ARBITRATION PANEL

ADJUDICATION OF DISPUTE BETWEEN

BEYAN-POYE COMMUNITY FOREST & AKEWA GROUP OF COMPANIES, INC.

FINAL ARBITRAL AWARD

In the arbitration hearing, pursuant to Paragraph 25 of the Community Forest Management Agreement (CFMA) for the Harvesting of Logs within the Beyan-Poye Community Forest in Gibi District, Margibi County

Made on October 19, 2022
UMC Compound, 12th Street, Sinkor, Monrovia, Liberia

CLAIMANT: Body	Beyan-Poye Community Forest Management
Claimant's counsel:	*Heritage Partners and Associates (Atty. Sagie Kamara, Cllr. Lucia Gbala)*
RESPONDENT:	Akewa Group of Companies, Inc.
Respondent's counsel:	*Law Offices of Sayeh & Sayeh (Atty. Augustine Williams, Atty. Kenneth Flomo)*
ARIBITRAL PANEL:	Cllr. Joel Elkanah Theoway, Chairman Cllr. Tomik L. J. Vobah, Member Cllr. G. Moses Paegar, Member

I. Introduction

1. The Claimant in these arbitration proceedings, Beyan- Poye Community Forest Management Body, issued a Notice of Arbitration on the Respondent, Akewa Group of Companies, Inc. in the letter or Notice dated January 31, 2022, from Heritage Partners and Associates, a law firm representing the Claimant, Claimant referred to Paragraph 25 of the Community Forest Management Agreement (hereinafter known and referred to as "CFMA") between the Claimant and Respondent as grounds for arbitration, which provides as follows:

"Paragraph 25
That in the event of any dispute arising under this Agreement, the Parties shall first seek to resolve the differences with the aid of the FDA, and wherein the matter remains undetermined, local government officials should be referred to as the neutral parties in the third party mediation process. If the above methods cannot settle the dispute, the Parties herein shall result to arbitration in line with the commercial arbitration rules: and judgments rendered by the arbitrators shall be confirmed by a court of competent jurisdiction.

(a) Arbitration shall be conducted by an arbitral panel of three (3) persons; one (1) arbitrator shall be named by the Managing Director of the forestry Development Authority or his/her designated representative
(b) The Arbitration shall be conducted in keeping with arbitral rules under Liberian laws. Each Party shall be responsible for, and shall pay the fees and expenses of its appointed/designated arbitrator. The fees and expenses of the third arbitrator, shall be shared on equal basis by the Parties, while the cost and expenses of the arbitration proceeding itself shall be assigned by the arbitral panel as it adjudged fit and shall be paid by the party liable to the other or in default of Agreement
(c) A decision by the majority of the arbitral panel shall be binding on the parties and enforceable [by] court of law.
(d) In invoking arbitration, a party of this agreement shall give written notice to [the] other party, stating the nature of the dispute and appoint its arbitrat[or]. The other party must notify arbitrator and state its response to the dispute as stated by the party giving notice of arbitration within thirty (30) days of notice to the chairman, the arbitral panel shall commence its work every day until a decision is arrived at and rendered."

2. The Claimant, in its Notice of Arbitration, alleged that the Respondent failed to pay Land Rental fees and Cubic Meter fees as and when due; the Respondent is incapable of performing under the CFMA; that the purpose or benefits anticipated by the Claimant from the CFMA were being denied it by the Respondent, thus amounting to failure of purpose; that the Respondent failed to undertake corporate-social obligations under the CFMA; and that the Respondent frustrated efforts aimed at mediating existing disputes.

3. In the said Notice on which the Forestry Development Authority (FDA) was copied, the Claimant named and provided details of its arbitrator, in person of Cllr. Tomik Vobah, and sought the appointment, by the FDA, of the third arbitrator in keeping with Paragraph 25 of the CFMA as quoted supra.

4. The FDA, pursuant to the Notice of Arbitration on which it was copied, and as per Paragraph 25 of the CFMA, named Cllr. Joel Elkanah Theoway, as the third arbitrator and Chairman of the Arbitration Panel. The appointment which was contained in a letter dated February 28, 2022, was served on the Parties, and Cllr. Theoway.

5. On April 11, 2022, the Claimant filed a Petition to Compel Arbitration before the Commercial Court of Liberia, essentially alleging that the Respondent had failed and neglected to submit to arbitration after being duly notified by the Claimant according to the CFMA. Claimant further averred that it followed all of the prerequisites as outlined in the CFMA before issuing its Notice of Arbitration, hence it prayed the Court to order and compel the Respondent to submit to arbitration and appoint its arbitrator.

6. The respondent resisted the said Petition in its Returns, alleging essentially that Claimant, Petitioner before the Court, showed no iota of evidence that it complied with all of the conditions precedent enshrined in Paragraph 25 of the CFMA to trigger arbitration, and as such, until all of the required meditations are undertaken, it cannot submit to arbitration, hence the Court must not compel it to submit to arbitration. Therefore, the Petitioner's petition should be denied.

7. On May 19, 2022, the Commercial Court, sitting in its May Term of Court called for a Pre-Trial Conference between the Parties, and after hearing oral representations from the counsels, held and determined that the Petitioner/Claimant, had fulfilled all of the requirements of the mediation, and therefore ordered the Respondent to submit to arbitration. Respondent was further ordered to appoint its arbitrator.

8. Pursuant to the Order of the Commercial Court compelling the Respondent to arbitrate, the Respondent named its arbitrator in person of Cllr. G. Moses Paegar, following which the Chief Judge of the Commercial Court, in open court on Thursday, August 4, 2022, commissioned the three arbitrators, namely Cllr. Joel Elkanah Theoway, Chairman, Cllr. G. Moses Paegar, Member, and Cllr. Tomik Vobah, Member.

9. The Panel under Notice issued to the Parties, held two Arbitration Management Conferences in keeping with Paragraph 7.26 of Chapter 7 of the Commercial Code of Liberia (Title 7 LCLR), on August 9, 2022, and August 16, 2022, respectively, in which the Parties and the Panel reached some agreements, including:

   i. The issue(s) to be resolved by arbitration;
   ii. The date, time, place, and estimated duration of the hearing;
   iii. The need for discovery, production of documents, or the issue of interrogatories and to establish the procedures therefor;
   iv. The law, rules of evidence, and the burden of proof that is or are to apply to the proceedings;
   v. The exchange of declaration regarding facts, exhibits, witnesses, and related issues;
   vi. Whether the summary of evidence of parties should be oral or in writing;
   vii. Costs and arbitrators" fees; etc.

10. Consistent with the agreement reached with the Parties at the AMCs. The Claimant filed its Statement of Claims on August 11, 2022, and the Respondent filed its Statement of

Defense on August 13, 2022, and Hearings commenced on August 17, 2022. The Parties, through their respective counsels, made opening arguments, paraded witnesses, some of whom were subpoenaed by the Panel through the Commercial Court and made their closing arguments on September 22, 2022. The Panel had 20 sittings, all of which were graced by the party litigants. The Panel appointed Mr. Hosea Nelson as clerk.

II. Facts Summary

11. The facts, as culled from the pleadings of the parties can be well summarized as follows:

A. Summary of Claimant's Claims

i. Claimant avers that it entered into a CFMA with the Respondent on March 25, 2017, granting the Respondent the right to conduct commercial logging in the claimant's Community Forest in Gibi District, Margibi County, in exchange for the Respondent to pay Land Rental fees, Cubic Meter fees and carry out several corporate social responsibilities as listed in the said CFMA.

ii. Claimant alleges that the Respondent grossly defaulted in performing its obligations under the CFMA, including failure to pay Land Rental fees until two years after the execution of the CFMA; payment of only 24% of total accrued Land Rental fees; and, failure to export over 60% of logs harvested, thus indicating lack of capacity to conduct commercial logging activities in keeping with the CFMA for the mutual benefit of the Parties.

iii. Claimant asserted further that it made good faith efforts to have the Respondent comply with its obligations under the CFMA, but the Respondent has refused, failed, and reneged, thus continuously and deliberately breaching the terms of the CFMA. Hence, it issued a Notice of Arbitration to have the matter settled.

iv. The claimant claims and prays the Panel to grant it an award of US$962,519.00 as Special Damages and US$400,000.00 in General damages. The claimant also prays the Panel to terminate the CFMA and to grant it all other further reliefs deemed just and equitable.

B. Summary of Respondent's Defense/Counterclaims

i. Respondent denies all of the allegations of the Claimants and prays the Panel to dismiss the claims and deny the prayers. Respondent further avers that it complied with the terms of the CFMA, paying Land Rental fees, Cubic Meter fees, and undertaking Social Corporate Responsibilities in keeping with the CFMA until the Claimant rioted, contending that were it not for the riot and protest actions of the Claimant, incident to the shipment of its first consignment of harvested logs, it would have been in full compliance with the CFMA to date.

ii. Respondent further avers that it completed a well in Karyuway Town, and had begun the construction of another in Poye Town but faced a challenge due to the absence of a bridge to cross the other needed materials for construction; that it also conveyed three hundred concrete blocks to begin construction works on a

toilet in Gaye's Town, but the inhabitants of the town informed them that they did not need toilet; that it constructed a feeder road from Gibi District Headquarters through Karyuway Town, onto Gbarta Mission; and it rehabilitated and maintained 54 kilometers of feeder road from its concession area to Kakata, constructed a 30-meter bridge over a river in Bolola, which it maintained annually, to convey its logs out of the concession.

iii. Respondent also alleges that before the riot, it paid unto the Claimant the full amount of Land Rental fee for the year 2018 in the amount of US$22,1919.88 and subsequently paid US10,000.00 in 2020 against the 2019 Land Rental fees. Other payments were made toward the Land Rental fees and Cubic Meter fees which cannot be fully authenticated due to the fire incident at the Respondent's office within the concession area which destroyed everything.

iv. Respondent asserts that after it obtained an export permit for the shipment of its logs, and met with the Claimant, informing it that it was about and ready to make its first shipment, it rented forty (40) trailers and containers and took them to its Concession area to load logs into them for conveyance to the Freeport of Monrovia where a vessel was waiting to have the logs exported. Respondent claims further that when the trailers arrived in the concession area, the Claimant staged a riot in February of 2019, preventing the loading and or passage of the trailers. Respondent alleges that as per the wishes of the rioters, it could not take its logs, and had to return the trailers and containers empty to the Free Port of Monrovia.

v. Respondent contends that after the protest was dispersed through the intervention of the Office of the Superintendent of Margibi County, Respondent was permitted to return to its concession area and resume operations. Respondent further contends that after it resumed operations, it rented containers and trailers once more to convey its logs to the Freeport of Monrovia, but there was a subsequent riot in March of 2020 at the Bolola Bridge by the people of Bolola, refusing to allow Respondent to temporarily use the Bolola Bridge for the passage of its containers after the alternate bridge Respondent constructed collapsed due to torrential rainfall. Respondent says and avers that the containers that were still in the concession areas after the bridge collapsed were prevented from crossing until they were emptied of all logs, and the containers that were proceeding towards the concession after the said bridge collapsed were prevented from passage on the Bolola Bridge as well.

vi. Respondent asserts that Claimant breached the CFMA when they stage the riots, even though Claimant under the CFMA was under obligation to protect Respondent's operation from interruption.

vii. Respondent, therefore, counterclaims US$1,405,633.12 in Special Damages to cover for demurrage accrued for the delay of two scheduled vessels; storage of trucks in Margibi County; loss of profit suffered due to the cancellation of one-year sales contract with buyer; transportation expense for logs; Bank Overdraft charges; and equipment rental fee.

viii. Respondent further seeks General damages of US$5 Million; prays that the Panel declares its operation commence and continue in keeping with the CFMA; that the Panel declares that CFMA remains in tight and in full force and effect; and that the Panel declares that the intervening period of the CFMA was not made effective and operational incident to Claimant's disruption and riot action retroactively and that the same be compensated therefor.

III. Non-contested facts

12. From the examination of the facts, and the analysis of the oral and documentary evidence adduced by both the Complainant and the Respondent, the Panel derived the conclusion that the following issues are not in dispute:

13. Arkewa Group of Companies paid in full the Beyan-Poye Community Forest Management Board the Land Rental fee for the year 2018 in the amount of Twenty-Two Thousand United States Dollars (US$22,000.00).

14. The total payment of the Land Rental fee paid by Akewa Group of Companies to the Beyan Poye CFMB for the year 2019 is in dispute. However, it is not disputed that Akewa Group of Companies paid an initial Ten Thousand United States Dollars against the 2019 Land Rental fee to Beyan Poye CFMB. Additional payments beyond the said US$10,000.00 is disputed by the Parties, which dispute is resolved hereunder in this Opinion.

15. There was a riot in February of 2018 in Wohn, the Capitol of Gibi District, against the operations of Akewa Group of Companies, thereby preventing Akewa from taking logs from its concession in the Beyan-Poye forest when it took shipping containers mounted on trucks to move logs to the Freeport of Monrovia for shipment. Akewa Group of Companies was not allowed to take any logs from the forest, and its containers left the forest empty.

16. There was a subsequent riot at the Bolola Bridge on the Kakata to Wohn road, against Akewa Group of Companies' utilization of said bridge in the transport of its logs to the Freeport of Liberia through Kakata. Akewa Group of Companies was earlier using its alternative bridge constructed over the river in Bolola, but due to the heavy downpour of rain, the alternative bridge collapsed. Akewa was not allowed to use the Bolola Bridge, hence the trailers that were left behind when the alternative bridge collapsed were allowed to cross the Bolola Bridge empty.

17. Akewa was denied the usage of the German Camp road, the official and shorter route to its concession area, by the Salala Rubber Company. This led Akewa Group of Companies to rehabilitate the Kakata-Wohn Road and the construction of an alternative bridge over the river in Bolola, avoiding using the Bolola Bridge, which was deemed not to be fit to withstand the weight of logs-loaded trailers. The rehabilitation of the Kakata-Wohn Road was not contemplated at the signing of the CFMA.

IV. Claimant's Key Arguments/Contentions

18. Claimant contends that amidst the silence of the CFMA on the termination of the said CFMA for gross breach of terms thereof, the Claimant was entitled to the termination of the CFMA by law, owing to the breach of the Respondent.

19. The claimant contends further that it has established by a preponderance of the evidence that it is entitled to a monetary award, including damages as prayed for in its Statement of Claims.

20. Claimant further contends that the Respondent's counterclaim cannot lie due to variance in the counterclaim and the evidence adduced through oral and documentary evidence

V. The Respondent's Arguments

21. Respondent contends that the CFMA cannot be terminated because the Parties, in Paragraph 32 thereof, covenanted that no breach of the CFMA by any Party will render the CFMA null and void.

22. Respondent contends that the riots of February 2019 and March 2020 were staged and carried out by the Claimant, and that claimant failed to protect it from the disruption of its operation in keeping with the CFMA.

23. Respondent further contends that it suffered great loss due to the riots, and that said loss impaired its capacity to comply with the CFMA, especially as it relates to the payment of Land Rental fees and Social Corporate Responsibilities as was due.

24. Respondent says that Claimant being the cause of the loss it suffered, is entitled to damages from the Claimant.

25. The Respondent says that if allowed to resume operations by the Panel and the Claimant, it has the capacity to continue operation and fulfill its obligations under the CFMA, provided there is no further hindrances.

VI. Analysis

26. The Panel shall look into each of the contentions of the Parties, and where necessary, merge two or more contentions. However, the first determination to be made by the Panel is whether or not it has jurisdiction to hear and decide on the claims or dispute.

27. Paragraph 25 of the CFMA as quoted hereinabove prescribes that the Parties shall first seek to resolve their differences through mediation and that if the differences remain unresolved, the Parties shall resort to arbitration in line with commercial arbitration rules. It says further that the judgments rendered by the arbitration shall be confirmed by a court of competent jurisdiction. This provision of the CFMA also lays out the membership of the arbitration panel and further prescribes how the cost will be borne. Without re-litigating the conclusion reached by the Honorable Commercial Court which ruled and compelled the Parties to

arbitration and commissioned the arbitrators, we take judicial notice of the said Commercial Court's ruling that prior mediatory measures required to be sought by the aggrieved party before submitting the dispute to arbitration have been fulfilled. The Panel also notes that one of its members was appointed by the Claimant, while another was appointed by the Respondent, and the third, who is the Chairman, was appointed by the FDA. This appointing arrangement is delegated to each of the aforesaid appointing authorities by Paragraph 25 of the CFMA, which means that the Panel was legally and contractually impaneled. The Panel determines that Paragraph 25 does not exclude certain dispute, but rather generalizes and gives absolute jurisdiction over all disputes arising under the CFMA to be resolved through arbitration. There are no doubts that a dispute exists between the Parties, since Claimant made claims against the Respondent, and the Respondent objected, and also made counterclaims. There are also no doubts that Claimant and the Respondent are the parties to the CFMA, which provisions mandates dispute resolution through arbitration.

28. Before finally expressing our view in this regard, we wish to point out that the resolution of disputes by arbitration generally presupposes the existence of an arbitration agreement between the parties to the arbitration in connection with a (usually contractual) relationship between the parties. That agreement, in this case, is the CFMA, but in particular Paragraph 25. As we read that provision, we see that it provides for either party to the dispute to unilaterally initiate arbitration proceedings. The Panel concludes, therefore, that it has jurisdiction to decide the present dispute.

Regarding whether the CFMA can be terminated

29. The claimant argues that the CFMA can be terminated amidst what it refers to as gross breach and its silence on termination. The claimant contends that the legal grounds for such termination are based on fairness, noting that same is grounded in common law and also espoused by the Honorable Supreme Court of Liberia, which held in the case **Mohammed Kafel v. Intestate Estate of Barclay Cooper, LRSC 36 (2010)**, that *"Courts of Law often do not reject rescindment of contracts judicially determined to be unconscionable."* The claimant then proceeds to argue that Paragraph 32 of the CFMA is unconscionable. The claimant contends that it is a remote forest community that enters a contract with a "business concession company" with no opportunity to have said contract reviewed by a lawyer of its choice. The claimant alleges that the parties did not have equal bargaining power, and concludes that the CFMA not favoring termination is unfair to the Claimant, and therefore unconscionable. Hence, it should be terminated in light of the gross breach, without deference to the said Paragraph 32.

30. In accessing Claimant's argument, it is important to quote two provisions of the CFMA as seen below:

> *"30In the event that a breach arises in any governing law or the terms of the Community Forest Management Agreement by the parties, this shall not render the Agreement null and void but shall seek to resolve through dialogue or applicable fine may apply"*

"32 The Community Forest Management Agreement shall be a standing Agreement and that under no circumstances can it be revoked by any party."

31. The Panel is persuaded by all of the Claimant's arguments regarding parties to an agreement being bound by its terms and conditions; that legal duties are imposed upon parties to observe stipulations contained in binding contract; common law right to terminate a contract for material breach; unconscionability being ground for termination of a contract, etc. The Panel buttresses these arguments by holding that contract in and of itself is protected under Article 25 of the Constitution of Liberia, and case laws in which the Supreme Court of Liberia has consistently upheld the sanctity of the provisions of contracts and has relentlessly enforced same against and in favor the parties.

32. Let us look at the Claimant's contention that the CFMA, especially Paragraph 32, is unconscionable. Unconscionability, as defined by the Black's Law Dictionary (8th Edition) means extreme unfairness, which is assessed by one party lacking meaningful choice, and contractual terms that unreasonably favor the other party.

33. Firstly, the Claimant paraded no witness to demonstrate that the Claimant did not know the consequences of the CFMA that they were entering into in 2017 with the Respondent. At no time, was this Panel presented with any evidence that the Claimant found the CFMA or Paragraph 32 unfair. It is not sufficient for the Claimant to just argue that Paragraph 32 is unconscionable, it must provide proof.

"It is a fundamental and vital principle of good pleading and practice that allegata and probate must correspond; that nothing can generally be proved that is outside the allegation, and that the facts must be proved substantially as alleged. If they are not thus proved, the variance results." **Saar v. RL, 29 LLR 35 (1981)**

34. Secondly, the Claimant was able to recognize and asserted its rights under the Community Rights Law (2009) by obtaining the necessary governmental authorization to exercise its rights over its community forest. Thirdly, the Claimant was able to push for the regulatory and statutory Land Rental fee per hectare and Cubic Meter fee per cubic meter of log. The claimant further pushed for corporate social responsibility, including road construction, 13 hand pumps, 13 latrines, construction of five room modern health center, all within six years.

35. The fourth point is that Paragraph 32 does not only apply to the Respondent for which it would be deemed unreasonably favoring one party. It could apply to any of the parties depending on the circumstances. So the mere definition of unconscionability as seen clearly in the Black's Law dictionary does not apply in the instant. Moreover, the Claimant has educated people within their midst, they are not illiterate. There is even a former Senator amongst them, who has been deeply involved in the transaction between the Parties. The mere fact that the CFMA was not reviewed by a lawyer of the Claimant's choice does not make it unconscionable, and any argument to the contrary without evidence to prove is baseless, and we so hold.

36. Still, on the case for the termination of the CFMA, the Panel says that it is easy to see what Claimant's expectations were by reviewing the CFMA. The benefits under the CFMA for Claimant are Land Rental fees, Cubic Meter fees, and Corporate Social Responsibilities as laid out therein. If you remove these three benefits from the CFMA, there is absolutely no benefit left therein for the Claimant. Apart from the payment of Land Rental fees for the year 2018, and a little accounting dispute on whether the 2019 Land Rental fee was paid in full, there is no dispute that the Respondent did not pay the Land Rental fee for 2020-2022. The respondent even admitted it. The exact Cubic Meter fee accrued is disputed by the Parties. Some Social Corporate Responsibility projects which the Respondent says were undertaken were confirmed by the Claimant witnesses, while some were disputed. Additionally, it is not disputed that Respondent has not undertaken a substantial number of social projects. Respondent even admits. Without alluding to or dismissing Respondent's defense to the disputed accounts, or to the undisputed accounts, we hold further that the mere failure of Respondent to be current with its payments of Land Rental fee and to undertake all of the social projects within the timeframe specified can be construed and interpreted as a material breach of the CFMA.
37. However, does that mean that amidst the expressed prescriptions of Paragraph 32 and or Paragraph 30 of the CFMA, the said CFMA can be terminated as prayed for by the Claimant? The Panel will now delve into that.

38. *"Revoke"* conveys the same meaning as *"terminate,"* and being guided by the Plain Meaning Rule of Construction, and having found the text of Paragraph 32 of the CFMA to be clear and unambiguous, we are reluctant to ascribe any interpretation thereto that would suggest otherwise. In short, we will respect the Parties' wish that the CFMA should not be disturbed nor revoked due to disagreement between the Parties. It is important to note also that the CFMA is not void of a mechanism to resolve a dispute. Paragraphs 30 and 32 show that the Parties anticipated that there would be disputes and those disputes were planned for. They also cherish their relationship so much that they agree, not just in Paragraph 32, but earlier in Paragraph 30, that even if disputes arise, it cannot affect the existence of the CFMA.

39. In the case, Sherman v. Republic, the Honorable Supreme Court of Liberia opined that Courts cannot enforce a contract in a manner otherwise than expressed therein. **Sherman v. Republic, 1 LLR 154 (1881).** The Parties to the CFMA have agreed and expressed that the CFMA should not be revoked by any party due to dispute or amidst dispute. The Supreme Court Opinion as quoted herein has provided a direction that is applicable in this case. This means the only enforcement path for the CFMA is to ensure that its terms and conditions are scrupulously adhered to. To be precise, all disputes must be submitted to arbitration where such disputes are not amicably resolved. Termination is prohibited, hence not attainable.

40. Additionally, it is not as if the CFMA is not terminated, Claimant is left without a remedy. There are sufficient remedies available to the Claimant in the absence of termination. For instance, if the Respondent fails to pay Land Rental fees and Cubic meter fees, the Claimant could submit the complaint to arbitration and if proven, it shall be granted relief. If Respondent fails to carry out or undertake social projects as enshrined in the CFMA, this

dispute can be submitted by the Claimant to arbitration and if proven, Respondent will be compelled to carry out those projects and could even pay damages for said breach.

41. In the case Taraby v. Awar, Appellant Raouf Taraby, who instituted an action against appellee Farid Awar in the circuit court for damages for breach of contract entered into between the parties for the construction of a building, applied to the said circuit court for a preliminary injunction to restrain interference with the completion of work contracted for. The facts of the case are that a building contract was executed between the appellant and the appellee. The terms and conditions of the contract and the duties to be performed by both parties were clearly defined. Security against the appellant for failure to carry out its part of the contract was captured in Paragraph 3 which reads: *"that it is further agreed upon by the parties hereto that upon the failure of the contractor to deliver the building, that is, complete same and have the keys ready to turn over to the owner within the time specified in Paragraph 2 hereof, where such delay is not caused by the owner, the owner shall have the right to enter an action of damages for breach of contract against the contractor. Notwithstanding, upon the contractor completing the said building and the owner paying over to him, the contractor, whatever balance might be at the time due, the contractor shall turn over the keys for the said third story to the owner."*

42. Appellant Taraby, Plaintiff below, alleged that Appellee Awar, defendant below violated the contract by refusing to allow him to complete the meager outstanding work on the building, which were finishing touches and painting, with the motive of depriving him of his balance payment. He further averred that the defendant wanted to complete the work. As a result, he sought a Writ for Preliminary Injunction. The trial court denied Plaintiff Taraby's petition for preliminary injunction and the Supreme Court sustained the trial court's ruling.

43. The issue the Supreme Court determined was *"Whether or not chancery is the proper forum to enforce the terms of a contract, especially so when the contract provides the course to be taken where this contract is violated."* Speaking for the Supreme Court in 1965, Chief Justice Wilson held that the *"logical and legal sequence would be an action for breach of contract against respondent if he violated his part of the contract."* Chief Justice Wilson further held that *"actions growing of the contract for violation of which the right to recover in a court of law is reserved and legally the only course to be pursued, makes the injunction proceedings a departure from the course expressly and mandatorily laid down in the statute and consistently pronounced by the Court in a long line of decisions."* Taraby v. Awar, 17 LLR 36-40 (1956).

44. The Taraby case is analogous to the case at bar in that the same way the building contract provided a remedy for breach, the CFMA provides a remedy for breach as well. The CFMA is crystal clear about how disputes must be resolved. It directs that disputes must not lead to revocation of the CFMA and that all disputes, if not amicably resolved, be submitted to arbitration. A contract being a legally binding agreement of the parties which creates a law for the parties, the requirement to submit unresolved disputes to arbitration is the law of the Parties relative to the CFMA. In fact, the only time the Parties agreed that the CFMA will become Null and Void has to do with failure of the Respondent to start operation within a year. **See Paragraph 28 of the CFMA.** So, it is not that the Parties were oblivious to the

termination of the CFMA, they were very precise, intentional, and settled on the condition that would render it terminated and the conditions that will not.

45. Given that the law of the parties is that the CFMA cannot be terminated in the face of dispute, termination of the CFMA as prayed for by the Claimant shall be an equitable relief. But delving into equitable relief, equitable relief for breach is denied where adequate remedy exists at law. **Taraby v. Awar, 17 LLR 40.** The Panel has already clearly articulated supra the list of remedies available at law to the Claimant. As such, we are hesitant, reluctant, and unpersuaded to grant the Claimant's request for termination of the CFMA as doing so will be a clear departure from established precedent of our jurisdiction, which prohibits courts from granting equitable relief for a contract where there is adequate remedy available at law.

46. In passing and further examination of the Claimant's request for termination on equitable grounds, the Panel says that even under equitable consideration, the termination of the CFMA will be wanting under the facts and circumstances of this case. As mentioned in the list of undisputed facts, the Respondent had to rehabilitate the Wohn- Kakata road and construct an alternative bridge, which was not contemplated during the signing of the CFMA. Two separate riots caused Respondent, not to remove logs from its concession area or transport logs to the Freeport of Monrovia for shipment. There is evidence that during both riots, shipping containers rented by Respondent were caught up for days in Gibi District and later left empty. Will it then be equitable for Respondent to suffer these unforeseen challenges which obviously took resources to cure, and still grant unto Claimant termination in equity?

Again, Claimant strenuously argues that the failure of the Respondent to perform its obligation under the CFMA demonstrates that the Respondent lacks the capacity to perform under the CFMA and that if the contract is not terminated, the purpose of the CFMA will not be served. We find this contention very speculative and conjectural on grounds that there were factors not contemplated during the signing of the CFMA that occurred as mentioned supra, which factors are weighty under equitable consideration. Hence, the termination of the CFMA will be inequitable. The Panel, therefore, affirms its denial of the Claimant's prayer for cancellation of the Agreement.

A. Relative to Respondent's contention that Claimant rioted and, is liable to it in damages resulting from the riots

47. Respondent alleges and argues that Claimant rioted in February of 2019 when Respondent took containers to its concession area to remove its first set of logs for shipment. Respondent also alleges that when the people of Bolola rioted in March of 2020, at the Bolola Bridge, the Claimant did nothing to protect the Respondent pursuant to the CFMA. The Respondent in effect holds the Claimant responsible for the Bolola riot in March 2020 which prevented Respondent from crossing the said bridge with its logs. Respondent says Claimant breached the CFMA when it failed to stop or prevent the riots, noting that CFMB committed itself to protect the Respondent from significant interruption of its operations.

48. Let us delve firstly into the contention that Claimant rioted. By doing so, we need to understand who Claimant is. The claimant is a corporation established under the laws of Liberia to manage the Community Forest of Beyan Poye people. It is a body corporate,

separate from the people of Beyan Poye, which can be sued or sued. The claimant is managed by a body called the Community Forest Management Body (CFMB). The CFMB takes all decisions on behalf of the Claimant. Being a corporate body, it is obvious that decisions are taken by the CFMB through consensus or votes at meetings. Respondent admits that it participated in some meetings of the CFMB. Respondent also asserted that when it obtained its Export Permit, it met with the Claimant, meaning the CFMB, informing them that it got its Export permit and was ready to ship. One of the Respondent's witnesses, in person of Madam Abigail Funke Adebunmi, testified that the community concern was why the notice to them regarding shipment was so short. She then informed the CFMB that it was just the time she received the permit. She did not say that there was opposition to her shipment for any reason whatsoever.

49. Accounts of the riots from the various witnesses paraded by both parties show that a man by the name of Michael Pewee was the mastermind behind the riot of February 2019. Evidence shows that Michael Pewee did not contest his role, rather, he admitted to staging the riot. It is also interesting to note that Michael Pewee is not from Beyan Poye, he did not stage the riot in Beyan Poye and is not a member of the CFMB. At no time during any of the testimonies from any of Respondent's witnesses or subpoena witnesses that they contested that Michael Pewee did not claim responsibility for the February 2019 riot. At no time also did any of the witnesses mention that Michael Pewee said he was acting on behalf of the CFMB. In fact, the testimonies of witnesses during the Hearings are replete with assertions that the CFMB was very instrumental in calming the situation down and accompanied the officials of the Respondent to the Office of the County Superintendent, where the issue of the riot was discussed and resolved.

50. When the February 2019 riot was dispersed, Respondent resumed operation and collected the logs from its concession. The Claimant was present to take stock and the process went on smoothly. Unfortunately, while transporting its logs, it was met with heavy downpours of rain. The rain undermined the alternative bridge Respondent constructed thereby collapsing it. At this point, Respondent wanted to use the Bolola Bridge, which it knew from the very beginning of its operations, it would not be allowed to use due to its axel load limitation. It was prevented. However, the Respondent blames the CFMB for the Bolola protest that prevented it from using the Bolola Bridge. Let us also find out how the CFMB could be held responsible: Bolola is miles away from Beyan Poye; Respondent did have prior notice that it would not be allowed to use the Bolola Bridge, therefore it constructed the alternative bridge that collapsed; Madam Adebunmi testified that during the riot, the Bolola protestors said that the Claimant was not sharing Land Rental fees with them, so they were angry; Respondent did not proffer any evidence that Claimant staged or masterminded the Bolola bridge riot.

51. But why will the Claimant choose to riot in the first place? Let us rationalize it in the absence of concrete evidence. It is like excusing Russia for blowing up the Nord Stream Pipeline when Russia could just shut it down for any reason, i.e. maintenance, as was done frequently recently. If the Claimant did not want the Respondent to remove logs from the concession area for any reason, it would have made it known clearly during the meeting held between the Parties when the Respondent disclosed its intention to ship. If the Claimant did not want the Respondent to remove logs for shipment, why would it join Respondent in the loading process (tally of logs) in March 2020? It would have openly objected to it. More than that,

Respondent transported their logs without hindrance until its alternate bridge collapsed. When it reconstructed the bridge, it continued transporting its logs. Besides, what benefits are there to accrued by Claimant if the logs, which were already harvested under a duly executed CFMA between the Claimant and the Respondent, are not sold? Claimant was aware that Respondent had to sell the logs to be able to pay Land Rental Fees, Cubic Meter Fees and undertake Social Project. The Panel is therefore not persuaded by Respondent's argument.

52. Respondent also contends that Claimant violated its obligation toward its. Respondent refers to Paragraph 2 which states that *"BCFMB shall defend and protect the rights of AGC at all times during its logging operations against all would be encroachers, illegal sawyers, intruders, and/or trespassers on said Community' Forest."* Respondent also refers to Paragraph 24, which states that "The Parties mutually agreed that in case of any dispute or misunderstanding that arises in the course of the agreement, the parties shall seek to resolve [same] through dialogue and shall not resort to obstruction of operations or riot that might lead into the destruction of life and properties.

53. The Panel does not find anything in the afore quoted Paragraph 2 that commits the Claimant to provide police protection for the Respondent. Said paragraph prescribes the same obligation a seller of land has towards his/her buyer. Protecting and defending does not mean being a vigilante. It simply imposes a duty on the Claimant to support the Respondent in the Respondent's exerting of its rights over the concession area. This support was demonstrated during the February riot when officials of the CFMB accompanied the Respondent to Kakata to hold a meeting with the County Superintendent. We, therefore, hold that Claimant did not breach its duty under Paragraph 2.

54. As to Paragraph 24, The Panel also says that said clause would have been violated had there been evidence that Claimant rioted. This paragraph applies directly to the allegation that the riots were staged by the Claimant. There being no evidence that the Claimant staged the February 2019 riot and /or masterminded or supported the March 2020 riot, we hold that Claimant did not breach its obligation under Paragraph 24 of the CFMA.

55. The Panel takes note of the testimonies of witnesses of both parties which evidenced that when the February 2019 riot started, a police contingent was dispatched to the scene to buttress the few officers on the ground. However, even with the presence of the police, the riot lasted for three days. In such a situation, it is unreasonable for anyone to blame the Claimant for not stopping the riot when the police itself could not do so. The same analogy can be made for the March 2020 riot at the Bolola Bridge.

56. Amidst all of these impossibilities, coupled with no evidence that the Claimant rioted, we are not convinced by the allegation that Claimant was the rioter in February 2019 and March 2020. We also are not convinced that Claimant was capable of preventing and calming the riot, for which it should be liable for the said riots. The claimant not being the rioter nor to be blamed for it, the Panel cannot attach liability flowing from the riot to it. Hence, the Respondent's counterclaims for general and special damages are hereby denied.

B. Regarding whether Respondent's nonperformance is excusable

57. We have determined herein that Respondent defaulted on material obligations under the CFMA, including Land Rental fees, Cubic Meter fees, and Social Corporate responsibilities. We have also determined herein that these defaults cannot result in the termination of the CFMA both in law and equity. The Panel at this juncture will turn to the issue of whether the Claimant is entitled to pecuniary relief as a result of the Respondent's default and in the absence of the termination of the CFMA. The claimant seeks US$104,599.00 in outstanding Land Rental fees; US$806,000.00 in unperformed social corporate responsibilities; US$4,750.00 in outstanding Cubic Meter fees for exported logs; and US$15,000.00 in unshipped logs within the concession area. The sum is US$903,309.44. The claimant is also claiming US$400.00 in general damages.

58. Respondent argues that it was performing its obligation under the CFMA until the riots. As a result of the riots, Respondent says that it suffered economic losses that impaired its operations, thereby creating an impossibility to perform its obligations thereon. Respondent enumerated the challenges posed by the riots as follows via oral and documentary testimonies.

59. Respondent alleges that in an effort to ship its first logs, contracted and rented one hundred (100) forty-foot container trucks to convey its logs from the concession area to the Freeport of Monrovia, and for onward shipment. Respondent averred further that it made a down payment of US$80,000.00 at a rate of US$2,000.00 per truck. In substantiating this claim, Respondent proffered a contract between it and a company known as Hand of God Transport, Inc. dated February 16, 2019, two days before the riot of February 18, 2019. Respondent says further that it dispatched the first forty container trucks to its concession area to get the logs to convey for shipment. Thirty-nine of the truck arrived while one encountered defects on its way. Respondent says further that the trucks arrived late February 17, 2019, as a result, Respondent chose to wait the next morning, February 18, 2019, for the loading and return to Monrovia. It was the exact February 18, 2019, that the riot started to prevent the trucks from being loaded.

60. Testimonies of both parties' witnesses attest to the presence of container trucks, and in fact, it was the presence of the container trucks that precipitated the riot. Respondent also attached a receipt of payment to Hand of God Transport, Inc. The Manager of Hands of God also testified to the transaction. Hence, the Panel has no reason to doubt the authenticity of the US$80,000.00 payment for the contracting of containers for the trucking of logs from the Respondent's concession area. The Panel believes that US$2,000.00 is a reasonable amount to pay for a container truck to go into the forest in Margibi County to transport logs to the Freeport of Monrovia. We are also persuaded that the Respondent was not refunded when the trucks were forced to leave without its log because it was of no fault to Hand of God Transport, Incorporated. It was also fair for Hand of God Transport Inc. not to refund the Respondent because it made a trip to and from the forest. Though it did not return with the logs, it made no difference because it burned fuel and pay its staff for the trip.

61. Respondent says further that in consequence of the riot of February 18, 2019, which resulted in the hired trucks being unable to transport the Respondent's logs, two vessels it booked for "February 21 and 30, 2022" respectively, to convey the log to its buyer, left the Freeport of Monrovia empty.

62. In support of this allegation, Respondent proffered a series of email changes between May 1, 2019, and August 17, 2019, which appear to speak to the booking of vessels to ship Respondent's logs, but the logs missed the shipments on two occasions due to delay from the Respondent. Regarding these email changes proffered by the Respondent, the Claimant's counsel raised the issue of February 30, 2019, which we have also taken due note of.

63. There being no contrary evidence to the evidence proffered by the Respondent as it relates to the scheduled vessels, the Panel is of the opinion that the Respondent had to book a vessel or vessels for her shipment for which it was being transported to the Freeport of Monrovia. Respondent could not have transported its logs to the Freeport of Monrovia without the intention to ship them. Otherwise, those logs would attract port charges, especially since the Freeport is no longer used for logging activities.

64. Respondent further alleges that due to the riot which caused it to miss the shipment to its buyer when it finally got the logs from the forest after it resumed operations, the shipper informed it that there would be no ship available until after 21 weeks. The Respondent said while the logs were stored at the Freeport of Monrovia, the Respondent attracted storage, the Letter of Credit (LC) issued by the buyer to secure the payment of the logs expired; the buyer refused to renew the LC; the Respondent had to cancel the sales agreement to be able to sell logs to a different buyer and when the logs were finally shipped and arrived in Vienna, a vast number of them very rotten due to the heat in the containers in which they were store for about six months. Respondent says it lost US$1.4 Million plus because it was forced to sell the logs at a giveaway price.

65. Respondent's witness and CEO, Mrs. Abigail testified that while she was in Vienna to arrange the sale of the log with a new buyer, the first buyer who was also in Vienna sued the Respondent for breach of contract. Respondent says that she settled the case by paying the first buyer US$50,000.00, which she credited from Afriland First Bank in Liberia. She also said that she was detained by authorities in Vienna relative to the case and that she was released based on intervention by the Nigerian Embassy.

66. These assertions were supported by a sales agreement, a cancellation order by the Commercial Court of Liberia, a series of email exchanges regarding the extension of LC between Respondent and Mr. Huyen Nguyen, pictures of split or burst logs, bill of laden for exported logs to Vienna.

67. Without reading deep into the substantives of these allegations and pieces of evidence adduced, we find on its face that Respondent suffered substantial damages as a result of the riots enough to strangulate its operation, and we are also persuaded by Respondent's argument, and based on the facts and circumstances of this case that had it not been for the riots, Respondent would have complied with its obligations under the CFMA.

68. Having concluded supra that the riots impaired Respondent's performance under the CFMA, the question is, can Respondent be excused from the consequences of its default which was occasioned by the riot? Respondent tried to impress upon the Panel to support its reasoning by citing Yonrue Trading v. International Bank (Liberia) Limited, in which the Supreme Court held that:

69. *"Under the doctrine of impossibility of performance of contract, the party is absolved from non-performance due to impossibility as well as impracticability because of the extreme and unreasonable difficulty, expense, injury or loss involved. In that case, something unexpected must have occurred and the risk of the unexpected occurrence must not have been allocated either by agreement or by custom... According to Black's Law Dictionary, 5th Edition (1979) "Although impossibility or impracticability of performance may arise from many different ways, the tendency has been to classify the cases into several categories. These are: a) Destruction, deterioration, or unavailability of the subject matter or tangible means of performance; b) Failure of the contemplated mode of delivery or payment; c) Supervening, prohibition, or prevention by law; d) Failure of the intangible means of performance, and e) Death or illness....".* **Yonrue Trading Corp. v. International Bank (Liberia) Limited, Supreme Court Opinion, September 14, 2005.**

70. The principle of *pacta sund servanda* requires that agreement must be kept. However, such rule is not absolute, as can be seen, supra in the Yonrue case. When the performance of a contractual obligation becomes impracticable, i.e. considerably more burdensome (expensive) than originally contemplated – albeit physically possible- due to an unexpected event, this would lead to adaptation of the contract to the changed circumstances or avoidance of the contract.

71. For the consideration of the core issue under evaluation, the Panel will deliberately void the term "impossibility" and focus on "impracticability. Though there is a thin line between both terms, the former brings about complete avoidance of contract obligations, while the latter may bring about either. Impracticability can be regarded as an event, which excuses a breaching party. In such a case, the non-breaching party can neither ask for performance nor compensation. However, it must still be decided if the impracticability excuses the breaching party *ipso facto* or if it grants the breaching party a right to avoid the contract. It can be argued that impracticability does not lead to an absolute excuse or avoidance of the contract but only to the adaptation of the terms of the contract to change the circumstances and reestablish the balance between the breaching party's obligation and the non-breaching party's counter obligation.

72. If the Respondent argues that the CFMA cannot be terminated, which we agree to; and considering that the Respondent alleges to have the capacity to continue its operations when this Panel orders so, then the Respondent cannot be absolutely excused or avoided from its obligation under the CFMA. What is obtainable under the circumstances is an adaption of the contract, based on the impracticability determined. Under such adaptation, we hold that the Respondent cannot be excused from or avoided from the payment of Land Rental fees and Cubic Meter fees. The reason is that the Respondent is still in possession of the concession area, it must pay the Land Rental fee. As for the Cubic Meter fee, the same is

due upon the harvesting of the logs, hence once a log is felled, the Cubic Meter fee must be paid. If concessionaires are allowed to pay a Cubic Meter fee only on shipped logs, affected communities will lose tremendous amounts in Cubic meter fees because some concessionaires recklessly allow logs to go to waste through abandonment.

73. As for Corporate Social Responsibility, it will be unfair to the Respondent to undertake same when it is not operating the forest. Corporate social responsibility usually comes out of income more than the actual operational expense, though same is also budgeted. This means that once operations resume, the Respondent is still obliged to carry out the outstanding projects over time. Hence, we hold that even though Claimant did not prove how it arrived at the US$806,000.00, even if it had, it would not have been equitable to order the Respondent to pay same to the Claimant for projects.

74. Also on the issue of general damages, the Panel holds that same will not lie in the instant case, as Respondent's breach of contract cannot be excused under impracticability and it still pays the consequences of the said breach, which is damages.

75. In conclusion, the Panel holds that the Respondent cannot be excused from the payment of a debt, i.e., Land Rental fee and Cubic meter fees. However, Respondent shall be excused from damages, which is a consequence of a breach of contract, a contract from which breach is being excused due to impracticability.

VII. Decision and Award

After considering the pleadings, the evidence and testimonies presented by the Parties in and during these proceedings, the Panel has decided on the full and final resolution of the issues submitted for determination as follows:

1. The CFMA cannot be terminated in law and/or equity since the Parties have mutually agreed to keep it intact irrespective of their disagreement(s), no matter the issue. Hence, the Claimant's prayer for the termination of the CFMA is hereby denied.

2. There is no evidence to tie the Claimant to the riots of February 18, 2019, and March 2020, respectively. There is also no circumstantial evidence that could favor the Respondent's claim, as the Panel has not seen any motive or benefit to be accrued unto the Claimant. Consequently, the Respondent's counterclaim for special damages and general damages against the Claimant are hereby denied.

3. Although the Respondent is in breach of the CFMA relative to the payment of Land Rental fee and Cubic Meter fee, *as and when due, including Respondent's obligation to undertake* social projects as enumerated under the CFMA, said breach is excusable under the doctrine of impracticability. Respondent is excused due to the manifest hardship and tremendous financial losses it suffered as a result of the riots. Hence, the Respondent is only required to pay outstanding Land Rental fees, and Cubic Meter fees, which are debts Respondent owes Claimant. The Claimant's request for US$806,000.00 for projects not implemented is hereby denied, and Claimant's damages claim is also denied.

4. Claimant is hereby ordered to grant Respondent unhindered and immediate access to the concession area to allow the Respondent to carry out its operations without any pre-condition.

5. Immediately upon resumption of operations, the Claimant and the Respondent shall undertake an inventory of all logs felled and lying within and about the concession area, following which the outstanding Cubic Meter fees for logs felled but not shipped will be accessed based on the price mentioned in the CFMA. When the amount in Cubic Meter fees has been determined, Respondent shall pay 25% thereof forthwith, and the balance 75% shall be paid in equal monthly instalments of six months.

6. The actual Cubic Meters of logs shipped by the Respondent shall be obtained from the Forestry Development Authority (FDA), following which any difference in and between the amounts paid by the Respondent against the Cubic Meter fee and the amount accessed based on the FDA's data, shall constitute Respondent's indebtedness to the Claimant for the Cubic Meter fees for logs exported, and shall be due and payable in full forthwith.

7. Respondent is indebted to the Claimant for Land Rental fees for the years 2020, 2021 and 2022 in the amount of US$68,919.87 and outstanding payment on the 2019 Land Rental fee of US$12,919.87. The sum, US$81,839.74, 25% of which, US$20,459.93, shall be paid forthwith, while the balance of US$61,379.81 shall be payable in twelve (12) equal consecutive monthly instalments commencing from the resumption of operations.

8. Respondent shall implement all outstanding social corporate projects within the next five years. They must be implemented in the order in which they are stipulated in the CFMA.

9. The years 2019 and 2020 were years of significant disruption of the operations of Respondent. Hence, consistent with Paragraph 26, the tenure of the CFMA shall be extended by two years, which means, instead of fifteen (15), the CFMA shall be for Seventeen (17) years, commencing from the year 2018.

10. The failure of the Respondent to immediately resume operations, which failure is not attributable to the Claimant, the CFMA shall be terminated by operation of law. *"Immediately,"* within the meaning of this Award, means within three months of the effectiveness or judicial enforcement of this Award, while *"operations"* include deployment of staff, gathering of logs, shipping of logs, felling of logs, etc.

11. Each Party shall bear its own cost associated with these proceedings. Other joint costs shall be shared by the Parties equally.

AND IT IS HEREBY SO ORDERED

GIVEN UNDER OUR HANDS THIS 19TH DAY OF OCTOBER, A.D. 2022, IN THE CITY OF MONROVIA, REPUBLIC OF LIBERIA

Cllr. Tomik L. Vobah
MEMBER

Cllr. G. Moses Paegar
MEMBER

Cllr. Joel Elkanah Theoway
CHAIRMAN