DAVID D. MENSAH et al., Appellants, v**. FRANCES WILSON**, by and thru Her Attorney-In-Fact, FRANCES WILSON-HOFF, Appellee.

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

Heard: April 4, 1994. Decided: September 23, 1994.

1. A trial court cannot rule a case to trial on a bare denial after dismissing the answer on one point only, without ruling on all the issues on law raised by the pleadings.

2. In real property cases, a default judgment should not be granted upon only one assignment issued for the hearing. If on the first assignment, neither the defendant nor his counsel appears, the Court should at least make another assignment.

3. The granting of an application for default judgment does not preclude the plaintiff from proving his/her case.

4. On an application for judgment by default, the applicant shall file proof of service of the summons and complaint, and give proof of the facts constituting the claim, the default, and the amount due.

5. A court can only affirm and confirm a verdict which awards a sum certain when said sum certain has been pleaded and testified to at the trial by plaintiff and his/her witnesses.

6. Even when a defendant has defaulted in a case, the plaintiff must establish proof of his claim before judgment can be rendered thereon.

7. Issues not raised in pleadings may not properly be raised on the trial of a case.

8. Where an issue is not raised in the complaint, it ought not to be raised during the trial, for the fundamental purpose of pleadings is to provide notice to the parties of issues which are to be raised on trial.

Appellee in these proceedings instituted an action of ejectment against appellant in the Civil Law Court of the Sixth Judicial Court, Montserrado County. When the case was called for trial, after the disposition of law issues, neither appellant nor his counsel appeared, even though as per the returns of the sheriff, a notice of

assignment was duly served upon them. In light of appellant's absence, appellee prayed the court for default judgment which was granted. A jury was empaneled, the case heard and a verdict returned in favor of appellee. Subsequently appellant filed a motion for a new trial which was resisted, heard and denied, to which appellant noted their exceptions and appealed to the Supreme Court.

The Supreme Court held that a trial court cannot rule a case to trial on a bare denial after dismissing the answer on one point only, without ruling on all issues of law raised by the pleadings. The Court also held that judges should not be too hasty in granting default judgment in cases involving real property, especially upon one notice of assignment. In the instant case the court opined that the trial court should have at least made another assignment and then proceed with the case if appellant failed to appear. The Court further observed that even though appellee was granted default judgment, he failed to establish the facts constituting his claim.

Accordingly, the Supreme Court *reversed the* judgment of the trial court, and remanded the case for a new trial commencing with the pleadings.

Snonsio E. Nigba, in association with *Moses Yangbe,* appeared for appellants. *Stephen B. Dunbar,* Jr., in association with *Joseph P. Findley,* appeared for appellee.

MR. JUSTICE MORRIS delivered the opinion of the Court.

This is an ejectment action instituted by Frances C. Wilson, by and thru her attorney-in-fact, Frances Wilson-Hoff of the City of Monrovia, Liberia as plaintiff against David Mensah, Jr., Dr. Karbo, Edward Bestman, Charles Boley and Frank Moses Duo of the City of Monrovia, Liberia, as defendants. Pleadings progressed to reply, and at the disposition of law issues, the entire answer was dismissed and defendants placed on bare denial. Hearing of the case was assigned on the 30th of January 1985 for January 31, 1985. There is a copy of a letter in the file which indicates that the defendants's counsel received the notice of assignment at 7:30 p.m. on the 30th of January, 1985. The letter further indicates that the counsel was engaged in a case previously assigned for that same day and therefore was unable to get in touch with his clients that evening. Hence neither the counsel nor any of his clients appeared for the trial. At the call of the case, counsel for plaintiff asked for default judgment which was granted. The sheriff was instructed to call the defendants three times at the door, and that upon their failure to answer, the plaintiff would proceed with the trial to establish her case. Accordingly, the defendants were called three times at the door, but did not appear; therefore the plaintiff proceeded with the

trial. A jury was empaneled, the case heard, and a verdict returned awarding the plaintiff the total sum of One Hundred Fourteen Thousand Two Hundred Forty-Five Dollars ($114,245.00) as rent, and the defendants ordered evicted from the premises. The motion for a new trial was filed, heard and denied. Hence, this appeal before us on a five-count bill of exceptions.

With reference to count one of the bill of exceptions, this Court, in the case *Claratown Engineer Inc., et al., v. Tucker,* 23 LLR 211(1974), held that:

"A trial court cannot rule a case to trial on a bare denial after dismissing the answer on one point only without ruling on all the issues of law raised by the pleadings."

With regards to count two, there is no indication that the letter requesting for postponement of the trial from January 31, 1985 to February 4, 1985 was received by the judge on the 31' of January, 1985, prior to the hearing. However, the court wishes to observe that this is a real property case and that there was only one assignment issued for the hearing. If the defendants or their counsel failed to appear, the Court should have at least made another assignment, since the suit involved a real property that is in dispute, and that upon their failure so to appear at the second assignment, the court may then proceed.

Referable to counts four and five, we herewith quote the contention raised by the appellants therein: "And further that Your Honour also committed prejudicial and reversible error when you affirmed and confirmed the verdict of the trial jury returned against defendants because said verdict is manifestly against the law and the evidence adduced by plaintiff on the trial, in that although there is no allegation in plaintiff's complaint of any residence by any of the defendants herein and there was no convincing proof of any rent due by any of the defendants, yet the jury awarded the amount of $114,245.00 (One Hundred Fourteen Thousand, Two Hundred and Forty-Five Dollars) as rent due and Your Honour erroneously confirmed and affirmed said verdict, to which final judgment defendants excepted."

Count Five of the bill of exceptions reads thus:

"5. And also defendants submit further that the final judgment rendered against them by Your Honour is excessive, illegal, erroneous and prejudicial because it is not supported by any scintilla of evidence during the trial, neither was there any prayer or allegation in plaintiff's complaint for rent due; nor does the plaintiff have any legal title to the property claimed by her because plaintiff's grantor's title to the property

before conveyance was never alleged nor proven, to which final judgment defendants excepted and appealed."

We also quote plaintiffs three count complaint:

PLAINTIFF'S COMPLAINT "Frances C. Wilson, by and thru her Attorney-In-Fact, Frances Wilson-Hoff, plaintiff in the above entitled cause of action complains of the defendants as follows, to wit:

1.That Frances Wilson-Hoff holds a power of attorney from Frances C. Wilson nominating and appointing her attorney-in-fact as will more fully appear from photocopy of the said power of attorney hereto attached and marked exhibit "A" to form a cogent part of this complaint.

2. And plaintiff further complains that at the commencement of this action she is the owner in fee simple and is entitled to the possession, use and occupancy of a certain parcel of land known as block No. 1, situated, lying and being in Old Congo Town, Montserrado County, Republic of Liberia with the following descriptions:

"COMMENCING at the Southeastern corner of S.D. George's adjoining Eastern Block marked by a concrete monument and running parallel with it, North 45 degrees West 247.5 feet thence running North 45 degrees East 198 feet; thence running North 53 degrees East West 170 feet; thence running South 53 degrees East 415 feet parallel with a 25 foot alley the point of beginning and contains 3.30 acres of land and no more."
covered by warranty deed from Edward J. Gabbidon to Frances C. Wilson dated November 2, 1963 as will more fully appear from photocopy of the said warranty deed hereto attached and marked Exhibit "B" to form a cogent part of this complaint.

3. And plaintiff further complains that the said defendants, well knowing the premises, against the will and consent of the plaintiff is illegally occupying, detaining and withholding from plaintiff said parcel of land to plaintiff's great inconvenience, injury and damage."

The answer to this complaint denied the claim of the complaint. The defendants claimed, among many other things, that they have lived notoriously for twenty-two years on the land and as a result the plaintiff was statutorily barred. The Court dismissed the entire answer on the ground of inconsistency in that in pleading the

statute of limitations, the party must first agree and then states its reason. With reference to the defendants not paying rent, the plaintiff attached carbon copies of letter written to each of them demanding the payment marked as exhibit "A-1 to A-5" to form part of the reply and promised to prove same at the trial as appeared in count four of the reply.

At the trial, after the court had granted the applicant's application for default judgment, the plaintiff testified to the deed and power of attorney marked as "P/1 and P/3". The only statement regarding the amount awarded by the jury came by way of a direct question to the plaintiff when the plaintiff was asked:

"Q. Please say if you know how much rent is due you by the defendants?

A. The amount is One Hundred Fourteen Thousand, Two Hundred Forty-Five Dollars."

The counsel for plaintiff then rested with the usual reservation. The second witness of the plaintiff, J. Quiah, as there were only two witnesses, including the plaintiff herself, in an answer to the jury's question said the following:

"Q. Mr. Witness, you earlier stated in your testimony that the tenants paid rent to you, I would like to know as to whether they paid per month or year?"

A. They paid monthly."

Q. Mr. witness, you collected rent from the defendants as you said. Did you issued receipts to them?"

A. Yes, I do."

Q. Can you tell the court and jury the amount collected by you per year?"

A. I do not know the exact amount."

Jury rests with the witness."

Under our procedure hoary with age, the granting of an application for default judgment does not preclude the plaintiff from proving his/her case. Our statute on the point declares:

"On an application for judgment by default, the applicant shall file proof of service of the summons and complaint, and give proof of the facts constituting the claim, the default, and the amount due." Civil Procedure Law, Rev. Code 1:42.6.

In the instant case, the amount was never alleged in the complaint so as to give the defendants due and timely notice of what was intended to be proved against them, to the amount due and for the period beside the amount stated by the plaintiff in answer to question on the direct. Besides, according to the exhibit attached to the reply "A/1 to A/5" which are copies of letters addressed to each of the defendants, the court observed the following:

1. Letter to David Mensah, Jr., dated November 26, 1981 indicates One Thousand Forty ($1,040.) Dollars for rent due from October 1979 to November 1981.

2. To Dr. Karbo, dated November 26, 1981, indicates an amount of One Thousand ($1,000.00) Dollars as rent from November 1979 to November 1981.

3. To Mr. Edward Bestman, dated November 26, 1981 indicates Five Hundred and Fifty ($550.00) Dollars for rent from February 1980 to November 1981.

4. Mr. Charles Boley, dated November 26, 1981 indicates Seven Hundred Twenty ($720.00) Dollars for rent from December 1979 to November 1981.

5. Mr. Frank Moses Due, dated November 26, 1981, indicates Nine Hundred Forty-Five ($945.00) Dollars as rent for March 1980 to March 1981.

The total of these amounts according to the different letters would be:

David Mensah, Jr. ---------- $1,040.00
Dr. Karbo---------- -$1,000.00
Mr. Edward Bestman ----------$550.00
Mr. Charles Boley---------- $720.00
Mr. Frank Moses Due---------- -$945.00
TOTAL ----------$4,255.00

which is far less than the One Hundred Fourteen Thousand, Two Hundred Forty-Five ($114,245.00) Dollars. Therefore, beside the answer to the question as to the amount of rent which the plaintiff claimed was $114,245.00; there is no proof of

how this amount was arrived at. The court is therefore amazed as to why such arbitrary amount will be affirmed by a court of justice, especially so when neither the period which the rent covers nor the amount per month or year is stated. Besides, the letters written to defendants were not ever introduced at the trial nor admitted into evidence. The question is how did the jury or the court arrive at such a sum? Is it merely by the answer of the plaintiff to a question on the direct without any confirming witness or evidence that the court confirmed and affirmed? A court of justice can only affirm and confirm a verdict which awards a sum certain when said sum certain has been pleaded and testified to at the trial by plaintiff and his/her witnesses. This court has held that:

"Even when a defendant has defaulted in a case, the plaintiff must establish proof of his claim before judgment can be rendered thereon." *Baky v. George et al.,* 27 LLR 80 (1973).

Secondly, "Issues not raised in pleadings may not properly be raised on the trial of a case." *Shaheen v. Compagnie Francaise De L 'Afrique Occidentale,* 13 LLR 278 (1958). Therefore, there being no rental issue raised in the complaint, it ought not to have been raised on the trial, for the fundamental purpose of pleadings is to provide notice to the parties of issues which are to be raised on trial.

In view of the foregoing, and the laws cited above, the judgment of the lower court is hereby reversed and the case remanded for new trial commencing with the pleadings. Costs are to abide final determination. The Clerk of this Court is hereby ordered to send a mandate to the court below informing the judge presiding therein to resume jurisdiction. And it is hereby so ordered.

Judgement reversed, case remanded for new trial.