

**SALALA RUBBER CORPORATION**, represented by its General Manager  
and/or its Legal Representative, Appellant v. **FRANCIS Y. S. GARLAWOLU**,  
Appellee

APPEAL FROM THE EIGHTH JUDICIAL CIRCUIT COURT, NIMBA  
COUNTY

Heard: November 10, 1999 Decided: December 16, 1999

1. The lawyer-client relationship does not exist by mere allegation but must be established by documentary evidence showing the existence of a contract duly executed by the client and the lawyer; and for any claim arising out of that relationship, the documentary evidence must be produced to substantiate the existence of the relationship.
2. Pleadings are mere allegations, subject to proof by the preponderance of the evidence at the trial. Where a party plaintiff has not presented evidence in support of the allegations of his pleading, he cannot recover against the party defendant.
3. The mere allegations or averments set forth in the complaint do not constitute proof, but evidence is essential as to the truth of the facts constituting the claim in order to render a judgment with certainty concerning the matter in dispute.
4. The law provides that the plaintiff upon application can be granted a default judgment for the failure of the defendant to appear, plead or proceed to trial.
5. A default judgment is an imperfect judgment which must be made perfect by the production of sufficient evidence by the plaintiff to substantiate his claim or to support the averments in his pleading. Failing this, the plaintiff should not recover against the defendant even though the defendant is not present to present evidence in contradiction of the evidence presented by the plaintiff.
6. In a default judgment proceeding, it is required that the plaintiff establish the facts of the claim as well as the amount due.

Appellee filed a complaint against appellee at the Thirteenth Judicial Circuit Court claiming special damages in the amount of US\$25,000.00 (Twenty-Five Thousand United States Dollars) plus general damages as may be determined by the jury. Appellee, a lawyer, claimed that he provided legal services to appellant for a certain period of years; that appellant's representative signed a memorandum committing appellant to payment of the fees; but that appellant failed and refused to pay the fees.

In its answer, appellee denied that appellant provided the legal services or ever served as legal counsel to appellant; appellant also denied that any of its authorized representatives ever signed any memorandum with appellee committing appellant to payment of legal fees in the amount claimed by appellee. Appellant also challenged appellee to produce the original of the memorandum allegedly executed by appellant's authorized representative.

At the trial, appellant moved the court for change of venue to the circuit court in Montserrado County or Grand Bassa County. The motion was granted but because of appellee's concern for a fair and impartial trial in those jurisdictions, the Thirteenth Judicial Circuit Court granted the change of venue to the Eighth Judicial Circuit Court.

When the case was called for trial by jury, neither a representative of appellant or its counsel was present; and so a default judgment was granted to appellee, who presented his evidence and rested. A verdict for appellee was subsequently confirmed by the trial judge; and the counsel appointed by the trial court to take the judgment for appellant, excepted and announced an appeal to the Supreme Court.

Upon review, the Supreme Court found that appellee had failed to produce evidence to make perfect the imperfect judgment granted to him. That is, appellee failed to show by documentary evidence that a lawyer-client relationship existed between him and appellant; and appellee also failed to produce the person, allegedly authorized by appellant to sign the memorandum, to prove the existence of the memorandum and the validity of appellee's claim. The Supreme Court held that pleadings are mere allegations, subject to proof by preponderance of the evidence. The Supreme Court also held that even where a party has obtained a default judgment, he must prove his case by preponderance of the evidence or he should not prevail.

The Supreme Court therefore *reversed* the judgment and remanded the case for a new trial.

*Isaac C. Nyephu* appeared for Appellant. *Francis I'. S. Garlawolu pro se.*

MR. JUSTICE JANGABA delivered the opinion of the Court.

An allegation is defined by law writers as "the assertion, claim, declaration, or statement of a party to an action, made in a pleading, setting out what he expects to prove." BLACK'S LAW DICTIONARY, 7th Ed. 74 (1990) . Further, "allegations and

averments in no case amount to proof, but evidence is the essential means which demonstrates, makes clear, or presents the truth of the facts constituting the issues. This enables the court to pronounce with certainty concerning the matter in dispute, and enables the jury to decide upon the question submitted to them." *Attia v. Sherman*, 1 LLR 222, 223 (1889).

The records transcribed and forwarded to this Court reveal that Francis Y. S. Garlawolu, appellee, instituted an action of damages for wrong against the Salala Rubber Corporation, appellant, at the Thirteenth Judicial Circuit Court for Margibi County. In his complaint, appellee alleged, among other things, that he rendered legal services to appellant as legal counsel for appellant from 1985 to 1992 without compensation for his services. Appellee also alleged in his complaint that he, appellant, executed a memorandum on the 2<sup>nd</sup> day of December, A. D. 1991, wherein one John N. Pennoh committed appellant to pay appellee US\$25,000.00 (Twenty-Five Thousand United States Dollars) for the legal services rendered by appellee.

Appellee claimed that appellant failed to pay this amount of US\$25,000.00 (Twenty-Five Thousand United States Dollars) and so in the complaint, appellee claimed US\$25,000.00 (Twenty-Five Thousand United States Dollars) as special damages and also prayed for general damages commensurate with the legal services rendered. Appellee further gave notice that he would request the trial court to issue a subpoena duces tecum against appellant to produce the original copy of the memorandum at the trial.

The writ of summons was issued on the 13<sup>th</sup> day of September, A. D. 1997, and served on the 15<sup>th</sup> September, A. D. 1997, commanding appellant to make its former appearance and/or file its answer on or before the 23<sup>rd</sup> day of September, A. D. 1997. The writ of summons was returned served on September 15, 1997.

Appellant filed an answer denying appellee's assertion that he rendered legal services to appellant between the period of 1985 and 1992. Appellant also denied executing a memorandum for payment of US\$25,000.00 (Twenty-Five Thousand United States Dollars) to appellee for legal services rendered to appellant. Appellant contended that the failure of appellee to proffer a photocopy of the alleged memorandum to his complaint rendered said complaint uncertain and unintelligible and therefore subject to dismissal.

Appellee filed a reply, upon which the pleadings in this case rested.

Appellant filed a motion for change of venue to either Montserrado County or Grand Bassa County. This motion was resisted by appellee; it was heard by the Thirteenth Judicial Circuit Court and granted. However, instead of Montserrado County or Grand Bassa County, the case was forwarded to the Eighth Judicial Circuit, Nimba County because appellee feared that the courts in Montserrado County and Grand Bassa County would not accord him a fair and impartial trial of the case.

The records in this case reveal that the appellant did not appear for the hearing of this case on December 19, 1997, upon a notice of assignment dated December 17, 1997, due to a judicial engagement of appellant's counsel at the First Judicial Circuit for Montserrado County, Criminal Assizes "C". Appellant claimed that its counsel wrote a letter to the trial judge informing him of his engagement and requested the postponement of this case; however, the receipt of this letter by the trial judge is in dispute.

Because of the absence of appellant and his counsel from the hearing on December 19, 1997, appellee prayed the trial court for a default judgment. The application was granted by the trial judge, and, in keeping with law and trial procedure, appellee was permitted by the trial court to take the stand and prove his case.

In endeavoring to prove his case, appellee testified for himself, and also had two witnesses, in persons of David B. J. Wayman and Arthur S. Kandakai, testify. On the direct examination, appellee recognized and confirmed the signature of one John Pennoh, Personnel Manager and Public Relations Officer of appellant at the time of the alleged execution of the memorandum. However, the said John Pennoh was never called to testify to the validity of the contract and the genuineness of his signature. In response to a question from his own counsel as to the whereabouts of the original memorandum, appellee testified to the effect that he had the original document probated and registered and it was returned to him on November 23, 1999. However, at the time of filing his complaint, he discovered that the original memorandum was lost and so he gave notice in his pleading that he would apply to the trial court for subpoena duces tecum against the appellant to produce the original.

The second witness in person of David B. J. Wayman did not testify to the genuineness of John Pennoh's signature; rather, he only confirmed John Pennoh's position in appellant's management to be personnel manager and public relations officer, as claimed by appellee in the complaint. He never testified to the effect that he was present at the time the contract (memorandum) was executed by John Pennoh

and appellee. It is also not shown on the face of the document that David B. J. Wayman ever witnessed this contract.

The third witness in person of Arthur B. Kandakai only testified that appellee and John Pennoh, along with one Yakpawolo, visited the division of appellant's rubber plantation and informed the workers concerning the reopening of the plantation, and that the illegal tapping of the plantation was stopped by ECOMOG through the assistance of appellee. This witness also did not testify to the existence of a contract between the appellant and appellee; he did not testify to the genuineness of John Pennoh's signature. Further, like David B.J. Wayman, this witness did not also attest to the contract.

In its verdict, the empaneled jury held appellant to appellee for the sum of US\$25,000.00 (Twenty-Five Thousand United States Dollars) as special damages and US\$30,000.00 (Thirty Thousand United States Dollars) as general damages. The trial Judge, His Honour Timothy Z. Swope, rendered final judgment on December 23, 1991, confirming the verdict of the jury. The counsel appointed by the trial court to take the judgment for appellant, Anthony G. Williams Kei, excepted to this judgment and announced an appeal to this Court. Appellant processed the appeal and presented us with a brief containing four issues.

Of the four issues raised in appellant's brief, we deem only the first issue relevant for the determination of this case.

Appellant contended that appellee failed and neglected to produce John Pennoh, the alleged administrative manager, whom appellee alleged signed the memorandum (contract) committing appellant to pay the sum of US\$25,000.00 (Twenty-Five Thousand United States Dollars) to appellee. This John Pennoh, according to appellant, should have been appellee's prime witness in this case.

Appellant also contended that witness David B. J. Wayman never worked for appellee, and instead of said David B.J. Wayman, John Pennoh should have been summoned as a witness for appellee to testify to the genuineness of his signature as well as the services allegedly rendered by appellee to appellant. Appellant further contended that the documentary evidence produced by appellee at the trial is uncorroborated, in that, the appellee failed to produce evidence to substantiate his allegation in respect of said documentary evidence.

Appellant concluded that appellee failed to make perfect the imperfect judgment by default granted by the trial court, as required by law. Appellant therefore prayed this Court to reverse the judgment of the trial court.

The appellee also raised four issues in his brief; but this Court deems only the fourth issue worthy for the determination of this case.

Appellee argued that the memorandum pleaded, testified to, and admitted into evidence did establish evidence of a high degree as to the special damages of US\$25,000.00 (Twenty-Five Thousand United States Dollars). It was also contended by the appellee that the general damages awarded him by the jury and confirmed by the judge is commensurate with the mental agony and inconvenience suffered by him due to appellant's several failures to fulfill its promises to him. Appellee therefore requested this Court to confirm the judgment of the trial court.

From the evidence and the briefs submitted the paramount issues for the determination of this case are:

1. Whether or not the alleged memorandum of understanding did substantiate a lawyer-client relationship between appellant and appellee and also support the veracity of appellee's claim.
2. Whether or not the appellee made perfect the imperfect judgment granted him by the trial court due to appellant's absence or default.

The above stated issues will be decided in the order in which they are raised.

As to the issue of a lawyer-client relationship between the parties, this Court first observes the absence of a retainer contract between appellant and appellee from 1985 to 1992, contrary to what as alleged by the appellee during the argument of this case. The records in this case are also devoid of any evidence that appellee ever produced the alleged contract upon which his claim of indebtedness from 1985 to 1992 is based. A lawyer-client relationship does not exist by mere allegation but by a documentary evidence duly executed by the client and the lawyer; and for any claim arising out of that relationship, it is required that the documentary evidence be produced in substantiating the existence of the lawyer-client relationship.

The claim of the lawyer against his client can only be proven by the existence of the contract creating a lawyer-client relationship, as in this instant case. It was required by

the appellee to have established a lawyer-client relationship with appellant from 1985 up to and including the death of the late Counsellor Cassell in 1991 by the production of a contract creating such a relationship between the parties. The alleged memorandum can establish the veracity of appellee's claim when and only when appellant, by and through its legally authorized representative, who allegedly executed same with the appellee, appears and testifies as appellee, for purposes of confirming the validity of said memorandum. This Court observes that John Pennoh, whom the appellee alleged and argued signed the memorandum, was never summoned by the appellee as his prime witness to testify to the existence of the contract, the genuineness of his signature, and the validity of appellee's claim.

Accordingly, this Court holds that appellee did not establish by the preponderance of the evidence that a lawyer-client relationship existed between him and appellant.

The second issue in this case is whether or not appellee made perfect the imperfect judgment granted him by the trial court due to appellee's absence or default.

Our Civil Procedure Law provides that the plaintiff upon application can be granted a default judgment for the failure of the defendant to appear, plead or proceed to trial as in the instant case. Civil Procedure Law, Rev. Code §1:42.1. It is, however, required that the plaintiff establish the facts of the claim as well as the amount due. *Mid*, § 1:42.6. Thus, the mere allegations or averments set forth in the complaint do not constitute proof, but evidence is essential as to the truth of the facts constituting the claim in order to render a judgment with certainty concerning the matter in dispute. It also follows that such evidence enables the trial jury to decide upon the question presented to them. *Attia v. Sherman*, 1 LLR 222, 223 (1889).

Appellee's claim against appellant, set forth in his pleading, is an allegation or declaration which appellee, as the plaintiff, is expected and required to prove during trial by a preponderance of evidence. In other words, a plaintiff to whom an imperfect judgment is granted is required under our law to make the imperfect judgment perfect by the production of sufficient evidence to substantiate his claim. Appellee failed and neglected to proffer any evidence of his claim against the appellant that he served as retained legal counsel to appellant from 1985 up to and including the death of the late Counsellor Cassell in 1991. Appellee also failed to summon John Pennoh as his prime witness, who allegedly executed and signed a contract with him in said John Pennoh's capacity as the legal representative of appellant to testify to the existence of the contract and the validity of appellee's claim.

It has been written by law writers that "pleadings do not prove themselves; that is, their allegations do not constitute evidence of the facts alleged in favor of the pleader, and averments of a pleading unsupported by proof are unavailing. Thus, as a general rule, every material allegation of a complaint, declaration, or petition must be proved unless admitted or deemed admitted by the adverse party." 71 C.J.S. *Pleadings*, §520(b).

Wherefore, and in view of the foregoing, it is the opinion of this Court that the judgment of the lower court is not supported by the evidence adduced at the trial; and accordingly, said judgment is hereby reversed and this case is remanded for a new trial. 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 proceed with the hearing of this case on its merits. Costs to abide final determination. And it is hereby so ordered.

*Judgment reversed; case remanded.*