

**WILLIAM G. KNUCKLES, Appellant, v. THE LIBERIAN TRADING AND
DEVELOPMENT BANK, LTD. (TRADEVCO), by and thru its President et al., Corporate
Officers, Appellee.**

Knuckles v TRADEVCO Bank [2000] LRSC 6; 40 LLR 49 (2000) (12 May 2000)

MOTION TO DISMISS APPEAL FROM THE RULING OF THE CIRCUIT COURT FOR
THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: May 3, 2000. Decided: May 12, 2000

1. The Supreme Court need not pass on every issue raised by the parties in the pleadings; rather, the Court may address only those issues which have the tendency to decide the case and settle the controversy.
2. No appeal can be taken from an interlocutory ruling.
3. The requirements for the completion of an appeal are: (a) announcement of the taking of the appeal; (b) filing of the bill of exceptions within the time allowed by statute; (c) filing of an approved appeal bond as prescribed by law; and (d) service and filing of the notice of the completion of the appeal within the time stated by law.
4. A failure to comply with any of the requirements for an appeal is ground for the dismissal of the appeal.
5. An appeal may be dismissed by the trial court, on motion duly filed, for failure to file the bill of exceptions within the time prescribed by statute, and by the appellate court after due filing of the bill of exceptions for failure of the appellant to appear for hearing of the appeal, to file an approved appeal bond, or to serve a notice of the completion of the appeal as mandated by statute.
6. Where an appeal is taken from a ruling of the trial court granting a motion for a new trial without objections from the opposing party, and all of the statutory requirements for perfecting an appeal are complied with and the case placed on the Supreme Court docket, the appellee shall be deemed to have waived the right to object to the appeal and cannot therefore seek dismissal of the appeal in the Supreme Court on the ground that the ruling of the trial court was interlocutory.
7. Issues not raised in the trial court cannot be raised in, or passed upon for the first time by the Supreme Court, except where the issue challenges the subject matter jurisdiction of the Court.

Following a jury verdict awarding the appellant damages against the appellee, the latter file a motion for a new trial. The trial court granted the motion and an appeal was taken there-from by the appellant without any objections being interposed by the appellee. While the case was awaiting hearing by the Supreme Court, the appellee filed a motion to dismiss the same, asserting that the ruling from which the appeal was taken was interlocutory, that only a final

judgment could be appealed from, and that hence the appeal was not a proper matter for disposition by the Supreme Court.

In resisting the motion to dismiss, the appellant contended that although the trial court's ruling was captioned "ruling on a motion for new trial", it was in fact a final judgment since the trial judge had disposed of all of the issues presented in the case. The appellant also contended that the Supreme Court was without authority to dismiss his appeal as the jurisdictional steps prescribed by the appeal statute had been met and that the appellee had interposed no objections in the trial court to the announcement of the taking of the appeal.

The Supreme Court determined not to resolve the issue of whether the ruling from which the appeal was taken was inter-locutory but noted its agreement with the appellee that the appellant had waived the right to seek dismissal of the appeal since it had not objected to the taking of the appeal. The Court opined as a further basis for denial of the motion to dismiss that the appellant had taken all of the jurisdictional steps required by statute for the completion of an appeal, and that as such the appeal could not be dismissed on the ground that the ruling from which the appeal was taken was interlocutory. The Court therefore denied the motion and ordered the case re-docketed for hearing on the merits of the appeal.

Frederick A. B. Jayweh, Pei Edwin Gausi and Snonsio E. Nigba appeared for the appellant. Stephen B. Dunbar, Jr. of the Dunbar and Dunbar Law Firm appeared for the appellee.

MR. JUSTICE WRIGHT delivered the opinion of the Court.

The appellee/movant, Liberian Trading and Development Bank Ltd. (TRADEVCO), is defendant in an action of damages for wrong filed in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, by Plaintiff William G. Knuckles, appellant herein. Pleadings having rested, the law issues were disposed of and the case ruled to a jury trial on the merits. Following a full regular trial of the contested issues, the jury returned a verdict in favor of Appellant Knuckles, and found Appellee TRADEVCO liable to the appellant in the sum of US\$206,153.51 as special damages and US\$2,000,000.00 as general damages. Appellee TRADEVCO, being dissatisfied with this verdict, filed a motion for new trial, which was resisted, heard and granted. In the exhaustive October 7, 1999 ruling granting the motion, the trial judge set aside the jury's unanimous verdict of liable against appellee and ordered a new trial. The appellant excepted to the court's ruling granting a new trial and announced an appeal to the Supreme Court. The trial judge granted the appellant's appeal on the same day, October 7, 1999, without any resistance or objection from appellee in whose favor the new trial had been ordered. The appellant complied with all the jurisdictional steps and met all of the statutory requirements to qualify him for an appeal, thus legally removing the case from the trial court and properly placing it before the Supreme Court on appeal, as per the notice of completion of appeal served and dated November 20, 1999. Hence, this review.

In a seven-count motion dated March 9, 2000, Appellee TRADEVCO moved the Supreme Court to dismiss Appellant Knuckles' appeal. The essence of the appellee's motion is found in counts four (4) to seven (7), wherein it contended that the trial court's ruling on appellant's motion for new trial was interlocutory, and that under our law and in this jurisdiction an appeal can be taken only from a final judgment and not from an interlocutory ruling. Therefore, appellee said, this appeal cannot lie. The appellee relied on section 51.2 of the Civil Procedure Law, Revised Code 1, in support of its contention.

The appellant responded in a twelve-count resistance, wherein he prayed the Court to deny the motion and hear the appeal. In the resistance, the appellant contended that the motion to dismiss the appeal was baseless and without foundation in law because the appellant had met all of the statutory requirements for perfecting an appeal to place the case before the Supreme Court for review, and that in the absence of having violated said appeal statute, the appeal could not be dismissed. The appellant relied on sections 51.4 and 51.16 of the Civil Procedure Law to support his position.

Both parties respectively submitted two issues to the Court which, according to each of them, would decide the case. As to the appellee, these are the two issues:

"1. Whether or not His Honour Judge Kaba's ruling setting aside the verdict of the empaneled jury and grant-ing movant's motion for new trial is an interlocutory ruling or a final judgment?

"2. Whether or not an appeal to the Honourable Supreme Court is legally permissible from an interlocutory ruling?"

As to the appellant, these are the two issues:

"1. Whether the ruling of His Honour Judge Yussif D. Kaba, entered on October 7, 1999, granting a new trial is interlocutory or final given that he adjudged that the account which Mr. Knuckles maintained at TRA-DEVCO Bank was entirely a Liberian dollar account and not United States dollar account?

"2. Whether or not the Supreme Court may dismiss an ap-peat, where the appellant has complied with all of the statutory jurisdictional steps in perfecting the appeal?"

Both parties agree on the first question as being an issue for determination, that is to say, whether or not Judge Kaba's ruling was interlocutory or final? Appellee says that the ruling was interlocutory since it did not finally determine the ultimate rights of the parties, while the appellant says that it was final because the judge discussed and passed upon every issue in dispute between the parties, including the issue of what currency the appellant's account was maintained in, and left nothing more to be decided, even though the ruling was captioned and did award a new trial.

The Court must now decide whether Judge Kaba's ruling on appellee's motion for new trial was an interlocutory ruling or a final judgment. The answer to this question as to the character of the ruling would then lead to deciding whether or not an appeal would lie from such ruling.

However, appellant has advanced the question from a different angle; that is, where an appellant has fully complied with the appeal statute and completely perfected his appeal, can the Supreme Court dismiss the appeal. In the opinion of this Court, this question is fundamental and must first be resolved before the Court consider the character or nature of Judge Kaba's ruling. This Court has held in several cases that it need not pass on every single issue that is raised by the parties in the pleadings, but that it will address itself to only those issues which have the tendency to decide the dispute and settle the controversy before it. *Lamco J. V. Operating Company v. Verdier*, 26 LLR 445 (1978), text at 448; *Trokon International et al. v. Reeves, Johnson et al.*, 39 LLR 626 (1999).

We note that the appellant's appeal to this Court from Judge Kaba's ruling on the appellee's motion for new trial was granted and completely perfected without any objection or resistance from defendant. Both parties in their pleadings and briefs acknowledged and conceded this fact. Although the appeal is properly before the Supreme Court, yet the appellee has asked this Court to dismiss the appeal, contending only that the appeal grows out of an interlocutory ruling and that this violates our law.

It is common knowledge that no appeal would lie from an interlocutory ruling, but in the instant case, it has not yet been established that the ruling of Judge Kaba is in fact interlocutory. When the case was called for argument before this Bench, there was no application for consolidation nor did the Court order consolidation. Therefore, this Court has to first hear and pass on the motion and, depending on the outcome of the motion, it can proceed to decide the character of the ruling. Accordingly, the Court shall confine itself to only the second issue raised by the appellee, which is whether or not the Supreme Court can legally dismiss an appeal where the appellant has completed all the jurisdictional steps to properly vest the Supreme Court with jurisdiction over the appeal?

Appellant has relied on sections 51.4 and 51.16 of the Civil Procedure Law, found in 1 Liberian Code of Laws Revised, at pages 249 and 253, wherein it is provided as follows:

"Section 51.4. Requirements for completion of an appeal. The following acts shall be necessary for the completion of an appeal:

- (a) Announcement of the taking of the appeal;
- (b) Filing of the bill of exceptions;
- (c) Filing 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."

"Section 51.16. Dismissal of appeal for failure to proceed. 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, and by the appellate court after filing of the bill of exceptions for failure of the appellant to appear on the hearing of the appeal, to file an appeal bond, or to serve notice of the completion of the appeal as required by statute."

It is appellant's contention that all of the requirements of section 51.4 having been met and fully satisfied, and none of the provisions of section 51.16 having been violated, the Supreme Court is without legal authority to dismiss his appeal. The appellee did not show or attempt to show any breach or violation of the jurisdictional requirements of the appeal statute or the conditions which must be present to warrant the dismissal of the appeal. Rather, appellee's only reason for asserting that the appeal should be dismissed is that the ruling from which the appeal was announced was an interlocutory ruling and not a final judgment, and that the law provides that there shall not be any appeal from an interlocutory judgment.

Appellee cited and relied on the cases *Ketter v. Dennis*, 12 LLR 353 (1956) and *Stubblefield v. Nasseh*, 25 LLR 24 (1976), as authorities to support a dismissal of an appeal taken from an interlocutory ruling. Appellant, on the other hand, agreed that when a ruling is interlocutory it is not appealable, but he went to great lengths to point out some sharp contrasts with and to draw some distinctions between the two cited cases, on the one hand, and the instant case, on the other.

Analyzing the two cited cases, we find as follows: (A) In the *Ketter* case, the trial ended in a verdict in favor of the appellant, for which a motion for new trial was filed by appellee, heard and granted by the court in appellee's favor. The appellant appealed from the trial court's ruling granting a new trial to the appellee. Thereafter the appellee filed a motion in the Supreme Court to dismiss the appeal because the ruling granting the new trial was interlocutory. The appellant did not file resistance to the appellee's motion to dismiss the former's appeal. (B) In the *Stubblefield* case, the appellee had filed for cancellation of a lease agreement and had gotten judgment in his favor; the appellant had excepted to the ruling and had given notice to file a motion for a new trial, and did in fact file said motion, as well as a motion for relief from judgment. The trial court ruled on both motions and denied both. From this denial the appellant appealed to this Court. Thereafter, the appellee filed a motion to dismiss the appeal on grounds that the appellant had not appealed from the final judgment in the cancellation proceedings, and that in a non-jury case, no motion for new trial is required.

In the *Ketter* case, the motion to dismiss was never resisted by the appellant and the Court was left with no alternative but to grant the motion. In the instant case, the appellant has vigorously resisted appellee's motion and raised material legal issues which, in our view, ought to be passed

upon by this Court. In the Stubblefield case, the issues raised by the appellee included statutory grounds as defects in the appellant's appeal process, as well as the fact that a motion for a new trial was not required in a non-jury case. Moreover, the appellant in the Stubblefield case did not announce an appeal from the judgment of the court below. Relating the events in the Stubblefield case to the instant case, it is observed that appellant appealed from the court's ruling granting a new trial, which appeal was granted by the court without any objection or resistance from appellee. In addition, the appellant diligently pursued his appeal and perfected it within the time allowed by statute, to the extent that the case was placed on the docket of the Supreme Court.

During oral argument before this Bench, we asked counsel for Appellee TRADEVCO how he could sit by idly without any protestation whatsoever and permit Appellant Knuckles to perfect his appeal without raising any issue in the trial court and how the appellee felt having to now come before this Court with the request that we dismiss the appellant's appeal. In response, appellee's counsel conceded that the appellee had not objected to the appeal taken by the appellant but contended that it was not necessary to raise objection in the trial court because counsel knew that the ruling from which the appeal was announced was interlocutory and not final.

In counter argument, appellant's counsel contended that since the motion to dismiss did not state any defects in regard to the statutory requirements for perfecting an appeal, the appellee was precluded from raising for the first time any issue in the appellate court, which were not previously raised in the trial court to be passed upon by that court. According to the appellant, the issue of the trial court's ruling being interlocutory and not final should have first been raised in the trial court so as to form the basis for the granting or denying of the appeal. That would have laid the issue of the character, nature, or status of the ruling on the motion for new trial squarely before the Supreme Court.

We are of the opinion, as this Court has held on many previous occasions, that issues not raised in the court below cannot be raised in, and be passed upon for the first time by, the Supreme Court, except where the issue challenges the subject matter jurisdiction of the Court. Civil Procedure Law, Rev. Code 1:11.2 (6); *Lamco J. V. Operating Company v. Verdier*, 26 LLR 180 (1977), Syl. 1.

We observed earlier in this opinion that the appellee had failed to point out any legal defects in the perfecting of the appeal to this Court. We are constrained therefore to agree with the appellant that as all of the jurisdictional steps outlined in section 51.4 of the Civil Procedure Law had been complied with and that as the appellee had alleged no defects or failures by the appellant in fulfilling the requirements stipulated in section 51.16, there is no basis or justification in law or otherwise upon which the Supreme Court can rely to dismiss the appeal. We hold accordingly, and hereby rule that the appeal should be heard on its merits. It is at that time and during the hearing on the merits that this Court will determine whether or not Judge

Yussif D. Kaba's ruling on appellant's motion for a new trial was a final judgment or merely an interlocutory ruling.

We note also that the appellant has taken the position through-out the hearing on appeal that the caption or heading of the ruling as "RULING ON MOTION FOR NEW TRIAL" was merely a pretext by the trial judge to give the impression that the ruling was interlocutory when in reality it was a final judgment since the trial judge had conclusively passed on all of the material issues of controversy between the parties and had left nothing more to be decided. In that regard, the appellant maintained that "it is not the heading of the ruling or a document which is material but the content of the document."

This Court will refrain from delving into this question and will reserve same for the hearing of the appeal on its merits.

Wherefore, and in view of the foregoing, it is the considered opinion of this Court that as the appellee's motion to dismiss the appeal lacks legal merit, the same has to be and is hereby accordingly denied and the resistance sustained. The appeal is ordered heard on its merits to determine the nature or character of the ruling of the trial court.

The Clerk of this Court is hereby ordered to re-docket this case to have the appeal heard on the merits. Costs are to abide the final determination of the case. And it is hereby so ordered.

Motion to dismiss appeal denied.