MR. HARKAMALJI SINGH SAINI, Appellant**,** ***v.*** **MESSRS NADIM HOMIDAN** and NABIH SAAD, Appellees.

APPEAL FROM THE DEBT COURT FOR MONTSERRADO COUNTY.

Heard: December 10, 1984. Decided: January 11, 1985.

1. All final judgments are appealable, except those of the Supreme Court, which are absolute and binding on all parties to a cause before it.
2. While appeals lie from all final judgments of trial courts, there can be no appeal from an interlocutory judgment or order; hence, there can be no appeal from a lower court's refusal to grant a new trial and before final judgment is rendered.
3. For a judgment to be final, it must be complete and definite in its nature, and it must be certain or capable of being made certain.
4. A final judgment determines and disposes of the whole merits of the cause before the court by a declaration that the plaintiff is or is not entitled to recover by the remedy chosen.
5. An interlocutory judgment is one which is made before a final decision, for the purpose of ascertaining a matter of law or fact preparatory to a final judgment, or a subordinate point or plea, or which settles some step, question, or default arising in the progress of the cause, but does not adjudicate the ultimate rights of the parties or finally put the case out of court.

Appellant and another person who entered into a partnership agreement were sued by the appellees for debt, growing out of a lease agreement under which the partners had leased from appel-lees certain premises for the purpose of operating a restaurant. Appellant, claiming that the partnership had been dissolved and that the restaurant was being operated solely by one of the previous partners as a sole proprietorship, for the period of the lease sued for, filed a motion to strike his name from the suit and to thereby relieve him from any obligations under the lease agreement.

The trial court denied the motion to strike, holding that the private agreement between the parties limiting their liabilities was not binding on third parties such as the sub-lessor. From this ruling appellant noted exceptions and announced an appeal to the Supreme Court, contending that the ruling of the trial judge was a final judgment which put finality to the debt action.

The Supreme Court disagreed, noting that the ruling from which the appeal was announced was not a final judgment. The Court opined that whilst a party against whom a final judgment has been rendered has the right to appeal, except in cases deci-ded by the Supreme Court, an appeal could not be taken from an interlocutory ruling, which was the case relative to the ruling on the motion to strike. The motion to strike, the Court said, did not enquire into or dispose of the merits of the case and its denial did not harm the rights of the parties or bring finality to the proceedings. The Court observed that as the ruling on the motion to strike was interlocutory, the remedy available to the appellant and which appellant should have pursued was certiorari. The Court therefore concluded that under the circumstances, it could not hear the appeal. It therefore *dismissed* the appeal and ordered the trial court to proceed to hear the case on the merits.

Roger K. Martin of the Tubman Law Firm appeared for appellant. *Joseph P. Findley* of the Findley & Associates appeared for appellees.

MR. CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.

The history of this case is rooted in a partnership agreement between two Indian Nationals, the co-defendant, H. S. Saini, and another person named Ashok B. Tolani, who is now believed to be without our borders in foreign parts. The two had entered into a partnership agreement in May, 1981. Shortly thereafter, the partners entered into a sub-lease agreement with the appellees, two Lebanese Nationals, for the use of the Island Restaurant, located in Vai Town, Bushrod Island, Monrovia, for a period of three years certain, including May, 1984, with an optional period of two years, at an agreed rental fee payable annually.

While the sub-lease agreement was yet current, the partners, on May 31, 1984, dissolved and cancelled the partnership agreement, which agreement was often referred to in correspondences between the attorneys of both appellant and appellees before the present litigation commenced between said parties.

When appellees subsequently approached appellant for the arrears of the rental fees on the sub-lease referred to, the latter refused to pay, stating as the grounds that he was no longer a partner with Mr. Ashok B Tolani who had continued to use the Island Restaurant as a sole proprietor after the cancellation of the partnership with appellant. When appellees sued both former partners to the sub-lease agreement for debt, appellant filed an answer basically denying responsibility for said rent in view of the cancellation of the partnership agreement and his eventual withdrawal from the operation of the restaurant. Subsequent to said answer, appellant filed a motion to strike his name as a co-defendant from the action of debt, contending substantially the same as in his answer.

In passing on said motion, the court held that a private agreement between partners as to limitation of liability was not binding on third parties, in this case, the third party being the appellees who are sub-lessors. To this ruling appellant excepted and announced an appeal which was ultimately perfected. It is the said appeal arising from a denial of the motion to drop that is under consideration here.

In his brief, appellant maintained and argued that the denial of his motion to strike his name from the case as a party- defendant put finality to the debt action; hence, he says, the ruling is appealable. On the other hand, appellees argued that the denial of the motion to strike did not put finality to the action of debt, but that said denial amounted only to an interlocutory ruling, not subject to appeal.

From the foregoing contentions, it appears that the main issue raised by the parties in this appeal is whether or not the denial of a motion, filed by a co-defendant to strike off his name, put finality to the main cause of action and is therefore a proper cause for appeal.

From earliest times, this Court has held that all final judgments are appealable, except those of the Supreme Court which are absolute and binding on all parties to a cause before it. As recently as March, 1984, this Court held that appeals lie in all final judgments below, but that there can be no appeal from an interlocutory judgment or order. *Fahnbulleh and the Board of General Appeals v. Lamco*, 32 LLR 94 (1984). In that same opinion, the Court distinguished between a final judgment and an interlocutory one. It held that for a judgment to be final it must be complete and definite in its nature; and it must be certain, or capable of being made so. A final judgment is therein held to determine and dispose of the whole merits of the cause before the court, by declaring that the plaintiff is or is not entitled to recover by the remedy chosen.

On the other hand, the Court also pointed out that an inter-locutory judgment is one which is made before a final decision, for the purpose of ascertaining a matter of law or fact preparatory to a final judgment, or a subordinate point or plea, or which settles some step, question, or default arising in the progress of the cause, but does not adjudicate the ultimate rights of the parties or finally put the case out of court.

The law as to appeals from final judgments of lower courts is supported by statute, which obviously eliminates interlocutory rulings. Civil Procedure Law, Rev. Code 1 :51.2, *Judgments Subject to Review.*

Case law authority on the issue of final and interlocutory judgments is in abundance in our jurisdiction, as mentioned, *supra.* The earliest case in point is *Cooper v. McGill,* l LLR 93 (1878), in which the court held that an appeal cannot be taken from an interlocutory judgment since the appellate court does not review cases by piecemeal. The Court proceeded further to define a final judgment as that which puts an end to the matter in controversy, so far as the same is within the purview of the court.

The Court maintained that until final judgment, no valid appeal can be taken. In rationalizing its position, the Court pointed out that were the rules for appeal otherwise, litigants would be harassed by appeal and the courts burdened with unnecessary labor. It concluded that it was a judicial decision of the character of a final judgment, setting the rights or interests in controversy between parties to a cause that is essential to invoke appellate jurisdiction. Furthermore, in *Tuning v. Morel,* 1 LLR 235 (1891), this Court again held that there could be no appeal from an interlocutory judgment before final judgment has been rendered; hence there could be no legal appeal from the lower court for refusing to grant a new trial when there was no final judgment rendered in the case.

These earlier cases were followed by several more recent cases, all maintaining that there can be no appeal from an interlocutory judgment until there has been a final judgment in some cause.

From the foregoing expositions, it becomes obvious that in order to determine the issue presented, it is important to first determine whether or not the judgment from which this appeal was taken is a final judgment. The appellant strongly maintained that there was a final judgment as could have been appealed from. The appellees, on the other hand, challenged that interpretation and contended that the ruling was purely interlocutory.

Appellant filed a motion to strike off his name in an action of debt which is the foundation of this suit, and from which the denial and also this appeal arose. The action of debt remained undetermined. But appellant, while admitting that he was a party to the sublease agreement, out of which the debt grew, also denied owing any obligation on said sub-lease because, he said, he had allegedly withdrawn from the partnership, leaving co-defendant Tolani as sole proprietor, with full responsibility for the rental payments.

Consequently, he filed the motion in order to have his name stricken off as co-defendant. The motion was denied by the court, which then directed that the action of debt be heard on the merits. It was against said ruling that the appellant appealed to this Court for a final determination, contending that the denial of his motion to strike finally determined his rights in the matter.

Judging from the foregoing, there can be no denying that said motion to strike was a preliminary action to determine the proprietor of having appellant joined as a defendant in the matter. The motion to strike presented a question of fact which could have been better proved were the case to be heard on the merits. Indeed, the motion to strike did not inquire into the merits of the action of debt. Therefore, the denial of said motion did no harm to the rights of the parties to the action of debt, and it could not be said to have been a final adjudication of appellants' rights in the matter.

When the motion to strike was denied, it was left to the appellant to have the case heard on the merits in order to present the circumstances of his case for determination. Alternatively, he could have moved on some remedial writ, admittedly certiorari, if he felt his motion had not been properly handled. But we are not convinced, however, that the contested ruling on the motion to strike was a final judgment, as contemplated by both the statute and case law, as would make it appealable.

In view of what we have said, the appeal is disallowed with costs, and the judge below is ordered to proceed to hear the case on its merits. And it is hereby so ordered.

Appeal disallowed.