

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC
OF LIBERIA, SITTING IN ITS MARCH TERM, A.D. 2019

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.....CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H.WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA.....ASSOCIATE JUSTICE

Mamawa & Sons, Inc., represented by its President/CEO,
Konneh Samukai, of the City of Monrovia, Liberia
.....APPELLANT

VERSUS

The United Bank of Africa (UBA), represented by its Chief
Executive Officer, of the City of Monrovia, Liberia
.....APPELLEE

APPEAL

GROWING OUT OF THE CASE :

Mamawa & Sons, Inc., represented by its President/CEO,
Konneh Samukai, of the City of Monrovia, Liberia
.....MOVANT

VERSUS

The United Bank of Africa (UBA), represented by its Chief
Executive Officer, of the City of Monrovia, Liberia
.....RESPONDENT

MOTION FOR
NEW TRIAL

GROWING OUT OF THE CASE:

Mamawa & Sons, Inc., represented by its President/CEO,
Konneh Samukai, of the City of Monrovia, Liberia
.....PLAINTIFF

VERSUS

The United Bank of Africa (UBA), represented by its Chief
Executive Officer, of the City of Monrovia, Liberia
.....DEFENDANT

ACTION OF DAMAGES
FOR WRONG

Heard: May 7, 2019

Decided: August 16, 2019

Counsellors Idris S. Sheriff and D. Anthony Mason of the Henries Law Firm appeared for the appellant. Counsellors James E. Pierre and N. Oswald Tweh of the Pierre, Tweh & Associates appeared for the appellee.

MR. JUSTICE NAGBE DELIVERED THE OPINION OF THE COURT

A perusal of the records certified to this Court revealed that on January 19, 2017, the Mamawa & Sons, Inc., appellant, plaintiff below, through its legal counsel, the Henries Law Firm, filed a formal complaint before the Civil Law Court, Sixth Judicial Circuit, Montserrado County, Republic of Liberia, against the United Bank of Africa (UBA), appellee, defendant below. The appellant alleged in its complaint that on the 15th day of September, 2009, it entered a corporate protocol agreement with the Teydi SL 27 400 of Montforte De Lemos, Spain, represented by its President, Janvieu Mazira Vasquez, for the construction of ten thousand affordable mixed housing units within the fifteen counties of Liberia at the total cost of Eighty-Seven Million United States (US\$87,000,000.00) Dollars; that the execution of the corporate protocol agreement with its foreign partners, appellant also signed a corporate protocol agreement with the National Housing Authority (NHA), being the entity to regulate the development of local housing units in Liberia; that with the execution of the corporate protocol agreement with the NHA, the appellant began to work out modalities/plans for the Eighty-Seven Million United States (US\$87,000,000.00) Dollars housing project. The appellant mentioned in its complaint that the corporate protocol agreement with the National Housing Authority (NHA) was a commitment that the government of Liberia through the NHA made to guarantee government's support for the proposed housing project; that to

enhance the full implementation of the housing project, the appellant engaged the HFC bank of Ghana for the establishment of a mortgage bank in Liberia to serve as the financial institution that could provide the necessary funds for the development of the ten thousand housing units within the fifteen counties of Liberia. Consequently, the HFC bank of Ghana expressed its willingness to establish a mortgage institution in Liberia, thereby conducting a feasibility study for the establishment of a mortgage bank through a memorandum of understanding (MOU) signed between the appellant and the HFC bank in September 2012.

Following the signing of the memorandum of understanding between appellant and the HFC bank of Ghana, the NHA, in its communication dated January 2013, committed itself to supporting the housing project because of the enormous benefits the citizens of Liberia would derive; that in the face of this progress, appellant lamented and complained that on August 11, 2011, the appellee, the United Bank for Africa (UBA), issued a press release and held a press conference during which the appellee informed the public that four of its employees had connived with some business entities and stolen huge amount of money from the bank; that the appellant was named as one of the entities/companies that committed the theft along with the four employees. Subsequently, an indictment was drawn up against the four employees and the appellant. We quote counts one (1) and two (2) of said indictment because of their relevance to this Opinion:

1. "that at intervening times between the period September to December 2010, or there about in the City of Monrovia, Free Port Branch, Bushrod Island, Montserrado County and in the City of Ganta, Nimba County, Republic of Liberia, the defendants as a team through employee to employee's relationship and in

collaboration with co-defendants Ali Enterprise, Mamawa & Sons, James Adam, Alieu & Sons, and Only God's Blessing within the Republic of Liberia did criminally strategize and purposely, willfully and intentionally steal and misapplied funds, principle and interests generated from loans of the UBA in the amount of One Million, Two Hundred Fifty-Seven Thousand, Seven Hundred Seventy-Two United States Dollars thereby depriving defendants' employer of its much needed resources by conspiring, conniving, facilitating and willfully orchestrating their plan to rob their employer, UBA", and

2. "that co-defendant Tunde C. Fon, working at the Free Port Branch, Bushrod Island, as branch cash officer of the United Bank for Africa (UBA) used his office to manipulate the system and incorporated co-defendants, Rashi R. Chandi, Free Port Branch Operation Manager, Romeo Clarke, Jr., cash management clerk, James E. Potter, Resident Auditor, Broad Street, Kerlie Miller, Ganta Branch Cash Officer, Chikezie Aben, Ganta branch manager, Boakai Paegar, Head Auditor and Investigator, Patrick K. Manjoe, Paynesville Operations Manager, Khrushchew Urey, Free Port Branch Resident Auditor, Edward Constance, Johnson Diggs, Gerald Wright and Edwin Yeah, all of the Ganta Branch. Given that all the positions occupied by them were all cash oriented, they began loaning money out to institutions and individuals such as Ali Enterprise, Mamawa & Sons,...facilitated the commission of the crime and thereafter converted interest and principle into their personal use".

As a consequence of the allegations contained in counts one and two of the indictment, the appellant maintained that all of its major negotiations for the Eighty-Seven Million United States (US\$87,000,000.00) Dollars housing project could not be realized because the press release of the appellee on the 11th day of August 2011 to the public in which the appellee had listed the appellant alleging that the appellant had been engaged in an illegal transaction with the appellee's employees, had damaged the business reputation of the appellant. The appellant further complained that not only did the

appellee publish the name of the appellant as a criminal, but also proceeded to the office of the County Attorney for Montserrado County who drew up an indictment for several businesses, including the appellant; that this erroneous information was carried both in the print and electronic media. The appellant also averred and maintained in its complaint that the erroneous information published by the appellee against the appellant on August 11, 2011, made its investors and partners apprehensive and therefore abandoned the ten thousand housing units project. The appellant further complained that the publication did not only lead to the abandonment of the development of the ten thousand housing units that could have been built in the fifteen counties of Liberia, but also caused appellant the loss of total profit in the amount Sixteen Million, Three Hundred Twenty-Four Thousand, Four Hundred Seventy-Six United States Dollars (US\$16,324,476.25) and Twenty-Five Cents; that as a result of the “diabolical” action of the appellee against the appellant in these proceedings, the appellant had suffered public ridicule and mental anguish, to the extent that all its business partners had dissented it, and which brought its business to a virtual standstill, all attributable to the appellee for which the action of damages for wrong will lie.

In response to the averments and allegations contained in the appellant’s complaint, the appellee filed a twenty count answer contending substantially that the appellee is without any knowledge or information sufficient to form the truthfulness of the averments contained in the complaint because at no time on the date mentioned by the appellant or even thereafter did the appellee grant any interview, issue a press release or hold a press conference in relation to

the appellant's financial dealings with the bank or any financial institution in Liberia or elsewhere.

In addition, the appellee maintains that to the best of its knowledge an indictment was drawn up against the appellant and others in a criminal suit after a thorough investigation was conducted by the National Security Agency (NSA) and the Liberia National Police Crime Service Division (CSD), which investigation concluded that the appellant was among others who conspired, facilitated and collaborated in the crime of theft of property, economic sabotage, misapplication of entrusted property, criminal facilitation, criminal conspiracy and criminal solicitation.

The appellee further contends that the claim or allegation of the appellant that the publication made by the appellee on August 11, 2011, damaged the appellant's business dealing lacks any scintilla of proof but only intended to hoodwink the court below in the miscarriage of justice; since between 2011 and 2013 the appellant had concluded several agreements including confirmation of the housing units projects by the NHA.

Traversing counts twelve and thirteen of appellant's complaint, the appellee denied that it published the name of the appellant as a criminal and proceeded to the office of the county attorney to prepare an indictment against the appellant and several other businesses; that the information allegedly made by the appellee was reported in the print and electronic media based on a confession made by Mr. Tunde fon, one of the co-defendants named in the indictment during the National Security Agency (NSA) and police investigation; that the

appellant's statement that the print and electronic publication damaged its business reputation when in fact and in truth the appellant throughout 2011 and up to 2013 concluded several agreements including confirmation of the housing units project by the NHA.

The appellee says and contends that assuming without admitting that the appellant was reaping such a huge profit, the appellee has caused no disturbance to the appellant's business operation because the appellant continues to sign agreements even after the alleged publication that the appellant claimed the appellee had made in the print and electronic media.

In concluding its twenty count answer, the appellee says and contends that had co-defendant, Tunde Fon, named in the indictment had not mentioned the name of the appellant as one of those involved in the facilitation of the criminal enterprise which caused the appellee the loss of huge sum of money, the appellee would have had no knowledge of the appellant's involvement in the criminal enterprise. Besides, the government having found an indictment against the appellant and others a criminal trial was had and the appellant along with the other co-defendants were adjudged guilty and to which judgment, they excepted and appealed to the Honorable Supreme Court which appeal is pending before the Court. Therefore, the appellee prayed the lower court to deny the appellant's prayer for special and general damages.

Following the exchange of pleadings, the presiding Judge assigned the case for the disposition of law issues on March 9, 2017 and thereafter ruled the case to jury trial. On May 8, 2017 trial commenced with the

qualification of appellant's three witnesses, namely: Samuka M. Konneh, Samuka V. Konneh and Selefiber Boakai Coomber.

The appellant's first witness, Mr. Samuka M. Konneh, testified that he was aware that there was a negotiation between the appellant and the Management and the Board of Directors of the National Housing Authority (NHA). It was agreed that the Chairman of the Board, Mr. John T. Richardson and Amos Sackie of the NHA to go to Ghana to meet with the mortgage bank in Accra, Ghana, to conclude arrangement for the establishment of the HFC Mortgage Bank, that if established, would have provided the funds for the development of the ten thousand housing units throughout the fifteen counties of Liberia. The witness further testified that they spent three days in Accra, Ghana, and the HFC Bank's Managing Director being satisfied with the details of the housing project requested that they and the bank enter a memorandum of understanding, which they subsequently signed. A condition in the memorandum of understanding requires that the HFC Bank would send people to Monrovia, Liberia, to conduct a feasibility study; that after a week following the signing of the MOU, the HFC Bank sent four men to Monrovia to conduct the study. The witness concluded his testimony that he received a call from the Ministry of Justice citing him to a meeting with the Minister of Justice, Counsellor Christiana Tah. He attended the meeting with his lawyer, Stanley Kpaklain, and provided information to the Minister on the protocol agreement signed between the appellant and the NHA on one hand; protocol agreement between the appellant and the HFC Bank on the other.

The appellant's second witness, Mr. Samuka V. Konneh, testified that he worked for Mamawa & Sons, Inc. as its Executive Secretary responsible for preparing and dispatching all communications and computed the various agreements the appellant signed with its partners; that from 2008 up to some years later, the witness accepted joining the appellant because he hoped that he would be part of the process that could provide security and lodging for the people of Liberia; that he believed in the merit of the project that not only the project would have built corporate structures, but he knew that the housing project would have supported the infrastructural development of Liberia and therefore committed his effort and time without any salary, but only to be told after some years later that all their dreams and efforts and everything they had done were trashed to the ground.

Further, in a question on the direct examination to the appellant's second witness as to whether any problem or anything prevented the appellant from building the ten thousand units around the country, he responded thus: "to the best of my knowledge, the only thing that prevented our project was a single news story, which was faked from wherever it came and I think it was calculated to destroy our corporate efforts and the dreams of ordinary Liberians who would have benefited from the housing units we would have built. It was calculated to destroy us, a Liberian company that was dreaming very big. Just a single story."

Senikaba Boakai Coomber, appellant's third witness took the stand and testified that he was employed by the appellant as its project coordinator. That due to the appellant's international connection, the appellant had attracted international partners in Spain and Belgium

with whom they had discussion for the building of housing units in Liberia due to the fact that the civil war had destroyed many houses in the country. The appellant began discussion with the National Housing Authority (NHA) through its Deputy Managing Director, the late Moses Sackie. Following meetings with the National Housing Authority, the appellant signed protocol agreement with the management of the National Housing Authority (NHA). Subsequently, the appellant received an invitation to visit Spain and Brussels through which time the appellant met its business partners and concluded the deal to come to Liberia and develop ten thousand housing units within the Republic of Liberia. In concluding his testimony, the third witness stated thus: "...that we were given information from our international partners that we should look in some newspaper that there was something concerning Mamawa & Sons, Inc. To our dismay, we discovered that they had put Mamawa & Sons' name in some problems where they said we and some other persons clandestinely got into monetary matters. To the best of my knowledge, I did not see any document where we have asked UBA for letter of credit or money to be able to work with them. And because of that, our operation was put to a standstill. White people, once they see that you have some dark clouds over your head, they conclude that you are a criminal. So on that note, our company was asked to wait until there was some clarification".

After the appellant had rested in toto following the production of both oral and written species of evidence, the appellee took the witness stand with three witnesses namely: William Grant Jlopleh, James Konneh and Alieu S. Bility.

In his testimony, witness Jlopleh told the trial court that there was a situation that arose wherein some of the staff of the appellee were involved in vault lending. That in line with procedure, the employees involved were interrogated internally and subsequently forwarded to the NSA for further investigation. Witness Jlopleh concluded thus: "that I know as far as my knowledge can serve me right, that the case was communicated with our civil lawyers, Pierre, Tweh and Associates, and they attached the communication and sent it to the NSA for investigation. So I don't recall here that the United Bank for Africa (Liberia), Limited (UBA) ever forwarded the name of Mamawa & Sons, Inc., but I know our staff."

To a question on direct examination bringing to the attention of the appellee's second witness, James Konneh, if he knew about the allegation that the appellee had published the name of the appellant, Mamawa & Sons, at the same time accusing the appellant of committing a crime, the witness emphatically stated: "as far as my memory can serve me, UBA at no point granted interview to any journalist or published such information in the paper. What I know is that the information came from NSA to the court, so we are not aware of publishing anything in the paper concerning Mamawa & Sons, Inc."

The appellee's third witness, Alieu Musa Bility, testified and told the trial court that in November, 2010, the police received a complaint from the appellee, the United Bank for Africa (UBA), alleging that some of its employees were involved in theft amounting to One Million, Two Hundred Fifty some more Thousand Liberian (LRD1, 250,000,..) Dollars. That during the investigation, one of the co-defendants named Tunde Fon, revealed that he loaned money to the appellant in the tone of

Forty Thousand United States (US\$40,000.00) Dollars. After the conduct of the investigation, a report was prepared inclusive of the appellee's statement; hence, co-defendant, Tunde Fon and other persons investigated were charged with various crimes to include criminal conspiracy, criminal facilitation, economic sabotage, misapplication of entrusted property and theft of property.

The parties in these proceedings rested in toto and submitted the case to final argument. The counsels of both parties issued written instructions to the jury as to the outcome of the case. In its written instruction to the jury, the appellant, Mamawa & Sons, Inc., instructed the jury to review the species of evidence testified to, confirmed and admitted into evidence to determine their credibility and if established, be used to bring a verdict of liable in favor of the appellant. However, the appellant further instructed the jury that if it found from the evidence presented by the appellant during the trial is irrelevant and had no tendency to prove the truth then the jurors should say that the appellee is not liable.

The appellee relying on Rule 12 of the Revised Rule of the Circuit Courts (amended 1999), that "upon conclusion of the oral argument, either party may request the court to charge the jury upon any specific preposition of facts or principle of law and to reduce the charge into writing", therefore requested the trial Judge to charge the jury on the following facts and principles of law among several others.

1. "...you must consider and decide this case fairly and impartially and your decisions must be based only on the facts and evidence which was presented to you during the trial. Everyone whether it is an individual or company is equal before the law

and is entitled to equal and impartial treatment under the law. Your decision should not be based on sympathy for either party, but must be based on the facts and the evidence. You should not be prejudiced for or against any party.”

2. “In this jurisdiction, in a case for damages, the plaintiff has the burden of proving its case to the jury by the preponderance of the evidence. This means that during the trial, the plaintiff must produce sufficient evidence to convince the jury to decide that the defendant is LIABLE to the plaintiff. The law states that the party who alleges the fact must be able to prove it. If, on the other hand, the jury determines from the evidence which the plaintiff presented during the trial that the plaintiff did not prove its case by a preponderance of the evidence then the jury should find the defendant not liable.
3. “In deciding the case, the jury should take into account that although the plaintiff is claiming US\$87,000,000.00 as general damages, however, this is the total value of the entire ten thousand housing units project. Under the terms of the September 25, 2009 protocol, the plaintiff was entitled to receive ONLY 35% of the US\$87,000,000.00 which is US\$30,450,000.00. This means that the plaintiff would have received only US\$30,450,000.00 and not the US\$87,000,000.00. Therefore, the plaintiff is not entitled to general damages of the entire US\$87,000,000.00.”
4. “The plaintiff claims that it suffered losses in its operations or business and everything came to a stop as a result of the alleged publication in 2011. However, this allegation is contradicted by the evidence presented during the trial which shows that on September 10, 2012, the plaintiff signed a

memorandum of understanding (MOU) with HFC bank (Ghana) limited, a financial institution to serve as a mortgage bank for plaintiff to finance the same ten thousand housing project. Also in January of 2013, the National Housing Authority (NHA) through its managing director wrote a communication confirming that the selfsame project was still on course which showed no injury or losses...”

5. “The plaintiff is holding the defendant responsible for a 2011 publication and is seeking damages from the defendant for the publication although said publication did not name the defendant at the author. The defendant has denied been responsible for the publication...that the plaintiff failed to produce any evidence to prove that defendant published the story, in that case you must bring a verdict of not liable in favor of the defendant.”

The jurors retired to their room of deliberation and returned with a non-labile verdict in favor of the appellee.

Following the jurors’ verdict of non-labile, the appellant filed a motion for new trial consistent with law, argument had *pro et con* and the trial Judge ruled denying a new trial and confirmed jurors’ verdict of non-labile. There were two issues upon which the appellant moved the court in its motion for new trial, namely: that there was jury tampering and that the verdict was against the weight of the evidence presented by the plaintiff during trial.

In addressing the issue of jury tampering, the appellant relied on two affidavits from two of the trial jurors. Both affidavits were identical and

alleged that while in their room of deliberation, they observed that the jurors' forelady was sending out text messages on her telephone to other persons and that she had left the room of deliberation on three occasions and returned with One Thousand, Two Hundred United States (US\$1,200.00) Dollars, which amount she shared with the other jurors, but the two complaining jurors rejected their share of the money.

In an effort to establish the veracity of the allegation of jury tampering which tended to question the integrity of the jury's verdict, the court obtained independent confirmation and verification of the movant's allegation; the court below therefore ordered the issuance and service of *subpoena duce tecum* on Lonestar and Cellcom telephone companies to appear before the trial court to produce the call logs of the juror's forelady's two telephone numbers for the period 12 noon to 7:0'clock p.m. on June 16, 2017. In compliance with the *subpoena duce tecum*, both cell phone companies submitted their call logs for June 16, 2017, for the period 12 noon to 7: 0'clock p.m. The Lonestar call log did not show any text messages or telephone calls for the jurors' forelady Lonestar telephone number. Similarly, the call log from Cellcom did not show any phone call from the jurors' forelady for the period June 16, 2017, from 12 noon to 7: 0'clock p.m. The evidence adduced by the telephone companies refuted the allegation, the court therefore denied and dismissed the affidavits containing said allegation. The court concluded "that the affidavits deliberately fabricated and concocted for the sole purpose of disputing the validity of the verdict." In dismissing the allegation of jury tampering the court relied on the Supreme Court's Opinion in the case Constance et al v. Ajevon et all, 40 LLR 295 in which the Court held that "party waives his/her right to relief in the

manner alleging jury tampering or irregularity where the party fails to squarely raise the issue in the trial court and make it a matter for investigation prior to the jury being discharged rather than raising same in the motion after the discharge of the jury”.

That as to the issue of whether or not that the jury's verdict of non-labile is based on the facts and species of evidence adduced during trial by the parties thereto, the court ruled that the trial jury is the exclusive judge of the facts as to what constitutes a preponderance of the evidence and when the trial jury had reached a conclusion having been given consideration to the evidence that it is sufficient to support the verdict, the verdict should not be disturbed by the court. The trial court relied on the case *American Life Insurance v. Holder*, 29 LLR 143. Hence, the trial Judge in his final judgment dated July 7, 2017, confirmed the jury's verdict. From which ruling, the appellant excepted and announced an appeal to the Full Bench of this Honorable Supreme Court of Liberia sitting in its October Term 2017; the appellant later filed a bill of exceptions before His Honor Yussif D. Kaba, then Resident Circuit Court Judge, Civil Law Court, sitting in its March Term 2017. The appellant contended in its bill of exceptions substantially that the trial Judge committed reversible error when he averred that the appellant did not prove that it suffered injury, mental anguish and public ridicule from the publication of its name in the newspaper, which forms a sufficient ground for the damages claimed by the appellant to have been awarded by the trial court; that the failure of the jurors and the presiding Judge to award the damages being claimed in the prayer to the complaint of the appellant is a reversible error.

For the benefit of this Opinion, we quote verbatim counts two (2), six (6) and nine (9) of appellant's bill of exceptions to draw this Court's attention to the claim of the appellant that the trial Judge illegally denied appellant's motion for new trial and erroneously confirmed the not liable verdict of the jury.

Count two: "that Your Honor erred and made a reversible error because Your Honor confirmed the verdict of the jury that was contrary to the weight of the evidence as stated below:

That although the Mamawa & Sons, Inc. was named in the indictment based upon the complaint of the private prosecutor, United Bank for Africa (UBA), against the plaintiff in these proceedings, no evidence was adduced during the trial to link the appellant to the charge that was alleged."

Count six: "that Your Honor erred and made a reversible error when Your Honor's final ruling stated that the appellant did not prove that it suffered injury. This is so because in the complaint, the appellant spoke of mental anguish, public ridicule and the publication of its name were sufficient to award appellant damages. The failure of the jurors and Your Honor's failure to award damages to the appellant constitute a reversible error."

Count nine: " that Your Honor erred and made a reversible error when Your Honor failed to take into account that the jury's verdict should be set aside and a new trial awarded because the defendant's witnesses' testimonies were all based on hearsay and under our law, hearsay testimonies are not admissible..."

Having carefully perused the records in this case and penned together facts thereto, the issues for the determination of this Court are:

- (1) Whether or not the appellant, by the preponderance of evidence proved that the newspaper publication of August 11, 2011 is attributable to appellee;
- (2) Whether or not the newspaper publication of August 11, 2011 affected the business position of the appellant for which damages will lie; and
- (3) Whether or not appellant proved beyond doubt that there was a jury tampering which influenced the non-liaible verdict of the jury in favor of the appellee and that in the absence of proof, the verdict be sustained.

We will discuss these issues in the manner in which they are raised. As regards the question of whether or not appellant, by the preponderance of evidence proved that the newspaper publication of August 11, 2011 is attributable to appellee, we take a recourse to the records in this case for guidance.

On January 19, 2017, the appellant filed a formal complaint against the appellee in an action of damages for wrong alleging substantially that on August 11, 2011, the appellee issued a press release and had a press conference during which the appellee informed the public that four of its employees had connived with some business entities and stolen huge amount of money from appellee; that the appellant was named as one of the entities/companies that committed the theft along with four of its employees. Subsequently, the Ministry of Justice, through the County Attorney for Montserrado County, drew up an indictment against the four employees of the appellee along with the appellant. The appellant further alleged that the publication of August 11, 2011,

had damaged its business reputation and as a result thereof, the appellant's international business partners abandoned to do business. The appellant further alleged in establishing its claim against the appellee that on September 15, 2009, it entered a corporate protocol agreement with Teydi SL 27 400 of Montefort De Lemos of Spain for the construction of ten thousand affording mixed housing units within the fifteen counties of Liberia at the total cost of Eighty-Seven Million United States (US\$87,000,000.00) Dollars. The appellant also claimed that following the execution of corporate protocol agreement with its partners, it also signed a corporate protocol agreement with the National Housing Authority of Liberia, which is the regulatory agency for the development of local housing in Liberia.

That with the execution of the corporate protocol agreement with the NHA, the appellant began to work out modalities or plans for the Eighty-Seven Million United States (US\$87,000,000.00) Dollars project to begin in Liberia. The appellant maintained that the corporate protocol agreement with the National Housing Authority was a commitment by the government of Liberia through the NHA that guaranteed government's support for the proposed housing units project. Consequently, the appellant engaged the HFC Bank of Ghana for the establishment of a Mortgage Bank in Liberia to serve as the financial institution that would have provided the needed funds for the development of the ten thousand housing units to be constructed in the fifteen counties of Liberia. The HFC Bank of Ghana and the appellant signed a memorandum of understanding (MOU) in September, 2012. The HFC Bank dispatched a team to Liberia to do feasibility study for the establishment of the Mortgage Bank in Liberia.

In an attempt to prove that the August 11, 2011 newspaper publication the appellant attributed to the appellee, which the appellant claimed damaged its business reputation for which its foreign partners abandoned the development of the ten thousand housing units in Liberia, the appellant produced three witnesses, namely: Samuka M. Konneh, Samuka v. Konneh and Selefiber Boakai Coomber. The appellant's first witness, Samuka M. Konneh, confirmed the averment contained in the complaint but did not confirm the allegation that the newspaper publication of August 11, 2011, was an act committed, directly or indirectly against the appellant by the appellee either in a press release or during a press conference. A careful review of the records in fact did not establish any evidence of a press release issued by the appellee against the appellant. The certified records in this case are also void of any evidence of a press conference during which the appellee accused the appellant of financial malpractice. The law of Evidence as found in the Civil Procedure Law of Liberia, recorded at Section 75.6(1), page 198 provides that: "the best evidence which the case admits of must always be produced; that is, no evidence is sufficient which supposes the existence of better evidence". It goes without saying therefore that the appellant was under duty at the filing of its complaint and through the testimonies of its witnesses to have established whether or not the appellee did in truth and in fact issue a press statement which damaged the business reputation of the appellant. This allegation being very grave, the establishment of its truthfulness rests squarely on the appellant. Section 25.5 of the Civil Procedure Law of Liberia at page 198 provides unequivocally that "a party making a claim or allegation carries with it the burden of proof". The law further says that "the burden of proof rests on the party who alleges a fact except that when the subject matter of a negative

averment lies peculiarly within the knowledge of the other party, the averment is taken as true unless destroyed by that party.”

This leads us to review the testimony of the second witness, Mr. Samuka V. Konneh, of the appellant. For the purpose of this Opinion we quote a specific portion of his testimony as follows: “I worked for Mamawa & Sons, Inc. as its Executive Secretary responsible for preparing and dispatching all communications and computed the various agreements the appellant signed with its partners; that from 2008 up to some years later I joined the appellant because I hoped that I will be part of the process that could provide security and sleeping place for the people of Liberia; that I believed in the merit of the project that not only the project to have built corporate structures, but I knew that the housing project would have supported the infrastructural development of Liberia and therefore committed my effort and time without any salary, but only to be told after some years later that all our dreams and efforts and everything we have done were trashed to the ground”. In a question to the second witness Mr. Samuka V. Konneh on the direct examination as to whether any problem or anything prevented the appellant from building the ten thousand units around the country, he responded thus: “to the best of my knowledge, the only thing that prevented our project was a single news story, which was faked from wherever it came and I think it was calculated to destroy our corporate efforts and the dreams of ordinary Liberians who would have benefited from the housing unit we would have built.” “It was calculated to destroy us, a Liberian company that was dreaming very big, just a single story.” While this portion of the testimony of the witness might have contained a sad note in the business life of the appellant, but it failed to establish link between

appellant and its accused, the appellee. The second witness lamented and expressed his surprise at the story and referred to it as a calculated ploy or attempt to destroy the corporate efforts and the dreams of ordinary Liberians but did not know the source of the story so he said in these words "the only thing that prevented our project was a single news story which was faked from wherever it came...". The appellee was never named in the testimony of the second witness just as the first witness who did not name the source of the newspaper publication to be attributed to the appellee.

As to the appellant's third witness on the issue of the newspaper publication, he had this to say "...we were given information from our international partners that we should look in some newspapers that there was something concerning Mamawa & Sons, Inc. To our dismay, we discovered that they have put Mamawa & Sons' name in some problems where they said we and some other persons clandestinely got into monetary matters. To the best of my knowledge, I did not see any document where we have asked UBA for letter of credit or money to be able to work with them. And because of that, our operation was put to a standstill. White people, once they see that you have some dark cloud over your head, they conclude that you are a criminal. So on that note, our company was asked to wait until there was some clarification." It is only in the testimony of the third witness he mentioned the appellee under an unexplained unclear circumstance. What that amounts to is everybody's guess. Like the two preceding witnesses quoted in this Opinion, the third witness, Mr. Selekiber Boakai Coomber, did not, in specific and clear term mention or call out the name of the appellee as the source of the August 11, 2011 publication, which publication seemingly tarnished the business reputation of the appellant. Having

not discovered a clear indication that the August 11, 2011 newspaper publication is attributable to the appellee, we revert to the Daily Observer Newspaper, vol. 14, no. 519 which reported the alleged theft at the United Bank for Africa (UBA), the appellee to determine the source of said publication. Under the caption, thirteen bank officials arrested for One Million United States (US\$1,000,000.00) Dollars theft. This paragraph of the newspaper publication is being quoted verbatim because of its relevance to the question of whether or not the appellee did issue a press statement in which it accused the appellant in any financial malpractice. "...the indictment...noted that co-defendant Tunde C. Fon, working in the capacity of Free Port Bushrod Island Branch Cash Officer used his office to manipulate the system and incorporated the other co-defendants given that all positions occupied by them were all cash oriented, they began loaning money out to institutions and individuals such as Ali Enterprise, Mamawa & Sons,...". This assertion attributed to Tunde C. Fon is a confirmation of the appellee's denial that it did not issue a press statement but rather it is one of the defendants in a criminal charge that named the appellant. We therefore hold that the appellant having failed to trace the newspaper publication to the appellee, the appellee cannot be held liable on this count.

This takes us to the second issue whether or not the newspaper publication of August 11, 2011, affected the business position of the appellant for which damages will lie. The appellant contended in its complaint and buttressed by the testimonies of its three witnesses that the newspaper publication of August 11, 2011 damaged its business reputation and therefore sustained a loss of Eighty-Seven Million United States (US\$87,000,000.00) Dollars housing project and denied a

total profit of Sixteen Million United States (US\$16,000,000.00) Dollars or thereabout. To establish the veracity of this allegation, again we revert to the records in this case. On January 14, 2013, exactly two years after the publication of the story of theft in the Daily Observation Newspaper which carried the name of the appellant, the managing director of the National Housing Authority wrote a letter of support to appellant for the construction of ten thousand housing units in Liberia.

"NATIONAL HOUSING AUTHORITY
P.O. Box 3012, Mailbag: 9036
Tel.: 06558468

Office of the Managing Director

January 14, 2013

Mr. Javier Mazaira Vasquez
President
Molinos de Antero 22-24 bajo
27400 Montforte de Lemos
Lemos (Spain)

Dear Sir:

RE: Letter of Support to MAMAWA for the construction of
10,000 Housing Units

At the request of MAMAWA & SONS, INC., we the National Housing Authority (NHA), being fully aware of our responsibilities as per existing agreements between us, send this official communication confirming our partnership and indicating our willingness to expressly support impending housing development project undertaken by them in Liberia. This understanding is subject to terms and conditions to be agreed upon between all parties at the time of project implementation.

As the Government of the Republic of Liberia through the NHA endeavors to ensure the provision of adequate and affordable housing for its people, would appreciate any contribution your company could make to our above mentioned Partner towards the final realization of this impending project for the benefit of the country. Rest assure that the NHA will make all efforts in keeping with its mandate to provide investment incentives such as duty free privileges and title free land to encourage investment and affordable housing in collaboration with other agencies of our government.

We anticipate your positive and fruitful collaboration.

With kind regards,

Yours truly,

Samuel W. Thompson
Managing Director
(signed)"

This communication under reference in this Opinion, is clear to all intents and purposes and needs no further construction; for if the August 11, 2011 publication had damaged the business reputation of the appellant, this favorable recommendation and approbation coming from the Government of Liberia through its relevant agency, the NHA, to appellant's business partner in Lemos (Spain), Europe, would not have been written as such. This Court, therefore, is not inclined to accept the allegation that the August 11, 2011 newspaper publication by the Daily Observer Newspaper had damaged the business reputation of the appellant.

Having disallowed the appellant's claim of loss of business to the August 11, 2011 newspaper publication attributed to the appellee, this brings us to the last discussion of this issue whether or not damages will lie. Concluding its 18 count complaint for damages for wrong

against the appellee, appellant most prayerfully prays this Honorable Court to adjudge the appellee liable to the appellant in the amount of Eighty-Seven Million United States (US\$87,000,000.00) Dollars for the loss of business or the value of the ten thousand housing units that would have been provided for the appellant, special damages to be awarded to the appellant by the appellee in the amount of Sixteen Million, Three Hundred Twenty-Four Thousand, Four Hundred Sixty-Seven Dollars (US\$16,324,467.25) and Twenty-Five Cents and general damages of (10%) of this amount of Sixteen Thousand, Three Hundred Twenty-Four Dollars (US\$16,324.25) and Twenty-Five Cents.

The Supreme Court of Liberia, in its Opinion recorded in the case *Intrusco Corp v. Osseily*, 32 LLR 558, syl. 9, (1989), opined “that damages are a pecuniary compensation or indemnity which may be recovered by any person, property or rights through the unlawful act or omission or negligence of another”. The Supreme Court of Liberia opined in numerous Opinions as in this Opinion that “generally, damages, whether special or general are pecuniary compensation or indemnity which may be recovered by any person who has suffered a loss, detriment, injury, whether to his person, property or rights through the unlawful act or omission, or negligence of another.” Cases in accord but not limited to the following: *Firestone Liberia, Inc. v. G. Galimah Kollie* (Supreme Court Opinion, 2012), *Harries v. Cavalla Rubber Corporation*, (Supreme Court Opinion, October Term 2012), *City Builders v. Purported City Builders*, (Supreme Court Opinion, March Term 2013). This Court has held in these and several other Opinions on damages that “in legal contemplation, damages is the sum of money which the law awards or imposes as pecuniary compensation,

recompense, or satisfaction for an injury done or a wrong sustained as a consequence of either a breach of contract or tortuous act.”

Having laid down the legal framework through which damages are awarded: special damages, general damages or punitive damages, we will now discuss them individually. Section 9.5(7) recorded at pages 108 and 109 of the Civil Procedure Law (1LCLR), defines special damages thus “when items of special damages are claimed they shall be specifically stated or pleaded with particularity (emphasis ours). The Supreme Court of Liberia in its Opinions recorded in *Intrusco Corp v. Osseily*, 32 LLR 558, syl. 3 (1985); *Dopoe v. City Supermarket*, 34 LLR 343-353; *Townsend v. C.V. Dyer Memorial Hospital*, 11 LLR 288, (1952) also held “that special damages must be specially pleaded and specifically proved at the trial by a preponderance of the evidence upon which the trial jury must base its verdict.” This Court notes that the claim of appellant of special damages for loss of business, which act cannot be traced to appellee is untenable and therefore disallowed; hence the jury acted consistent with the facts and testimonies adduced during trial in denying the special damages award. The special damages being claimed are speculative, self-serving and unsubstantiated. Therefore special damages are disallowed.

This Court further says that the general damages being claimed by the appellant against the appellee is speculative and has no foundation in the facts in this case. The appellant is claiming the award of Eighty-Seven United States (US\$87,000,000.00) Dollars when through its submission before this Court during the argument of this case that the appellant was to receive only 35% of the Eighty-Seven Million United States (US\$87,000,000.00) Dollars. This Court is therefore at a total loss

to understand how appellant would have been awarded 100% of the principle that should have been used to construct the ten thousand housing units in Liberia. Again, this Court takes note of the 10% claim of the housing project which amounts to US\$16,342.25 as general damages owing to the fact that appellant sustained injury and mental anguish from the August 11, 2011 newspaper publication. This Court reiterates that the newspaper publication cannot be traced to the appellee as there is no evidence whatsoever to prove this Court otherwise. General damages are therefore disallowed.

This brings us to the final issue whether or not appellant proved beyond doubt that there was a jury tampering which influenced the non-labile verdict of the jury in favor of the appellee. In addressing the issue of jury tampering, the court conducted an investigation and invited the two cellphone companies, Lonestar and Cellcom telephone companies, when the court below ordered the issuance and service of the writ of subpoena duce tecum on these said companies. The two cellphone companies produced the call logs of the jury's forelady's two cellphones numbers for the period 12 noon to 7:0'clock p.m. on June 16, 2017. The evidence adduced by the cellphone companies refuted the allegation, denied and dismissed the affidavits containing said allegation and the court concluded that the affidavits were deliberately fabricated concerted. This Court says that there could have been no better way for the court below to have investigated the allegation of jury tampering. The court's decision denying the allegation based on the facts obtained from the two cellphone companies, the verdict of non-labile by the jury should not be disturbed. The Supreme Court of Liberia has opined that "it is the duty of the empanelled jury to determine the probative value of the evidence and decide on their credibility". Insurance Company of

Africa et al v. Fantastic Store, 32 LLR 366 (1984). The verdict of non-lia-
ble of the jury is consistent with the facts and evidence adduced
during trial, the trial Judge therefore acted properly when he confirmed
the non-lia-ble verdict of the impanelled jury.

WHEREFORE, AND IN VIEW OF THE FOREGOING, that the appellant,
Mamawa & Sons, Inc., having failed to prove the allegation of wrong
doing to its business reputation as a result of the appellee, United Bank
for Africa (UBA), alleged action, the unanimous verdict of the
empaneled jury denying general and special damages and awarding a
non-lia-ble verdict to the appellee is hereby affirmed. The Clerk of this
Court is ordered to send a mandate to the court below commanding
the Judge presiding therein to resume jurisdiction and give effect to this
Judgment. Costs are ruled against the appellant. AND IT IS HEREBY SO
ORDERED.

Judgment affirmed.