**A.D.C. AIRLINES**, represented by its it President, General Manager or its Authorized Representatives, Appellant, v. **BENEDICT F. SANNOH**, Executive Director of the Center for Law & Human Rights Education, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: November 26, 1998. Decided: January 22, 1999.

1. It is contemptuous for an appellant to flagrantly refuse to accept the court's judgment in a case in which it is a party and had filed pleadings.

2. An appeal is a matter of right and is held inviolable except from judgments or orders of the Supreme Court.

3. To obtain a reversal of any ruling, order, or judgment, real errors must be assigned as having been committed by the trial court.

4. The law on appeal is mandatory, both by dictates of the statute and opinions of the Supreme Court, and a failure to comply with any of the requirements within the time allowed by statute is ground for dismissal of the appeal.

5. The completion of an appeal requires the fulfilment of the following conditions: announcement of the taking of the appeal, filing of the bill of exceptions, filing of an appeal bond, and service and filing of the notice of the completion of the appeal.

6. An appellant shall present his bill of exceptions signed by him to the trial judge within ten days after the rendition of the judgment; and an appeal may be dismissed by the trial court for failure of the appellant to file a bill of exceptions within the time allowed by statute.

7. Although there are constitutional guarantees of basic freedoms and rights, there are equal limitations and duties, and prescribed guidelines for the exercise of those freedoms and rights, and which are not ipso facto unconstitutional; for where one's right ends is where another right's begins, and no one , has a right or is free to violate the right of another.

8. The right or appeal is deemed waived where the appellant fails to take all of the mandatory steps to get his appeal properly before the Supreme Court.

9. When an appeal is waived by failure of the appellant to comply with the mandatory appeal steps, a ruling confirming the waiver and dismissing the appeal should not be the subject of appeal unless arbitrary or founded on misinformation, fraud, prejudice, or illegality.

10. Where the appellant does not contend or claim that he filed a bill of exceptions, there should be no basis for an appeal from a ruling of the trial court dismissing the original appeal.

11. Generally damages are not required to be pleaded specially, but they do require that some evidence to sustain the award of general damages be produced.

12. Ordinarily, the verdict of a jury awarding damages will not be set aside as being excessive, but an appellate court will do so where there is not evidence to support the amount awarded, or the verdict is so disproportionate to the measure of damages, or the testimony most favourable to the successful party will not sustain the inference or fact on which the damages were estimated.

Appellant, against whom judgment had been entered, based on a verdict returned by the jury in favour of the appellee, failed to file a bill of exceptions as required by law. Whereupon, appellee filed a motion in the trial court to dismiss the appeal. The motion was resisted and sustained by the trial court which ordered the judgment enforced. From the judgment dismissing the appeal, appellant announced an appeal. A bill of exceptions was thereafter filed by appellant but it failed to serve and file a notice of completion of the appeal within the time required by law, as required by without the statutory time. A motion to dismiss the appeal was then filed with the Supreme Court which, although acknowledging the basis for dismissal, deter-mined that in the interest of justice, it would allow a hearing of the case on the merits.

Following the hearing of the case, in which the parties submitted without arguments, the Supreme Court ruled that it could not hear the merits of the case since it was unable to determine which appeal was before it and because the appellant had in both instances failed to comply with the mandatory requirements of the statute. The Court held that whenever an appeal is announced from a judgment and the appellant fails to file its bill of exceptions as required by law, and a motion is made to the trial court to dismiss the appeal, a ruling by the trial court dismissing the appeal is not appealable. The Court reiterated its prior holdings that an appellant is mandatorily required to file its bill of exceptions within ten days of the rendition of judgment, to file an appeal bond within sixty days of the rendition of judgment, and to serve and fine a notice of

completions of appeal within sixth days, a failure to comply with any renders the appeal dismissible. The Court opined that because the appellant had violated these mandatory provisions of the statute, the appeal should be dismissed.

However, notwithstanding the dismissal of the appeal, the court held that the verdict of the jury was excessive and that the evidence produced by the appellant did not warrant the amount awarding the jury. The Court therefore ordered the award reduced to not less than ten percent of the special damages not more than one hundred percent of the special damages. With the foregoing modification, the Court dismissed the appeal.

*David A. B. Jallah* of the David A. B. Jallah Law Firm appeared for appellant. *Benedict F. Sannoh* of the Center for Law and Human Rights Education appeared for appellee.

MR. JUSTICE MORRIS delivered the opinion of the Court.

Culled from the certified records transmitted to this Honourable Court, it is revealed that on the 15thday of January A**.** D**.** 1996, Appellee Benedict F. Sannoh, instituted an action of damages for breach of contract against Appellant A. D. C. Airlines, in the Civil Law Court for the Sixth Judicial Circuit, County of Montserrado, Republic of Liberia, sitting in its March Term, A. D. 1996.

The appellee in his complaint alleged that on December 22, 1995, he purchased a round-trip ticket from appellant for the latter airline to transport him from Monrovia to Lagos, Nigeria, and back to Monrovia. On December 24, 1995, he traveled to Lagos, and on Friday, December 29, 1995, appellant confirmed appellee's return trip to Monrovia for Sunday, December 31, 1995, as was earlier confirmed. The complaint further alleged that appellant abandoned appellee and told appellee he had to be responsible for himself, pending the next flight to Monrovia, which act caused him undue hardships, inconveniences, embarrassment and humiliation, such that he had to credit the amount of US$275.00 for food, hotel and transportation from Sunday to Tuesday.

Therefore, appellee, instituted this action of damages for the careless, wanton and negligent action of appellant toward him and for which he claimed the amount of as special damages plus an amount not less than US$ 100.000.00, as general damages, as the jury might see fit, in addition to an amount as exemplary and punitive damages to serve as a deterrent to appellant for its conduct.

The writ of summons was issued the same day, January 15, 1996, and was served on the next day, January 16, 1996, on appellant, by and thru its administrative manager, Mr. Nathaniel Kaiyeepu, who instructed his security officer to sign or the writ and complaint. On January 25, 1996, appellant by and thru it counsel, Findley and Associates, filed its answer of seven (7) counts, raising several legal and factual defenses and praying the dismissal of the suit. On February 5, 1996, plaintiff filed his reply and pleadings rested.

On September 19, 1996, a notice of assignment was issued for the disposition of law issues on September 23, 1996. However, when the assignment was taken for service on appellant corporation, its counsel, Counsellor Joseph Findley, was reported to be out of the country and so the assignment was taken to the office of appellant, where its employees refused to accept the said assignment. The records further revealed that on September 23, 1996, the Court issued another assignment for the next day, September 24, 1996, and again, appellant's station manager, one Maxwell, also refused to receive the assignment. Based on the sheriff's returns to the service of the second notice of assignment, the court then issued a writ of summons for contempt on the same day September 23, 1996, for the appellant to appear the next day September 24, 1996. When the writ was served on the manager, Mr. Maxwell, he ordered the ECOMOG soldiers assigned at the James Spriggs Payne Airport to have the bailiff take back the writ and leave the premises. On September 24, 1996, a writ of arrest for contempt was issued against the appellant, and again Mr. Maxwell refused to receive it and did not appear before the court.

Based on the sheriff's returns, the court called the case on September 24, 1996, for disposition of laws issues and permitted appellee to argue his side of the law issues. The court entered its ruling on the law issues on September 26, 1996, dismissing appellant's answer, placing appellant on bare denial of appellee's complaint, and ruling the case to trial. On the same day, September 26, 1996, appellee caused a notice of assignment to be issued for the trial of the case to be had on September 30, 1996. Once again, Mr. Maxwell, the station manager of appellant corporation, refused to accept the assignment when it was served on September 27, 1996.

Pursuant to said assignment and the returns thereto, the case was called for trial. The appellant, being absent, was called three times .at the door and a default judgment entered against it upon its failure to answer. An imperfect judgment was entered in favour of appellee and a trial jury empaneled. The trial commenced on September 30, 1996 and concluded on October 2, 1996. Appellee produced four witnesses as well as

documentary evidence. For reliance, see Civil Procedure Law, Rev. Code 1: 42.1 and 42.6, *Default judgments.*

The trial ended on October 2, 1996. The jury was charged and sent to their room of deliberation, from where they emerged with a unanimous verdict of liable against appellant, and awarding appellee the amount of US$275.00 as special damages and US$80,000.00 (Eighty Thousand Dollars) as general damages. For reliance, see Civil Procedure Law, Rev. Code 1: 22.9, 22.11 and 22.13. After the lapse of the statutory period, the court, on October 8, 1996, entered final judgment confirming and affirming the verdict of the trial jury adjudging appellant liable to appellee in the sum of US$275.00 as special damages and US$80,000.00 as general damages.

The appellant being absent at the rendition of the said final judgment, the court deputized and appointed Counsellor James E. Pierre to take the ruling on behalf of the defendant. Counsellor Pierre, the appointed Counsel, excepted to the judgment end announced an appeal therefrom to the Supreme Court. The court noted the exception and granted the appeal on October 8, 1996 as aforesaid. For reliance, see Civil Procedure Law, Rev. Code 1: 51.6.

As contained in a letter dated October 15, 1996, the court-appointed counsel for appellant, Counsellor James E. Pierre, informed the court that he had submitted copies . of the court's final judgment and ruling on the law issues to the appellant at its office at the Meridien Bank Plaza, Randall Street, Monrovia, on Monday, October 14, 1996, but that Mr. Nathaniel Kayeepu, appellant's administrative manager, refused to accept delivery of and to sign the receipt for the same. Thereupon, Counsellor Pierre returned the copies of the final judgment and ruling on law issues to the court.

Thereafter, the appellee, on October 24, 1996, filed a motion to dismiss appellant's appeal because of appellant's failure to file its bill of exceptions within the statutory period, even though the final judgment had been forwarded to it by the court-appointed counsel within time. On November 12, 1996, the court assigned the motion to dismiss for hearing on November 20, 1996. On November 18, 1996, appellant filed a notice of additional counsel, announcing the David A. B. Jallah Law Firm, in addition to Findley and Associates, as its counsel. Also, at that time, November 18, 1996, the appellant's new counsel signed for and received said assignment for the hearing of the motion on November 20, 1996.

Appellant's new counsel, on November 20, 1996, filed a five (5) count resistance to appellee's motion to dismiss, praying the court to deny said motion and rising several

legal issues. On November 27, 1996, the Court assigned the motion for hearing on December 2, 1996. The court, on December 5, 1996, entered its ruling on the motion to dismiss, in which ruling the court granted appellee's motion, overruled appellant's resistance, and ordered the final judgment enforced based on appellant's failure to file its bill of exceptions within statutory time.

The appellant excepted to the ruling granting appellee's motion to dismiss appellant's appeal, and appealed therefrom. The court noted the exceptions and granted appellant's appeal from the ruling on the motion. The appellant thereafter filed its bill of exceptions and appeal bond, but did not serve a notice of completion of appeal within sixty days. The Supreme Court, during its March Term 1998, in a majority opinion, denied appellee's motion to dismiss appellant's appeal and decided to hear the appeal on its merits; hence, this review of the proceedings below.

When the case was assigned and called for argument on the 26th day of November, A. D. 1998, in compliance with the Honourable Supreme Court's majority opinion, handed down during its March Term A. D. 1998, counsel for both parties, that is, appellant's counsel, Counsellor David A. B. Jallah, and appellee's counsel, Counsellor Benedict F. Sannoh, moved the court to waive argument and to base its' opinion on the certified records before us. The request was duly granted by this Honourable Court. (See court's records and minutes of November 26, 1998.

The main issue upon which this decision rests is, which appeal is before this Court? Or, put another way, what is this Court expected to review? Is it the trial proceedings and the trial court's final judgment handed down on October 8, 1996, from which the court-appointed counsel for appellant, Counsellor James E. Pierre, appealed for the appellant, and which appellant did not perfect, or, is it the trial court's ruling of December 5, 1996, granting appellee's motion to dismiss appellant's appeal, which appellant abandoned and did not perfect? An off shoot to this second question is, where an appellant neglects to perfect his appeal from a final judgment and the appeal is dismissed on motion of the appellee, does that appellant, as a matter of right and of law, have a right to further appeal from that ruling dismissing his original appeal? The Court shall now proceed to determine which appeal is being reviewed and then finally address the issue of appeal as a matter of right where the original appeal is dismissed for having been abandoned by the appellant.

In the trial court, the case was tried upon several notices of assignment being issued and served on appellant, and refused and ignored by appellant. The final judgment was rendered on October 8, 1996. Because appellant was absent, the court appointed

a lawyer to take the judgment for appellant, thereby securing appellant's right of appeal. The judgment was forwarded to appellant by the court-appointed counsel but the appellant refused to accept same and the judgment was returned to the court on October 15, 1996. Since none of the jurisdictional steps for perfecting the appeal was employed to have the Supreme Court take cognizance of the case after appellant became aware of a judgment adverse to its interest, the appellee filed a motion to dismiss the appeal, which the court granted. So, if the appeal before the Supreme Court is from the final judgment of October 8, 1996, then the question to answer is, what errors were committed by the trial judge for which the judgment is being reviewed or is sought to be reversed? Alternatively, if the appeal now before the Supreme Court is from the trial court's ruling of December 5, 1996, granting appellee's motion and dismissing appellant's appeal, then the issue is whether the trial judge committed error in granting appellee's motion to dismiss appellant's appeal because of appellant's failure to file a bill of exceptions and to perfect its appeal.

On the theory that it is the trial court's final judgment of October 8, 1996 which is now being reviewed (but which the Court thinks not), this Court observes that appellant was served with that final judgment by Counsellor James E. Pierre sometime between the date of rendition on October 8, 1996 and its return to the Court on October 15, 1996 (one week in between). The trial court was informed that appellant had refused to accept same. First, it was contemptuous to the Court for appellant to have flagrantly refused to accept the court's judgment in a case to which it was a party and had filed pleadings.

Secondly, and more importantly, it is to be noted that when the suit was filed on January 15, 1996, the writ of Summons was served on appellant by end thru its administrative manager, Nathaniel Kaiyeepu and it was appellant who took the writ to Findley and Associates to file appellant's answer to the complaint. It is this same Nathaniel Kaiyeepu who was served on October 14, 1996 with the court's final judgment and he refused to accept the judgment. Against this background, appellant cannot or could not raise the contention (and they have not raised it) that the judgment was served on the wrong person or on someone without authority to receive papers for appellant corporation, since it was this same person who received the writ and whose act placed the appellant under the jurisdiction of the court and upon which appellant filed its answer. For reliance, See the Civil Procedure Law, Rev. Code 1: 3.38(6), *Jurisdiction. Sub-Chapter B. Forms, Issuance And Service of Process.*

The trial court duly designated a counsel to take the judgment on behalf of the absent appellant, thereby fulfilling the statutory requirement, absolving the court from being

accused of violating the right of appellant to have the case, reviewed on appeal, and shielding the court from accusation of collusion or prejudice. An appeal is a matter of right and shall be held inviolable except from judgments or orders from the Supreme Court. For reliance See LIB. CONST., Art. 20(b) (1986) and Civil Procedure Law, Rev. Code 1: 51.2, *Judgments subject to review.* Under the laws in our jurisdiction, and in the instant case, the court did what it ought to have done and (thereby removed the possibility for appellant applying for a writ of error in the Supreme Court so as to have its case reviewed as it would have done in case of a regular appeal. For reliance, see *Revised Rules of the Supreme Court, Part IV, Par. 8.*

The appellant, at that point, had the opportunity to have the Supreme Court review the proceedings of the trial court and correct any errors found to have been committed. counsel in their brief and oral arguments in this Court advanced several issues as errors committed by the trial court. The appellant, however, forfeited the right to have these errors addressed when it failed to file a bill of exceptions within the time allowed by law. In fact, even up to and including, the date of this opinion appellant has still not filed a bill of exceptions) or taken any other jurisdictional step to perfect its appeal to give the Supreme Court jurisdiction over the case. As such, the Supreme Court never did, and still has not acquired jurisdiction to review the proceedings of the trial court or as would call into question that court's final judgment of October 8, 1996.

Therefore, it is the holding of this Honourable Court that the appeal before this Court at this time is not, and could never be, the appeal announced by Counsellor James E. Pierre from the trial court's final judgment on October 8, 1996, and as such, this Court, lacking jurisdiction over that appeal, is impotent to comment on or take any action in respect of any event that transpired in the trial court, commencing with the filing of the complaint on January 15, 1996, up to and including the rendition of the final judgment on October 8, 1996, because of the appellant's failure to complete the statutory prerequisites for perfection of his appeal. For reliance, see *Bility v. Sirleaf* 25 LLR 319 (1976); *Delancy v. Republic,* 4 LLR 251, 257, (1935); *Liberty v. Republic,* 9 LLR 437 (1947); *Saudi v. Gebara,* 15 LLR 598 (1964).

Subsequently, we come to the theory that this Court is called upon to review on appeal the trial court's ruling of December 5, 1996, granting appellee's motion to dismiss appellant's appeal of October 8, 1996. To obtain a reversal of any ruling, order, or judgment, real errors must be assigned as having been committed by the trial court.

In the instant case, a motion was filed by appellee for the trial court to dismiss appellant's appeal of October 8, 1996, on the grounds that the appellant failed to file a bill of exceptions within the time allowed by law, which ten (10) days after final judgment, which would have been on October 18, 1996 (or even up to the filing of that motion on October 24, 1996).

The law on appeal is mandatory, both by dictates of the statutes and opinions of the Supreme Court, and a failure to comply with any one of the requirements is ground for dismissal of the appeal. For reliance, see Civil Procedure Law, Rev. Code 1: 51.4, which provides the following: "The following acts *shall be necessary* for the completion of an appeal: (emphasis supplied);

(a) Announcement of the taking of the appeal;

(b) Filing of the bill of exceptions

(c) Filling of an appeal bond;

(d) Service and filing of notice of completion of the appeal;

Failure to comply with any of these requirements within the time allowed by statute shall be ground for dismissal of the appeal" *Id.,* ∫ 51.4.

The Civil Procedure Law also states that "The appellant shall present a bill of exceptions signed by him to the trial judge within ten days after rendition of the judgment." *Id,* ∫ 51.7.

The statute also provides that "An appeal may be dismissed by the trial court on motion for failure of the appellant to file a bill of exceptions within the time allowed by statute." *Id.,* ∫ 51.16.

From the certified records in this case, it is observed that the final judgment was rendered and an appeal announced there-from on October 8, 1996, transmitted to appellant on October 14, 1996 and returned to the court on October 15, 11996 by the court-appointed counsel upon appellant's refusal to accept same. Under the appeal statute, the appellant should have filed its bill of exceptions on October 18, 1996, which was ten (10) days after judgment. But that was not done. It is shown from the records that the judgment was transmitted to appellant on October 14, 1996. Therefore; their ten days started to run as of October 14$^{th}$and they should have

filed theirs bill of exceptions on or before October 24, 1996; again, this was not done. Then appellee filed his motion on October 2, 1996, which was assigned on November 12, 1996, for hearing on November 20, 1996. Even within that time appellant could have filed a motion for enlargement of time with justification, but did nothing. For reliance, see Civil procedure Law, Rev. Code 1: 1.7(2). It was on November 18, 1996, that appellant filed a notice of additional counsel, and that said additional counsel, on November 20, 1996, filed its resistance to the motion to dismiss. Even up to that time appellant still could have asked for enlargement of time but never did; rather, it resisted the motion, raising issues not responsive to the motion's central theme that appellant had failed to file its bill of exceptions to the final judgment.

That being an issue of law, obviously, the court passed on it and granted the motion thereby dismissing the appeal. It is the granting of appellee's motion that is now subject of review on appeal. The germane issue for determination by this Court is, did the trial judge commit reversible error where he granted appellee's motion to dismiss and dismissed appellant's appeal?

As stated *supra,* the statute on appeal is mandatory, and should be strictly adhered to, and that a failure to adhere thereto renders the appeal dismissible. *Bility v. Sirleaf supra.* What error did the judge commit.? Did appellant file its bill of exceptions on October 18, 1996, or on October 24, 1996, or did appellant file at all? Appellant, in its resistance to the motion or even in its brief and argument before the Supreme Court, did not allege or contend that it ever filed any bill of exceptions to the final judgment of October 8, 1996. The appellant did dot allege and/or show that it did file its bill of exceptions to the final judgment. Therefore, it is the holding of this Court that the trial judge committed no reversible error when he dismissed the appeal. For reliance, see Civil Procedure Law, Rev. Code 1: 51.4 (a, b, c, & d), Requirements for completion of appeals, § 51.7, and § 51.16.

Therefore, if the judge did not commit any error, and he acted properly in dismissing the appeal, what then is the basis of this review? This is simply a ploy and a delay measure to baffle justice, and this Court should not and will not lend itself in aid of such action by parties.

It is observed further that when the trial judge granted appellee's motion and dismissed appellant's appeal on December 5, 1996, appellant filed its bill of exceptions and appeal bond within statutory time abut then neglected to file and serve its notice of completion of appeal within time, consequent upon which appellee

filed a motion in the Supreme Court to dismiss the appeal. However, this Court, in its majority opinion dated January 23, 1997, denied appellee's motion to dismiss and decided to hear the appeal on its merits.

The question is, what is the merit of appellant's appeal from the trial court's ruling of December 5, 1996 dismissing appellant's appeal? In other words, what error was committed by the trial judge to warrant a reversal of his ruling of December 5, 1996, granting appellee's motion and dismissing appellant's appeal of October 8, 1996? We also find that the trial judge did not err in granting appellee's motion because it is not denied by appellant that appellant failed to file its bill of exceptions to that final judgment of October 8, 1996, even up to and including today's date.

Therefore, it is the considered holding of the Court that the appeal is void of any merits whatsoever, which would warrant any action against the ruling of the trial judge in granting appellee's motion and dismissing appellant's appeal.

Having addressed the main issue in this case, there is, however, a collateral issue which deserves comment. It is novel in this jurisdiction, and as such, is without precedent in our jurisprudence. That matter is, where an original appeal is dismissed for failure of the appellant to proceed does that appellant have an absolute right of appeal from that ruling dismissing his original appeal?

The Constitution of Liberia and our statute laws provide for an appeal from adverse rulings, judgment, decisions, or decrees, as a matter of right, except from the Supreme Court. Constitution. For reliance, see LIB. CONST., Art. 20 (b) and Civil Procedure Law, Rev. Code 1: 51.2, *supra.* The question is, is this right endless or unrestricted? Are there perimeters within which this right is exercised or enjoyed? Are there requirements to be met in order to invoke and enjoy that right? Without quoting verbatim, it is said that freedom without restriction is anarchy, and control without limitation is tyranny. In other words, even though there are constitutional guarantees of basic freedoms and rights, there are equal limitations and duties, and prescribed guidelines for the exercise of those freedoms and rights, and such guidelines or prescription are not *ipso facto* unconstitutional; for where one's right ends is where another's right begins and no one has a right or is free to violate the right of another.

Since the Constitution is the general framework for the declaration end protection of basic rights, it certainly cannot be so minutely detailed as to provide for or prescribe every right or remedy or means of enjoyment or enforceability of rights, privileges,

and duties. The Legislature therefore fills the vacuum by enacting laws to take care of specific aspects for fulfilling constitutional provisions. One of such legislative enactments is the Civil Procedure Law which provides the means by which the constitutional guarantee of the right of appeal may be enjoyed by persons aggrieved by decisions, judgments, or rulings of any and all courts, boards and tribunals, except the Supreme Court.

That legislation recognizes and preserves the right of appeal, *Id.* § 51.2, *supra),* but goes further to prescribe the method by which the right of appeal is to be invoked and enjoyed. *Id. ,* 51.6. And so, if an appellant fails to take any of the mandatory jurisdictional steps to get his appeal properly before the Supreme Court, as in the instant case, then that right to appeal is deemed to have been waived. And when it is so waived, a ruling confirming that waiver and dismissing that appeal should not be subject of appeal unless arbitrary or founded on misinformation, fraud, prejudices, or illegality. We hold that such a ruling should not be disturbed especially where the appeal is pursued merely for the purpose of delay. Where, as in the instant case, the appellant does not contend or claim to have filed its bill of exceptions at all, there should be no basis for any appeal from a ruling dismissing the original appeal. Justice delay is justice denied.

This is only a round about way of getting the Supreme Court to review and pass on issues either not properly presented or raised in the trial court, or passed on by the trial court but not properly laid before the Supreme Court. We hereby declare that an appellant who fails to perfect his appeal and same is dismissed for that failure, is not entitled, as a matter of law and of right, to an appeal from the ruling dismissing that original appeal. The right of appeal is not endless or unrestricted.

In concluding this opinion, the Court wishes to observe and call attention to the careless and negligent manner in which lawyers handle cases for heir clients. By their callous and unprofessional behavior, many of our lawyers are responsible for their clients being unnecessarily and unduly exposed to expenses and losses to which they ought not to be. Parties lose not necessarily because they were wrong or liable and also not necessarily because their lawyers are uneducated or untrained, but because they are just careless, reckless and negligent.

This Court uses this case to call lawyers' attention to the oaths taken and their professional duty or obligation when they decide to accept employment from persons already aggrieved. Since our laws are riot retroactive or *ex post facto,* we wish to inform the general public and the National Bar Association at beginning the October Term,

1998 of this Honourable Supreme Court, we will commence rigid disciplinary action, including suspension and/or disbarment, if the situation so warrants, against lawyers who, because of mere; greed for money, carelessness and negligence, handle the case of parties before any and any of our courts in a manner that is patently and glaringly unprofessional and negligent, and because of which said parties are exposed to liability which they ought not to be.

In fact, since our law is silent on this issue, this opinion forms the basis for lawyers to be disciplined by our courts and for parties to be able to ,sue lawyers for malpractice.

The last issue of importance is the verdict of the jury which awarded the appellee the amount of US$80,000.00 as general damages. Reviewing the records of the trial, we find nothing to warrant the verdict in that amount. it is true that general damages of US$100,000.00 that were prayed for by the appellee which the jury reduced to US$80,000.00 are not required to be pleaded specifically, but this clearly required some evidence to sustain the awarding of US$80,000.00 as general damages.

Ordinarily, the verdict will not be set aside as being excessive, but an appellate court will do so where there is no evidence to support the amount awarded as in the instant case, or where a verdict is so grossly disproportionate to the measure of damages and where the testimony molt favourable for the successful party will not sustain the inference or fact on which the damages were estimated. For reliance, see *Cooper et al. v. Davids et. al.* 27 LLR 310, 318-319 (1978); *Levin v. Juvico Supermarket,* 24 LLR 187 (1975); 5 C.J.S., *Appeal and Error,* Section 1651 (1958).

Predicated upon the excessiveness of the verdict with respect to the general damages awarded, it is the holding of this Court- that the general damages of US$80,040.00 (Eighty Thousand United States dollars) are reduced to not less than 10% and not more than 100% of the special damages awarded plus actual litigation costs, in the interest of substantive justice, notwithstanding, the affirmation of the judgment of the court below for the purpose of discouraging unjust enrichment and excessive awards.

The appeal is hereby dismissed and denied for being unmeritorious and lacking in legal foundation, and because the judge did not err in any manner in granting the motion and dismissing the appeal. Therefor, the trial court's final judgment of October 8, 1996, is hereby affirmed with the modification that the general damages of US$80,000.00 are reduced to not less than 10% and not more 100% of the special damages awarded plus actual litigation costs, and are ordered enforced. The trial court

will accordingly resume jurisdiction over the case of which this appeal grew and enforce its judgment, with costs against appellant.

The Clerk of this Court is hereby ordered to seed a mandate to the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, ordering the judge presiding therein to resume jurisdiction over the case and enforce its final judgment rendered on October 8, 1996 as modified. Costs are assessed against appellant. And it is hereby so ordered.

*Appeal dismissed; judgment affirmed with modification.*

MR. JUSTICE WRIGHT *concurs.*

Once again I am unable to agree with my very distinguished colleagues of the majority and because of which I have prepared a separate opinion and have not signed with the majority.

I agree with the majority that the appeal should be denied and that the final judgment should be affirmed, but I am totally opposed to that portion of the opinion which modifies the verdict of the jury as to its award of general damages.

The concern of my colleagues is that the amount of general damages awarded by the trial jury is excessive, in that the special damages claimed and awarded is only US$275.00 while the general damages awarded is US$80,000.00. They halve conceded in their opinion that general damages do not have to be specifically pleaded, yet, they have gone ahead to state that "this clearly requires some evidence to sustain the awarding of US$80,000.00 as general damages."

This is where we differ. I find this to be a clear invasion of the province of the trial jury. The law has specifically reserved the measure of general damages to be the exclusive domain of the trial jury and no one else. My colleagues have talked about evidence being required to justify an award of general damages. I beg respectfully to say that nothing could be further from the truth and the law than this. The holding is completely contrary to law and wholly unjustified.

Even if evidence were required for general damages, is it or would it be the Supreme Court to receive that evidence and decide whether or not it is sufficient to sustain the verdict? Not even the trial court, which sits on the trial and receives evidence, has the authors, to tamper with a jury's verdict, much less the Supreme Court in its appellate

jurisdiction. So then may I respectfully ask, what evidence did my colleagues receive for them to reduce the jury's award? What yardstick did they use to determine by how much the verdict should be reduced? Was there a percentage to be deducted? If their concern was (as it indeed was) that the gap between $275.00 and $80,000.00 was too great, what motivated it downward to $30,000.00 and what is the difference between $80,000.00 and $30.000.00, as it relates to their holding? In other words, did they receive any evidence to support the $30,000.00, to which the award has been reduced? I don't believe they received or could have deceived at this level any evidence to support an award of $30,000.00, or any other amount for that matter. It was purely arbitrary and from thin air. My contention is that the right to be arbitrary and to take the award from thin air rests in the trial jury and no one else.

The law on damages is so clear and well known that it does not require a scholarly dissertation to show that the holding of the Court on this issue is contrary to law and should be reconsidered. The majority has stated: "where a verdict is so grossly disproportionate to the measure of damages and where the testimony most favorable for tie successful party Will not sustain the inference or fact on which the damages were estimated," My question is, what is the measure of damages and who makes or takes that measurement'? Secondly, when is the verdict proportionate to the damages? Is there a formula?

In my view, if the Court is not satisfied with a verdict, that verdict is not overturned by the Court but rather merely set aside and a new trial awarded. And this is in the trial court at that, and not the Supreme Court. Generally, when the jury returns a verdict, it is the trial court that determines whether the verdict conformed to the evidence and if it does, the Court affirms and confirms the verdict in a final judgment. What, then comes before the Supreme Court is not the verdict of the jury but the final judgment of the trial court. Then the Supreme Court reviews the judgment and either affirms, reverses or modifies the judgment; but the Supreme Court, being restricted to the records certified to it, and also not having bad the benefit for hearing evidence, does not go to question the wisdom of the trial jury in exercising a clearly discretionary function. If the Supreme Court feels the trial court erred in confirming the verdict, it is the judgment that is reversed and not the verdict.

If the majority is dissatisfied with the award of damages, then they should reverse the final judgment and order a new trial in which the plaintiff should be required to prove his general damages, something I have never heard about in our jurisdiction and something which the law does not provide for.

This is the point on which my very distinguished colleagues and I did not agree and for which I did not sign the judgment; hence, this concurrence.