

**ISAAC DOPOE**, Plaintiff/Appellant, v. **CITY SUPERMARKET**, Defendant/Appellee.

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

Heard: November 9, 1986. Decided: January 23, 1987.

1. Prior to the review of any case on appeal to the Supreme Court, several procedural legal steps are required to be performed, viz: (a) The filing and disposition of a motion for a new trial; (b) the rendition of final judgment; (c) the filing of an approved bill of exceptions; (d) the filing of an approved appeal bond; and (e) the issuance and service of a notice of completion of appeal.
2. Cases on appeal to the Supreme Court are heard and disposed of based upon the unsuccessful party's bill of exceptions and the records of the lower court.
3. Under the rule of pleadings, where a motion is filed during the morning hours of the court and not withdrawn, the hearing of a motion filed thereafter in the afternoon hours of the court is irregular and hence error by the trial court.
4. A trial judge acts in conformity with the statute and is not deemed to have erred in granting a motion for judgment during trial, where said motion is spread upon the minutes of the court.
5. When a motion for a directed verdict is made during trial and granted by the court, it is not erroneous for the trial judge to direct the empaneled jury as to what verdict to hand down or arrive at.
6. It is not error for the trial judge, in his charge to the empaneled jury to instruct them to find for the defendant and not for the plaintiff, where such instructions are based on the evidence. However, the empaneled jury, being judges of the facts, are not bound to obey the instructions of the trial judge.
7. The granting or denial of a motion for a new trial rests in the sole discretion of the trial judge and no error is attributable or can be assigned to a trial judge who, in the exercise of that sound discretion, makes a ruling or decision thereon; and the appellant court has no right to review the exercise of that discretion unless it appears that it has been abused to the prejudice of the aggrieved party.
8. A motion for a new trial may be granted in the interest of transparent justice as where the verdict of the empaneled jury is contrary to the weight of the evidence.
9. It is legally permissible for an adverse party such as a defendant to move the court for a judgment on the ground that the allegations laid and contained in the plaintiff's complaint

were not testified to or proved. Such motion, however, does not deprive the moving party from the production of evidence.

10. Hearsay evidence is not the best evidence to be admissible in proof of the allegations set forth in a complaint.

11. In civil cases, proof is established by a preponderance of the evidence.

12. A plaintiff claiming damages by virtue of allegations of illegal arrest, detention and torturous pains to his body, has the burden to produce evidence in proof thereof, failing which the defendant has the right to apply to the court for a directed verdict.

13. A motion for judgment (a directed verdict) does not waive the right to trial by jury or precludes a party from presenting further evidence, even when it is made by all parties; but if the court grants the motion for a directed verdict in an action tried by a jury, it shall direct the jury what verdict to render.

14. There is a marked legal difference between special and general damages: When the amount of damages is specifically named, this constitutes special damages which must be alleged and proved at the trial; when the amount is omitted in the prayer and is alleged to be the result of mental or torturous pains and anguish, its is referred to as general damages, and may be awarded by the trial jury as determined by its best judgment.

15. It is not sufficient to merely allege an injury and claim damages therefor; instead, the plaintiff must prove the injury complained of and show that he has been damaged to a sum commensurate with the amount claimed as damages.

The appellant, who was employed as a night watchman with the appellee, was investigated, interrogated, arrested and subsequently released by the Criminal Investigation Division (C.I.D.), an criminal agency of the Government of Liberia, the foregoing the result of a report lodged with that agency by the appellee, following the burglary of its premises in which it sustained a loss of \$25,000.00. When the appellant was released from detention, he requested the appellee to reinstate him to his former position with the appellee. The appellee refused the request, noting that as its premises had been burglarized when the appellant was on duty as a night watchman, the object of his employment had be undermined, and that it was therefore unnecessary for appellant's services to be continued with the appellee. The appellant thereafter commenced an action of damages against the appellee, claiming general damages of \$250,000.00 for his alleged illegal arrest and detention, and the resulting alleged torturous pains to his body.

Following appellant's presentation and resting of evidence, and on appellee's motion for a directed verdict, which was granted by the trial court, the judge, in his charged to the jury, directed that they bring in a verdict for the defendant/appellee and not the plaintiff/appellant. In obedience to the judge's instructions, the jury returned a verdict of not

liable in favour of the appellee. From this judgment, plaintiff/appellant appealed to the Supreme Court for a final review.

On a review of the case, the Supreme Court ruled that the trial court did not err in granting the appellee's motion for a directed verdict. The Court noted that mere allegations do not constitute proof and that under the law, the plaintiff/appellant had the burden of proving or substantiating the allegations made in the complaint. The appellant, it said, had failed to meet that burden of proof, which in civil cases is a preponderance of the evidence. The evidence, the Court held, did not indicate that the arrest and detention of the appellant were caused by or at the instance of the appellee; rather, it said, it was the C.I.D. that had, on its own accord, interrogated, arrested and detained the appellant. The Court observed that under such circumstances, where the plaintiff had failed in meeting the burden of proof, the defendant had the right, granted by statute, to move the trial court for a directed verdict. The Court reasoned that the once the trial court had granted the motion for the directed verdict, it was not error for the judge, in his charge to the jury, to instruct them to bring back a verdict in favor of the appellee, although the jury was not duty bound to obey those instructions.

With respect to the appellant's challenge to the trial judge's denial of his motion for a new trial, the Court noted that the decision whether to grant or deny a motion for a new trial is solely within the discretion of the trial court judge, and that in the absence of an abuse, the Supreme Court did not have the right to review the exercise of that discretion. The Court therefore *affirmed* the judgment of the trial court holding the appellee not liable to the appellant.

*E. Winfred Smallwood represented the plaintiff/appellant.* The P. Amos George Law Firm represented defendant/ appellee.

MR. JUSTICE DENNIS delivered the opinion of the Court.

The legal and factual controversy, as are couched in the written pleadings in this case — being the complaint, the answer and the reply — and ruled to trial, reveal that the plaintiff/appellant was employed by the defendant/appellee on the 3rd day of January 1969 in the position of a night watchman. In that capacity, the appellant performed services for the appellee up to and including the 28th of July 1979, a period of more than ten years.

Unfortunately, defendant/appellee's place of business was burglarized, and the defendant/appellee was said to have sustained a loss of about \$25,000.00 in cash and other commodities or goods. Growing out of this act, the appellee made representation to the Government of Liberia for the appropriate action. Plaintiff/appellant was the night watchman at the time of the incident of the alleged burglary.

The aid of the Criminal Investigation Division (C.I.D.), an agency of the Liberia National Police, a security apparatus of the Government of Liberia, was requested to visit the place

where the burglary had taken place and to investigate the matter. In the process of the investigation, the night watchman was interrogated, investigated and subsequently detained by the C.I.D.

The defendant/appellee did not accuse plaintiff/appellant of the alleged burglary; rather, it was the C.I.D. of the Government that had him interrogated, detained and released. Thereafter, the appellant approached the defendant/appellee to be reinstated, but the request was rejected by the defendant/ appellee on the ground that the purpose for which the plaintiff/ appellant's was employed was to keep a diligent and watchful care of defendant/appellee's premises; that the premises had been burglarized; and that the object of the appellant's employment with the appellee had thereby been undermined, making it unnecessary to continue plaintiff/appellant's services.

The foregoing is a cursory narrative of the facts which formed the basis for the plaintiff/appellant's dismissal and which resulted in the filing of this action of damages by him on the 21st day of December 1979 in the Civil Law Court, Sixth Judicial Circuit, Montserrado County.

In his complaint, the plaintiff/appellant averred, among other things, that the defendant/appellee "falsely, maliciously, and wickedly accused him of having committed the alleged crime of burglary in his capacity as night watchman". This allegation was denied in defendant/ appellee's answer as being untrue.

The written pleadings, which comprised legal and factual issues in the complaint, the answer and the reply, having rested, the issues of law, which should precede the hearing on the issues of facts, were heard and disposed of on the 11th of April A. D. 1981. For reliance, see *Johnson v. Dorsla*, 13 LLR 378 (1959). In his ruling on the law issues, the trial judge ruled the case to trial by jury on the complaint, together with counts one and three of the answer, and one, two, four, and eight of the reply.

Mere allegations such as are contained in the written pleadings and which are ruled to a jury trial, are not proof. The burden of proving those allegations rests with the plaintiff or the party maintaining the affirmative evidence, whether *pro et con*, and must be produced at the trial. In the instant case, the averments of the written pleadings ruled to jury trial had to be testified to by the plaintiff/appellant and his witnesses, and thereafter negated or denied by the defendant/appellee and his witnesses since in civil cases all defenses relied upon must be first pleaded and thereafter testified to. Civil Procedure Law, Rev. Code 1: 25.5; *Massaquoi v. Lowndes*, 4 LLR 260 (1935); *Bey-Solow v. Gordon*, 2 LLR 95 (1913). This Court has held that "unless excused upon statutory, or other legal grounds, witnesses should appear at a trial to be examined and cross examined. *Clark v. Barbour*, 2 LLR 15 (1909). Indeed, this Court has in the past noted two basic points regarding proof:

1. That courts will only decide upon issues joined between the parties, specially set forth in their pleadings
2. That matter of defense not set up in defendant's plea shall not be allowed.

Moreover, we have said in times past that prior to the review of any case on appeal by this Court of *denier resort*, there are several procedural legal steps or factors incidental and necessarily required to be performed by the appealing party. They are:

- a) The filing and disposition of a motion for new trial.
- b) The rendition of final judgment.
- c) The filing of an approved bill of exceptions.
- d) The filing of an approved appeal bond.
- e) The issuance and service of the notice of completion of an appeal.

During the March Term of this Court 1986, an amended motion to dismiss the appeal in this case was filed, heard and denied, and the case ordered proceeded with on its merits. *Dopoe v. City Supermarket*, 34 LLR 215 (1986), decided July 31, 1986.

This Court has held in numerous opinions that cases on appeal to this Court are heard and disposed of based upon the unsuccessful party's bill of exceptions and the records of the lower court. *Bryant v. African Produce Company*, 7 LLR 93 (1940).

In his five-count bill of exceptions, plaintiff/appellant raised substantially the below issues.

1. In count one of the bill of exceptions, plaintiff/appellant complained that a reversible error was committed by the trial judge when, on the morning of January 20, 1986 he granted the appellee's motion for judgment, but later in the afternoon denied a second motion based upon the self same facts, without rescinding, modifying or reversing the ruling of the former motion passed upon in the morning.
2. In count two of the bill of exceptions appellant complained that the trial judge committed a prejudicial error by asserting in his charge to the jury the following: "I therefore charge you to go to your room of deliberation and return a verdict finding for the defendant and not the plaintiff."
3. In count three of the bill of exceptions, plaintiff/ appellant further complained that the trial judge committed another reversible and prejudicial error by the denial of appellant's motion for a new trial on the ground that the motion was not supported by the evidence adduced at the trial. Indeed, appellant asserted that the trial judge had denied the trial jury of

the right to examine and consider the evidence under oath in open court. Thus, he said, the jury had acted only upon the order of the trial judge.

4. In count four of the bill of exceptions, the plaintiff/ appellant submitted for the consideration of this Court an alleged additional error committed by the trial judge, said to be his denial of plaintiff's motion for a new trial. The trial judge is alleged to have relied on section 26.4 of 1 LCLR as the legal authority for the denial of the said motion. That section, plaintiff/appellant said, referred to a directed verdict but provides instead that the court may set aside a verdict after a jury had handed down the same, if the court determined that the verdict was contrary to the weight of evidence or the instructions of the court.

5. Plaintiff/appellant further averred in count five of his bill of exceptions that the trial judge committed another prejudicial and reversible error by his rendition of final judgment, confirming and affirming the directed verdict which was neither supported by the evidence adduced at the trial nor in accordance with the Civil Procedure Law, Rev. Code 1: 26.4.

In resolving count one of the bill of exceptions which alleged that error was committed by the trial judge when he passed upon two similar motions for judgment without first modifying, rescinding or reversing the ruling of the former motion which he granted before proceeding to deny the latter motion. According to this contention, the trial judge had granted one motion during the morning hours, but had denied a very similar motion in the afternoon without first rescinding the earlier decision. It is well to refer to the statute controlling the withdrawal and refile of pleadings, which includes motions. Under the rule of pleadings, the former motion having been heard during the morning hours of court and not having been withdrawn, the filing and hearing of the latter motion in the afternoon was irregular. Hence, the trial judge erred in this respect. Count one of the bill of exceptions is therefore sustained.

With regards to count two of the bill of exceptions, the records, including the judge's ruling which is found on sheet seven of the 25th day's jury session, Wednesday, January 20, 1986, reveal that a written motion for judgment during trial was filed but that the same was not entertained by the court on the legal ground that a copy of the motion was not served on the adverse party at least four hours before the said motion was called for hearing. The court cited for reliance Rule 8 of the Rev. Rules of Court of 1972.

During the trial of the case, a motion for judgment during trial was spread on the records which was granted by court. See sheet eight twenty fifth days jury session Wednesday January 20, A. D. 1982. In granting the motion, the court relied on Rev. Code I: 26.2. The ruling of the trial judge in this respect, being in conformity with the relevant statute and the evidence, the same is hereby upheld.

When a motion for a directed verdict is made during the trial and granted by court, as in the instant case and circumstance, it is not erroneous for the trial judge to direct the empaneled jury as to what verdict to hand down or arrive at. Hence, count two of the bill of exceptions characterizing the judge's action as erroneous, is overruled. Civil Procedure Law, Rev. Code I: 26.2

Further addressing count two of the bill of exceptions which asserts that the trial judge erred when, in his charge he instructed the empaneled jury to find for the defendant and not for the plaintiff, we hold that the trial judge based his instructions on the evidence. However, the empaneled jury, being judges of the facts, were not duty bound to obey the instructions of the trial judge. *Board of Trustees of Monrovia College and Industrial Training School v. Coleman*, 3 LLR 404 (1933).

In count three of the bill of exceptions, plaintiff/appellant further complained that the trial judge erred in denying plaintiffs motion for a new trial. This Court has held on manifold occasions that the granting or denial of a motion for a new trial rests in the sound discretion of the trial judge, and that no error is attributable or can be assigned to the trial judge who, in the exercise of his sound discretion, makes a ruling or decision thereon. Moreover, as the granting or refusal of a new trial, both in criminal and in civil cases, is generally said to rest in the sound discretion of the trial court, the appellate Court has no right to review the exercise of that discretion unless it appears that it has been abused to the prejudice of defendant. Accordingly, the trial court's ruling denying the motion for a new trial, not being a fatal error in the disposition thereof, count three of the bill of exceptions is therefore overruled. *Killix v. R.L.*, 8 LLR 173 (1943).

With reference to count four of plaintiffs bill of exceptions which accused the trial judge of still another error in the disposition and denial of plaintiffs motion for new trial, our opinion, given immediately above also applies thereto. Of course, this conclusion is subject to the principle that a motion for new trial may be granted in the interest of transparent justice as where the verdict of the empaneled jury is contrary to the weight of evidence. However, where the granting of such a motion would be against transparent justice, the same should not be granted. Civil Procedure Law, Rev. Code 1: 26.4.

Plaintiff complained in count five of his bill of exceptions that the trial judge erred when he rendered final judgment confirming and affirming the directed verdict of the empaneled jury which, appellant said, was contrary to the evidence adduced at the trial as well as the law controlling such situation.

Under our law, the burden of proving the material allegations of the complaint rested on the plaintiff. The plaintiff/ appellant and his witnesses having testified, and the plaintiff, having rested evidence, the defendant/appellee moved the court on the minutes or records for judgment during the trial. It is a generally accepted legal principle that an adverse party such

as the defendant may be allowed to move the court for a judgment during trial on the ground that the allegations laid and contained in plaintiff's complaint were not testified to or proved. Such a motion does not deprive the moving party from the production of evidence.

From a review and scrutiny of the evidence of the plaintiff/ appellant, we are of the opinion that the same was hearsay evidence, and as such was not the best evidence admissible in proof of the allegations laid in the complaint. In civil cases, proof is established by a preponderance of evidence, which is the perfection of evidence. Civil Procedure Law, Rev. Code 1: 25.7, *Hearsay; idem*, § 25.6, *Best evidence*.

The averments in the five-count complaint, as well as the prayer by the plaintiff/appellant for an award of general damages in the sum of \$250,000.00 by the empaneled jury because of plaintiff/appellant's alleged illegal arrest and detention, and the alleged torturous pains to his body, created on the plaintiff/appellant the burden to produce evidence in proof thereof. And where the plaintiff/appellant failed to meet such burden of proof, the defendant/appellee had the right to apply to the court for a directed verdict. That motion was granted by the trial judge and the empaneled jury was so charged. Under the Civil Procedure Law, Rev. Code 1: 26.2, the motion for judgment (a directed verdict) does not waive the right to trial by jury or preclude a party from presenting further evidence, even when the motion is made by all parties. But if the court grants the motion for a directed verdict in an action tried by a jury, as in the instant case, it shall direct the jury what verdict to render.

Although the plaintiff/appellant prayed for general damages in the sum of \$250,000.00, ostensibly for the alleged torturous pains suffered by him, the jury in its verdict, dated January 20, A. D. 1982, states that "after a careful consideration of the evidence adduced at the trial of said case, we do unanimously agree that the defendant is not liable in the action of damages", indicating thereby that the plaintiff had failed to meet the burden of proof.

There is a marked legal difference between special and general damages. When the amount of damages is specifically named, this constitutes special damages which must both be alleged and proved at the trial. On the other hand, in general damages the amount is omitted from the prayer and is alleged to be the result of mental or torturous pains and anguish. In such a case, the empaneled or trial jury may award such amount as in its best judgment it deems reasonable and just. *Franco-Liberian Transport Company et. al v. Bettie*, 13 LLR 318 (1958); *Firestone Plantation Company v. Greaves*, 9 LLR 250 (1946).

Again, in *Iota v. Noelke*, 6 LLR 329 (1939), we find the following: "According to the laws of this country, it is not sufficient to merely allege an injury and claim damages therefor, but the plaintiff must prove that injury complained of and that he has been damaged to a sum commensurate with the amount claimed as damages."



It follows therefore as a reasonable deduction and in our considered opinion that the material averments of the complaint were not testified to, and hence not proven. These include the amount of \$250,000.00 prayed for as general damages, which was not specifically pleaded nor proved at the trial. The trial judge's denial of the motion for a new trial, his affirmance of the verdict of the empaneled jury finding the defendant not liable, and his rendition of final judgment should be and the same are hereby upheld and confirmed by this appellate Court. Costs are hereby ruled against the plaintiff/ appellant.

*Judgment affirmed.*