Respondents shall within 30days of this order render an account of the proceeds of sale of frozen and other fishes obtained during fishing activities in Sierra Leone of the 8 vessels namely Shenghai 1-8 for the period June 2015 to October 2015.
4. Upon the rendering such account this matter is remitted to the High Court to inquire into the profit derived from all fishing activities as per order 4 above and what percentage is recoverable by the Appellant which shall not in any event exceed 35%.

5. Interests on the sum of $64,000 (*Leone equivalent*) at the rate of 9% from the date of commencement of this action until date of this judgment.

6. Costs to the Appellant to be t axed if not agreed.

7. All sums ordered shall be paid in Leones at the rate of exchange existing in February, 2015.

Given under my hand and seal of the Court this 29th day of November, 2019.

.....
Hon Mr Justice E. E. Roberts

Certified True Copy

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Ag. Master and Registrar