

HAFEZ JAWHARY, Appellant, v. ALHAJI SAIBU WAGGAY, Appellee.

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

Heard: March 20, 1985. Decided: June 20, 1985.

1. Where the answer and reply are withdrawn and amended, the trial court must hear and rule on the issues of law raised in such amended pleadings, and not rule on the issues of law raised in the original pleadings.
2. It is an elementary principle of law in this jurisdiction that what is not legally done is not done at all.
3. The amendment of pleadings in a court has the effect of automatically withdrawing and substituting the original pleadings; hence, the original pleadings have no legal standing or effect on the case in court or to form the basis for a determination. Rev. Code 1 :9.10.
4. The Supreme Court cannot assume the role of a trial court to dispose of issues of law raised in the pleadings; it can only review issues ruled upon by the trial court and excepted to by a party.

In an action of ejectment instituted in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, by appellant against appellee, and following the exchange of initial pleadings, the appellee withdrew its original answer and filed an amended answer. This necessitated the withdrawal of the reply by appellant and the filing of an amended reply. In disposing of the law issues, however, the trial judge passed upon the issues as raised in the original answer and reply, and relying thereon dismissed appellant's complaint. From this ruling an appeal was taken to the Supreme Court.

In arguing before the Supreme Court to uphold the trial judge's dismissal of appellant's complaint, the appellee contended that the ruling of the trial judge worked no harm to the appellant since the issue upon which the judge based the dismissal of appellant's complaint was also raised in the amended answer, although in a different count.

The Supreme Court disagreed and rejected the contention. The Court held that the issues

of law, as raised in the amended answer and the amended reply, should have been heard by the trial judge, and that he was legally obligated to rule on them. To revert to the original pleadings as a basis for his ruling was error warranting reversal of the ruling, the Court said. The *ruling* was therefore *reversed* and the case remanded for a new disposition of the law issues.

Robert G. W. Azango and *Roger K. Martin* appeared for the appellant. *Joseph C. Williamson* and *Joseph Kennedy* appeared for the appellee.

MR. JUSTICE SMITH delivered the opinion of the Court.

This appeal was taken from the ruling of the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, dismissing plaintiff's action of ejectment on the issues of law.

The trial records reveal, and counsel for the parties agreeably argued, that when the action of ejectment was filed, the defendant, now appellee before this Court, filed a seven-count answer. In count six thereof, the defendant raised the issue of wrong form of action, stating in substance that since the transaction out of which the action of ejectment grew was one involving a contract of sale, that is, the conveying of real property and the execution of a bill of sale, where there was a default in payment, the action should have been an action of debt and not one of ejectment which is a possessory action maintainable only by one who possesses title. The defendant also asserted in the said count that plaintiff having executed a bill of sale, he had parted with title, and hence was without title and authority to bring an action of ejectment without first cancelling the contract of sale, if he felt that the contract had been breached. Alternatively, the defendant averred that the plaintiff should have sued for debt to recover the alleged amount by which the defendant had defaulted.

However, before the issues of law could be disposed of by the trial court, defendant withdrew his answer and filed an amended answer. Whereupon the plaintiff, who had already filed a reply, also had to file an amended reply.

The trial judge, in disposing of the legal issues, elected to take cognizant of the defendant's answer which had been withdrawn and put aside completely the amended answer and the amended reply. The trial judge therefore based his ruling on count six of the answer which had been withdrawn without any mention of the amended pleadings. Here is what the judge said in his said ruling:

"... As well pleaded in count six of the defendant's answer, the proper action in this case should be debt by attachment and for the fixture and furniture as well as the equipment in the hotel or by a replevin as the full price of the hotel has been paid by the defendant.

In view of the foregoing, count six of the defendant's answer is sufficient in itself to overshadow plaintiff's complaint and the reply and this court cannot but dismiss the plaintiff's action without prejudice. And it is hereby so ordered."

Counsel for appellee conceded in his argument that the trial judge had based his said ruling on the answer which had been withdrawn, but contended that this was inadvertently done. This, according to counsel for appellee, did no harm to the appellant, especially so when the same issue of wrong form of action was raised in count four of the amended answer.

We are not in agreement with the argument of counsel for appellee that the dismissal of appellant's action on the pleadings which had been withdrawn and were therefore no longer in court, did no harm to the appellant. We are of the opinion that the issues of law raised in the amended answer and the amended reply should have been heard by the trial judge and ruling thereon entered, but not to enter ruling on the withdrawn answer. By this procedure adopted by the trial judge, it cannot be said that the law issues raised in the amended pleadings were ever disposed of by the trial court.

It is an elementary principle of law that what is not legally done is not done at all. The issues as raised in the amended pleadings, that is, the amended answer and the amended reply, were the only issues before court to be disposed of, with reference to the counts in which they were raised, and not those contained in count six of the answer which had been withdrawn. The amendment of pleadings in court automatically withdraws and substitutes the original pleadings amended and hence the original pleadings have no legal standing or effect on the case in court to form the basis of a determination. See for reliance Civil Procedure Law, Rev. Code 1 :9.10, *Amended Pleadings*.

This Court cannot assume the role of a trial court to dispose of the issues of law raised in the amended pleadings; we can only review issues ruled upon by the court below and excepted to by the aggrieved party. It having been shown that the trial judge based his ruling on the pleadings which had been withdrawn and not on the pleadings before the court, we

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have no other alternative but to reverse the ruling and remand the case to the court below with instructions that it resumes jurisdiction of the case and proceed to dispose of the issues of law raised in the amended pleadings, to do so in preference to all other cases pending before the court, and to give a ruling according to the law controlling. Costs to abide final determination. And it is hereby so ordered

Ruling reversed; case remanded.