JACK OSABUTY, Plaintiff/Appellant, v**. LIBERIA PORT STORAGE COMPANY, INC**., represented by and thru its General Manager, Defendant/Appellee.

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

Heard: November 11, 1986. Decided: January 23, 1987.

1. The plea of the statute of limitations is one in bar to the institution of a suit, and when raised in a pleading (answer), it obviates the necessity of passing upon the remaining controversial legal issues contained in the pleadings.

2. Whenever a right of action accrues to a party and that party fails to institute the action, he is forever barred from so doing. Civil Procedure Law, Rev. Code 1:2.12

3. The institution of a civil action is not contingent upon the pendency or termination of a criminal prosecution.

4. The criminal prosecution of a party, even if properly conducted, does not necessarily excuse that party from civil liability thereafter for wrong committed.

5. A party is required to pay accrued costs prior to the refiling of an action, the refiling being contingent upon compliance with the former requirement.

6. There is a marked difference between payment of accrued costs and a bill of costs.

The appellant, plaintiff in the trial court, filed an action of damages against the appellee, charging that the appellee had accused him of embezzlement, and had thereby caused him to be investigated, arrested and detained at the headquarters of the Criminal Investigation Division (C.I.D.) of the Liberia National Police, and charged by the Criminal Court, First Judicial Circuit, Montserrado County, with the commission of the aforesaid mentioned crime. The appellant, a store keeper of the appellee company, also alleged that he had been further embarrassed by the appellee securing a writ of NE EXEAT REPUBLICA against him, which writ prevented him from travelling out of the country for a period.

The facts of the case showed that as a result of the appellee's failure to appear to prosecute the criminal case, the appellant was acquitted of the charge; that following appellant's acquittal, he requested the appellee company to reinstate him to his previous employment with appellee, but that the latter refused to do so; and that as a consequence, the appellant commenced an action for wrongful dismissal, which was resolved in appellant's favor. Several years thereafter, the present action was commenced.

The trial court, in disposing of the law issues, dismissed the plaintiff's action, holding that the action was time barred by the statute of limitations. The action, the court said, was brought beyond the three year period prescribed by the statute. On appeal to the Supreme

court, the trial court's ruling was affirmed. Noting that the institution of a civil action was not dependent upon the pendency or termination of a criminal prosecution, and that the prosecution of one party does not excuse the other party from civil liability for the wrong committed, the Court opined that appellant's failure to institute his civil action for the wrong complained of, within the three year period prescribed by the statute, commencing from the date the right of action accrued, rendered the action time barred. The Court observed that although the appellant was acquitted on August 28, 1979, he did not institute the damages action until January 28, 1986, a period of six and one-half years after the right accrued. The trial court, it said, was therefore correct in dismissing appellant's action. Accordingly, the judgment of dismissal was *affirmed.*

The Cooper & Togbah Law Firm represented the plaintiff. *The Massaquoi & Associates Law Firm* represented the defendant.

MR. JUSTICE DENNIS delivered the opinion of the Court.

These judicial proceedings, essentially comprising both law and facts, commenced with the filing of the afore named plaintiffs action of damages in the office of the clerk of the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, on the 28th day of January A. D. 1986, during that Court's March Term, 1986. The plaintiff allegedly aggrieved by the within named defendant, instituted the above entitled cause of action, asserting substantially as follow to wit:

1. That he, the plaintiff, had always demeaned himself as a law abiding, respectable and reputable citizen of Liberia, not having theretofore been accused and convicted of a criminal offense.

2.Further, that on May 1, 1968, the plaintiff aforesaid was employed by the within named defendant as a storekeeper and served defendant until the month of September 1978, a period of ten years, when he obtained permission or leave of absence from his employer to attend the funeral of a relative, residing in the Republic of Ghana.

3. Perforce of unforeseen and uncontrollable circumstances prevailing at the time by the closure of the Ghanian borders, plaintiff submits that he was unable to return within the period of time granted him by his employer; and that upon his return to Liberia and to his job, the manager of the defendant's company hurled and uttered insults at plaintiff and rejected his continuing on the job. An argument then ensued between plaintiff and defendant which resulted in the defendant company accusing plaintiff of embezzlement. That thereafter, the defendant reported the matter to the C. I. D. which then had plaintiff arrested and detained at its Headquarters for a protracted time.

4. That based upon the false allegations levied by the defendant, plaintiff was charged, tried and acquitted by Circuit Court for the First Judicial Circuit, Criminal Assizes, Montserrado County.

5. That during the pendency of the criminal proceedings, the management of the defendant company continued to harass and molest plaintiff to the extent of instituting two suits against the plaintiff, including a NE EXEAT REPUBLICA proceeding, not yet concluded. Plaintiff alleged also that due to the NE EXEAT proceeding, plaintiff was unable to leave the bailiwick of the country, thereby imposing extreme hardship on him and his family.

6. That after the acquittal of plaintiff of the charge of embezzlement, he requested the management of the defendant to reinstate him but he was told that no consideration would be afforded him until the suits filed against were determined.

7. That in view of the foregoing, plaintiff prayed for general damages in an amount not less than $150,000.00 or as the jury deemed best.

In contesting this suit, the defendant filed an answer which, according to the records in the case, was subsequently withdrawn and an amended one substituted, raising the contentions enumerated below:

1.That count one of the plaintiffs complaint was inconsistent with and contradictory to counts four and five of the complaint, in that while plaintiff had averred in counts four and five that he was charged and prosecuted for the alleged commission of the crime of embezzlement, in count one, he had averred that he had never been charged.

2. That as to counts two and three of the plaintiff s complaint regarding the issues of plaintiffs dismissal and the action of damages having been litigated or determined by the Supreme Court, admitted to by plaintiff in count nine of the complaint, the said issues, particularly the ones raised in the action of wrongful dismissal, were passed upon by the Ministry of Labour.

3.That in counts four and five, the defendant denied ever having reported to the Criminal Investigation Division (C.I.D.) that the plaintiff or any other employees of the defendant company had embezzled funds from defendant company; rather, the defendant asserted that it had simply reported to the C.I.D. that its business documents and goods stored by it for its customers were missing and that it was the sole decision of the C.I.D., an appropriate agency of the Government, to detain and prosecute plaintiff.

4. In traversing count six of plaintiffs complaint, defendant averred that no actions of damages and NE EXEAT REPUBLICA were pending but rather that the same had been withdrawn on May 5, 1982.

5. In count nine of defendant's amended answer, the issue of the statute of limitations was raised, the defendant's contention being that the right of the plaintiff to commence the cause of action accrued immediately after the time the alleged act was said to have been committed and expired at the end of the three years period prescribed by the statute. However, the plaintiff action was filed beyond the three year period.

6. Plaintiff, in traversing the amended answer, filed a reply, which was subsequently withdrawn and substituted with the filing of a sixteen-count amended reply, the material averments contained therein being:

1. That the entire amended answer of the defendant should be dismissed for an infraction of the statutory law on pleadings, same being the payment of accrued costs prior to the withdrawal and refiling of an emended pleading.

2. That with reference to the opinion of the Supreme Court, handed down at its October Term, 1985, in his favor, the plaintiff asserted that the said opinion related to the matter of wrongful dismissal and not the action of damages.

Cases cognizable before this Court of dernier resort are litigated upon a bill of exceptions approved by the trial judge and filed by the dissatisfied party with the clerk of the trial court. In the instant case, the plaintiff herein, being the dissatisfied party, had filed an approved bill of exceptions. Because we consider count nine of the amended answer and seven of the approved bill of exceptions to contain the most salient issue, i.e. the statute of limitations, we hereunder quote count nine of the amended answer word for word as follows, to wit:

"That as to the entire complaint of the plaintiff, defendant submits that even assuming *arguendo* that the complaint of the plaintiff contains any iota of merit, which defendant denied it has, defendant submits that the present suit for inconveniences, ill treatment and physical and mental injuries, and damages for wrongful dismissal and failure to give a letter of recommendation, constitute injury to the person, for which an action is maintainable at law within a period of 3 years from the date the right to relief accrued, i.e. since the time the alleged wrong said to have been committed by the defendant against the plaintiff occurred over six years ago, the plaintiff is effectively statute barred, under the statute of limitation from maintaining or bringing this suit against the defendant. For this palpable legal blunder, defendant requests court to dismiss the entire complaint of the plaintiff, with costs against the plaintiff."

The plea of the statute of limitations is one in bar to the institution of a suit, and when raised in the pleadings (answer), obviates the necessity of passing upon the remaining controversial legal issues contained therein Whenever a right of action accrues and a party fails to institute the same, he is forever barred from so doing. Civil Procedure Law, Rev. Code 1: 2.12.

From a careful perusal of plaintiffs complaint, especially in count five thereof, it is substantially averred that the C.I.D. investigated the plaintiff herein and thereafter charged him with the alleged commission of the crime of embezzlement. The count alleges that plaintiff was tried by the First Judicial Circuit Court, Criminal Assizes, Montserrado County, and was acquitted on the 28th day of August, 1979, during the term presided over by the late Judge, His Honour. Jeremiah B. Reeves. Given the foregoing, it is our holding that the right of action accrued to the plaintiff from the period of this acquittal, that is, from August 28, 1979. Indeed, the institution of the civil action was not contingent upon the pendency or termination of the criminal prosecution. See *Johnson v. Matter Bros.,* 20 LLR 425 (1971), wherein this Court stated that "[t]he criminal prosecution of a party, even if properly conducted, does not necessarily excuse that party from civil liability thereafter for wrong committed."

The dismissal of plaintiffs complaint on the lone and salient legal issue of the statute of limitations, which is one in bar to the institution of an action, was both legally tenable and meritorious.

The statute also provides for the payment of accrued cost prior to the refiling of an action: Vide: Civil Procedure Law, Rev. Code 1: 9.10(b). According to the said statute, the "refiling of an action shall be contingent on the payment of accrued cost."

There is a marked legal difference between the payment of accrued cost and the bill of cost. When an action is withdrawn, the writ of summons which places the party defendant under the jurisdiction of the court is also withdrawn and not when a pleading such as a complaint or petition, answer or reply is withdrawn.

We note that an approved bill of exceptions forms the basis for the impartial and just determination of this and all other cases. Among the seven-count approved bill of exceptions is the issue raised in count one of defendant's amended answer which attacked the plaintiff's complaint as being inconsistent, contradictory and evasive.

Heretofore such a plea was violative of the statutory law governing pleadings. However, it is presently permissible for

an adverse party to plead several defenses, provided he does so in numbered or separate paragraphs Reliance: Civil Procedure Law, Rev. Code 1: 9.8(4); *Ditchfield v. Dossen,* 1 LLR 492 (1907); *Cooper v. Davis,* 27 LLR 310 (1978). Count one of the amended answer is therefore not sustained.

All of the material issues of the approved bill of exceptions having been passed upon, we are of the opinion that the trial judge's ruling, handed down on the 23' of April A. D. 1986, *inter alia,* being sound in law, this action of damages for a wrong is therefore abated and dismissed.

It is therefore our considered opinion, predicated upon the facts and circumstances and the law applicable thereto, that the trial judge's ruling be, and the same is upheld. Costs against the plaintiff .

Ruling affirmed.