CITIBANK, N.A., by and thru its Resident Vice President, T. J. BEAMES, Appellant, v. **EDWIN K. RENNIE**, Appellee.

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

Heard: April 2 & 3, 1984. Decided: May 11, 1984.

1. A contention that the appellant has accepted benefit under the judgment and is therefore precluded from appealing must be reasonably made, as by a motion to dismiss the appeal.

2. Any act on the part of a party by which he impliedly recognizes the validity of a judgment against him operates as a waiver of his right to appeal therefrom, or to bring error to reverse it, and clearly one who voluntarily acquiesces in, or ratifies a judgment against him cannot appeal from it.

3. As a general rule, all courts whose judgments are preserved in any species of record or memorial have the power and authority to make such amendments and corrections therein as truth and justice require and the rules of law permit, to the end that the judgment may express what was actually decided or intended.

4. It is not an irreversible error for a judge to amend his ruling if it is done at the term during which it was entered, and before the bill of exceptions have been approved and filed.

The appellee, an employee of the appellant, was accused of theft when his driver failed to deliver the amount of$85,000.00 which was to have been transported from Citibank (in Monrovia) to the National Bank of Liberia just a couple of blocks away. The appellee was implicated because his personal driver and private car were used to effect the transportation of the funds, instead of the bank's car and driver as was usually done. The Criminal Investigation Division (C.I.D.) of the Liberia National Police investigated the case and determined that the appellee was not involved. However, the appellant, maintaining that it no longer had confidence in the appellee, gave him a new assignment which the appellant refused, claiming that it was a demotion. Consequently, the appellee was retired and placed on a pension, after having worked for the appellant for nearly 24 years. The appellee thereupon filed a complaint with the Ministry of Labour for illegal retirement.

Upon investigation, the hearing officer found that the retirement was illegal since the appellee was not allowed to reach the full retirement term, and ordered that the appellee receive his normal or regular salary for the unfinished term prior to pension (exclusive of normal benefits), or be paid off in like manner as someone made redundant by the appellant. The Board of Appeals reversed the ruling of the hearing officer, stating that there was no evidence of forced retirement. The judge of the civil law court for the

Sixth Judicial Circuit reversed the decision of the Board. Before an appeal was perfected, the lower court judge amended his ruling to correct errors in his court's calculation of the appellee's pension benefits. Citibank, in its appeal to the Supreme Court, excepted inter alia to the fact that the judge amended his ruling after exceptions were noted and an appeal was announced. Judgment was affirmed with modification.

H Varney G. Sherman appeared for appellant. J. Emmanuel Berry appeared for appellee.

MR. JUSTICE MORRIS delivered the opinion of the Court.

The appellee, as the record reveals, served the appellant bank for twenty-four consecutive years, less two months, when he wasretired and pensioned effective March 13, 1976 to correspond with his twenty-fourth anniversary with the appellant bank. The letter of January 19, 1976 informing the appellee of the effective date of the commencement of his pension benefits also notified the appellee that he would receive his salary for the two remaining months to make the number of his years of service twenty four years. The appellee's retirement stemmed from the

$85,000.00 theft case involving the appellee's driver and his car. It is said that appellee was responsible to transfer $85,000.00 from the appellant bank to the National Bank of Liberia and, instead of using the appellant bank's car; he used his own car and driver. He was turned over to the C.I.D. as a possible suspect but was later cleared by the director of that agency after investigation. Appellant, on the other hand, maintained that appellee could not retain the same position because it has lost confidence in him. The appellee was given another assignment, but he contended that his new assignment was a demotion. He was later retired and pensioned. The appellee, not being satisfied with the procedure adopted in retiring him, filed a complaint with the Ministry of Labour for illegal retirement.

The hearing officer who conducted the investigation ruled that the appellee's retirement was illegal, for he was not permitted to complete his legal term for pension. Therefore, he ruled that the appellee should be paid his normal salary in lieu of such unexpired term exclusive of the normal benefits, or be paid off under the same condition as his fellow employees who were declared redundant. The Board of General Appeals reversed the ruling of the hearing officer because it held that there was no evidence of force retirement. The judge of the Civil Law Court of the Sixth Judicial Circuit reversed the ruling of the Board of General Appeals. Appellant has processed his appeal to this Court for appellate review.

At the call of the case for hearing, counsel for appellant informed the court that he had filed information which he requested the Court to consolidate with the appeal. The information, in substance, states that while this appeal was pending the respondent/appellee had consistently and continuously collected and utilized his retirement benefits up to and including April,

1983, a copy of the receipt was attached as evidence. These acts of respondent/appellee not only confirmed that he was never forced to retire, but said acts and conduct also estopped and forever barred him from denying that his early retirement was voluntary. The informant also maintained in count seven that these acts and conduct of the respondent/appellee rendered the appeal before this court moot since the issues of force retirement have ceased to exist and there no longer exists any justiciable controversy. Counsel for respondent/appellee raised no objection to the consolidation of the information and the appeal. He argued that the informant/appellant, having appealed from the final judgment of the lower court, and while the appeal is pending, has elected to make partial satisfaction of the judgment from which it has appealed unknown to counsel for respondent/ appellee. Therefore, the appellant is barred from contesting the appeal, and must be ordered to comply with the judgment of the lower court. Counsel for informant quoted 4 AM. JUR. 2d, Appeal and Error, §§ 235, 236 and 250 to support his contention. We shall quote only section 250, page 745, which we feel is pertinent to the determination of this case for the benefit of this opinion:

"A party who accepts an award or legal advantage under an order, judgment, or decree, ordinarily waives his right to any such review of the adjudication as may again put in issue his right to the benefit which he has accepted. This is so even though the judgment, decree, or order may have been generally unfavorable to the appellant; By enforcing a judgment or decree by execution or otherwise, a party clearly waives his right to appeal unless the decree is such or the circumstances such that there is no inconsistency between such enforcement and the appeal. However, it is apparently not material whether payment is coerced by execution or simply accepted by the successful party. A mere tender of the benefits of a judgment, which is refused, does not operate as an estoppel.

Whether a party who accepted benefits under a judgment actually intended to waive his right to appeal is, as a general rule, immaterial.

A contention that the appellant has accepted benefit under the judgment and is therefore precluded from appealing must be seasonably made, as by a motion to dismiss the appeal."

We also recite section 242 from the same source:

"It has been broadly asserted that any act on the part of a party by which he impliedly recognizes the validity of a judgment against him operates as a waiver of his right to appeal therefrom, or to bring error to reverse it, and clearly one who voluntarily acquiesces in or ratifies a judgment against him cannot appeal from it. The acquiescence which prohibits an appeal, or destroys it when taken, is the doing or giving of the thing which the decree commands to be done or given...."

According to informant's legal citation supra, the contention that appellee had received the benefit of the judgment, and was therefore precluded from appealing, must be made by a motion to dismiss the appeal. In the case at bar, it is the appellant who is contending that we should not consider the appeal because no controversy any longer

exists. Yet, it did not withdraw its appeal, and there is no motion to dismiss the appeal before us. How does it expect us to dispose of the appeal since the respondent/appellee is insisting on the hearing of the appeal? The Court has observed that the informant has partly done or given the thing (money) which the decree or judgment commands to be done or given, whilst the respondent likewise has accepted part of the award or legal advantage under the decree or judgment. However, we do not agree with the informant that we should dispose of the appeal duly perfected by either dismissing it, or ordering it stricken from the docket, or otherwise through the office of this information, there being no withdrawal of the appeal, or a motion to dismiss the appeal, or a showing that the controversy has been mutually or finally settled between the parties. The information is therefore denied.

Count one of the bill of exceptions which states that the judge erred because he reserved ruling for Friday, July 22, 1977 but instead rendered said judgment on July 21, 1977 was impliedly waived by the appellant, because it was not raised in the brief. Besides, the judge did appoint an attorney to take the ruling on behalf of the appellant and the court-appointed attorney did enter exception and announced an appeal to this court. Therefore, appellant was not prejudiced by this act of the judge. Count one of the bill of exception is not sustained.

Appellant contends in count two of the bill of exceptions that it is reversible error for a trial judge, after having entered final judgment, to which exceptions are taken and an appeal announced, to resume jurisdiction over the case and the parties without notice to said parties or a submission from either of the parties, to materially alter or amend said final judgment. Appellant cited the cases White v. Russell and Ware, 3 LLR 198 (1930) and King v. The International Trust Company of Liberia,20 LLR 438 (1971). In the King v. The International Trust Company of Liberia case, the judge, after giving final judgment, approved the bill of exceptions which was duly filed. Hence the lower court had lost its jurisdiction by the approval of the bill of exceptions. In the case at bar, no bill of exceptions was approved and filed. In the White v. Ware case, after exception was taken and appeal announced, the judge enforced its ruling by incarcerating the defendant until the judgment was satisfied. Therefore, neither case aforementioned is analogous to the current case. A judge may amend his ruling during term time.

In support of our holding that a court may amend its judgment during term time, we quote the following authorities:

"As a general rule, all courts whose judgments are pre- served in any species of record or memorial has the power and authority to make such amendments and corrections therein as truth and justice require, and the rules of law permit, to the end that the judgment may express what was actually decided or intended. This power is inherent and independent of statutes, but the power to amend and correct judgments is very largely regulated by statute in the different jurisdictions." 49 C. J. S., Judgments, § 236.

It was one of the earliest doctrines of the common law that the record of a court might be changed or amended at any time during the same term of the court in which a

judgment was rendered, and now as then the general power of a court of record over its own judgments, orders, and decrees during the existence of the term at which they are first made is undeniable. But it is also a rule of the common law that the jurisdiction of a court over its decrees terminates with the close of the term at which they were rendered, and a judgment may be amended or corrected only at the term during which it was entered, and not thereafter" 15·R C. L., § 128, at 677.

Count two of the bill of exceptions is overruled.

Appellant maintain in count three of the bill of exceptions that the judge erred in referring to a letter dated 317177 for it was not possible for such a document to have formed a part of the record since the investigation was conducted in 1976. Whilst this is true, yet the appellee in answering to a question on the cross said his salary was $7,085.00 in 1975. Here is the question, the answer and the statement made by the appellant:

"Q Have you been receiving the pension benefits due you since your retirement, either actually or constructively?

"A. The bank retired me and in their letter they say your pension is so much but we are taking so much against our loan. The difference of$87.93 monthly, I have been receiving with the hope of putting my records together. For instance, $7,085 00 was allocated for my gross salary, 1975, under Mr. Boyle's signature, but my pension benefit stated $6,988.89 for that year. Whether it is the correct benefit or not, I do not know.

"At this stage management serves notice that it will voluntarily investigate any discrepancies in the amount of gross salary used in calculating Mr. Rennie's pension and correct same if necessary."

There is no showing in the record that appellant made any voluntary investigation to ascertain if there were any discrepancies in the amount of gross salary used in calculating appellee pension benefit according to its own promise. Therefore, the unrebutted statement that his gross salary allocated in 1975 was $7,085.00 prevails. The $6,988.89 used in calculating his pension benefit must yield to the $7,085.00 as the gross salary for 1975. Regarding the $1,628.84 also stated as his salary for two months and seventeen days, by our calculation, amounts to $7,615.36 per annum representing the gross salary for 1976. The gross salaries for the five-year period are as follows:

1972	$4,760.40
1973	$4,997.32
1974	$5,897.32
1975	$7,085.00
1976	$7.615.36

$30,355.00

The five-year average is $6,071.08 and 40% of the five-year average is $2,428.43. One-twelfth of $2,428.43 is $202.37, which should be the monthly pension benefit for the appellee.

The judge also awarded Christmas bonus for 1976-1977, and cited the Labor Law of Liberia, page 85, sections 2501-2502. Recourse to these sections, we find no provision for Christmas bonus as a matter of right, and therefore said award is not conceded or affirmed. Appellee is entitled to vacation or annual leave pay as provided for in section 905 (3), page 58 of the Labor Law of Liberia in the amount of$634.61, computed from the $1,628.84 representing his salary for two months and 17 days in 1976 (see letter of January 19, 1976). Since appellee was paid for two months (January to March 13, 1976) to correspond with his 24th anniversary with the appellant bank, it was but fair to also pay him his salary· for the remaining one year, 1976-1977, March 13, to correspond with his 25th anniversary which would have made him eligible for pension. He is entitled to receive his one year pay which is $7,615 36 (last gross annual salary for 1976 computed from $1,628.84 as 2 months and 17 days' pay) minus the total amount he has received as pension benefits for March 13, 1976 to March 13, 1977. Appellee should also enjoy all benefits and honors bestowed upon employees who are retired after twenty-five years of service. The Court observed that the amendment made by the judge was for the purpose of correcting the errors made by the lower court in calculating the pension benefits. For example, $7,085.00 was used as the last annual gross salary for 1976, when the appellant itself stated $1,628.84 as the appellee's salary for two months and seventeen days in 1976, which by our calculation is $7,615.36 per annum. The judge calculated the pension benefit at 14% of the five-year average salary instead of 40% as the law requires. Therefore, the judge was correct in amending his judgment. Accordingly, counts three, five and six of the bill of exceptions are overruled and count four is sustained.

Counts seven and eight of the bill of exceptions are not sustained because the principal issues relating to appellee's retirement were not denied by appellant, except that the wit- nesses for the appellant, in person of Mr. H. Barley and Counse11or Christian Maxwell, legal counsel for appellant, testified that the appellee requested for retirement orally. The letter of Counsellor Richard A Diggs speaks to the contrary. Although the witnesses maintained in their testimonies that the appellee, after a meeting with Counsellors Richard Diggs and Christian Max well, considered the matter resolved, there is no documentary evidence to this effect. Hence the letter of Counsellor Richard Diggs prevails. Count nine of the bill of exceptions is overruled, for the principle of estoppel will not lie, as earlier ruled upon in the bill of information which was first decided in this selfsame opinion.

Finally, there is no cause for the invocation of the legal principle of "unfavorable inference" and therefore we did not belabor ourselves to pass upon same. If Counsellor Richard A. Diggs had written a letter on behalf of the appellee and there was allegedly a meeting held, at which a decision was made as to appellee's voluntary early retirement,

same should have been reduced to writing to form part of the record in this case. Otherwise, Counsellor Richard Diggs letter still stands.

In view of what we have said and the laws cited, coupled with surrounding facts and circumstances, we hold, and it is our considered opinion, that the judgment of the lower court, as amended and modified by this Court be, and the same is hereby affirmed. And it is so ordered.

Judgment affirmed, with modification.