Jones A. Beyan and Peter Toby of Congo Town And the City of Paynesville, Montserrado County .APPELLANTS VERSUS: **King Peter's Orphanage**, represented by and thru its Founder, **Joseph A. Flomo** of the City of Monrovia, Liberia APPELLEE

APPEAL

Heard: April 3, 2013 Delivered: August 1, 2013.

Mr. Justice Ja'neh delivered the opinion of the Court.

The facts informing the appeal proceedings before us beg this Court of Final Arbiter to direct its attentive reflections to the following dispositive issues:

(1) Was the granting of Default Judgment warranted under the facts and circumstances of this case?

(2) Does the granting of Default Judgment diminish on a party claimant the onus of preponderance of the evidence; and did the appellee produce evidence sufficient to authorize the affirmation of the Final Judgment entered by the trial judge?

(3) Is a trial judge, at rendition of the final judgment, duty-bound to appoint an attorney to take court's ruling for and on behalf of a duly notified lawyer failing to attend court?

(4) Does a judge conducting a bench trial violate the laws applicable by entering final judgment immediately after the party/parties rest evidence and the case is submitted for final judgment?

This Court shall address these issues in the serial sequence they have been presented. To aid us in this undertaking, it would seem appropriate to provide a summary of the case history, as culled from the certified records before us. Hence, the following historical gist

Presiding by assignment over the Sixth Judicial Circuit Court for Montserrado County, His Honor, Yussif D. Kaba, on August 20, A. D. 2007, entered Final Judgment in an Action for Specific Performance. He adjudged the appellants liable and ordered them to receive the payment of US$150.00 (United States One Hundred Fifty dollars), representing balance for the sale of two lots of land to the appellee and to execute the necessary title instruments in favor of the appellee.

No exceptions were noted to the said final judgment. The records certified to this Court attribute the failure to note exceptions to the said Final Judgment and to announce an appeal therefrom to the absence of appellants' counsel from court.

Two days thereafter, on August 22, 2007, appellants' lawyer filed a motion praying the trial court to rescind the said Final Judgment of August 20, 2007 and to award a new trial. The motion was subsequently withdrawn on September 27, 2007, and substituted with a six-count amended motion.

In the amended motion, counsel for appellants contended that sufficient legal reasons had attended the case at bar to compel the setting aside of the Final Judgment entered and to entitle the appellants to a new trial. Reasons advanced in support of the amended motion to rescind final judgment and award new trial included the following:

A. That while counsel for appellants acknowledged receiving the Notice of Assignment for the hearing of the case on August 20, 2007, counsel's sudden illness on the scheduled date of the trial prevented him from attending court. Counsel was similarly prohibited as a result of sickness from contacting his clients. As a result, the clients could not also appear and participate in the trial. Prevented from attending court on account of his illness constitutes, contended counsel, an excusable ground for his absence and an adequate basis also to sanction a rescission of the Judgment in question.

B. Counsel has further maintained that Judge Kaba violated the statute controlling by his failure and neglect at the rendition of final judgment to appoint a lawyer for the purpose of noting exceptions to the final judgment on behalf of the absent counsel and announcing an appeal from the said final judgment. Counsel has charged that Judge Kaba not having abided by this fundamental law and procedure, appellants are entitled to the relief they now seek from said final judgment.

C. That the law dictating that the rendition of a final judgment within four (4) days after trial and submission of the case, according to appellants' lawyer, was also trampled on as Judge Kaba, contrary to the mandatory provisions of the statute, entered final judgment immediately after the parties rested evidence.

D. Also, the trial judge, contended appellants' counsel, ignored the glaring factual contradiction during the trial in respect of the balance payment when he finally ruled that US150.00 be paid to appellants when appellants had clearly averred in their pleadings that the amount of US175.00 was the balance remaining to complete the payment for the property.

E. Finally, counsel for appellants has vigorously argued that the trial court committed reversible error, when Judge Kaba declined to reconsider its decision, especially as this is a real property action where appellants have good defense which, if allowed, the judgment would be otherwise.

On September 4, 2007, counsel for the respondent filed an amended resistance to appellants' motion to rescind judgment and award a new trial. The eleven-count resistance attacked the legal and factual sufficiency of the motion. We have summarized respondent's arguments as follows:

A. That assuming, arguendo that appellants' counsel abruptly fell sick on August 20, 2007, and visited the hospital on the same said date of the scheduled hearing, counsel failed and neglected to have proffered any documentary medical evidence to support this argument. Counsel for appellee has submitted that the failure by the absent counsel to attach a medical certificate renders the motion nothing but a flimsy excuse not grounded in law to rescind the final ruling entered and award a new trial.

B. That counsel should be held for unethical behavior and attached in contempt of court for filing a motion deliberately intended to mislead the court. Appellee's counsel supported his call to attach appellants' counsel in contempt of court by recounting that two assignments were returned served on appellants' counsel for hearing of the case prior to August 20, 2007. When appellants' counsel failed to honor any of those two assignments, Presiding Judge Kaba, on the minutes of court, seriously warned the absent counsel and indicated that failure by appellants' counsel to honor another

assignment will constrain the court to proceed with the matter. Even after Judge Kaba delivered this stern warning, counsel for appellants still disregarded the subsequent notice of assignment, which was returned served on appellants' lawyer, and failed to attend court for hearing of the case as was scheduled on August 22, 2007.

C. On the allegation that Judge Kaba violated the Statute by his failure to appoint a lawyer to deputize for appellants' absent counsel, counsel for appellee recalled Counselor Yangbe's previous appearance before the Honorable Supreme Court of the Republic of Liberia. During that appearance, Counselor Yangbe reportedly argued with forensic eloquence that the law imposes no duty imposed on a court of law to appoint a counsel to deputize an absent lawyer for the purpose of taking the ruling and announcing an appeal where there was showing that the absent counsel was duly cited but elected not to appear without any excuse. The previous case in reference also involved real property. Counselor Yangbe successfully argued and the Supreme Court dismissed that case in favor of Counselor Yangbe's client, affording the losing party no opportunity to defend his/her 'property right'.

D. Regarding the further allegation by appellants' counsel that Judge Kaba breached a cardinal provision of the Civil Procedure Law by rendition of final judgment immediately after the appellee rested evidence, appellee's lawyer insisted that the judge committed no error in any manner or form. Appellee's lawyer maintained that where default judgment has been duly granted by the court, the immediate rendition of a final ruling upon the resting of evidence and the submission of the case to the court for final determination, should not be allowed at this final moment to defeat the natural outcome of these proceedings, which glaringly points in favor of appellee.

E. It is harmless error, according to appellee's counsel, if the appellee intimated in the petition for Specific Performance the amount of US$150.00 (One Hundred and Fifty United Stated Dollars) while stating in its reply, a slightly different figure of US$175.00 (One Hundred and Seventy Five United States Dollars), as the balance payment. Appellee has insisted that the balance amount due appellants having been clearly stated in the petition, appellants' contention as set forth in its amended motion cannot constitute adequate legal ground for the rescission of the final judgment entered on August 20, 2007.

Judge Yussif D. Kaba entertained arguments, pro et con, on the amended motion as well as the resistance thereto. He ruled on November 30, 2007, denying the motion and affirming the Final Judgment.

Appellants' counsel, Counsellor M. Kron Yangbe, himself being present in court this time, excepted to this final judgment and announced an appeal to the Supreme Court of Liberia. Judge Kaba granted the appeal consistent with Section 51.2, Title I, (Civil Procedure Law), ILCLR [Liberian Code of Laws Revised] (1973) which reaffirms the constitutional right to appeal from any final judgment except one rendered by the Honorable Supreme Court of Liberia.

Also, in keeping with Civil Procedure Law, Rev. Code 1: 51.7, Judge Kaba, in approving the bill of exceptions on December 7, 2007, noted exceptions and reservations thereon. This provision requires, inter alia, that the trial judge should sign the bill of exceptions, "noting thereon such reservations as he may wish to make". [Emphasis supplied].

These appeal proceedings are now before this Court predicated on a five-(5) count bill of exceptions. It sets forth the following arguments and contentions:

1. Because, a court must decide every issue that is raised and not to be decided by a jury. To the contrary, Respondents raised the issue of lack of jurisdiction of the court during its June Term, A. D. 2006, because, the Respondents were not returned served with the summons within fifteen (15) days prior to the formal opening of this Honorable court, consequently, respondents did not enjoy the period within which to prepare a responsive pleadings in the case. This crucial issue of jurisdiction was not decided by your honor when you only ruled that the pleadings contained mixed questions of law and facts, therefore you ruled the case to trial. To which exceptions were noted.

2. That this is an action of Specific Performance of a contract which is tried by the court alone without a jury. According to law, where a defendant appeared and pleadings exchanged between the parties there should be no judgment by default, the Respondents having filed an answer as a responsive pleading, the court committed a reversible error by granting a judgment by default.

3. Because, Judgment by Default is not automatic proof of the claim of the plaintiff, but plaintiff must give facts and proof constituting the claim against the defendant. In the instant case, the two witnesses, namely, Joseph A. Flomo and Abraham Toure did not testify or establish any amount as price of the land was ever paid to the defendants. To the contrary, the two witnesses testified that the first amount was taken to Chris Marshall and Abraham Toure; this is clearly the absolute absence of existence of a contract between the parties sought to be specifically performed. That the petitioner did not proof his case as required by law, notwithstanding, your honor rendered final judgment without any iota of proof.

4. That according to law, where a court is ruling or giving a final judgment in the absence of a party or his lawyer who has been notified but failed to appear, the court must appoint a lawyer who will give or note exceptions and if necessary, announce an appeal in behalf of the absent lawyer. The provision of the Statute is clear and unambiguous, yet your honor overruled same and denied the motion for reconsideration to which exception was announced.

5. Accordingly during this September 2007 Term on the same date your honor denied the motion for reconsideration, there were several lawyers who received notices of assignment for ruling or final judgment in cases for that day, November 30, 2007, but not show up and pursuant to the to the same statute, your honor deputized some lawyers who took the ruling for the absent lawyer. Yet, your honor ruled to appoint a lawyer to take the ruling in favor of the absent lawyer is not applicable in the case at bar.

IN VIEW OF THE FOREGOING, Respondent presents the foregoing as their bill of exceptions for your Honor's approval.

With this summary, we will now examine the first issue, that is, whether the granting of default judgment by His Honor Yussif D. Kaba was legally justified in the light of the facts and circumstances attending the case. Travel to the records transmitted under the seal of the court is appropriate in this undertaking.

The certified records to this Court indicate that counsel for the appellants does not dispute in the Motion to Rescind Final Judgment and Award New Trial that he duly received the Notice of Assignment scheduling the hearing of the Specific Performance on the 20th of August, 2007. However, the appellants' lawyer has vigorously argued that the counsel got suddenly sick on the date set for the trial. That due to his sudden illness, the counsel was compelled to visit his doctor for treatment on the scheduled day of the hearing. This abrupt sickness, according to appellants' Motion to Rescind Judgment and Award New Trial, overwhelmed the said lawyer such that he could not reach even his clients to advise them, at least to appear in court and to participate in the trial. Appellants have therefore maintained that the sudden illness of their counsel, preventing him from attending the trial as scheduled, was a valid ground for said lawyer's absence. Under this circumstance, a court, when duly informed of this unforeseen and unfortunate situation, is warranted, according to appellants' counsel, to quash the judgment previously entered, within its term time with the provision of notice to the parties of interest.

Counsel for the appellee has disagreed. In their amended resistance, appellee's counsel accused counsel for the appellants of unethical attempt to mislead the court and asked that he should be attached for contempt of court. Appellee's counsel has also argued that here is no iota of truth in the reported sudden illness of appellants' counsel. This can be seen by the lawyer's miserable failure and utter neglect to annex any documentary medical evidence to support the allegation that the lawyer was sick and attended to by a medical doctor on August 20, 2007, the scheduled date of the trial. It is further argued by counsel for the appellee that the purported excuse, unsupported by any medical certificate from an attending physician and lacking any legal basis, same cannot be any legal justification to authorize rescission of the final judgment and for the awarding of a new trial.

It would serve no useful purpose to multiply authorities on this point. Suffice it simply to pronounce that this Court is in full agreement with the arguments set forth by appellee's counsel. While we are not in the position to dispute that counsel may have been ill and that his claim of illness may not be an attempt to mislead the court, we want to emphasize that proof of illness is mandatory where a party has sought postponement of a hearing on account thereof, as in the case at bar. It therefore follows that where a continuance of a trial is requested for reason that counsel is allegedly ill, but unsupported by verifiable medical evidence, the request by operation of law cannot be deemed as a valid ground to warrant postponement of the court's proceedings.

A valid excuse, to the mind of this Court, is contingent on the circumstances and the allegation made for seeking a continuance. For instance, one who claims to be travelling without the bailiwick of the Republic and unable to attend a hearing as a result thereof would be required minimally to attach proof of travel in satisfaction of the provision, to the court of a valid excuse to warrant a continuance. In the current case, where postponement has been requested on account of poor health to attend a trial, a court has no duty to postpone the scheduled hearing without medical evidence to clearly demonstrate that the party cannot attend court based on medical advisement.

Recently, this Court reaffirmed a settled principle of law articulated in a litany of opinions of the Supreme Court when Mr. Justice Korkpor, Sr., addressed the issue of unexcused absence and the failure of a lawyer upon citation to attend trial; The Management of GTZ v. Natt et. al, Supreme Court

Opinion, October Term 2010. See also Inter-Con Security Systems Inc. v. Bormesahn et. al.[1994] LRSC 41; , 37 LLR 689, 692 (1994); Wilson v. Dennis, [1974] LRSC 52; 23 LLR 263 (1974); Franco-Liberian Transport Company v. Bettie, 13 LLR 318, 324 (1958).

Speaking for this Court in The Management of GTZ case and addressing the issue of unexcused absence and the failure by a lawyer upon citation to appear and attend trial, Mr. Justice Korkpor, Sr., said:

The law requires a defendant in a labor case to be present at every stage whenever the case is assigned for hearing. In the event he cannot be present he must send a valid excuse, or his unexcused absence would be treated as abandonment of the cause.

This principle applies not only to labor hearings but also to proceedings of every court of competent jurisdiction. On inspection of the records in the instant case however, we are intensely troubled that counsel for the appellants exhibited sheer disregard for the authority of the court by his habitual absence from the scheduled hearings. Counsel also elected not to seek and obtain any excuse from the trial court. For instance, on sheet sixteen of the minutes of court, Eight Day's Jury Sitting, Monday, August 20, 2007 (June Term, 2007), Judge Kaba summed up the troubling attitude of appellants' lawyer in the following words:

On the 4th of July, A.D. 2007, this court issued a Notice of Assignment which was served and returned served as can be seen on the original copy by the sheriff of this court calling for the hearing of the Law Issues. At the call of the case for the Law Issues on July 9, 2007, at the hour of 1:30 P.M., [in keeping with the Notice of Assignment], the respondents and/or their counsel failed to appear in court nor send any letter to this court to warrant the continuance of these proceedings. Counsel for the petitioner moved this court to rule this matter to trial on its merits, this case being mixed issues of law and facts; same was granted by this court and this matter was ruled to trial as in keeping with law. Notice of Assignment was [again] issued on the 12th day of July, A. D. 2007; same was placed in the hands of the sheriff for service on both parties. But at the call of the case on the 19th day of July, A. D. 2007, the respondent and/or their counsel elected not to appear for the hearing of the main suit and again without any letter to warrant the continuance of these proceedings. However, this court on its sound discretion suspended the hearing of this matter to August 3, 2007, at the hour of 2:00 P. M. But on August 3, 2007, this court, because of its busy schedule, did not hear this matter. Again this court ordered an issuance of Notice of Assignment which assignment was placed in the hands of the sheriff for service. According to the sheriff's returns, the notice of assignment was served and returned served for the hearing of this matter on the 20th day of August, A. D, 2007 at the hour of 2:00 P. M. At the call of the case [on August 20th, A. D. 2007 as scheduled], the petitioner was present in court but the defendants and/or their counsels were not present in court, having been served with the Notice of Assignment. Counsel for the petitioner therefore requested court to invoke the appropriate rules of court as well as the 1LCLR, Section 42:1, and that an imperfect judgment be entered in favor of the petitioner. An imperfect judgment entered in favor of petitioner to be made perfect by the production of evidence was granted by this court.

As seen from the records, we are persuaded to believe that appellants' counsel seemed to have had only one single interest in this matter, i.e., to ensure that the hearing of the case never took place and to frustrate the ends of justice by every means. The records demonstrate that not only did appellant's counsel stay away from scheduled hearings without any valid excuse, but that every effort made by the trial court to have the counsel appear in court to defend his clients' interest was snubbed. Under these circumstances, this Court cannot accept as a valid legal argument that Judge Kaba committed an error when he directed the matter proceeded with. It seems to this Court that if cases were to be heard only when lawyers so feel, in regard to the laws and rules regulating the disposition of cases, a terrible precedent would be set by grounding the wheels of justice and prodding untold suffering on party litigants.

We have found no legal basis to support appellants' proposition in this respect. We therefore hold that Judge Kaba acted in keeping with law when he granted the default judgment on August 20, 2007, after successive absences of counsel for appellant without any valid excuse. On this point, we quote and incorporate the relevant portion of Judge Kaba's ruling as an indication of our full accord therewith:

According to the movant, he was the counsel for the movant but was not able to appear in court because he was sick. The court observed that the said counsel failed to annex to his motion any evidence of such illness to justify this court to set aside the judgment entered against the movant. The court in [therefore] in agreement with the respondent herein that the absence of the movant's counsel is unjustified and therefore the court sees no reason to disturb the judgment entered in favor of the respondent herein."

We will now proceed to examine the two related questions under issue number two (2): whether the granting of default judgment diminishes on a party claimant the *onus* of proof, and in this connection, whether appellee in these proceedings carried that burden to warrant the confirmation of the Final Judgment entered in its favor.

We must, in the interest of clarity, declare that the legal net effect of default judgment is simply for a court to grant a party the permission to present its case ex parte, notwithstanding the nonappearance of his adversary. That one has been granted default judgment does not, in any manner or form, diminish the burden of proof the law places on the shoulder of the one who alleges. Therefore, a final judgment entered by a tribunal on the basis of default but void of ample supporting evidence is invalid and unenforceable, de jure. Baky v. George, [1973] LRSC 38; 22 LLR 80, 85 (1973); Kaba, et al. v. Saleeby Brothers, et al.[1961] LRSC 1; , 14 LLR 275, 284 (1961). Sufficient authorities have been cited to reiterate the settled principle in this jurisdiction that for a default judgment to be regarded valid, legal and enforceable by the Supreme Court, the beneficiary party must have deposed during the trial evidence sufficient to preponderate the claim made. Where the trial records are void of evidence to support a finding by the court, both the judgment and the award therein made would simply be invalid and hence unenforceable. Liberia Telecommunications Company (LTC) v. Former Managers, Supreme Court Opinion, October Term 2011.

Appellants have contended that the judgment entered by Judge Kaba was unsupported by the evidence appellee produced during the trial. This contention is captured in count three (3) of the bill of exceptions. The said count states:

"Because, Judgment by Default is not automatic proof of the claim of the plaintiff, [to the contrary]...plaintiff must give facts and proof constituting the claim against the defendant. In the instant case, the two witnesses, namely, Joseph A. Flomo and Abraham Toure did not testify or establish any amount as price of the land was ever paid to the defendants. To the contrary, the two witnesses testified that the first amount was taken to Chris Marshall and Abraham Toure; this is clearly the absolute absence of existence of a contract between the parties sought to be specifically performed. That the petitioner did not prove his case as required by law, notwithstanding, your honor renderedfinal judgment without any iota of proof"

In the light of appellants' argument articulated in count three, hereinabove, this Court has a further duty, on the one hand, to carefully review the evidence appellee deposed, and on the other hand, to see whether the crux of appellee's claim set forth in the Action for Specific Performance was preponderated by the quantum of the evidence the law requires.

Reference to the complaint, our inspection of the records reveals that appellee/plaintiff, King Peter's Orphanage, represented by and through its Founder, Joseph A. Flomo, of the City of Monrovia, on June 15, 2006, filed an eight-count Action for Specific Performance. The action named Appellants Jones A. Beyan and Peter Toby, both of Congo Town, as defendants.

In summary, the complaint disclosed that Co-defendants Madam Chris Marshall and Jones A. Beyan are two former employees of the plaintiff; that during his employment with plaintiff, Co-defendant Jones A. Beyan's job included negotiating contracts in the name of the plaintiff; that the two Co-defendants Madam Chris Marshall and Jones A. Beyan, while in appellee's employ, were entrusted with the amount of US$600.00 (six hundred United States dollars) to purchase a parcel of land on behalf of appellee/plaintiff; that the said amount of US$600.00 (six hundred United States dollars) was delivered to the land seller, Co defendant Peter Toby, as partial payment against US750.00 (seven hundred and fifty United States dollars), same being the agreed purchase price for two lots of land; that the land was purchased for the purpose of constructing an orphanage home thereon; that following the partial payment to the landowner, the said Co-defendant Peter Toby told appellee to go ahead and proceed with the construction of the orphanage while the necessary processing of title instrument was being concluded; that appellee relied on this promise and quickly constructed two dormitories on the land, one for boys and the other for girls, with each containing a kitchen, a six room bathhouse, four toilet rooms and one modern hand pump; that during the construction and up to the completion of the structures, Co-defendant Peter Toby, who sold the land to appellee, witnessed not only appellee's open and notorious occupancy of the land in question but was also a regular visitor to the site as the construction gradually progressed up to final completion; that the orphanage was subsequently moved to the newly constructed facilities, also without any protests whatsoever from Co defendant Peter Toby; that all hell broke loose, however, when appellee, on March 22, 2004, fired Co-defendant, Jones A. Beyan, its employee and the man instrumental in negotiating the purchase of the

land (on account of the said Beyan allegedly tempering with a fourteen year old female orphan, which act is said to have brought embarrassment to the institution); that immediately after appellee took this action of dismissal, Co-defendant Jones A. Beyan unauthorizedly entered the orphanage and took away documents pertaining to the land; that Co-defendant Beyan also proceeded to address a letter to Co-defendant Peter Toby to the effect that he was turning the land over to Co-defendant Peter Toby, the man who received money for sale of the land to appellee. Co-defendant Beyan is said not only to have addressed a formal communication to the herein plaintiff reportedly threatening therein to evict the orphans from the land occupied by appellee Orphanage for reason that same was his private land, but has made good his threat by taking physical possession of the buildings when appellee instituted this action. As a result, the doors of the Orphanage were opened and important materials belonging to appellee carried away by appellants. Materials removed reportedly included a computer set valued at US$3,000.00 (Three Thousand United States Dollars), a generator at the cost of US$400.00 (Four Hundred United States Dollars), 1800 (One Thousand Eight Hundred) concrete blocks valued at L$45,000.00 (Forty Five Thousand Liberian Dollars).

Appellee contended that Co-appellant Peter Toby, as owner of the land, having received from appellee the amount of US$600.00 (six hundred United States dollars) as part payment against US750.00 (seven hundred and fifty United States dollars), and also having further visited the land regularly during the course of plaintiff's construction of the dormitories as well as the subsequent relocation of the orphans on the newly constructed facilities on the said land, all without appellants raising any contention whatsoever, equity cannot now allow Co-defendant Peter Toby to assert any legal claim of title to the premises; that an Action for Specific Performance would therefore properly lie to compel Co-appellant Toby to execute the necessary title instruments in favor of appellee.

As can be clearly seen, appellee's basic claim has been that it paid to Co appellant Toby, through two of its former employees, the partial amount of US$600.00 (United States Six Hundred dollars) of the agreed amount of US$750.00 (Seven Hundred Fifty United States dollars) for two lots of land for which Co appellant Toby promised to execute a deed in appellee's favor; that Co-appellant Toby thereafter allowed appellee to occupy the two lots of land and to construct two orphanage homes thereon only to thereafter physically take over the land and the orphanage homes and buildings belonging to appellee and now claiming ownership thereto, to the detriment of appellee. Where the claim as stated is supported by preponderance of the evidence, the obvious question would be whether an Action for Specific Performance is maintainable.

Specific performance, says Mr. Justice Pierre, is an equitable remedy which is employed to enforce a contract, be it written or oral. Pennoh v. Pennoh, 13 LLR 480 (1960). In Pennoh, this Court identified three fundamental requisites to justify a court decreeing an enforcement of a contract:

1. The contract must be founded upon valuable consideration.

2. The contract must be practicable in its mutual enforcement.

3. Its enforcement must not be contrary to good conscience; it must be of necessary importance to the plaintiff, and at the same time not oppressive to the defendant." Id. 480

It appears appropriate to ascertain from the records whether the requisite standard articulated in Pennoh to sanction an order for specific enforcement was met in the case at bar. The law requires, first and foremost, that the appellee demonstrates by preponderance of the evidence that a contract existed between the parties. That is to say, plaintiff has to illustrate within the facts and circumstances of this cause of action that the requisite elements of a valid and enforceable contract, offer, acceptance and consideration, were attended to and adequately satisfied within the contemplation of law. Karmo v. Yemgbie, 13 LLR 84, 86 (1957); Bestman v. Acolatse, [1975] LRSC 8; 24 LLR 126, 140-1(1974).

It is critically important to note that appellee's primary claim that Co-appellant Toby received money for the sale, and did sell two lots of land, seemed not to be disputed. In count five (5) of the appellants/defendants' Answer to the complaint, Co appellant Peter Toby makes a copious admission of this payment and its receipt for two lots of land. In admission to this fact, appellants narrated in the relevant part of count five (5) of his Answer, as quoted below:

That as to count four (4) of the complaint, same is false and misleading; that the fact of the matter is, that in June 2002, and thereafter, Co-defendant, Jones A. Beyan paid the total sum of US675.00 (Six hundred and seventy-five Untied States Dollars) to Co-defendant, Peter T. Toby. [with an outstanding] balance US$500.00 (Five hundred United States Dollars) as purchase price for two (2) lots of land situated in Paynesville, Montserrado County. and Co-Defendant, Jones A. Beyan moved on the premises, built school houses and started renting same, but failed to pay the balance price for the two (2) lots. [Emphasis Supplied]. Therefore, on the 6th day of October 2005, Co-defendant. Peter T. Toby wrote Co defendant. Jones A. Beyan. informing him to vacate the premises because of his failure to complete payment of the balance due according to the arrangement made and concluded between Jones A. Beyan and Peter T. Toby relative to the premises. [Emphasis Ours].

A few observations ought to be made here. There is no denial by Co-appellant Peter Toby that he was approached by Jones A Beyan, representing King Peter's Orphanage, for the purpose of purchasing two lots of land from him. Co-appellant also does not dispute appellee's pivotal claim that he (Co-appellant Toby) was offered an amount of money in payment for the two lots of land in question. Further, there is no row between the parties as to Co-appellant Peter Toby accepting certain amounts in payment for and his execution of receipts in evidence of the sale. None of these material facts offered to preponderate appellee's claim is in disagreement.

In carrying the burden of proof, appellee introduced two witnesses during trial in support of its claim. Joseph A. Flomo, appellee's first witness introduced himself as one of the incorporators of the King Peter's Orphanage Mission. The witness told the court that the Orphanage decided in 2003 to acquire a land following the demise of Peter Flomoson, who was one of the incorporators. Co-appellant Jones A. Beyan was also appointed at the time as Director of the Orphanage. A staff meeting was convened during which members were asked to contribute to the purchase of the land. According to the witness, an amount was agreed upon to be cut down from the staff. At the said meeting, Co-defendant Chris Marshall reportedly informed the gathering of being acquainted with landowner prepared to sell. Co-appellant Peter T. Toby was contacted as landowner after the first US$300.00 (Three Hundred United States dollars) was generated. The witness said that the Co-appellant agreed to a total cost US$750.00

(Seven Hundred & Fifty United States dollars) for the two lots and that the first amount of US$300.00 (Three Hundred United States dollars) generated was given to Abraham Toure, the Security and Director Jones A. Beyan. The money was taken to Chris Marshall and thereafter taken to, and paid to Co appellant Toby. A second payment of US$300.00 (Three Hundred United States dollars) was subsequently paid also to Co-appellant Toby. The Orphanage Home Mother, Ma Korpu and Director Jones Beyan took the second payment to Co appellant Peter Toby. The two payments of US$300.00 (Three Hundred United States dollars) each, totaling US$600.00 (Six Hundred United States dollars) left a remaining balance of US$150.00 (One Hundred & Fifty United States dollars) payable to Co appellant Toby. According to this witness, Peter Toby, Jones Beyan, Chris Marshall and Abraham Toure were present on the ground when the survey was conducted. Construction of the Orphanage Home then commenced. Everything went well, the witness claimed, until the appellee took action against Director Jones Beyan which resulted to his removal. The removal, the witness explained, was on account of what the witness alleged to have been the Director tempering with a fourteen (14) year old child when the first building was completed. The witness described the aftermath of Director Jones Beyan's dismissal in the following words:

he [Director Jones Beyan went behind us on Saturday. and took away all of the documents pertaining to the land, claiming that he was buying the place for himself while the second building was going on, Mr. Jones Beyan was not around and Peter Togba visited us and ate with us and he was told that Mr. Beyan is no more with us. Only to our surprise, Mr. Togba and Mr. Jones Beyan claimed that the land is for Mr. Jones Beyan and while the land was in confusion, the sponsor of the Orphanage Home decided to transfer the children until this matter can be resolved. To our surprise, Beyan went behind us and took away properties belonging to the Orphanage Home, including computer set valued the amount of US$3,000.00 (three Thousand United States dollars) one (1) generator valued the amount of US$400.00 (Four Hundred United States dollars, 1,800 (One Thousand & Eight Hundred) blocks six inch valued Liberian dollars in the amount of LD$48,000.00 (Forty Eight Thousand Liberian dollars) and with items that were in the building, chairs, etc, etc, that were in the school building. This is what I know, so we decided to sue them for this court to take action as in keeping with law. The King Peter's Orphanage Home is accredited by the Ministry of Health & Social Welfare. I rest.

Abraham Toure was plaintiff's second witness. Witness Toure introduced himself as a one-time employee with the appellee, King Peter's Orphanage. Witness Toure told the court that he became acquainted with Co-appellant Jones Beyan and Peter Toby when the Orphanage decided to purchase the two lots from Mr. Toby. He explained that Co-appellant Madam Chris Marshall recommended Co-appellant Toby, the land owner, to the Orphanage. Witness Toure corroborated earlier testimony that Plaintiff King Peter's Orphanage paid the initial amount of US$300.00 (Three Hundred United States dollars) for two lots which amount was taken to Co defendant Chris Marshall. According to the witness, Appellee, King Peter's Orphanage, made the second payment of US$300.00 (Three Hundred United States dollars) and same was taken to Co-defendant Madam Chris Marshall by Co- defendant Jones A. Beyan and Old Ma Korpu. The witness told the court that he was present on the ground when the survey was conducted for the two lots and the four corner stones planted in favor of the Appellee/Plaintiff Orphanage. This was the evidence presented during the hearing.

Some fifty years ago in 1954, this Court of Final Arbiter reversed the Sixth Judicial Circuit's judgment entered against plaintiffs/appellants in a suit for specific performance. The trial court based its judgment on two principal grounds: that the suit was statute barred and that the agreement was founded solely on a payment receipt to sell a parcel of land was not a contract. Kamara and Kamara v. Logan and Gbee, [1954] LRSC 17; 12 LLR 28 (1954).

In that case, the appellees, Henry V. Logan and Somo Gbee, while acknowledging receipt of the amount of $120.00 (one hundred and twenty dollars) from the appellants for the purchase of 8 (eight) acres of land, failed and neglected to issue the necessary title deed. The receipt issued by appellees Logan and Gbee was essentially of similar content to those issued by Co-appellant Toby in the case at bar. It read:

Received from Messrs. Jacob M. Kamara and James S. Kamara of the City of Monrovia and of the Republic of Liberia, the sum of ($120.00) one hundred and twenty dollars, being an amount paid for (8) eight acres of land in Bushrod Island, Montserrado County, of the Republic of Liberia, until said land is surveyed and proper deed is issued and signed by us.

The Supreme Court specifically addressed the query whether a receipt could be written such as to constitute a written contract. This Court answered in the affirmative, holding that the receipt delivered by the appellees to appellants constituted a written contract. The Supreme Court articulated the point that "when a contract which need not be in writing is reduced to writing, it is not necessary that it should be in a particular form." Id. 31. Further expounding this view, this Final Court of justice determined that the receipt issued by Logan and Gbee, as presented in the certified records, demonstrated that an agreement was entered into by the assent of two or more minds, involving exchange of consideration, consistent with the settled principle of contract law. The Supreme Court also overturned the trial court's ruling to the effect that there was no evidence to support the trial court's conclusion that the statute of limitations commenced running as of the date of issuance of the receipt; hence, appellants' suit was statute barred. The Supreme Court opined that [i]f A receives from B an amount of money for which he executes a note [therein]stipulating to pay said sum of money upon the happening of certain event, [as the conduct of a survey in that case], and that event does not happen until ten years thereafter, the statute of limitations does not begin to run until after that event,· it does not begin to run from the date of the execution of the note. Id. 31-32. This settled principle regarding the commencement of the statute of limitations was more recently further articulated in Parker v The International Bank (Liberia), Limited (IBLL), Supreme Court Opinion, March Term 2011.

Reversing the trial court's ruling disallowing appellant's action of damages for breach of contract on account of statute of limitations, Mr. Chief Justice Johnnie N. Lewis, speaking for the Supreme Court without dissent, said:

We hold, therefore, that the plaintiff/appellant's cause of action is not time barred since the right to relief accrued on 23 March 2001, when by letter, over the signature of Counselor G. Moses Paegar, the defendant/appellee Bank, for the first time, refused to honor its obligation to the plaintiff/appellant.

In the instant case, the certified records before us clearly illustrate that Co appellant Peter T. Toby executed receipts confirming part payment against 2 [two] lots of land. Co-appellant's admission made in count 4 (four) of the Appellants' Answer to the Complaint admitting to receiving monies and executing receipts therefor for the two lots in question, was yet irrefutable evidence further reinforcing the existence of a contract. It reflected the mutual assenting minds of the parties to enter into a contract. The subsequent mutual exchange of consideration between the parties relying on that meeting of the minds and the construction of the orphanage homes on the land intended for the sale concluded a binding and enforceable contract. It is an elementary principle of law in this jurisdiction that a reliance on a representation, as when Co-appellant Toby received and executed receipts for the sale of two lots of land, and the subsequent change of position of the parties, as the development made on the two lots by the buyer, did create a contractual obligation. This principle was further articulated in the case: The International Trust Company v. Cooper-Hayes, 41LLR 48, 57 (2002).

Having received monies for the 2 (two) lots for the purchase of the land, as duly evidenced by the issuance of receipts, and the buying party having so relied and constructed two homes thereon, it appears to this Court that a contract existed by assent of the parties and the mutual exchange of consideration. It seems perfectly appropriate under those circumstances that an action for Specific Performance would lie to compel the land seller, Co-appellant Toby, to execute a title instrument in favor of the purchaser. To hold otherwise would be tantamount to positive sanctioning an unjust enrichment of co-appellant Toby.

It is observed that appellee's witnesses while testifying to the circumstances giving rise to the conclusion of an agreement to purchase two lots as well as making part payment of the price to Co-appellant Toby failed to allude to the exact amount still due to Co-appellant Toby. Their testimonies in toto remained inconclusive as to the exact amount outstanding and due to Co-appellant Toby. There was no corroboration on this point by the witnesses. The certified records before us including receipts evidencing partial payment made at various times, were also inconclusive regarding the balance due. King Peter's Orphanage as the complainant failed to substantiate, by preponderance of the evidence, the balance amount payable to Co-appellant Toby. Taylor v Worrell, [1928] LRSC 4; 3 LLR 14 (1928); Vianini (LIBERIA) LTD., v McBorrough et al.[1966] LRSC 51; , 17 LLR 439,443 (1966).

On the other hand, we have examined the records and found repeated insistence by Co-appellant Toby that the appellee had a balance payment to be made in the amount of USSOO.OO (Five Hundred United States dollars) for the purchase of the two lots of land in question. The last communication from Co appellant Toby written on his behalf by his counsel, highlighted the same demand and insisted on USSOO.OO (Five Hundred United States dollars) as the balance due him. Also in count five of the Answer, Co-appellant Toby insisted that "Jones A. Beyan paid the total sum of US675.00 (Six hundred and seventy-five Untied States Dollars) to Co-defendant, Peter T. Toby, [leaving a] balance of US$500.00 (Five hundred United States dollars) as the purchase price for two (2) lots of land situated in Paynesville, Montserrado County.

To resolve this controversy, there is precedent allowing this Court to take judicial notice of those facts, circumstances, and events that are of common public knowledge such as not to be a subject of reasonable debate. Lamco JV Operating Company and the Ministry of Labor v Garmoyou et. al.[1988] LRSC 16; , 34 LLR 712, 723 (1986).

Consistent herewith and proceeding along this path, this Court, taking judicial notice of the selling price prevailing at that time for one lot where the subject two lots of these proceedings are located, and to ensure equity, justice and fair play in this matter, has determined that Co-Appellant Toby should be entitled to US$500.00 (Five Hundred United States dollars), as the balance payment representing the fair average price of US$550.00 (Five Hundred Fifty United States dollars) per lot at the time in that part of Paynesville.

Proceeding to the next point also not in dispute was the execution of the purchase receipts for the two lots of land intermittently executed within a period of seven (7) months all in the name of Co-appellant Jones A. Beyan. It is observed from the records that at the time these receipts were issued in Co-appellant Beyan's name, he was in the employ of the Appellee Orphanage and performed official duties as Director for and on behalf of the Appellee Orphanage. During the period of his employment as Director of the Appellee Orphanage, Jones A. Beyan's functions included negotiating and concluding contracts on his employer's behalf. These facts not being in dispute also, it logically follows that Co-appellant Jones Beyan acted in a fiduciary position for and on behalf of the Appellee Orphanage. To put it differently, the circumstances in this case lead one to infer the existence of a master-agent relationship between Co-appellant Jones Beyan, acting as Director of the appellee/plaintiff Orphanage and the Plaintiff Orphanage, his employer. The facts as obtained in the case support an articulable inference that Co-defendant was truly acting for and on behalf of the Plaintiff Orphanage. We have gathered further that Appellee Orphanage at some point determined that Co-appellant Beyan committed a firerable offense by allegedly molesting a child and accordingly dismissed him in March, 2004, six (6) months subsequent to the issuance of the receipts of purchase of the two lots of land in his name.

Assuming that the land was his personal purchase, and knowing fully well, and believing that the land in question belonged to Jones A. Beyan, by virtue of the purchase receipts being in his name, it would seem to defy ordinary logic that he would sit supinely and elect to assert title claims against Appellee/Plaintiff Orphanage for roughly twenty (20) months thereafter. Ordinarily, it seems natural that a fee simple title holder would have most likely asserted such title and sought to exercise ownership over the two lots. Such owner would have come to bear sufficient pressure on the Appellee Orphanage over its occupancy of the two lots and sought to have said Appellee Orphanage either pay him rental or enter some sort of formal agreement to acknowledge and recognize the Co-appellant's undisputed title. From the date of termination of his employment on March 22, 2004 to end of September, 2005, a period of eighteen (18) months at least, Co-appellant Beyan's stone silence, not once was rent ever demanded by either of the two appellants for the occupancy of the two lots.

There is also a related issue in this case begging our attentive reflection. All the receipts presented by the Appellee Orphanage were executed by Co-appellant Toby in the name of Jones A. Beyan. We

have observed even more significantly that the receipts were issued in the name of Jones A. Beyan between the period March A.D. 2003 and September 2003. There is no illustration in the certified records that Co appellant Jones Beyan ever asserted ownership to the land; not once did he ever demand that Appellee King Peter's Orphanage enter into a lease agreement with him or pay rental for the occupancy of the two lots, as a legitimate owner would have ordinarily done. We have not a single notice to this effect in the records that appellant served on the Appellee Orphanage demanding a single cent for occupancy of the premises or asking appellee to vacate the land if they fail to enter into agreement with the reported owner, Co-appellant Beyan. The first time Co-appellant Beyan seemed to have brought into question appellee's title to the premises was on October 10, 2005, some twenty five (25) months after the receipts of purchase were duly issued in his name. These receipts, it is worth remarking here, are the only instruments of evidence pointing to a land purchase transaction between the parties. It is of further importance also to note that the various receipts evidencing the purchase of two lots from Co-appellant Toby were all duly executed in Co-appellant Beyan's name. Given the fact that the two lots for which receipts were executed in the name of Co-appellant Beyan truly belonged to him, and that he was not acting on behalf of the Appellee Orphanage as Director, then, and in that instance, certain perplexing questions ordinarily would follow. Why would Co-appellant Beyan woefully fail and neglect to assert any claims of title to the two lots and exert his ownership thereto for a period over one and the half year. This would have been a natural course of action taken by a reasonable person whose property has been occupied without his permission and consent. No such action was taken in this case. To the contrary, the records reveal that both Appellants Beyan and Toby, while demonstrating their wanton desire to seize the two lots, seemed to have understood the difficulties they could be faced with. They both therefore fell short of claiming full title to the disputed two lots. Yet, cunningly, nineteen (19) months after his services were terminated, Co-appellant Beyan, for the first time, on October 10, 2005, wrote the following letter to the Appellee Orphanage:

October 10, 2005.
Joseph A. Flomo
King Peter's Memorial Orphanage
Nipay Town, Paynesville
Liberia

Dear Mr. Flomo:

You are hereby informed to leave the parcel of land that your orphanage home is presently occupying.

The owner of this property (Mr. Peter Toby) has requested for same by the 31st of October 2005, immediately. You are therefore asked to clear the facility to enhance the turning over on Monday, October 31st, 2005, by 4: O'clock P.M. Thanks for your cooperation. Attached is copy of the letter from Mr. Toby.

Kindest regards.

[signature]

Mr. Jones A. Beyan
CC:
Christian Aid Ministry
Union of Orphanages
Bureau of Social Welfare, Ministry of Health

Co-appellant Beyan's communication, supra, is of supplementary importance in its conveyance of two essential messages: (1). That the two lots upon which Appellee King Peter's Orphanage homes were erected be promptly vacated to facilitate the return of the premises to the owner, whom Co-appellant Jones A Beyan named as Peter Toby, the very same person who sold the two lots; and (2) that Co-defendant Peter Toby, who infact had duly executed receipts in the name of Co-appellant Jones A Beyan, substantiating the sale of the same-self two lots of land, has again become owner of the very property he already sold. What an interesting turn of events!

Further examining the certified records, we have discovered a letter of interesting contents written by Co-appellant Peter T. Toby. It is worth mentioning that Co-appellant Toby's letter was dated October 6, 2005, four (4) days prior to the communication of October 10, 2005 addressed to Appellee King Peter's Orphanage by Co-appellant Jones A Beyan, quoted *supra*. Co-appellant Peter T. Toby's communication of October 6, 2005, addressed, quite interestingly, to Co appellant Jones A Beyan, the man who, in the October 10, 2005 communication, had formally disclaimed any title to, or contested ownership over the two lots in question, reads as follows:

October 6, 2005

Mr. Jones Beyan
Old Road, Sinkor
Monrovia, Liberia

Dear Beyan:

This is to advise that effective the 31st of October, 2005, you are to leave from my parcel of land. This action has been taken because of your failure on the arrangement made and putting people to live, running a school and destruction of my plants without my knowledge.

Failure on your part, court action will be taken against you and all those people.

Please leave and please stop, stop!

Kind regards.

Very truly yours,

[signature]
Peter T. Toby
ADMINISTRATOR,
A.N. TOBY ESTATE

CC: Joseph A. Flomo

From its face, the October 6, 2005 communication constitutes a concession by Co-appellant Peter T. Toby that arrangements were concluded with him whereby a price was negotiated by the parties, accepted by both the seller and the buyers on the basis of which meeting of the minds Co-appellant Toby, the seller, received and accepted part payment for the land, as further evidenced by the receipts duly executed by the said Co-appellant. Yet, after acknowledging receiving part payment in consideration of the purchase agreement, Co-appellant Peter T. Toby thereafter has demanded that Co-appellee King Peter's Orphanage, vacate what he termed as "my parcel of land". It is worth noting that Co-appellant Peter Toby is claiming the land for which he has received substantial payment after the Appellee, King Peter's Orphanage Home has detrimentally relied on the agreement reached between the parties and invested considerable sum of money in erecting two homes for orphans, according to the records before us. While Co-appellant Toby does not deny concluding with appellee what clearly is a valid and enforceable agreement for the sale of the two lots now in dispute, we note with astonishment his untiring endeavors to dislodge the said arrangement and disregard the obligations created there under for the purported reason described in his own words as the failure on the arrangement made.

A number of conclusions may be logically drawn from the facts and circumstances attending to this case. Firstly, Co-defendant Peter Toby admitted in count five (5) of the Answer to being offered money for the purchase of two lots of land from him; that not only did he accept the money for the sale of two lots but in acknowledgment of the consideration of that agreement duly issued receipts. To the mind of this Court, Co-appellant's admission here constitutes conclusive evidence. This evidence supports the existence of a valid and enforceable contract between the parties. The agreement so concluded places a duty on Co-appellant Toby, after receiving benefits there under, to carry out his end of the bargain by executing title instrument to the appellee. Where there is demonstrated indication neglect and refusal by the benefitting party, as in the case before us, to execute a title instrument in fulfillment of his end of the deal, an action of specific performance would maintain to compel the neglecting party, as Co-appellant Peter Toby, to discharge this obligation. Co-appellant Peter Toby has struggled to justify his take-over of the premises in dispute because there is an outstanding balance to be settled by the appellee. This argument is flimsy and has no basis in law. The outstanding payment does not materially affect the validity and enforceability of the contract.

Secondly, Co-appellant Jones A. Beyan, in whose name virtually all the receipts for payment of the two lots were executed, amazingly asserted no title contest or lodged any personal ownership claims to the two lots of land on which the King Peter's Orphanage has been was constructed. His communication of October 10, 2005, to Mr. Joseph A. Flomo of Appellee King Peter's Orphanage, referred to earlier in this Opinion, was unambiguous. The letter was categorical in its words: "The owner of this property (Mr. Peter Toby) has requested for same by the 31st of October 2005, immediately." Under these circumstances, the question which naturally follows is who paid the money for the purchase of the two lots.

The communication of October 10, 2005, signed by Co-appellant Jones A. Beyan, would seem a sufficient basis to arrive at only one conclusion; that notwithstanding the issuance of those receipts in his personal name, Jones A. Beyan clearly acted as agent in the negotiated contract for the purchase of the two lots of land. As Executive Director of Appellee King Peter's Orphanage Home at the time when the purchase agreement was initiated and concluded, Co-appellant Jones A. Beyan, for all intents and purposes, represented and negotiated as agent for the land entirely for and on behalf of the Appellee. And we so firmly hold.

The third question for the consideration of this Court is whether the law imposes a duty on a judge to appoint a deputizing lawyer, for and on behalf of a lawyer who was duly served a notice of assignment but failed to attend court.

It is revealed from the certified records that when Judge Kaba rendered his Final Judgment on August 27, 2007, counsels for both the appellants and appellee were duly notified. However, counsel for the appellants elected to stay away. It is counsel's argument, nevertheless, that even where a lawyer has been duly notified of a hearing, as in the case at bar, but failed to show up in court at the rendition of final judgment, the trial judge must, as ordained by law, appoint a deputizing lawyer to act in his stead for the purpose of excepting to, and announcing an appeal from the final ruling. In the instant case, Judge Kaba did not appoint any lawyer to execute this duty. This not having been done by the judge constitutes a reversible error, counsel for the appellants has maintained.

In count 4 (four) of the approved bill of exceptions, counsel for the appellants has made the following submission:

That according to law, where a court is ruling or giving a final judgment in the absence of a party or his lawyer who has been notified but failed to appear, the court must appoint a lawyer who will give or note exceptions, and if necessary, announce an appeal in behalf of the absent lawyer. The provision of the Statute is clear and unambiguous, yet your honor overruled same and denied the motion for reconsideration to which exception was announced.

Both Judge Kaba and counsel for the appellee rejected the legal validity of this argument. Addressing this issue in his ruling in which he dismissed the Motion to Rescind Final Ruling and Award New Trial, dated November 30, 2007, Judge Kaba stated:

[C]ounsel raised the issue of appointing a lawyer to take the [Final] Ruling for and on his behalf] since he was absent. The court says that under our law, when a party voluntarily elect to absence themselves from a hearing and a default judgment is entered, the said counsel is not entitled to the appointment of a counsel to take the [Final] Ruling for and on his behalf .."

As for appellee's lawyer, he has strenuously defended Judge Kaba, arguing that no statutory law of this jurisdiction was violated when Judge Kaba elected not to deputize a lawyer for the absent counsel. Counsel for appellee has sought to draw our attention to the hypocrisy on the part of Counselor Yangbe. Counsel said that Counselor Yangbe, appearing in a previous matter before the Honorable Supreme Court of the Republic of Liberia, argued with forensic eloquence that no duty whatsoever is

imposed on a court of law to deputize a lawyer to take a ruling on behalf of an adverse party who had prior and due notice to appear but fails to do so without prior excuse. He therefore requested this Court to give no credence to any argument seeking to impose a duty on a judge to appoint a deputizing lawyer for a lawyer who disrespectfully absented himself from attending court. To do so, according to appellee's counsel, would amount to rewarding a self-absenting lawyer by doing for him what he ought to do for himself.

The applicable law in the disposition of this question is Section 51.6, title 1, [Civil Procedure Law] (1973). This provision speaks the following language:

An appeal shall be taken at the time of rendition of the judgment by oral announcement in open court. Such announcement may be made by the party if he represents himself or by the attorney representing him, or, if such attorney is not present, by a deputy appointed by the court for this purpose.

This Court realizes that there appears to be a conflict of interpretation of section 51.6, quoted hereinabove, as regard the duty imposed by law on a trial judge to appoint an attorney for the purpose of excepting to his ruling, and announcing an appeal for and on behalf of a lawyer who, as in the instant case, without any excuse granted by the trial judge, elected to absent himself from court when final ruling is rendered. By rendering conflicting interpretations of section 51.6, it must be remarked here that the Supreme Court itself has further fuelled the confusion.

Thirty-three years ago in the case National Port Authority v. Kpanyor, reported in [1981] LRSC 17; 29 LLR, 196, 198 (1981), this is what Mr. Justice Mabande, speaking for this Court without dissent, said on the question of the judge's failure to appoint a counsel:

The theory of default judgment basically implies abandonment of all defenses including the right to representation at the trial. The procedural requirement of deputizing a lawyer in the absence of counsel of a party litigant to take a ruling or judgment on his behalf supports the view that the absent party desired to contest the ruling or judgment. Where, however, there is an abandonment of a case by a litigant, the court is not required and should not deputize a counsel to defend that party by either taking a ruling or excepting thereto.

The Supreme Court has in fact further articulated the statutory interpretation in the National Port Authority, cited above, and reaffirmed the same principle in Bassma & Sons Liberia Inc. v. Pupo and G. H. Daryani Co. Ltd., [1984] LRSC 14; 32 LLR, 67, 73 (1984) as well as in Grass Roots Cinema Limited v. His Honour Francis N. Pupo, [1984] LRSC 57; 32 LLR 478, 485-6 (1984).

Speaking for a unanimous Court on the same issue, as presented in Bassma case, Mr. Justice Koroma stated:

Following the entry of default judgment in the instant case, after the defendant in the court below had already waived the rights afforded it to appear and be heard, the court was no longer under any legal obligation to secure the participation of the defendant in any part of the trial, including the taking and prosecution of an appeal to this forum. The appointment of a counsel to take the judgment for a defendant in default was void ab initio and could not vitiate the legality of the default judgment. If a

default or imperfect judgment is entered because of the absence of a defendant, then it logically follows that at the perfection of such judgment, it is not required for the defendant to be present, directly or indirectly. Hence, the petitioner in this case has no legal claim on the trial court in its bid to secure the primary jurisdictional step for an appeal to this forum, all such claims having vanished in the hurricane of waiver.

The interpretation provided by the Supreme Court in the cases cited hereinabove, appears to exempt a trial judge from any duty to appoint a deputizing attorney for a lawyer who absented himself, even without legal justification or granted excuse from attending court at the rendition of final judgment. Under this interpretation, the trial judge not appointing a deputizing lawyer under the facts and circumstances of this case, would therefore be justified.

But in the case, LAMCO J. V. Operating Company v. His Honor, Harper Bailey & Vonyeagan, reported in [1985] LRSC 46; 33 LLR 461, (1985), this Court gave an interpretation to section 51.6, title I, [Civil Procedure Law] which is clearly in diametric conflict with the previous meaning and interpretation.

In the LAMCO case, cited above, counsel for the plaintiff-in-error contended that the presiding judge erred when he failed to appoint a deputizing lawyer at the rendition of final judgment for the purpose of noting exception and announcing an appeal therefrom on behalf of the absent lawyer. In the cited case, this Court, reviewing the trial records, however, noted that the records cogently disclosed that a lawyer from the law firm representing the legal interest of the plaintiff-in-error was indeed present in the trial court when the trial judge entered the final judgment. The lawyer from the firm, although present in court, yet neglected and failed miserably to announce representation for the plaintiff-in-error, much more to announce an appeal in the client's interest from said final judgment.

Mr. Justice Nyeplu spoke for this Court to the issue of the trial judge's legal obligation, first and foremost, to appoint a deputizing attorney to represent the absent party, and secondly, whether a judge, under the facts and circumstances of the cited Lamco case, a judge could be deemed to have failed in the duty to appoint a deputizing lawyer. Let us not forget that an attorney of the firm representing the aggrieved party was in fact in open court but elected not to represent the said party and to announce an appeal from the final judgment.

Those facts notwithstanding, Mr. Justice Nyeplu, interpreting section 51.6, held as follows:

The essence of a court appointing attorney to represent a defaulting party at the rendition of final judgment is to fulfill the requirements of the statute which makes the granting of the right of appeal from every judgment mandatory, except that of the Supreme Court. The statute, [section 51.2 in relevance] makes no distinction between a final judgment by default and a final judgment under regular proceedings in which both parties are present. id. 469-7

Mr. Justice Nyeplu further held:

since the right to appeal is only exercised in open court by announcement after the rendition of a final judgment the statute requires that in order that the right to an appeal is not lost to a defaulting party,

an attorney be appointed by the court to represent said defaulting party, to move for a new trial, take exceptions to the final judgment, and to announce an appeal on behalf of the defaulter.

This Court further opined in that case:

while it is mandatory to appoint an attorney to represent a defaulting party at the rendition of a default judgment, the purpose of said mandate is served where an attorney of a law office representing said defaulting party is present in court at the call of the case, even though he refuses to announce representation. Said law office cannot thereafter successfully champion the defaulting party asserting allegations of a failure by the trial judge to appoint an attorney to represent it contrary to law. Id. 470.

This Court must therefore avail itself of the opportunity these appeal proceedings have presented to effectively remove this conflict of interpretation which for so long has lingered over the meaning and interpretation of section 51.6. In this undertaking, it is well to resort to a careful examination and scrutiny of the actual text and language of section 51. 6. It says, in material essence that in order to exercise the statutory right to appeal, the appeal must be announced (1) in open court and (2) at the time and place the judgment is entered. The language is also abundantly clear that (a) there is no mandatory requirement on a party of interest to appeal a judgment. Once in court, a party may also exercise its right not to appeal a decision. The statutory word may seek to grant discretion. The relevant part of the statute speaks the following language: such announcement may be made by the party if he represents himself or by the attorney representing him.[Our Emphasis].

Conversely, the statutory language is quite clearly imposing in the instance where the lawyer is absent at the rendition of final judgment. The unambiguous statutory expression seems not to be bothered as to the reason or reasons for the absence of the attorney at the entry of final judgment. This Court, consistent with the venerated principles of guiding statutory construction, must properly decline to invite "extraneous language, meaning and interpretation which ultimately may defeat the clearly express statutory preservation of the party's right to appeal. In its clear expression, the statute perfectly requires, as a means of preservation of the party's legal right to appellate review, the announcing of an appeal "by a deputy appointed by the court for this purpose. We understand the statute to impose a legal obligation on a trial judge, or any person presiding over a tribunal competent to determine the rights of parties or a Justice presiding in Chambers of the Supreme Court, whose final judgment may qualify for appellate review, to appoint a deputizing attorney, for and on behalf of an absent lawyer. This duty is never vitiated on account of the legal unjustifiability or otherwise of the lawyer's absence.

Therefore, for the conduct of a judge to be deemed as within the ambit of the law, the duty imposed by law on him must be strictly obeyed at all times to appoint a deputizing attorney when the party's lawyer does not appear in court at the rendition of a final judgment.

Consistent with this position, this Court is inclined to re-confirm the holding enunciated in the LAMCO J. V. Operating Company case, mentioned supra. Wherefore, and exercising our authority of self-reviewing, as well as recalling any interpretation and holding heretofore enunciated by this Court of Final Arbiter, we hereby recall the holding that a judge has no duty to appoint or deputize a lawyer for an absent attorney to afford the party statutory and constitutional right to appeal.

Hence, Judge Kaba's failure to deputize an attorney to perform the duty outlined in this opinion was an error. We have determined nevertheless that the error committed does not constitute sufficient legal basis to compel a reversal of the final judgment in the light of the overwhelming evidence against appellants in these proceedings. In the face of such overwhelming evidence, a reversal could serve no useful purpose and would only prolong a litigation that would have the same results we have herein determined.

While we accept that Judge Kaba did not satisfactorily discharge the duty of appointing a deputizing attorney for the ultimate object of a review of the case on its merits, this Court, in its wisdom, had accorded this case a full appellate scrutiny of all the contentious issues raised in the pleading certified to us. Under the circumstance, and having examined the records of the entire proceedings of the trial and found that the weight of the evidence adduced in favor of appellee was overwhelming, we decline to accept that Judge Kaba's failure, alluded to by Counsellor Yangbe, provides a sufficient basis for a remand of this case. To reverse the judge under the facts of this case not only would amount to gross travesty which will inflict innumerable pains of injustice, but in our judgment, would also an absurdity too huge to be insisted on by any reasonable person.

The last and final question to which we have accorded some reflection was triggered on a charge levied by appellants against the trial. In count 5 (five) of the amended motion filed by appellants for relief from judgment, resisted, heard and denied by Judge Kaba, appellant contended in the manner following:

5. That another inadvertent and overlooked procedure is that the time to render a final judgment is until four days four (4) days after trial and submission of the case. To the contrary, immediately after the parties rested evidence, the court rendered its final judgment and Your Honor is asked to please take Judicial Notice of its own records, this omission is due to oversight and inadvertence for which the court is asked to reconsider its decision especially in real property action, and the petitioner has good defense which if allowed the judgment would be otherwise.

The contention raised in the count, aforementioned, presents our last issue, whether a judge conducting a bench trial violates any law or procedure by entering final judgment immediately after the party/parties rested evidence and submitted the case for judgment.

The certified records confirm that shortly after the appellee/plaintiff rested evidence and submitted the case for final ruling, Judge Kaba proceeded to enter final judgment. Counsel for appellants has assigned as a violation Judge Kaba's conduct in rendering a final ruling immediately after the case was submitted for final judgment. Counsel says that appellants' motion to rescind said final judgment and to award a new trial should have been granted and the judge's refusal in this respect was a reversible error.

Seeking to set aside a judgment concluding the rights and obligations of parties, as the filing of a motion for relief of judgment by appellants' counsel is a serious undertaking. A lawyer should not resort to filing a motion to relief a party from a judgment rendered by a court of competent jurisdiction only for the purpose of baffling the plain course of justice. In the instant case, we are out rightly

astounded that the learned counsel would embark on such a major course terming the conduct of the judge as a violation of a sanctioned procedure, and yet would fail could not cite any law to support the purported violation. We have inspected the certified records and nowhere in the extensive records before us had appellants' attorney faintly alluded to any provision of the statute or a decisional law enunciated in this jurisdiction to support his contention. If there is any statutory provision, decisional law or a sanctioned practice regulating a bench trial and outlawing the rendition of a final ruling in a non-jury trial immediately after the parties have submitted the case for final determination, we have been unable to discover said law, our diligent search notwithstanding. Quite to the contrary, the law prohibiting a judge from entering a final judgment not before four days applies to a jury trial. Chapter 41, section 41.2, 1 LCLR, Liberian Code of Laws, title 1 [Civil Procedure Law Revised], (1973), strictly applies to jury trial. The statute requires a four day wait time period contemplates that where the petit jury has returned a verdict adverse to a party, ostensibly to offer for the filing of a motion for New Trial. Where a jury trial is therefore had, a judge is strictly prohibited from entering a final ruling prior to the expiry of four days following the reading of the verdict. Section 41.2 reads, inter alia,

The judgment in a jury case shall not be announced until four days after verdict

This question is not one of first impression in this jurisdiction. In Corniff's Art Printery v. Kennedy, et al.[1982] LRSC 35; , 30 LLR 38, (1982), similar contention was raised accusing the judge of hastily rendering judgment without giving any grace period.

As was argued in that case, Counselor Yangbe in the case before us has vehemently insisted that the law provides for a period of time preferably four (4) days within which a trial judge should render a final ruling.

Addressing this issue, Mr. Chief Justice Gbalazeh stated the following:

Under our statute, all judgments are announced in open court and entered immediately after the case has been argued and submitted, except for judgments in a jury trial, which cannot be announced before four (4) days from the day of verdict. Id.47.

This holding is also supported by a previous ruling in 1968 in the case Vianini Limited vs. McBorrough [1968] LRSC 40; 19 LLR 39, 46-47 (1960). In the Vianini case, this is what the Supreme Court said:

[l]t does appear that appellant labored under the misguided impression that the law imposes a time limitation within final judgment must be rendered in any given case after a motion for a new trial has been heard and denied. If our impression in this regard is correct, then we must here deny the appellant's contention, because a judge is authorized under the law to enter a final judgment in any cause at any time after disposition of a motion for a new trial in all civil cases, an after a motion in arrest of judgment in all criminal cases.

We are therefore of the considered view that the rendition of final judgment instantaneously after evidence rested and the case submitted to the court sitting without a jury, violated no law and infringed

no sanctioned practice or procedure in this jurisdiction. Appellants' counsel seeking to impress this Court otherwise has to be disregarded, as his contention is without the support of the law.

And having taken the position detailed in this Opinion, we nonetheless cannot let go this opportunity without commenting on the conduct demonstrated in the instant case by counsel for appellants, a respected jurist in this jurisdiction. We make this comment as a discharge of the onerous duty imposed on the Supreme Court to preserve the sanctity of the legal profession by insisting that a keen sense of justice and fair play must at all times attend to the practice of law in this jurisdiction.

In this respect, we note that Counselor Yangbe, on February 19, 2005, addressed a letter to Mr. Joseph A Flomo, a representative of the appellee/plaintiff, King Peter's Orphanage, regarding two lots of land, the subject of these appeal proceedings. The letter states:
Mr. Joseph A. Flomo
Nipay Town, Omega Community
Paynesville, Montserrado County

Dear Mr. Flomo:

This is to advise that I am counsel for Peter T. Toby, Administrator of the Intestate Estate of the Late Abraham N. Toby of Paynesville, Montserrado County.

Mr. Toby has complained to me that he owns a parcel of land situated in Nipay Town, near Omega Tower in Paynesville and you are occupying the [said] premises without any arrangement between you and him.

Please call at this office [on] Tuesday, February 22, 2005, at 4: O'clock P.M. for a conference in connection with your occupancy of the premises, and I [have] advised Mr. Toby to bring along with him his document for the premises.

Kind regards.

Very truly yours,

[signature]
M. Kron Yangbe
COUNSELOR-AT-LAW

CC:

Jones A. Beyan

Peter T. Toby

It would appear from a cautious reading of the letter quoted hereinabove that Counselor Yangbe was under the erroneous impression that the property of his client, Co-appellant Peter Toby, was being trespassed. On the basis of that, it would seem that this senior counsel made the representation contained in the February 19, 2005 letter. It is safe at that point to assume that Counselor Yangbe was

reasonably unaware of arrangements concluded vis-a-vis Appellee/Plaintiff's occupancy and development of the two lots of land.

But subsequent actions compel us to ask the question whether Counselor Yangbe's conduct in the handling of this case was entirely a wrong impression. The records do not seem to support such a suggestion.

For instance, Counselor Yangbe's clients, appellants, moved and effectively evicted the Appellee/ King Peter's Orphanage from the property without any court intervention. In the Answer filed to the complaint by Counselor Yangbe on behalf of his clients, he seemed to have been duly informed about the sale of the very two lots by his client, Co-appellant Toby. Counselor Yangbe, in the Answer filed to the Complaint, conceded that some sum of monies had been received by his client, Co appellant/Co-defendant Peter Toby. Count 5 (five) of the Answer reads:

5. That the fact of the matter is, that in June 2002, and thereafter, co defendant, Jones A. Beyan paid the total sum of US675.00 (Six hundred and seventy-five Untied States Dollars) to Co-defendant, Peter T. Toby, balance US$500.00 (Five hundred United States Dollars) as purchase price for two (2) lots of land situated in Paynesville, Montserrado County, and Co Defendant, Jones A. Beyan moved on the premises, build school houses and started renting same, but failed to pay the balance price for the two (2) lots.

Therefore, on the 6th day of October 2005, Co-defendant, Peter T. Toby wrote Co-defendant, Junes A. Beyan, informing him to vacate the premises because of his failure to complete payment of the balance due according to the arrangement made and concluded between Jones A. Beyan and Peter T. Toby relative to the premises. Jones A. Beyan acknowledged receipt of the letter of Peter T. Toby and informed Joseph Flomo accordingly.

From this Answer, it would seem clear to this Court that had Counselor Yangbe properly and adequately advised his client, firstly, the illegal takeover of the Orphanage and the displacement of orphans consequential of that illegal conduct by his client, Co-appellant Toby, and causing the Appellee Orphanage untold suffering and embarrassment, would have been most unlikely. Given his well over fifty years of incessant practice of law in this jurisdiction, it would appear that no one would could have better known than Counselor Yangbe that as of the moment his client accepted to sell the two lots of land, acknowledged receiving monies for that singular purpose and thereafter duly issued receipt acknowledging part payment for the purchase of the two lots, his client, the seller, effectively parted with title thereto as a matter of law. The seller could not relinquish title and yet seek to properly claim ownership to the very same piece of land. Counselor Yangbe there and then was under a legal duty to advise his client appropriately and not seek to engage in a fruitless law suit to frustrate the ends of justice resulting to the forceful and illegal takeover of a property clearly belonging to the appellee in these proceedings. Secondly, the senior counsel in the face of the overwhelming evidence of injustice perpetrated by his clients against the Appellee King Peter's Orphanage, yet proceeded to prosecute this appeal simply as a formal gesture, on flimsy and unjustifiable legal grounds. This is a reprehensible conduct, to say the least.
In the case, Gardiner Jr. v Republic, [1944] LRSC 28; 8 LLR 406, 415 (1944), this Court spoke to the

issue of prosecuting an unmeritorious appeal simply for the sake of it. In that Opinion by Mr. Justice Russell, handed down in 1944, where an unmeritorious appeal was prosecuted, as it is in the case at bar, the Supreme Court increased the sentence of the appellant. The Court said:

Inasmuch as it has been our practice, in case of affirmation of the judgment in criminal cases where in our opinion the appellant brought up an unmeritorious appeal, to increase the punishment by approximately twenty-five percent, it is therefore the opinion of this Court that the judgment of the court below should be affirmed with this modification, that instead of nine months at hard labor as sentenced in the lower court, said appellant should be confined in the common jail of Maryland County for twelve calendar months from the date of his incarceration; and it is hereby so ordered. Id. 415.

But for his stature, we would have imposed an appropriate penalty in the instant case. So let all take heed and take appropriate lesson in this regard.

There is yet another matter of concern to this Court to which our attention has been drawn by Counselor Yangbe. In count 7 (seven) of his Answer, Counselor Yangbe narrated:

That on the 22nd day of March 2006, the Clerk of the First Judicial Circuit, Montserrado County, upon the complaint of Counselor Charles Abdulai for and on behalf of his client wrote the Defendants herein to appear before His Honor James W Zotaa, on Tuesday, March 28, 2006, at l:OOp.m., relative to the complaint of the Plaintiff herein, whereupon a conference was held in consequence of which the court dismissed the complaint on its merit. Copies of the complaint and Clerk's certificate are hereto attached as Exhibits "E" and "F" forming an integral part of this answer.

It would appear that Counselor Charles Abdulai sought to justify his request for the intervention of First Judicial Circuit, Montserrado County, with His Honor, James W. Zotaa, in count 9 (nine) of his Reply. He explained in the said count:

That as to count seven of the answer, plaintiff submits that his attorney addressed aforesaid letter and it was intended to levy criminal charges against the Jones A. Beyan and Chris Marshall and as such, the letter cannot bar plaintiff from instituting a civil action against Jones A. Beyan and Peter Toby.

This Court is intensely troubled by this explanation. We desire to remark here that this Supreme Court has been incessantly confronted, particularly in recent time, with the conduct of lawyers tending to drag the court to public ridicule and disrespect. Lawyers involved in such undesirable conduct are those with long practice and experience. They would bring certain matters to a court knowing quite well that said judicial forum has neither subject matter jurisdiction nor personal jurisdiction over the parties, all in a deliberate move to circumvent the judicial process. By baffling the justice system, in clear flagrant disregard for the law and procedure, the entire judiciary is subjected to public disdain and ridicule. Counselor Charles Abdulai's communication of March 22, 2006, addressed to the First Judicial Circuit, reflects such a disdainful conduct with implications for the integrity of the judicial system in Liberia.

The letter, as referenced, reads thus:

May it Please Your Honour:

Watch Law Chambers, Inc. is counsel for the King Peter's Orphanage, represented by its founder, Joseph A. Flomo and requests your assistance regarding a controversy they are facing.

Sometimes in A.D. 2000, they were interested in acquiring a parcel of land to construct an orphanage in the City of Paynesville, Montserrado County. One of their employees in person of Madam Chris Marshall informed them that she knew a gentleman who had land to sell.

Thereafter, our client paid the total amount of US$600.00 (Six Hundred United States Dollars) with a balance of US$150.00 (One Hundred and Fifty United States Dollars) to Mr. Peter Toby by and through Madam Chris Marshall. Thereafter, she informed them to carry on the construction and based on that, our client constructed of two dormitories and subsequently moved on the premises.

On March 22, 2004, the orphanage dismissed Jones A. Beyan for having relationship with one of the children. Thereafter, Mr. Beyan entered the orphanage and took away documents pertaining to the land and later addressed a letter to Mr. Toby informing that he was turning the land paid for by the orphanage over to him, Peter Toby.

A complaint was filed with the Solicitor General of the Republic of Liberia but the complaining party informed the legal counsel that they were exercising their rights not to explain what transpired between them and our client, the administrator of the orphanage.

In view of the foregoing, we are for and on behalf of our client King Peter's Orphanage represented by its founder, Joseph A. Flomo, request your assistance by ordering the Clerk of Court to cite Madam Chris Marshall to a conference who received the amount mentioned supra so as to clear the doubts as to whether she did paid the amount received from our client to Mr. Peter Toby.

With sentiments of our highest esteem,

Kind regards.

Respectfully yours,

[signature]
Charles Abdullai
Counselor-At-Law

Cc: King Peter's Orphanage.

We wonder why Counselor Charles Abdulai would dare request the Criminal Court's assistance in the manner he proceeded. What is the legal basis upon which a member of this bar would seek the intervention of the First Judicial Circuit as Counselor Abdulai's?

Assuming Counselor Abdulai truly believed that the taking over of his client's property constituted a criminal offense, could he properly seek the intervention of the First Judicial Circuit, Criminal Assizes "B" in order to bring relief to his client. Could the judge presiding, in this instance, His honor, James W. Zotaa, properly act on such a request by intervening in this matter as Counselor Abdulai had desired?

Having practiced for several years as County Attorney for Montserrado County, Counselor Abdulai no doubt knew that even if the matter was cognizable before the First Judicial Circuit Court, same could only be legally entertained by the said court only subsequent to the grand jury presenting an indictment followed by the issuance and service of a Writ of Arrest on the person/s named in the indictment. The law is settled on this point that there is no need to multiply authority on same. Hilton v. Lewis, [1984] LRSC 37; 32 LLR 277, 282-3 (1984); Young et al. v Embree[1936] LRSC 21; , 5 LLR 242 (1936); Societa Lavori Porto Della Torre v. Hilton, [1984] LRSC 52; 32 LLR 444, 446 (1984).

Unfortunately, the learned counsel elected to incisively circumvent this laid down procedure. It is certainly a source of immense regret to this Court that Counsel of the stature of Counselor Charles Abdulai would behave in the manner as detailed in this opinion. We warn that a repetition of this conduct would attract the necessary penalty.

WHEREFORE AND IN VIEW OF THE FOREGOING, it is our considered opinion that the final ruling entered by the trial court, adjudging appellants liable is hereby confirmed. Also, the further ruling by the trial court that appellants receive the balance due him from the appellee and execute in appellee's favor a deed in two weeks and upon failure to fully comply be arrested forthwith and incarcerated to be released upon proof of full compliance with these orders, is also confirmed with the modification that appellant shall upon failure be attached in contempt of court. The order also entered by the trial court to the effect that Co-appellant Toby receives US$150.00 (One Hundred and Fifty United States dollars) as the balance due him, is also confirmed with the modification, however, that appellee is ordered to pay Co appellant Toby the amount of US$500.00 (Five Hundred United States dollars), for reasons already detailed in this Opinion. AND IT IS SO ORDERED.

Counselor Moses Kron Yangbe appeared for the appellants. Counselor Charles Abdulai appeared for the appellee.