IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC
OF LIBERIA, SITTING IN ITS MARCH TERM, A.D. 2021

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
BEOFRE HIS HONOR: YUSSIF D. KABA…..... ASSOCIATE JUSTICE

Total (Liberia) Inc. represented by the Managing Director, General Manager, Assistant Manager and all other authorized personnel of the City of Monrovia, Liberia ……Appellant

Versus — APPEAL

Stoner (Liberia) Inc. represented by the President and CEO, Rev. Fidel Onyekwelu of the City of Monrovia, Liberia……..Appellee

GROWING OUT OF THE CASE :

Stoner (Liberia) Inc. represented by the President and CEO, Rev. Fidel Onyekwelu of the City of Monrovia, Liberia……..Plaintiff

Versus — ACTION OF DAMAGES FOR WRONG

Total (Liberia) Inc. represented by the Managing Director, General Manager, Assistant Manager and all other authorized personnel of the City of Monrovia, Liberia ……Defendant

HEARD: November 20, 2019 DECIDED: August 26, 2021

MR. JUSTICE NAGBE DELIVERED THE OPINION OF THE COURT

This appeal grows from the adverse judgment had against the appellant by the trial Judge of the Civil Law Court, Sixth Judicial Circuit, Montserrado County, Republic of Liberia, out of an action of damages for wrong filed by the appellee, Stoner Liberia Inc. The appellee filed its complaint on December 12, 2016, and alleged in substance that in 2008, through a credit facility from the Ecobank, acquired four fairly used tanker trucks which were hired by the appellant to transport its petroleum products to various destinations in Liberia; that in May 2011, the former Managing Director of the appellant advance a proposal that in May 2011 through which he contracted transporters, including the appellee and procured 40 new trucks for the exclusive use of the appellant through a loan

arrangement with the Ecobank with payment therefor made from proceeds from services to be rendered by the transporters to the appellant; that the appellee took four of the trucks based upon this arrangement thereby increasing its fleet of trucks to seven under the contract; that on October 11, 2013, one of the appellee's tanker trucks bearing registration number BT-2663 was loaded with 5,000 gallons of fuel bound for the Monrovia Breweries, the appellant's customer; that the appellee delivered to the appellant's customer said quantity of fuel evidenced by a copy of a delivery note; that without a complaint from the customer, the appellant's Managing Director, Mr. Robert Fenech, suspended the appellee's services for four months on a mere allegation that the 5,000 gallons of fuel were not delivered to the appellant's customer, and thereafter placed the appellee's trucks under another competitor for ten months; that the appellee did not base the suspension on the outcome of any investigation; that the decision of the appellant to suspend the appellee damaged the appellee's revenue intake from the seven tanker trucks contracted by the appellant with the average income of US$70,000.00 per month; that the suspension also impair the appellee's ability to service the re-payment of a loan of US$1,000,000.00 it secured from the Ecobank which the appellant guaranteed with service proceeds for the purpose of procuring the four additional tanker trucks to augment appellee's fleet of trucks to seven; that as the consequence of the alleged illegal suspension of the appellee's services, the appellee suffered special damages of US$280,000.00 for the four month of total suspension, and the loss of 30% income during the period that its fleet of trucks were placed under the other competitor; and that the suspension also impaired the appellee's ability to service the re-payment of the loan of US$1,000,000.00 secured from the Ecobank. We quote the appellee's complaint in its entirety for its relevance to this Opinion:

> "1. That, the Plaintiff in these proceedings is a Liberian Corporation registered and doing business under the law of Liberia. Copy of its Articles of Incorporation is hereto attached and marked as Plaintiff's Exhibit "P/1" to form part of Plaintiff's complaint.
>
> 2. Plaintiff also avers and says that by a Board Resolution, the Board of Directors of the Plaintiff's Corporation authorized the action herein against the Defendant Corporation. Copy of the Board Resolution authorizing this action is hereto attached and marked as Plaintiff's Exhibit "P/2" to form part of this complaint.

3. Plaintiff further complains and says its main [line] of business is to provide transport services, mainly Tanker Trucks, for the transportation of fuel.

4. Plaintiff further complains and says that in 2008, she acquired four fairly used tanker trucks through credit facilities from the Ecobank. These tankers were contracted by the Defendant Management, Total (Liberia) Inc., for the transportation of its petroleum products to various destinations in Liberia.

5. Plaintiff further complains and says that in May 2011, the then Managing Director of Total (Liberia) Inc., Mr. Oliver Lasagne advanced a proposal to transporters, including the Plaintiff herein, for the procurement of forty (40) new trucks for the exclusive use for Total (Liberia) Inc. The Plaintiff benefitted from this program when four (4) of the trucks were given to the Plaintiff to form part of its fleet of vehicles to transport products exclusively for the Defendant Corporation. The Plaintiff would also receive payment from Total (Liberia) Inc. for services provided to pay Ecobank for these trucks under this arrangement.

6. Plaintiff further complains and says after the arrangement, she had then, the total of seven (7) trucks in the fleet and was receiving gross monthly income of US$70,000 (Seventy Thousand United States Dollars) from the Defendant Corporation for services provided, that is to say, the deliverance of petroleum products for the defendant. Copy of some of the invoices are hereto attached and marked in bulk as Plaintiff's Exhibit "P/3" to form part of this complaint.

7. Plaintiff also complains and says that on October 11, 2013, one of its vehicles, #B.T 2663 lifted 5,000 gallons of fuel on local purchase order #21407 and delivered same to the Monrovia Breweries and product was delivered to the said Breweries and received in full. Copy of the delivery note is hereto attached and marked as Plaintiff's Exhibit "P/4" to form a cogent part of this complaint.

8. Plaintiff further complains and says that even though Plaintiff delivered the 5,000 gallons to its destination, the Monrovia Breweries Inc., and with no complaint from the said Monrovia Breweries, the then Managing Director of the Defendant, Mr. Robert Fenech, suspended the Plaintiff Corporation for the period of four (4) months without any justification on mere allegation that the Plaintiff did not deliver the 5,000 gallons to the Monrovia Breweries without any investigation.

9. Further to count eight (8) above, Plaintiff complains and says that she made representation to the defendant Corporation that the fuel was delivered to the Monrovia Breweries and as a matter of fact, the Monrovia Breweries paid full to the Defendant Corporation for the

5,000 gallons of fuel, meaning that the allegation that the Plaintiff did not deliver the 5,000 gallons was incorrect.
10. Further to counts eight (8) and nine (9) above, Plaintiff further complains and says that for the four (4) months that the Plaintiff operation was illegally suspended by the Defendant Corporation, the Plaintiff lost the total of US$280,000 (70,000 x 4) in income. This amount the Defendant Management should be made to pay to the Plaintiff as part of the damages.

11. Plaintiff also complains and says that when the Defendant management elected to lift the suspension on the Plaintiff Corporation, she demanded that the Plaintiff puts its truck under another transport company called the Family Line Transport. This arrangement which started since November, 2014, reduced the Plaintiff's income by 30%, all to the detriment of the Plaintiff herein.

12. Plaintiff further complains and says that the action by the Defendant Management herein has sufficiently damaged the Plaintiff and that an action of Damages will therefore lie."

On December 27, 2016, the appellant filed a two count answer in which it denied having knowledge and information sufficient to form a belief of the falsity or truthfulness of the appellee's complaint and all allegations not specifically traversed in its Answer. We also quote the general denial of the appellant as follows:

"1. That as to Counts one (1) through twelve (12) of the Complaint, Defendant says that it is without knowledge and information sufficient to form a belief of the falsity or truthfulness of the averments contained therein, and therefore can neither deny nor confirm same.

2. Defendant denies all and singular the allegations of both fact and law as are contained in Plaintiff's Complaint and not specifically traversed in this Answer."

On December 28, 2016, the appellee filed a two count reply in which it confirmed the allegations contained in the complaint; the reply is stated as follows:

"1. That as to the entire Answer, Plaintiff says that the answer filed by the Defendant constitutes a general [denial] without addressing those particular instances that formed the basis for the plaintiff['s] claim of damages. Under our laws, that which is not denied is deemed admitted.
2. That as to counts one (1) and two (2) of the Defendant's answer, plaintiff says that she confirm and affirm one (1) through twelve (12) of the Plaintiff's complaint and says further that these counts made a clear case of damages which Defendant has not particularly deny, Plaintiff therefore pray[s] Your Honour to summarily rule against the

> Defendant in these proceedings, confirm and affirm the specific damages of US$280,000.00 (Two Hundred Eight Thousand United States Dollars) and empanel jurors to return a directed verdict for general damages in amount that will be deem equitable and just."

Pleadings having rested, the trial court, on February 10, 2017, proceeded to dispose of the law issues upon a regular notice of assignment and ruled the appellant to a bare denial for its failure to controvert the averments contained in the appellee's complaint.

The trial court ordered issue a regular notice of assignment for the hearing of this case during its June Term, A.D. 2017; hence, on July 14, 2017, the trial Judge called the case for hearing and the appellant made the following submission to the court quoted herein under:

> "At this stage, one of counsels for defendant begs to inform this Honorable Court that plaintiff in this complaint filed before this court alleges that a contract agreement was executed between the plaintiff and the defendant but that the plaintiff did not annex a copy of the said agreement before this court and furthers that when the summons was served on the management/defendant, its representative who has access to the corporate document was without the bailiwick; predicated upon which the defendant filed a general denial with the hope that he would have obtained all the requisite documents before withdrawing its responsive pleading. That in that process, the plaintiff filed a reply and subsequently obtained an assignment to dispose of the law issues. Counsel submits that after diligent search, it recovered a copy of the contract agreement signed between the plaintiff and the defendant subject of this litigation. Counsel wishes to bring to the attention of the court that in the same agreement copy of which Article 17,…, that the parties resolved to submit to arbitration in the event of a dispute. Counsel submits and says that he has discovered this evidence which he terms as newly discovered evidence, this court should take judicial cognizance and refuse jurisdiction over this matter on ground that [the] parties of their own choosing have decided to settle their dispute if any by way of arbitration.
>
> By permission of court, counsel wishes to present a copy of the said contract agreement for your perusal and information. Counsel says that since the parties agreed and executed this agreement outlining how to settle this dispute, this court should refuse jurisdiction over this matter and advise the parties to [resort] to [arbitration] as enshrined in that agreement.
> Wherefore and in view of the foregoing, counsel for defendant respectfully prays Your Honor to grant its submission and herewith submits copy of said agreement between the parties for your

attention and grant unto defendant all other relief as justice demands."

Subsequently, the appellant resisted this submission and averred thus:

"Counsel for plaintiff/respondent herein prays Your Honor [and] this Honorable Court to deny and dismiss the submission made by one of counsels for defendant as showeth the following to wit:

1. Because this case had been ruled to trial or was ruled to trial by another judge of concurrent jurisdiction, that is, Judge Yussif D. Kaba on the 10th day of February 2017; and ruled also the defendant to a bare denial. In keeping with our law, practice, and procedure, a judge cannot vacate or modify the ruling of another judge of concurrent jurisdiction;

2. Plaintiff/respondent's counsel says that the application should be denied because a party that is ruled to bare denial is estopped from introducing affirmative matter; the attempt by counsel for defendant/movant asking this court to submit a so-called agreement contravenes our practice, procedure and the law.

Wherefore and in view of the foregoing, counsel for respondent/plaintiff prays Your Honor and this honorable court to deny and dismiss the application made by one of counsels for defendant/movant and proceed to hear this matter consistent with Judge Yussif D. Kaba's ruling placing the defendant on bare denial. Counsel for Respondent/Plaintiff in support its argument cites:

1. Chapter 25., section25.1, Section 25.8 of 1 LCLR;

2. Counsel for Respondent/Plaintiff requests court to take judicial notice of the court's file;
3. Counsel for Movant/Defendant cannot introduce affirmative matter; [and]
4. This court or the judge cannot review the ruling of another judge of concurrent jurisdiction."

The trial court ruled on the submission and the resistance thereto and opined:

"the submission of counsels for defendant and the resistance thereto by
counsel for plaintiff are hereby noted. Counsel for defendant, in his submission, indicated that a contract agreement was executed [between] the plaintiff and the defendant but the plaintiff did not annex a copy of said agreement before the court. And when the summons was served on the defendant/management, its representative was without the bailiwick of the Republic of Liberia; predicated upon which the defendant filed an Answer of General

Denial with the hope that defendant would have obtained all relevant documents before withdrawing its responsive pleading and in the process plaintiff filed a Reply and subsequently obtained an assignment for disposition of law issues. Counsel for defendant averred that after diligent search it recovered copy of the contract agreement signed by and between the plaintiff and the defendant and that contract is subject of this litigation.

In this submission, counsel for defendant, brought to the attention of this court that parties resolved in this agreement to submit to arbitration in the event of a dispute and defendant has discovered its evidence which it termed as newly discovered evidence to refuse jurisdiction. This court should take judicial cognizance on matter that parties on their own volition have decided to settle their dispute in the way out of litigation by arbitration. Counsel for defendant submitted to this court a copy of contract agreement for arbitration for this court's perusal and information. Counsel for defendant prays court to grant [its] submission and grant unto defendant all other relief as justice will demand.

This submission had been countered by counsel for plaintiff/respondent. In his resistance, counsel for plaintiff contends that this case had been ruled to trial by another judge of concurrent jurisdiction on the 10th day of February 2017 in which ruling, the defendant herein was placed on bare denial and in keeping with our practice and procedure, a judge… cannot vacate, modify or interfere with the ruling of another of concurrent jurisdiction.

Counsel for plaintiff requested court to deny the submission made by counsel for defendant because a party that is ruled [to] bared denial is estopped from introducing affirmative matter; and attempt by defendant's counsel to submit a so-called agreement referenced above contravenes our practice, procedure and law. Counsel for plaintiff therefore prays court to deny and dismiss the submission made by counsel for defendant and proceed to hear this matter consistent with the ruling of Judge Yussif D. Kaba which placed defendant on bare denial. Arguments were entertained on both sides and the law citations relied on by each party noted.

This court says that the issue which it finds to be dispositive of this submission is whether or not a judge of concurrent jurisdiction under the law to review the ruling or judgment or judicial action of another of concurrent jurisdiction and whether or not a party placed on bare denial and bared from introducing affirmative matter may introduce affirmative evidence? The court answers these questions in the negative.

In a long line of opinions of the Honorable Supreme Court of Liberia, a judge of concurrent jurisdiction has no authority to modify or review the judicial act of a judge of concurrent jurisdiction no matter

how silly is the sitting judge a decision. In the instant case, this action of damages for wrong filed by plaintiff was countered by an answer filed by defendant and pleading rested with plaintiff's reply. Law issues was assigned and disposed of and in the disposition of law issues, the defendant in these proceedings was placed on bare denial of the averment contained in plaintiff's complaint and bared from introducing any and all affirmative defenses to the averment contained in plaintiff's complaint. This case had been ruled to trial by my colleague, Judge Yussif D. Kaba, I, would be grossly in error of the law were I to proceed with this case in any other manner or form besides trial since the case was ruled to trial.

As in the issue of whether or not one who is placed on bare denial may introduce affirmative evidence, this court answers in the negative. This court says that agreement to arbitrate which is the subject for counsel for defendant is an affirmative evidence the defendant is estopped from introducing and were this court to take judicial cognizance of said document, it would again be reviewing the judicial act of my colleague who had placed the defendant on bare denial.

Wherefore and in view of the foregoing, the submission of counsel for defendant is hereby denied and the resistance thereto sustained. The trial is hereby proceeded in keeping with the notice of assignment".

Following the denial of the submission by the trial Judge, the appellant noted exception therefrom, the trial commenced, appellant having waived the right to a trial by jury. The appellee produced two regular witnesses, namely: Fidel Chidi Onyekwelu, CEO of the appellee, Nnamdi Onyekwelu, appellee's General Manager and a subpoenaed witness, Lawrence B. Mensah, the HR Training Manager of the appellant who also served as Transport Manager and has substantive knowledge of the transactions.

The appellee's evidence tends to establish that it has been doing business with the appellant since 2008 as a transporter to deliver petroleum products to the appellant's customers; that during the course of this business dealing, the appellant persuaded the appellee and other competitors to upgrade their respective fleets by bringing in additional forty new tanker trucks customized to the standard and specifications and bearing the logo of the appellant; that the appellant gave guarantee to the bank for the appellee to secure US$1,000,000.00 for the importation of four additional tanker trucks; that while substantial repayment was outstanding, the appellant illegally suspended its services on mere allegation that the 5,000 gallons loaded on appellee's BT-2663 were not delivered to the customer, Monrovia Breweries, Inc. contrary to the evidence of

delivery note and invoices confirmed by the subpoenaed witness; that after four months of its suspension, appellant readmitted four of its seven tanker fleet in February, but subjected the appellee's services to another competitor, Family Line Transport, which further negatively affected the appellee's ability to satisfy the payment terms of the loan secured from the bank thereby exposing the appellee CEO's residence or collateral to the risk of foreclosure. The appellee's evidence shows that in May 2013, it earned an income of US$84,964.60 and in July, the same year, it also earned the amount of US$39,273.00 in revenue from services rendered to the appellant. The appellee's exhibits P/1 (copy of articles of incorporation), P/2 (copy of board resolution), P/3 (copies of invoices in bulk) and P/4 (copy of delivery note evidencing the receipt of the 5,000 gallons of fuel by the appellant's customer, Monrovia Breweries, Inc., were all testified to, marked by the court and admitted into evidence.

When the appellee rested with the production of evidence, the appellant filed a 15-count motion for judgment during trial in which it substantially alleged the following:

1. "Movant says and submits that [it] is provided for by law that at the close of the evidence presented by the opposing party with respect to a claim or issue, when said evidence is insufficient to warrant the defendant taking the stand to defend against it, the defendant may move the court for judgment during trial as a matter of law. 1 LCLR, Page 209, Section 26.2, captioned "Motion for Judgment During Trial." It is on the basis of the law cited herein that this Motion for Judgment During Trial is being filed by Movant.

2. Movant says that Respondent herein filed a twelve (12) count complaint against the Movant alleging Damages for Wrong during the March [2017] Term of Court. In count five (5) of the said complaint, Respondent alleges that in May of 2011 the then Managing Director of Total Liberia Inc., Mr. Olivier Lasagne advanced a proposal to Transporters including the Plaintiff herein for the procurement of forty (40) brand new trucks for the exclusive use of the Movant. From this arrangement, the Respondent benefitted from this program when four (4) of its trucks were included in the fleet of vehicles to transport petroleum products for Movant. The Respondent would also receive payment for services provided to pay Ecobank for these trucks under this arrangement.

3. Also complaining, the complainant averred that after the arrangement with Movant, he had a total of seven trucks in the fleet

of vehicles and was receiving gross monthly income of US$70,000 from the Movant for services rendered under the contract. Respondent further complained that on October 11, 2013, one of its vehicles BT-2663 lifted 5,000 gallons of fuel on local purchase order No. 21407 and delivered same to Monrovia Breweries in full, notwithstanding, his contract was suspended for four (4) months without any justification. And also that Monrovia Club Breweries paid the full amount for the 5,000 gallons of fuel.

4. Respondent averred in his complaint that for the four (4) months its operation was suspended, Respondent loss a total of US$280,000 in income, (meaning US$70,000 x 4 months).

5. In an attempt to establish its case by the preponderance of the evidence, the Respondent paraded two regular witnesses and one subpoena witness. The regular witnesses Rev. Fidel C. Onyekwelu and Nnamdi Onyekwelu testified in substance that their contract were suspended for four (4) months without any justifiable reasons and that at the result of the suspension, they loss a gross income of US$280,000 as special damages. Notwithstanding, this amount named by the witnesses as special damages, they did not proof by the preponderance of the evidence as required by law. The Supreme Court of Liberia has held that where a party states a specific amount as damages, as in the instant case, that amount is placed in the realm of special damages which must be proven with certainty and specificity and must be proved with particularity. The case, Joseph Hanson and Sochne (Liberia Limited) v. tuning, 17 LLR 617, Syl. 1 Text at 619. It is also the law that allegation in the pleading are intended only to set forth in a clear and logical manner the points constituting the cause of action for which relief is prayed, and if not supported by evidence can in no way amount to proof. Further, that mere allegations are not proof and factual allegation pleaded must be proven at trial; for it is evidence alone which enables the court to decide with certainty the matter in dispute. Frankyu et al v. Action Contre La Faim, 39 LLR 289, Syl. 2. American Life Insurance Company, Inc. v. Holder, 29 LLR 143, Syl. 4.

6. Movant submits that based on the above, the Respondent has presented absolutely no oral or documentary evidence in support of its claim of the damages prayed for, this court, consistent with the opinion of the Supreme Court cited above cannot award him such damages.

7. And also because Movant says that on the cross examination the Respondent first witness informed the court that the basis or the gravamen of the Respondent case was the illegal suspension of his trucks that were hired to transport petroleum product on behalf of the Movant. The testimonies of both witnesses on the stand

contradicted each other to the extent that the first witness told the court that he was claiming damages from the four (4) brand new trucks, whereas the second witness, who is the General Manager of Stoner, told the court that they were claiming damages on seven (7) trucks. Given their respective testimonies, the amount of damages being claimed by the Respondent certainly does not support their damages.

8. Movant submits that when Respondent's witnesses were asked on the cross about the whereabouts of the contract executed by the parties thereto, the first witness of the Respondent in person of Rev. Fidel C. Onyekwelu, who was then CEO, told the court that he only signed the last page of the agreement and that the rest of the agreement was sent to Ecobank and that he was informed by the Movant that when the contract was probated, he will be given a copy. The second witness confirmed the existence of a contract between the parties. Notwithstanding the admission made by the witnesses concerning the existence of a written contract, the said contract was never annex to the complaint. The Honorable Supreme Court of Liberia held in the case Cio v. Cio 35 LLR 92, Syl 1 "That a party who alleges a fact must proof it at trial by the preponderance of evidence where the fact is denied by the opposing party. Movant says that no plaintiff can be entitled to damages unless he can show that the defendant has wronged him; and it is not sufficient to merely assert that he has been wronged; he must be able to proof it. In the instant case, the Respondent wants this court to hold the Movant liable for Damages for Wrong which grows out of a contract executed between the parties. Notwithstanding, the Respondent failed, refused, and neglected to annex to its complaint filed before this court the whole contract to enable this Honorable Court make an informed judgment. The failure of the Respondent to have annexed a copy of the contract makes the complaint a proper subject for denial and dismissal.

9. And also because Movant says that Article XVII of the contract captioned, APPLICABLE LAW AND SETTLEMENT OF DISPUTES: says "That the parties shall endeavor to resolve amicably any dispute that arise upon the operation or the interpretation of this contract by ARBITRATION." When Respondent first witness was asked on the cross as to why the respondent did not make use of the provision of the arbitration clause, he told the court that he was not aware of the provision, but even if he were aware of the existence of this arbitration clause, the Movant also violated this clause. By that assertion it is cleared that the contract that was executed between the Movant and Respondent had a provision for the resolution of dispute, as such, this court lacks jurisdiction over this matter.

10. And also because Movant says that there are so many opinions of the Supreme Court stating that the issue of jurisdiction over the subject

matter may be raised at any time, even for the first time before the Supreme Court, and that courts are bound to determine their jurisdiction once the issue is raised before them. Movant submits that it is not necessary to cite law thereon. Further, our jurisprudence is replete with opinions of the Supreme Court, and therefore not requiring any special citation of law, which state that where a court has no jurisdiction over the subject matter, its judgment is void. What requires citation of law is how does a court determine whether it has jurisdiction over the subject matter or not.

11. The law is that in determining whether it has jurisdiction, a court should not only rely on the title of the case; but the averments of the pleadings. 1 Am Jur 2d, Actions, Section 37 (second paragraph); 61A Am Jur 2, Pleading, Section 65 (second paragraph). The Supreme Court passed on this issue squarely when it stated in the case, Blamo versus Zulu et al., October 1982 Supreme Court Opinions, that: "It is from the averments of the complaint and other pleadings that the cause of action is determined; and it is form the cause of action that the subject matter over which the court has jurisdiction, in order to render a valid judgment is, in turn, determined; and it is from the subject matter that jurisdiction is finally determined." In a subsequent opinion, Shannon versus Bull, December 1983 Term Supreme Court Opinions, the Supreme Court held that to determine whether a cause of action exists, the court should look to the body of the pleadings and the averment of facts, not to the prayer. In a more recent case, Mathies et al. versus Alpha International Investment Ltd., March 2001 Term Supreme Court Opinions, the Supreme Court ruled that the cause of action is determined not by the title but by the averments of the pleadings, first the complaint.

12. That the law is that the purpose of pleading is to set out the facts, which give rise to the action and to give notice of what the opposing party has to defend himself against in the court. The law also provides that the evidence that is adduced at trial should be in support of the pleading that was filed in court. Kpunel et al versus Chan Chief Armah Gbassie et al 15 LLR 150; Bailey versus Sancea, 22 LLR 59; and Nah versus Nah, 18 LLR 195. The Supreme Court of Liberia also held in the case William G. Knuckles versus The Liberia Trading and Development Bank Limited (TRADEVCO), 40 LLR 511, that the plaintiff in a case has the duty of burden of proving his case and to do so by the best evidence available to him; every party alleging a fact must prove it and absent the best evidence being produced, even the best laid down action will be defeated. Mere allegations of a claim do not constitute proof, but must be supported by evidence as to warrant a court or jury accepting it as true and enable the court to pronounce with certainty concerning the matter in dispute.

13. The Supreme Court of Liberia has held in the case Franco Liberia Transport Company versus John W. Betti, 13 LLR 318, that special damages must be specifically pleaded and proved, and that uncertain, contingent or speculative damages cannot be recovered. The Supreme Court also held in the case Brant, Willig & Company (BRAWICO) versus Ralph Captan, 23 LLR 96, that special damages must be specifically pleaded and proved, and that damages recoverable in any case must be susceptible of ascertainment with a reasonable degree of certainty or must be certain both in their nature or in respect of the cause for which they proceed. Therefore, uncertain, contingent or speculative damages cannot be recovered either in action ex contractu or action ex delicto. The Supreme Court further held in the case Medvedev versus National Port Authority, Supreme Court Opinions, March Term, 2007, that where special damages are claimed they must be particularly alleged and affirmatively proved. Respondent having failed to plead and prove with specificity and certainty the special damages prayed for, same cannot be recovered in keeping with the laws cited herein.

14. That also Movant says that under our law, special damages must be specifically pleaded and proved at the trial by a preponderance of the evidence upon which trial jury may base its verdict. Intrusco Corporation versus Ossely, 22 LLR 558; Appleby versus Freeman & Sons, 2 LLR 271 (1916); and Firestone Plantations Company versus Greases, 9 LLR 250 (1947). The Court also held in the case: Super Cool Services versus American Insurance Corporation, Supreme Court Opinions, March Term, 2004, that a plaintiff is required to prove his case by a preponderance of evidence, and special damages claimed by him must be specifically stated and proved with particularity. The Court also held the Super Cool Services case, and it is provided under our Civil Procedure Law, specifically Section 25.5, that the burden of proof rests on the party alleging the existence of a fact, and the party carrying the burden of proof must establish his allegation by a preponderance of the evidence.

15. Movant says that given the scope of the evidence presented by the Respondent and the laws controlling in respect of such evidence, it is overwhelmingly cleared and convincing that the Respondent cannot recover against the Movant and no Jury can reward the Respondent any form of damages in the absence of proof and evidence. Accordingly, Movant says that Section 26.2 of the Civil Procedure Law cited herein above is applicable and Movant is entitled to judgment as a matter of law and fact. Movant therefore prays Your Honor and this Honorable Court to grant Movant's motion for reasons already stated herein above.

Wherefore and in view of the foregoing, Movant prays Your Honor to grant and enter judgment during trial in its favor, thereby refusing jurisdiction over these proceedings, and denying and dismissing

same, and grant unto Movant any other and further relief as Your Honor may deem just, legal, and equitable in the premises."

Resisting the motion for judgment during trial, the appellee advanced the following:

"1. That as to the entire Movant's Motion, Respondent says that same should be denied and dismissed for reason that under the law, for a Motion of Judgment during Trial to be had in favor of the Movant/Defendant as in the instant case, the Respondent/Plaintiff must have failed to establish its case. On the contrary, the Respondent/Plaintiff herein complained that she was injured by the unilateral termination of its contract which put its property at risk in that its residence valued at US$860,000.00 (Eight Hundred Sixty Thousand United States Dollars) was used as collateral and his three (3) trucks were also used as collateral thereby subjecting these properties to possible foreclosure to the injury of the Respondent herein.

3. Further to count one (1) above, Respondent says that Motion for Judgment during Trial is not the same as Motion for Summary Judgment. Counsel for the Respondent further says that the action against the Respondent, the subject for the action of Damages for a Wrong against the Movant, centered around a single event, that is, the Respondent did not deliver 5, 000 gallons of fuel to the Monrovia Breweries, even though on the contrary, Monrovia Breweries submitted documents to the effect that the fuel was delivered and payment made to Total (Liberia) Inc. This simple fact established the whole case, that is, Total (Liberia) Inc. acted illegally to the Respondent to its injury. These allegations were never refuted by the Movant in these proceedings. The delivery note issued by Monrovia Breweries, Inc., certifying that the 5,000 gallons of fuel were delivered was testified to, confirmed and admitted into evidence, thereby concluding the Respondent/Plaintiff's allegations. The Movant/Defendant has not produced any evidence to contrast the clear and convincing proof of wrong doing against the Respondent by the Movant. Hence, the entire Motion should be disregarded and denied.

3. That as to counts 2, 3, 4, 5 and 6 of the Movant's Motion, Respondent says that the Movant is given the impression that the Respondent's claim of damages was limited to the four (4) months as indicated in the complaint. On the contrary, and by the testimonies of witnesses, the Respondent clearly established that initially the Movant did suspend the Respondent for four (4) months for the same allegation. Shortly after the suspension was lifted, the Respondent received a letter from the Movant restating the termination of the agreement for no other reason. The January 22, 2014 communication is quoted below verbatim:

"TOTAL LIBERIA INC.
Our Ref: ADM/14/813
January 22, 2014

Mr. Fidel Onyekwelu
General Manager
Stoner Liberia Incorporated
Monrovia, Liberia

Dear Mr. Onyekwelu:

Ref: Diesel theft incident report, Stoner BT 2663

I refer to the incident report submitted by Stoner Liberia Inc. on 9th January 2014 to TOTAL Management. TOTAL is deeply concerned about the detail of this report and the accuracy of the information provided by Stoner management in respect of the truck movements for Stoner BT 2663 for the period Friday 11th October 2013 to Monday 14th October 2013.

TOTAL has obtained the authentic OBC report from the OBCV professionals supplying services to TOTAL in West Africa. The OBC supplier confirms that the OBC Stoner BT 2663 was functioning correctly on Friday 11th October 2013 to Monrovia 14th October 2013. The OBC professionals have detailed the following pertinent movements of Stoner BT 2663 for the period, contrary to the information provided by Stoner management.

STONER BT 2663 truck movement	OBC BT 2663 movement description by the suppliers of the OBC to the TOTAL Group.
The driver parked the truck at the Stoner compound until Monday 14 October 2013.	On Saturday 12th October BT 2663 left the Stoner office (HOTEL AFRICA, OAU vilas road at 09hr18 and drove 2 km to an unknown location and returned to the Stoner office at 16hrs same day.
On Monday 14th October 2013 the driver of BT 2663	Monday, 14th October BT 2663 left the Stoner

turned up at 09h00 and drove the truck to the customer and discharged the product without any shortage recorded on the delivery note. The driver drove back to the Stoner office at a few minutes to 12 noon.	office at 07h 13 and drove to the TOTAL service station. BT 2663 left the TOTAL Station at 10h and drove 600m to the customer 10h. BT2663 then left the customer at 10h 38 and arrived back at the Stoner office at 12h 18.

Based on the accurate tracking of the OBC on Stoner BT 2663 it is clear that 5,000 gallons diesel was never delivered to customer premises as asserted by Stoner Management, as no time was spent the customer to offload the diesel.
Further, as BT 2663 has been stationed at the Stoner management offices on and off – throughout the period Friday 11th October 2013 to Monday 14th October 2013 TOTAL management fails to understand why the Stoner report is so inaccurate about the truck movements. TOTAL can only conclude that Stoner management has been misleading with the facts regarding the movements of BT 2663 over this period.

As a result, 5,000 gallons of diesel loaded on Friday 11th October 2013 by Stoner truck BT 2663 is unaccounted for. Further, as the diesel was never discharged at the customer premises TOTAL fails to understand how a signed customer delivery note has been returned.
This incident is a clear breach of the contract with TOTAL, notwithstanding Stoner management's total failure to give an accurate account of the incident. Under Article XV it states:
The contract shall also be terminated immediately by TOTAL LIBERIA, without the CONTRACTOR being able to claim recourse, in case of:
Report of missing PRODUCTS
Stoner Liberia Inc. has entirely lost the confidence of TOTAL management and we will be seeking ways to address this critical situation.
Robert FENECH
Managing Director
cc: Cllr. Benedict Sannoh, Ministry of Justice
" Mr. Kola Adeleke, ECOBANK
OBC report is attached

Respondent also says that the above quoted letter shows that the suspension or the illegal termination action against the Respondent was based upon the same reason for which the Respondent was suspended. Once the suspension is ongoing up to this matter,

meaning that the damages that are being suffered by the Respondent for the non-usage of her vehicles will continue at the rate of US$60,000 per month as special damages as testified to by the Respondent. In other words, the illegal termination of the Respondent services was done in the month of October and has been going on for 31 months at the rate of US$60,000 and the specific damages of US$60,000 x 31 months equals to 1,860,000.00 based upon the evidence that has been adduced thus far. Copy of the communication is hereto attached and marked at Respondent's Exhibit "R/2" to form an integral part of the Resistance.

4. Further, the general damages based upon the injuries to the Respondent's character and the public ridicule will be determined by the court and that the Respondent's complaint filed is for damages for wrong and not for breach of contract. The allegations that were made by the Movant imputed criminality to the Respondent. Such an allegation exposed the Respondent to public ridicule in the Respondent. Such an allegation exposed the Respondent to public ridicule in the business community. This is so because the Respondent received 5,000 gallons of fuel to be delivered to the Monrovia Breweries, Inc. The fuel was delivered against document by the recipient and payment for the said fuel was made to the Movant. So there was no legal basis for the Movant to have labeled the Respondent in these proceedings by implication as a rogue. This is the reason why an action of damages will lie to claim loss of income and other injury to the character of the Respondent. The Respondent action therefore has basis in law and that the testimonies of his witnesses clearly established the reason given by the Movant in the illegal action against the Respondent was injurious and that an action of damages will lie.

5. Further to accounts 2 and 3 above, the Supreme Court held in the case Swissair Vs. Calaban, 35, LLR, page 49 at syl., "A special sum of money asked for as special damages must be based on certain knowledge as to their correctness and in such eventuality, this must be testified to and proved at the trial in order to justified a judgment awarding such sum." Respondent says that she prays that on a monthly basis, Movant showing the Respondent monthly income the Respondent's vehicle made as income as a result of the non-use of her vehicles. Document prepared by the Movant showing the Respondent monthly income was testified to during the trial, confirmed and admitted into evidence before this court. In other words, the amount of damages being claimed by this court. In other words, the amount of damages being claimed by the Respondent is not speculative but by the Respondent certain knowledge and evidence produced during the trial while the general damages will be determined by the Judge.

6. That as to counts 7 and 8 of the Movant's Motion, Respondent says that the impression given by the Movant that the Respondent complaint was based upon a breach of contract is false and

misleading. The Respondent sued in an action for damages for wrong. It is clear from the Movant communication dated January 22, 2014 that the Movant allegations against the Movant go to the character of the Respondent. It also imputed criminality against the Respondent herein, because by the allegations of the Movant, the Respondent had to virtually closed down the transport sector of his business. While it is true that the party that alleges must prove the allegation, the testimonies of the Respondent's witnesses and the other documentary evidence adduced thus far clearly established a case of damages against the Movant. The damages must therefore be measured by the court sitting both as judges of the facts and the law. Counts 7 and 8 of the Movant's Motion should therefore be disregarded and dismissed.

7. That as to counts 9, 20, 11 and 12 of the Movant's Motion, Respondent says that the subject matter of the Respondent's complaint before the court is an action of damages for wrong which is cognizable before the Civil Law Court. The issue of jurisdiction over the subject matter which is being raised by the Movant is misinterpretation of the law and the facts before this court. The allegations based upon the Movant's communication of January 22, 2014, were clearly designed to damage and did damage the Respondent. This court has jurisdiction to entertain action of damages for wrong is the subject matter before this court. Hence, counts 9, 10, 11 and 12 of the Movant's Motion should be disregarded and denied.

8. That as to count 15 of the Movant's Motion, the Movant is simply attempting to evade the providence of the court. The Court is sitting as both judge of the facts and law. Consistent with our law and procedure, it is the judge that must evaluate the evidence and apply the appropriate laws in reaching a concluding whether or not the Respondent has established a case. Certainly, the Respondent has established the case constituting the wrong committed against her by the Movant. Secondly, the allegations as are contained in the complaint were never traversed by the Movant. Therefore, Movant is on bare denial of the facts. Count 15 therefore of the Movant's Motion should be disregarded and denied.

9.Respondent denies all and singular the allegations of both law and facts as set forth and contained in the foregoing and annexed Movant's Motion which cannot be traversed.

WHEREFORE AND IN VIEW OF THE FOREGOING, Respondent most respectfully prays Your Honour and this Honorable Court to deny and dismiss the Movant's Motion in its entirety and also grant unto Respondent all further relief that Your Honor may deem just, legal and equitable."

The trial court sustained the appellee's resistance, denied, and dismissed the appellant's motion for judgment during trial and reasoned as follows:

> "The records before us revealed that on December 12, 2016, the Respondent herein, filed an Action of Damages against the movant in these proceedings. In the 12 count complaint, the Plaintiff/Respondent, alleged that it is a transport company for many years registered and doing business under the laws of Liberia. The plaintiff further alleged in the complaint that prior to the termination of its agreement with the movant/defendant, he had the total of 7 tankers in the fleet of trucks that were working with TOTAL Liberia. Four of these trucks were guaranteed by the defendant and the funding for the purchase of these vehicles as provided by Ecobank (Liberia) Ltd. a tripartite agreement was signed by the plaintiff, the defendant and Ecobank which contained a provision that the defendant will fully utilized the services of these trucks until the One Million Dollars for these trucks is fully paid.
>
> In support of the averments contained in the complaint, the plaintiff exhibited its Article of Incorporation, a Board Resolution authorizing the court's action, copies of month invoices prepared by the defendant which indicated the monthly intake for the trucks owned by the plaintiff that were providing services to the defendant. The plaintiff also exhibited copy of a delivery note which the plaintiff alleged form the basis of the unlawful and illegal termination of the plaintiff's agreement. According to the plaintiff, the delivery noted contained five thousand gallons of diesel fuel that was delivered to the Monrovia Breweries, Inc. the plaintiff further indicated in its complaint that even though the fuel was delivered as per the delivery note to the Monrovia Breweries, the defendant however terminated the services of the plaintiff and made it appear that the plaintiff stole the fuel thereby exposing the plaintiff to public ridicule, shame and disgrace. The plaintiff therefore prays the court to award her damages for wrong for the damage that was done to the plaintiff as a result of the baseless allegations made against the plaintiff.
>
> The summons was served on the defendant with an opportunity to traverse the allegations that were contained in the complaint.
> On December 27, 2016, the defendant filed a general denial without traversing any of the allegations. On December 28, 2016, the plaintiff filed reply to the defendant's general denial and confirmed the original complaint in its entirety. On the 10th day of February 2017, the court entertained arguments on law issues and in its ruling, ruled the defendant to bare denial.
>
> On July 18, 2017, the trial of this case began as bench trial. The plaintiff paraded three (3) witnesses, Rev. Fidel Onyekwekulu, the CEO of the plaintiff's corporation was the first witness. In his testimony, told the court in substance that the company's agreement with the defendant's corporation was terminated based upon false

allegation and that the allegation created the impression that the plaintiff's stole five thousand gallons of fuel, thereby exposed the plaintiff to public ridicule, shame and disgrace. He testified to the documentary evidence and also confirmed that on the average the [seven] trucks that he had in the fleet at the time, make monthly income of US$60,000.00 or more.

The second witness to testify for the plaintiff was subpoena witness in person of Mr. Mensah. Mr. Mensah was subpoena to confirm whether the monthly statements that were attached or exhibited were prepared by the defendant. In his testimony, the witness confirmed that indeed the monthly statements for two separate months were indeed the monthly statements for two separate months were indeed prepared by the defendant in favor of the plaintiff.

The third witness to testify for the plaintiff was Nmadi Onyekwelu. In his testimony, this witness basically confirmed the testimony of the first witness for the plaintiff. The witness further informed the court that since they started working with the defendant, none of their trucks have ever been denied or disqualified. He told the court that as a matter of fact, the five thousand gallons of fuel that the defendant alleged was not delivered to the Monrovia Breweries was delivered to the Monrovia Breweries under his supervision and the delivery note delivered to the defendant. These witnesses were directed, cross examined and discharged [by] the court from the witness stand.

On August 29, 2017, the defendant, thru its legal counsel filed a fifteen counts motion for judgment during trial. In the motion, the movant/defendant alleged that the plaintiff's evidence did not establish any wrongdoing on the part of the defendant/movant in these proceedings. The movant/defendant further alleged in its motion that the court did not have jurisdiction over the subject matter, on ground that the plaintiff and defendant or the movant and respondent executed a contract which contained a provision for arbitration. The movant argued that the failure by the plaintiff/respondent to have taken advantage of the arbitration clause means that the plaintiff/respondent did not proved the specific damage with specificity as required by law. The movant therefore prayed the court to refuse jurisdiction over the proceedings and dismiss the action. To this motion, the respondent filed a nine counts resistance, praying the court to deny the motion for judgment during trial and order the movant/defendant to take the stand to provide evidence on its own behalf for reason that the complaint before the court, IS AN ACTION OF DAMAGES FOR WRONG. In keeping with our law extant, the respondent argued that the Civil Law Court has jurisdiction over the subject matter for damages for wrong. More besides, the respondent argued that the basis of the complaint was a communication dated January 22, 2014

that was written by the movant/defendant in these proceedings which alleged that five thousand gallons of fuel by implication was stolen by the plaintiff. The plaintiff/respondent further argued in its resistance, that the Civil Law Court is sitting as judges of the fact and the law and that the filing of motion for judgment during trial is an attempt to evade the province of the court. In concluding its argument before this court, the respondent/plaintiff told this court that the prayer contained in the movant's motion for judgment during trial runs contrary to the movant's motion. The movant's motion is for judgment during trial but the prayer is to dismiss for lack of jurisdiction over the subject matter.

THE COURT

This court says that motion and resistance have been carefully reviewed as well as the oral arguments before this court. The issue presented by both the motion and the resistance herein, is whether or not the movant's motion for summary judgment during trial contains sufficient ground for this court to take a judgment in favor of the movant consistent with the evidence adduced before this court?

This court says that chapter 26 of 1LCL Revised section 26.2, it is provided that after the close of the evidence presented by an opposing party with respect to a claim or issue, or at any time of the basis of admission, any party may move for judgment with respect to such claim or issue upon the ground that the moving party is entitled to judgment as a matter of law. The court says that even though the movant captioned its precept, motion for judgment during trial, however the prayer of the motion speaks to a motion to dismiss for lack of jurisdiction. The law in this jurisdiction is that when a party files a motion for judgment during trial, that party will be praying the court to render judgment in its favor as a matter of law or on the basis of an admission. In the motion filed by the movant herein, the averment clearly suggests that what the movant filed is a motion to dismiss for lack of jurisdiction. This court says that a motion to dismiss for lack of jurisdiction is not the same as motion for judgment during trial. Additionally, the movant's prayer in the motion for judgment during trial did [not] request this court to rule in its favor based on admission or as a matter of law, instead the movant prayed this court to dismiss the complaint for lack of jurisdiction. So then, the question to be asked is whether this court has jurisdiction over the subject matter? We hold that this court has jurisdiction over an action of damages for wrong. Additionally, considering that this court is sitting as both judge of the facts and law, the court believes that it will be travesty of justice to rule in favor of movant/defendant that this court initially ruled to bare denial for its failure to have traversed the allegations contained in the complaint. More besides, the respondent in these proceedings has testified to an exhibited documentary evidence such as delivery note which formed the crux of the complaint without any objection from the movant/defendant. While we agree that in an action of damages, the plaintiff is required

by our law to prove the extent of damages by the preponderance of evidence; this court says that the weight and credibility to be given to the evidence that has been adduced by the respondent/plaintiff in these proceedings rests with the court.

WHEREFORE AND IN VIEW OF THE FOREGOING, this court declines to grant the judgment during trial and will therefore order that the defendant/movant takes the stand to produce evidence on the basis of its bare denial so that this court can base its determination from an informed stand point.

MOTION DENIED AND THE RESISTANCE IS HEREBY SUSTAINED. AND IT IS HEREBY SO ORDERED.
GIVEN UNDER MY HANDS AND
SEAL OF COURT THIS 7TH DAY OF
SEPTEMBER, A.D. 2017.
HIS HONOR J. BOMIA KONTOE
ASSIGNED CIRCUIT JUDGE. SIXTH JUDICIAL CIRCUIT,
CIVIL LAW COURT."

Thereafter, the appellant took the witness stand and produced two regular witnesses and one subpoenaed witness, namely: Lawrence B. Mensah, the appellant's HR Training Manager, Mohammed Sheriff, the appellant's Human Resources and Corporate Manager, and Mr. Victor Gboyah, Chief of Patrol of the Liberia National Police, then Assistant Senior Inspector of Police for Administration.

Generally, the appellant's evidence tends to establish that a contract exists between the parties for the transport of petroleum products to the customers of the appellant; that on October 13, 2013, the Assistant Senior Inspector of Police, Victor Gboyah, arrested and turned over to the Crimes Services Department of the Liberia National Police, the appellee's tank trucker with registration number BT-2663 and another tanker trucker bearing registration number TT-1168 at the time the appellee's truck was transferring fuel to the latter; that the appellant suspended the services of the appellee pending the conclusion of the police investigation and the issuance of a clearance to the appellee to that effect; that the suspension lasted for about three months and was later lifted in January, 2014; that the appellee resumed operation in February, 2014, but under Family Line Transport, another contracted transporter of the appellant because the appellee could not present a police clearance; that the arrangement continued up to November 2014 when the appellee's contract was terminated due to the

Family Line Transport's inability to continue to absorb the appellee's tankers; that a contract existed between the parties, Article 15 of which the appellee violated when its truck, BT-2663 was arrested in a suspicious transaction with another tanker truck; that the alleged written contract under Article 17 provides for arbitration in the event of a dispute arising from the alleged written contract; that the monthly income of the appellee, like other transporters similarly situated, was not fixed, but depended on quantity of load, distance travel, season and the rate (base on distance); and that appellee, like other competitors, was given a guarantee to secure a loan of US$1,000,000.00 as way of upgrading the appellee's fleet to international standards for fuel service delivery. Attempts by the appellant to introduce into evidence the written contract and a letter supposedly written by the Ministry of Justice touching on the suspension of the appellee were overruled over the objection of the appellant on grounds that the appellant could not introduce affirmative matter having been placed on bare denial.

Judge J. Boima Kontoe sitting as both the trier of facts and law entertained final argument in the case and thereafter entered final judgment holding the appellant liable in special damages in the amount of US$2,800,000.00 and general damages in the amount of US$280,000.00 totaling US$3,080,000.00 in award favorable to the appellee. We quote excerpt of the trial judge's final ruling as follows:

> "The issues to be decided by this court are:
>
> 1. Whether or not a party that is ruled to bare denial may introduce documentary evidence?
>
> 2. Whether or not this Civil Law Court has jurisdiction to hear Action for Damages for Wrong?
>
> 3. Whether or not the termination of the services of the plaintiff in these proceedings based upon criminal allegation for which he was not charged, indicted and convicted was legally justified?
>
> 4. Whether or not the extent of damages suffered by the plaintiff in these proceedings may be gathered from the facts and circumstances of this case? ...
>
> 1. As to the first issue, whether or not a party that is ruled to bare denial may introduce documentary evidence? As to this issue, this court says that during the hearing, the defendant attempted to

introduce an alleged agreement that was executed between the defendant and the plaintiff. The plaintiff's counsel objected to the production of the document into evidence for reason that the defendant was on bare denial. This court agreed and sustained the objection because the Supreme Court has held in a long line of Opinions that a party that has been ruled to bare denial may not introduce affirmative matter. (29 LLR 437 syl.1).

2. As to the second issue, whether or not this Civil Law Court has jurisdiction to hear Action of Damages for Wrong, this court says that the Civil Law Court has jurisdiction to hear all civil matters over which no other court has been given exclusive jurisdiction. An Action of damages for Wrong is one of the causes or actions that falls squarely within the jurisdiction of this court. When the defendant filed its motion for judgment during trial, it raised the issue that this court lacks jurisdiction to hear the case. The court finds this argument totally untenable. The parties in these proceedings were served summons which brought them under the jurisdiction of this court, and this court has jurisdiction to hear all civil cases over which no other court has exclusive jurisdiction, including an Action of Damages for Wrong. Consistent with Chapter 25 of 1LCLR, Section 25.1, this court is under a duty to take judicial notice of the law.

3. As to the third issue, whether or not the termination of the services of the plaintiff in these proceedings based upon criminal allegation for which he was not charged, indicted and convicted was justified to be a defense against an action of damages that may result therefrom, this court says that the constitution of Liberia, especially Article 20(a) of the Constitution, guarantees due process as one of the fundamental rights guaranteed every person, meaning by due process, that the law must hear before it condemns. Under our criminal jurisprudence, a person against whom a criminal allegation is made, is presumed innocent until proven guilty. Additionally, mere allegations do not constitute evidence unless proven to be true. The mere allegation that was made by the defendant that the plaintiff did not deliver 5,000 gallons of fuel, without any evidence or any investigation report from the police, cannot be entertained by any civilized court. More besides, the plaintiff told this court that the Monrovia Breweries paid the defendant for the 5,000 gallons of fuel and that the Monrovia Breweries did not make any complaint to the defendant on any matter concerning the delivery of the 5,000 gallons of fuel.

   The court wonders how the defendant arrived at the conclusion that the 5,000 gallons had not been delivered to the Monrovia Breweries. Secondly, on what basis did the defendant receive the payment for goods that defendant claimed had not been delivered? All of these questions lead one to believe that the termination of the services of the plaintiff was not justified and that same was done merely to injure and expose the plaintiff to serious hardship and mental

anguish. In the mind of this court, and Action for Damages for Wrong will be justified.

4. As to the fourth issue, whether or not the extent of damages suffered by the plaintiff in these proceedings may be gathered from the facts and circumstances of this case, this court says that the Supreme Court in the case, International Trust Company of Liberia vs. Cooper Hill, 41LLR, page 48 held that a "plaintiff will not be denied substantial recovery where he or she has produced the best evidence available which sufficiently affords a reasonable basis for estimating the damages." The plaintiff company in these proceedings produced evidence before this court that indeed that at the time of the action against it by the defendant, it was in almost a Million Dollars debt with the Ecobank for trucks that were brought into the country to provide transport services for the defendant. Evidence adduced during trial established that on a monthly basis, the plaintiff received US70,000 per month on the average for services rendered TOTAL LIBERIA, defendant herein. This court agrees with the plaintiff that the termination damaged plaintiff because the termination of plaintiff's services for no apparent reason when a Million Dollars debt is hanging over the head of the plaintiff, with plaintiff's valuable property subject to possible foreclosure proceedings based on an unsubstantiated, certainly provides sufficient grounds for damages which would cover loss of income, mental anguish and emotional stress. This court therefore holds that indeed the plaintiff suffered damages.

   WHEREFORE AND IN VIEW OF THE FOREGOING, the defendant is adjudged liable to the plaintiff as follows:

   SPECIAL DAMAGES –

a) Loss of income for the period January 2014 – 2017, or for the period of three (3) years which covers the total of 36 months, at the rate of US$70,000.00 per month, yields 2 Million Five Hundred and Twenty Thousands United States Dollars;

b) Loss of income for the first four months which totaled US$280,000.00, for a grand total of special damages of US$280,000.00.

   GENERAL DAMAGES - The court will also award ten percent (10%) of the specific damages as general damages, or US$280,000.00.

   TOTAL AWARD – The total award therefore in favor of the plaintiff herein is US$3,080,000.00.

   The Clerk of this court is hereby ordered to prepare the Bill of Costs to be taxed by counsels for the parties and place same in the hands of the Sheriff of this court for full collection.

AND IT IS HEREBY SO ORDERED.
GIVEN UNDER MY HAND AND THE
THIS 18TH DAY OF DECEMBER 2017
HIS HONOR J. BOMIA KONTOE
ASSIGNED CIRCUIT JUDGE."

From this final judgment, the appellant noted exceptions on the records and announced an appeal to the Honorable Supreme Court sitting in its March Term 2020. The appellant assigned twenty-nine (29) errors in its bill of exceptions for appellate review:

> "Defendant/Appellant in the above-entitled cause of action having excepted Your Honor's Final Ruling rendered on December 18, 2017, and announced an appeal therefrom, now presents this Bill of Exception for Your Honor's approval, as follows:

1. That Your Honor erred when you failed and refused to dismiss plaintiff/appellee's complaint upon Motion filed by the appellant/defendant to do so. Furthermore, the parties in the instant Action of Damages for Wrong entered a Contract for the lifting of petroleum products; and in said contract – specifically, Clause 17 therefore – the parties agreed that in the event of a dispute arising thereunder, the parties would submit to arbitration for the resolution of same. Regrettably, however, plaintiff/appellee failed to abide by this provision of the referenced contract. This issue was brought to Your Honor's attention, but Your Honor ignored same by denying the motion to dismiss filed by defendant/appellant. For this conclusion of Your Honor's which is clearly erroneous and prejudicial, defendant/appellant respectfully excepts.

2. That plaintiff/appellee and defendant/appellant having decided the mode of resolving any dispute growing out of the contract referred to in count one (1) above, Your Honor's decision to have assumed jurisdiction over the subject matter was erroneous and prejudicial; for which error of Your Honor's defendant/appellant excepts.

3. The jurisdiction is conferred by statute; and where the court acts without jurisdiction, the court's judgment is void and of no legal effect. The refusal of Your Honor to have refused jurisdiction over the subject matter renders Your Honor's Final Ruling void and of no legal consequence; for which error of Your Honor's defendant/appellant excepts.

4. And also because defendant/appellant says that at the close of plaintiff/appellee's presentation of evidence, defendant/appellant filed a motion for summary judgment even though the former did

not present clear and cogent evidence to prove its case as required by law. Notwithstanding, Your Honor denied the said motion for summary judgment; for which erroneous and prejudicial ruling of Your Honor's defendant/appellant excepts.

5. The law in this jurisdiction is that the party who alleges a fact has the burden of proof, absent which the case will be dismissed. Plaintiff/Appellee alleges that the herein mentioned contract on which it relied to institute the Action of Damages for Wrong was illegally suspended by defendant/appellant for four (4) months, but failed to annex said contract to its complaint to put the trier of facts in a better position to decide the alleged breach with a clear degree of certainty. Notwithstanding, Your Honor proceeded to determine that the plaintiff/appellee was entitled to damages for wrong without a copy of the contract being before Your Honor and for which erroneous and prejudicial ruling of Your Honor defendant/appellant excepts.

6. That the law is that the best evidence which the case admits of must always be produced – i.e. plaintiff/appellee was required to have produced the referenced contract so that the court would be able to render judgment consistent with the alleged wrong said to have committed. The failure of plaintiff/appellee to have produced the best evidence, which is the contract, made it impracticable for Your Honor to have reasonably determined the alleged wrong so committed. For this error, defendant/appellant excepts.

7. That the judgment amount of US$3,080,000.00 awarded plaintiff/appellee is not only outrageous but not supported by the evidence produced at trial. The said award is solely intended to scare away investors and visit hardship on those seeking employment opportunities with defendant/appellant. Plaintiff/Appellee alleges in its complaint that its services illegally suspended by the defendant/appellant for four (4) months, and that at the time of its suspension plaintiff/appellee had seven (7) trucks in its fleet, generating an income of US$10,000 per truck per truck or US$70,000.00 for the seven trucks per month; and that for four months, same would yield US$280,000.00 for the four months. The allegation is what the plaintiff/appellee was required to prove by preponderance of the evidence, but failed to do so. Notwithstanding, Your Honor held defendant/appellant liable to plaintiff/appellee and awarded the amount of US$3,080.000.00; for this prejudicial and erroneous ruling of Your Honor's defendant/appellant excepts.

8. That the ruling of a party to bare denial does not relieve the plaintiff from establishing his/her case by preponderance of the evidence. The ruling of defendant/appellant to bare denial (preventing it from

pleading affirmative matters) did not in any way amount to an outright judgment for the plaintiff/appellee, as the plaintiff/appellee was under legal duty to prove its case by the best grade of evidence, which the plaintiff woefully failed to do so. Notwithstanding, Your Honor held defendant liable to the plaintiff/appellee in damages; for which erroneous and prejudicial ruling of Your Honor's defendant/appellant excepts.

9. That Your Honor erred when Your Honor misapplied the laws to the facts adduced at trial. Plaintiff/Appellant; but rather, its services were suspended for four months without any justifiable reason. Notwithstanding, Your Honor decided to equate the suspension to termination. For which prejudicial error of Your Honor's defendant/appellant excepts.

10. That plaintiff/appellee did not produce any clear, cogent and concise evidence to have warranted a judgment in its favor, especially so when the plaintiff failed to produce a copy of the contract, the alleged breach of which prompted the institution of the Action of Damages for Wrong, even though the plaintiff had the opportunity to do so. Plaintiff/Appellee subpoenaed Ecobank Liberia Limited to produce a copy of the referenced contract but when the bank's staff in the person of Attorney Fallah appeared in court in response to the writ, plaintiff/appellee then declined and dispensed with use of the subpoenaed contract. The effect of this is that the contract on which plaintiff/appellee's Action of Damages was based was deliberately not put into evidence at the instance of plaintiff/appellee. That had Your Honor allowed the contract which had been subpoenaed by plaintiff/appellee to be produced by Ecobank, to be put into evidence, then that would have enabled Your Honor to see that the contract sued on contained a dispute-resolution clause which divested Your Honor and this Honorable court of jurisdiction and Your Honor would have refused jurisdiction. Despite all of these shortcomings, Your Honor held defendant/appellant liable to the plaintiff; for which pre-judicial and erroneous riling of Your Honor's, defendant/appellant excepts.

11. That throughout the production of evidence, defendant/appellant did not mention that it suspended plaintiff/appellee because of theft; but rather, defendant/appellant said that one of plaintiff/appellee's trucks was involved in a fuel deal which was being investigated by the police; and because defendant/appellant did not want to be doing business with a transporter engaged in shady deals, it advised plaintiff/appellee to obtain police clearance to exonerate itself from whatever allegation that may have been levied against it. This was the position of defendant/appellant during the entire exercise as there was no allegation of theft as Your Honor is made to believe. For this reason, defendant/appellant excepts.

12. That defendant/appellant did not say that plaintiff/appellee did not deliver the 5,000 gallons of fuel to MBC, but that one of plaintiff/appellee's trucks was engaged in a shady deal with a private truck for which it was arrested and subjected to an investigation. To this end, defendant/appellant requested plaintiff/appellee to obtain a police clearance to clear the latter's name from whatever allegation brought against it. The allegation of the arrest of one of plaintiff/appellee's trucks and the issue of a police investigation were never denied by the plaintiff/appellee. Under the law, that which is not denied is deemed admitted. Accordingly, plaintiff/appellee was required to produce rebuttal evidence to the effect that its truck was not involved in any arrest on fuel charges. Notwithstanding, this clear, cogent and undisputed evidence, Your Honor ruled to the effect that defendant/appellant is liable to plaintiff/appellee; for which erroneous and prejudicial ruling of Your Honor defendant/appellant excepts.

13. That Your Honor also erred when Your Honor misinterpreted the testimonies given by Officer Boyah regarding the arrest of plaintiff/appellee's truck. The officer informed the court that after he effected the arrest, he turned the truck and its content over to the Freeport Police for investigation. That he was not clothed with the authority to conduct an investigation of the matter, and that is why he turned the case over to the police for investigation. This testimony of the witness regarding the arrest of plaintiff/appellee's truck was never rebutted nor denied; and as indicated earlier, under our law, that which is not denied is deemed admitted. Despite these hard facts established during trial against the allegations made by plaintiff/appellee, Your Honor ignored same and awarded plaintiff the outrageous amount of US$3,080,000.00 as damages without any ounce of proof; for which prejudicial and erroneous ruling of Your Honor's defendant/appellant excepts.

14. That during trial of the case, several communications exchanged between the plaintiff on the one hand, and the police and the Ministry of Justice on the other hand, with respect to the timely investigation of the involvement of plaintiff/appellee's truck in the transfer of fuel to a private truck were brought to Your Honor's attention; but again, Your Honor ignored same and ruled adversely to the defendant/appellant without any evidence; for which prejudicial and erroneous ruling of Your Honor Defendant excepts.

15. That as to the three issues raised by Your Honor and answers thereto, defendant/appellant says that these issues do not conform to the facts established during trial and the laws applied thereto. Defendant/Appellant submits that as to the first issue regard defendant/appellant's being on bare denial and attempting to introduce an alleged agreement into evidence, same should not have been an issue. Plaintiff/Appellee agreed that there exists a contract

between the parties for the lifting of petroleum products. The contract being the instrument that binds the parties, the failure of plaintiff/appellee to annex same to the complaint begs the question as to how Your Honor reasonably determined the alleged wrong said to have been committed by defendant/appellant? For which prejudicial and erroneous riling of Your Honor defendant excepts.

16. That as indicated hereinabove, the fact that a defendant/appellant is placed on bare denial does not ipso facto prevent plaintiff/appellee from establishing his case by the preponderance of evidence. The burden of proof was on plaintiff/appellee to prove its case. regrettably, however, plaintiff/appellee failed to do so. Howbeit, Your Honor ruled adjudging defendant/appellant liable to plaintiff; for which erroneous and prejudicial ruling of Your Honor's defendant/appellant excepts.

17. That as to the second issue raised by Your Honor, regarding jurisdiction over the case, defendant/appellant submits that Your Honor also erred when you assumed jurisdiction over the case notwithstanding the parties agreed to submit to arbitration in the event of a dispute growing out of the herein-mentioned contract, divesting the court of jurisdiction over the subject matter until the parties shall have exhausted the remedy already agreed in the contract. That jurisdiction is conferred by statute; and where a court acts without jurisdiction, the judgment thereto is void. Based upon this principle of law, coupled with the numerous opinions of the Supreme Court of Liberia on the subject, Your Honor was in error by assuming jurisdiction over the subject matter; for which defendant excepts.

18. That the issue is not whether or not the Civil Law Court for the Sixth Judicial Circuit has trial jurisdiction over an action of damages for wrong, but whether the parties to the referenced contract, subject of the action, had agreed the settlement of any dispute arising therefrom. The mode of settling their dispute having already been defined, the court did not legally acquire jurisdiction over the subject matter. Hence, Your Honor was in error to have exercised jurisdiction over the same. For which defendant/appellant excepts.

19. That subject matter jurisdiction can be raised at any time, and this was properly brought to Your Honor's attention when the defendant/appellant requested Your Honor to refuse jurisdiction due to the arbitration clause enshrined in the contract; but Your Honor declined to listen to said request and proceeded to assume jurisdiction over the matter. That the service of the summons on defendant/appellant was not an issue. Defendant/Appellant says that the cardinal issue raised by defendant/appellant was that of subject matter jurisdiction and not personal service. That despite this very

cogent argument, Your Honor proceeded to assume jurisdiction over the case. For this patently prejudicial error of Your Honor's defendant/appellant excepts.

20. That Your Honor erred when you declared that plaintiff/appellee's services were terminated based on a criminal charge brought against it. Defendant/Appellant says that there is no evidence that plaintiff/appellee's services were terminated in the first place. What the records revealed is that plaintiff/appellee's services were suspended for four (4) months and not terminated. So, defendant/appellant wonders from whence did the issue of termination come. Plaintiff/Appellee having complained that its services were suspended for four (4) months, same is the best grade of evidence to have been considered by Your Honor and not otherwise.

21. That Your Honor erred when you misapplied Article 20(a) of the Constitution of Liberia regarding due process. Defendant/Appellant submits that it did not suspend plaintiff/appellee on account of any criminal charge; rather, it was due to plaintiff/appellee's truck's alleged involvement in a fuel deal, based upon which it was requested to submit a clearance from the police that investigated the matter. The plaintiff/appellee acknowledged that one of its vehicles was involved in the transferred of fuel to a private tanker and as such pleaded with the police to hasten with the investigation so that the plaintiff/appellee cannot be exonerated from the alleged allegation. Defendant/Appellant reiterates that it did not accuse the plaintiff/appellee of fuel theft; rather it was the police that arrested plaintiff/appellee's truck for allegedly transferring fuel to a private tank and based on such arrest defendant/appellant requested plaintiff/appellee to submit a police clearance at the outcome of the police investigation. The fact that the plaintiff/appellee truck was arrested and submitted to an investigation, due process was served. As indicated herein, defendant/appellant maintains that it did not accuse the plaintiff/appellee of fuel theft as Your Honor concluded in Your Ruling. Accordingly, Your Honor's Ruling to the effect that the plaintiff/appellee was not given due process, constituted prejudicial error for defendant excepts.

22. Defendant/Appellant submits that the intent for its requesting a police clearance from the plaintiff/appellee was to protect its reputation and not be seen and/or known as an organization doing business with individual and/or organization engaged in shady deals. It is from this backdrop that the plaintiff/appellee was requested to bring a police clearance following which the suspension would be lifted. That the suspension imposed by the defendant/appellant was in mid-October and plaintiff/appellee was paid for the period worked prior to the suspension. So, in real term, the suspension lasted for only two and one half (2.5) months - i.e. mid October 2013 to

December 31, 2013. This allegation was not rebutted by the plaintiff/appellee, and, as already indicated, under our law that which is not denied is deemed admitted. Notwithstanding, Your Honor ruled otherwise and for this reason defendant/appellant excepts.

23. That Your Honor also erred when you concluded that the damages alleged suffered by the plaintiff/appellee could be determined from the facts and circumstances of the case which is erroneous. The plaintiff/appellee alleged in its complaint that its services were suspended by defendant/appellant for four months and that during this period he had seven (7) trucks earning an aggregate monthly income of United States Dollars Seventy Thousand (US$70,000). Therefore, plaintiff/appellee claimed that its lost income was US$280,000.00 with the four months of its suspension. This allegation was never proved by the plaintiff/appellee during trial. Defendant/Appellant says that under our law, when a specific amount is named as damages, same must be proved with specificity, particularity, and certainty. In the instant case, the plaintiff/appellee was required to prove the US$280,000.00 with certainty – a legal requirement it failed to meet. The assertion made by Your Honor that damages could be and was determined by circumstances surrounding the case is erroneous and has no basis in law and facts. The damages should have been determined on the facts presented by the plaintiff/appellee. The burden of proving this allegation was on the plaintiff/appellee, which it failed to carry. Notwithstanding, Your Honor ruled adjudging defendant/appellant liable to the plaintiff/appellee and for which ruling, defendant excepts.

24. That Your Honor also erred when you based your calculation of damages allegedly suffered by the plaintiff/appellee on seven (7) trucks at US$10,000.00 per truck per month or a total of US$70,000.00 per month. The said same amount could not have been lost income from four (4) trucks reporting the same US$10,000 per month. Assuming that the plaintiff earned an average of US$70,000.00 per month for seven (7) trucks, said amount could not have been generated by four trucks for the same period. Hence, Your Honor's calculation is erroneous for which defendant excepts.

25. That Your Honor also erred when you gave credence to plaintiff/appellee's assertion that it made an average of US$70,000.00 per month without a showing that it ever made such an amount during the period under review. For example, the plaintiff/appellee was asked as to the distances covered and the volume of product it carried. These questions were intended to show how the alleged lost income would be derived. Your Honor should have considered the answer to these questions to enable you make a clear determination as to the actual lost income to which

plaintiff/appellee was entitled, if any. Your Honor ignored all of these facts and made the outrageous [amount] of US$3,080.000.00 in favor of plaintiff/appellee. For this error, defendant/appellant excepts.

26. Defendant/Appellant says that Your Honor committed a reversible error when you awarded plaintiff/appellee the total sum US3,080,000 without considering the facts presented and also without determining from the record, whether or not the injury complained of was caused by the defendant/appellant. Also, the award is not supported by the facts as same is based on active imagination. Under our law, allegations are not facts and one who alleges a fact has the burden of proof. The plaintiff/appellee did not prove in any way that the damages allegedly suffered were the direct consequence of defendant/appellant's action; for this, defendant/appellant excepts.

27. That Your Honor erred when you ruled out of term prescribed by law which was brought to your attention prior to your ruling. Defendant/Appellant submits that you could not render any valid judgment out of term without getting an extension from the Honorable Supreme Court. Accordingly, the judgment rendered by Your Honor out of term is void and of no legal effect and for this reason defendant excepts.

28. That the law is that a defendant placed on general or bared denial is neither deprived of the right to cross examine the plaintiff's witnesses as to proof, nor is he deprived of the right to produce evidence in support of his denial and that the burden of proof does not shift to him. Defendant/Appellant says that during the trial of this case and on cross examination plaintiff/appellee admitted that there existed a contract between the parties which contains an arbitration clause therein for resolution of disputes that may arise under said contract. This fact was brought to Your Honor's attention but you ignored same based on objection from the plaintiff/appellee's counsel. Defendant/Appellant says that had Your Honor considered the Contract, you would have been placed in a better position to determine whether or not you had jurisdiction over the case. The fact that the Defendant/Appellant was placed on bare denial did not prevent it from producing evidence to support its denial. The admission made by the plaintiff/appellee that there existed a Contract between the parties, Your Honor should have allowed the contract to be placed into evidence to enable you reach a determination consistent with law. Your Honor's refusal to allow the Contract to be introduced into evidence even though the parties agreed to its existence constituted a reversible error for which defendant/appellant excepts.

29. That Your Honor erred when you concluded that the plaintiff/appellee's contract was terminated without due process. There is no evidence to support this allegation. The record shows that the plaintiff/appellee's contract ended on its own term and same was not renewed. The record also shows that because plaintiff/appellee could not maintain the number of vehicles under the contract, he was advised to partner with another transporter because after the Audit conducted by defendant/appellant, it did not meet the minimum standard required of all transporters. It was on that basis that plaintiff/appellee joined another transporter in February 2014 and worked until the end of the contract. All of these facts were neither denied by the plaintiff/appellee nor did it produce any rebuttal evidence to prove otherwise. Notwithstanding, Your Honor ruled holding defendant/appellant liable to the plaintiff/appellee for damages and predicated thereupon, Your Honor awarded the outrageous, prejudicial and legally wanting judgment sum of US$3,080.000.00; for this error, defendant/appellant excepts.

    Wherefore and in view of the foregoing, defendant/appellant submits the Bill of Exceptions for Your Honor's approval, in fulfillment of the second jurisdiction step to the perfection of its appeal. All counts approved as far as supported by the records.

Having stated the parties' contentions in the pleadings, applications and the resistance thereto, and considering the evidence adduced by the parties during the trial, we shall now enquire into the issues for the disposition of this appeal.

The following issues are presented for determination by this Court:

1. Whether or not the trial court lacks jurisdiction over the case given the alleged existence of an arbitration clause in an alleged contract between the parties?

2. Whether or not the trial judge proceeded legally when he denied the appellant's motion for judgment during trial?

3. Whether or not the trial judge erred when he ruled out of term without obtaining an extension from the Honorable Supreme Court?

4. Whether or not the award of the amount of US$2,800,000.00 as general damages by trial judge is justified by the records in this case.

We shall discuss these issues in the order they are presented.

Relative to the first issue, the appellant in counts 17 through 19 of the bill of exceptions submitted that the parties herein, by virtue of an alleged contract executed by the parties, agreed that in the event of any dispute arising between them as the consequence of the said contract, such dispute shall be referred to arbitration. That this understanding by the parties divests the court of exercising original jurisdiction over this matter; it being a derivative of the res of the contract. It is further averred in the bill of exceptions that the challenge to the trial court's jurisdiction over the subject matter is not premised on the Civil Law Court's jurisdiction over action of damages for wrong; rather the said objection was based on the fact that the parties having agreed to submit all disputes arising under the contract to arbitration, the civil law court is without jurisdiction to entertain an action based on such dispute. Additionally, the appellant argued that the trial court not been with subject matter jurisdiction, there is nothing in the law that preclude the appellant from raising such issue at any time during the trial. This Court notes that the lower court ruled the appellant to a bare denial of the appellee's complaint after pleadings rested for failure to traverse the averments in the said complaint in the answer. This act certainly estops the appellant from introducing affirmative matter. *Mussa v Cooper et al, 37 LLR 906 1994*, *Kashouh et al v Heirs of Bernard et al, Supreme Court Opinion, March Term, A.D. 2008* The appellant raised the issue of the existence of a written contract for the first time in a submission interposed when the court called the case for trial. The appellant justifies the filing of an answer containing general denial to the absence of one of its representatives who had all of the appellant's documents in his possession and who was without the bailiwick of the Republic at the time of the service of the summons. That while awaiting the return of this representative in order to withdraw and amend its pleading to traverse the averments in the appellee's complaint, "the appellee filed a reply, and subsequently obtained an assignment to dispose of the law issues". This allegation tendS to give the impression that the court hastily proceeded with this matter without according the appellant the opportunity available under the law to properly present it side of the case. We shall now search the transcribed records to ascertain whether this averment finds support therein.

The certified records show that the appellee filed its complaint on December 12, 2016, and that the writ of summons and the complaint was served on the appellant on the 20th day of December 2016. The appellant filed its general denial on December 27, 2016 followed by the appellee's reply filed on December 28, 2016. The trial court assigned the matter for the disposition of law issues on February 10, 2017, that is fifty-three days after the filing of the reply. This clearly demonstrates that the appellant had ample time to have amended the answer even without the documents, but with notice that the documents would be produced at a later date due to extenuating circumstances, or for enlargement of time pending the availability of the documents.

Further justifying its failure to plead the contract and affirmatively raise the issue of the arbitration clause contained therein, Counsel for the appellant in the submission referred to herein *supra* alleged "that after diligent search, it recovered a copy of the contract agreement signed between the plaintiff and the defendant, subject of this litigation. Counsel wishes to bring to the attention of the court that in the same agreement copy of which Article 17,…, that the parties resolved to submit to arbitration in the event of a dispute. Counsel submits and says that he has discovered this evidence which he terms as newly discovered evidence, this court should take judicial cognizance and refuse jurisdiction over this matter on ground that the parties of their own choosing have decided to settle their dispute if any by way of arbitration". Our statute is not silent on the procedure in case of newly discovered evidence before trial. Section 9.11 of the Civil Procedure Law as revised states that "At any time before submission of the case to the court or a jury, the court may, on motion with notice, grant to a party permission to introduce new evidence in addition to the allegation of his pleading," with the proviso however that such motion "shall be granted only if the moving party shows to the satisfaction of the court by affidavit that at the time of service of the pleading he did not know and could not with reasonable diligence have known of the facts as to which such evidence is offered". In the instant case, the appellant did not show by affidavit that at the time of the service of the answer, it did not know and could not with reasonable diligence have known of the existence of the contract with the arbitration clause. In fact, a perusal of the averment in the submission informs this Court that it is the counsel of the

appellant rather than the appellant that is alleging the discovery of new evidence. This being the case, it would have been tenable under the law had the appellant sought for the enlargement of time rather than alleging that the appellant's counsel did not know or could not have known with reasonable diligence the existence of the contract. Alternatively, the appellant could have traversed with particularity the allegations of the appellee's complaint and given notice to the appellee that the appellant shall produce the contract during trial. Two other witnesses, Lawrence B. Mensah and Mohammed Sherriff, who testified for the appellant *infra*, demonstrated evidence of the knowledge of the appellant regarding the contract. This Court says that it is the party and not the counsel who must allege that he did not know and could not with reasonable diligence have known of the existence of the evidence to be introduced in an affidavit. *ALICO v. Koroma et al, 30 LLR 61 (1982)*

Recourse to the certified records on appeal reveals that the appellee, in count 4 of its complaint filed before the trial court averred that the appellant contracted the services of the appellee tanker trucks without a statement of the mode of the contract or the existence of any arbitral clause within the contract. The appellant, in answer to this complaint, filed a general denial of the allegations of facts averred in the appellee's complaint without a statement of the existence of a written contract or any arbitral agreement between the parties in respect of the subject matter of the contract. The law provides that "Every defense, in law or fact, to a claim for relief in any pleading, whether a claim or counterclaim, shall be asserted in the responsive pleading thereto if one is required, except that the defenses enumerated in section 11.2 may at the option of the pleader be made by motion". *Civil Procedure Law Revised Code: 1:9.8(1), Washington et al v Sackey, 34 LLR 824 1988.*

A party defendant relying on affirmative matters as a defense to a claim is mandatorily required to assert such defense in its answer. According to Black's Law dictionary, 6th Edition, page 60 (1995), 'An affirmative matter in pleading is a response to a plaintiff's claim which attacks the plaintiff's legal right to bring an action as opposed to attacking the truth of the claim'. While the 8th Edition page 451 (2007) also defines an affirmative matter as 'A defendant's assertion of facts

and arguments that, if true, will defeat the plaintiff's or prosecution's claim, even if all the allegations in the complaint are true. Also termed plead avoidance.' Our court has also held that, "A defendant on general denial or on bare denial loses his right to introduce affirmative matter during trial but he is not deprived of the right to cross examine as to proof nor is he deprived of the right to produce evidence in support of his denial."*Kashouh et al v. Heirs of Bernard et al, Supreme Court Opinion, March Term, A.D. 2008.*

Moreover, documents not pleaded and annexed to a pleading under the principle of notice cannot be admitted into evidence. *The Garnett Heirs et al v Allison 37 LLR 611 1994, Universal Printing Press, v. Blue Cross Insurance Company, Supreme Court Opinion, March Term, A. D. 2015.*

The appellant, having not asserted in its answer the claim of the existence of a contract containing the arbitral clause, and not having annexed the contract to the answer thereby given notice to the appellee, the trial court could not legally take cognizance of such assertion and instrument when the appellant attempted to introduce it through a submission made when the case was called for hearing and also considering that the appellant was placed on bare denial. The trial judge therefore acted legally when he denied the appellant's submission.

Traversing the second issue as to whether or not the trial judge proceeded legally when he denied the appellant's motion for judgment during trial? To settle this issue, we take recourse to the certified records transcribed to this Court. The appellant premised its motion on two grounds; firstly, the appellant contended that the appellee did not present oral and/or documentary evidence in support of its claim for damages, and that the witnesses gave contradictory testimonies on the source of the damages. Secondly, that the witnesses of the appellee confirmed and admitted that a contract existed as alleged by the complaint, but that the appellee failed to plead or produce the contract into evidence. That, in the face of the admission by the appellee's witnesses that a contract existed between them which called for arbitration in the event of a dispute arising therefrom, therefore, the trial court lacks jurisdiction over the subject matter of the case.

The appellee countered that the testimonies and documents adduced during the trial by its witnesses established a prima facie case for damages for wrong based upon the wrongful suspension and termination of its services without a justifiable cause; moreover, the evidence squarely established the injuries suffered and the amount of damages therefor.

Touching on the issue of jurisdiction that the Civil Law Court does not have subject matter jurisdiction over the action of damages for wrong because the contract document contains a provision for arbitration in case of dispute between the parties, the appellee maintained that there was no breach of contract, hence, the appellant's contention bordering the introduction of the contract was untenable for the mere fact that the appellant was ruled to bare denial.

In upholding the appellee's resistance to the motion for judgment, the trial court reasoned that a motion of this nature is granted as a matter of law where the moving party is entitled to judgment with respect to a claim or issue, or at any time based on admission. However, the instant motion filed by the appellant primarily seeks to dismiss the action for lack of subject matter jurisdiction as was contained in the appellant's prayer. The trial court also reasoned that the appellee has made its case for damages caused by the illegal suspension of the appellee's transport services by the appellant. The trial court concluded that it has jurisdiction over all civil cases in which other courts have no exclusive jurisdiction, including the action of damages for wrong.

The Court also notes the contention of the appellant that the appellee, in the testimony of two of its witnesses admitted to the existence of a contract between the parties and by that admission the appellant is entitled to judgment during trial. Passing on this contention of the appellant, this Court is not inclined to take the side of the appellant because it having been ruled to bare denial cannot raise any affirmative issue in this case; it will therefore be a fruitless exercise by this Court to delve into determining the correctness of the appellee's witnesses testimonies which point to the existence of a contract between the parties. Further, we note the tactful method employed by the appellant by attempting to introduce an evidence on the contract between the parties which was never

pleaded by the appellant, which evidence cannot be affirmative defense because the defendant/appellant had already been ruled to bare denial. Had the contract, a copy thereof been annexed to appellant's answer to the appellee's complaint, the line of questioning of the appellee's witnesses during which time they referred to the contract between the parties would have been legally correct and its introduction into evidence to form an integral part of these proceedings could have been permissible. This issue cannot be further belabored.

The appellant also contended that the appellee did not present oral and/or documentary evidence in support of its claim for damages, and that the witnesses gave contradictory testimonies on the source of the damages so claimed by the appellee. A recourse to the certified records culled from this case reveals that not only did the appellee provide evidence of the injury suffered as the consequence of the action of the appellant, but also laid the foundation for the damages suffered as the result of the illegal act against the appellee by the appellant.

Moreover, the ruling of the trial Judge shows that the evidence adduced by the appellee during trial established the fact that the appellant indeed and in truth hired the services of the appellee to transport petroleum products to the various destinations of the appellant's customers; that the appellant unjustifiably suspended the appellee's fleet of tanker trucks without a cause; and that as a result of the suspension, the appellee suffered damages for which the complaint should be maintained in the trial court. The appellee's witnesses testified to the allegations as contained in the appellee's complaint, and corroborated by the subpoenaed witness, Lawrence B. Mensah, to the extent of the suspension of the appellee based on a suspicious deal involving one of the appellee's tanker trucks. The appellee also tendered evidence showing incomes from the course of business dealings for the period May and July, 2013, tending to support its claim that it suffered loss in revenue as a result of which loss the appellee could not meet its re-payment obligation to the bank thereby exposing the appellee to the risk of a foreclosure of its collaterals held with the bank.

It is trite law that the party that alleges a fact has the burden to prove that the fact alleged is true. The burden on the plaintiff may shift and call for a certain

result if and when the plaintiff tends to establish a prima facie case. In the absence of a rebuttal to the evidence adduced by the plaintiff, the court will assume to be true the evidence produced by the plaintiff and enter a judgment thereon. Cases the abide are: *Jackley v Siaffa, 42 LLR 3 (2004); Forestry Development Authority v Walters et al, 34 LLR 777 (1988); CBL v Doe, Supreme Court Opinion, October Term 2015. Chae Dae Byoung et al v. The Government of the Republic of Liberia, Supreme Court Opinion, March Term, A.D 2019.* In the face of the quantum of evidence adduced by the appellee, this Court is of the opinion that the evidence rises to a presumption of truth unless overcome by a rebuttal or denial by the appellant.

While the appellant was ruled to bare denial, at the close of the production of testimonies and evidence by the appellee, the appellant filed a motion for judgment during trial to the effect that the appellee had admitted to the existence of a contract when in fact the appellant could not assert affirmative claim in the face of its bare denial. This Court observes that the claim or issue presented in the appellant's motion during trial contained affirmative matters such as the challenge to the trial court's jurisdiction over the case not be tenable under the Civil Procedure Law Revised when such challenge would have been legally and rightly made in a regular legal process, that is, when the appellant should have pleaded affirmative issues to the complaint of the appellee. For the law provides that during the filing of a responsive pleading, the defendant may file a motion to dismiss the complaint so filed against it on legal or factual grounds. But in this case, the appellant was ruled to bare denial, meaning, it did not respond to the appellee's complaint in the contemplation of the law, and cannot therefore raise a challenge to the jurisdiction of the trial court over the subject matter of this case as an affirmative defense. Besides, our civil Procedure Law allows the trial Judge to use his sound discretion to grant or deny a motion for judgment during trial. The law provides: "Unless, an abuse of this discretion is shown, this Court will not disturb the ruling of the court below from a denial of a motion for judgment during trial". *Garden Mountain Ltd v. Morris et al 38 LLR 73 (1995).* Therefore, we hold that the trial judge did not err when he denied the appellant's motion for judgment during trial for reasons stated above.

As to the third issue whether or not the trial judge erred when he ruled out of term of court without obtaining an extension from the Honorable Supreme Court, the appellant contended vehemently that prior to the rendition of the final judgment, the appellant brought to the attention of the trial judge that he was without term; that notwithstanding the objection, the trial judge rendered final judgment without the authority to do so. The appellant argued that without the extension, the final judgment announced by the trial court on December 18, 2017, was invalid and *void ab initio*.

A review of the records does not show any evidence that the appellant raised the issue before the trial Judge. Intriguingly, as important as this issue presents a challenge to both the competence of the trial Judge and the validity of the final judgment of trial court, the appellant's brief is conspicuously silent on the issue. This Court has determined that the attempt to raise in the Supreme Court issues of irregularity which allegedly occurred in the trial court, unsupported by any showing in the records, is contrary to law, since the Supreme Court can only take cognizance of matters of records. Issues to be considered and determined by the Supreme Court must be raised and passed upon in the court below before a review by the Supreme Court can be had, and the Supreme Court will not make a determination of an issue not raised in the trial court. *First United American Bank v. Saksouk Textile Center 38 LLR 327 (1977), The Intestate Estate of Anderson v. Neal 41 LLR 313 (2002).*

It is also settled that the court will not do for party litigants that which they ought to do for themselves. *Jappeh v. Thian 35 LLR 82 (1988), Sio v. Sio 35 LLR 92 (1988), Hussenni v. Bruskine, Supreme Court Opinion, March Term, A.D. 2013.* We hold therefore, that the alleged irregularity or error not having been made a matter of records for appellate review, the trial judge was not in error when he rendered final judgment in the case on December 18, 2017.

The last issue for our determination is whether or not the trial judge was justified when he awarded the appellee special damages in the amount of US$2,800,000.00 and general damages in the amount of US$280,000.00. The undisputed facts in this case reveal that the parties, the appellant and the

appellee, entered an agreement in which parties agreed and understood that the appellee would provide transport services to the appellant. In consequence thereof, the appellant negotiated a lone of One Million United States (US$1,000,000.00) Dollars from the Ecobank appellant and guaranteed the loan repayment by receipt of income to be provided by the appellee to the appellant. The records in this case further show that said loan was used to purchase forty (40) brand new tanker trucks out of which appellee was given four (4) to transport appellant's petroleum products to various destinations of its customers. This Court also notes that during the course of their business relationship the appellant suspended the appellee's services to transport petroleum products on allegation of a shady deal; that prior to the suspension of the appellee's services by the appellant, the appellant had negotiated and guaranteed the appellee a loan of US$1,000,000.00, the repayment of which was backed by receipts or incomes from services provided by the appellee to the appellant. After the lifting of the suspension, the appellant coerced the appellee to put its trucks under another transport management called Family Line Transport which deprived the appellee 30% of its income. In consideration of these undisputed facts, the trial Judge, sitting in a bench trial ruled and awarded the appellee the amount so stated herein above.

The appellant however, filed its bill of exception and brief in which it strenuously argued that the appellee failed to make its case for special damages as alleged in its complaint; that neither did the appellee plead or put into evidence the contract alleged to have been breached by the appellant; that the appellee's witnesses gave inconsistent testimonies specifically on the source of the damages alleged, that is, the US$70,000.00 monthly loss as pleaded in the complaint; that the award of US$2,800,000.00 runs contrary to the evidence adduced during the trial; and that in the absence of evidence on injury or damages, the trial judge erroneously elected and awarded 10% general damages to the appellee in the amount of US$280,000.00.

The appellee refutes these contentions and essentially argued that its complaint against the appellant is based on damages for wrong and not one for breach of contract; that the appellee made its case for the illegal and wrongful suspension

of its services on a mere allegation of not delivering the 5,000 gallons of fuel consignment to the appellant's customer, Monrovia Breweries, Inc. contrary to proof of delivery; that the subsequent termination of the appellee's services on a criminal allegation without a charge, indictment or conviction justifies the trial judge's conclusion of liable against the appellant; that the appellant's letter of January 22, 2014, terminating the appellee's services on a mere allegation of not delivering the 5,000.00 gallons of fuel damaged the appellee's business reputation to the extent inhibiting the appellee from dealing with other petroleum dealers; and that as the trier of facts and law, the trial judge was justified when he awarded US$3,080,000.00 damages in the face of the loss sustained by the appellee.

The review of the records reveals that the trial judge principally held the appellant liable for damages for wrong on the theory that the suspension and later termination of the appellee's services by the appellant was unjustified in the absence of due process to convict the appellee on criminal charges; more importantly, where the alleged neglect to deliver the 5,000.00 gallons of fuel was unsubstantiated by evidence. In summary, the trial judge concluded that the appellee's evidence adduced during trial met the test for the preponderance of the evidence that it lost monthly income between US$60,000.00 and US$70,000.00; and that as a result of the suspension and subsequent termination of the appellee's transport services, the appellee was unable to salvage its indebtedness to the bank and risked foreclosure proceedings against the appellee's collaterals.

We shall now proceed to scrutinize the evidence in light of the records before this Court. On October 11, 2013, the appellant loaded 5,000 gallons of fuel onto the appellee's tanker truck marked BT-2663 for delivery to the appellant's customer, Monrovia Breweries, Inc. Upon arrival on the said October 11, 2013, at the Monrovia Breweries, the appellee's tanker truck was turned back because the customer had closed for business on that day; the appellee's tanker truck was advised to deliver the fuel on the next working day which fell on Monday, October 14, 2013. However, the appellant's subpoenaed witness, Victor Gboyah, a deputy inspector of police for administration, testified that on Sunday, October 13, 2013,

the security consultant in person of Mr. Sam Siryon hired by the appellant called the witness' attention to a commission of a crime in the Gardnersville area involving said BT-2663 and another tanker truck marked TT-1168, he arrived on the scene and effected the arrest of the two tanker trucks, and later turned over the investigation to the Crime Services Department of the Liberia National Police. The appellant claimed that it is based on this apparent "shady deal" that the appellee was told to bring a police clearance in order to continue services with the appellant. Therefore, the appellant suspended the appellee until the latter could present a police clearance.

Earlier in the trial of the case, the appellee's two regular witnesses testified that when BT-2663 was turned back and advised to discharge the 5,000 gallons of fuel on the next working day, the tanker truck was driven to the appellee's headquarters in Lower Virginia, the Hotel Africa area and parked; that on October 14, 2013, the said tanker discharged and delivered the consignment of fuel to the appellant's customer which delivery was acknowledged by the customer on the delivery note, and copy of the delivery note submitted to the appellant. This testimony was corroborated by the appellant's witness, Lawrence B. Mensah during trial. Notwithstanding the delivery of the 5,000 gallons of fuel without any complaint of shortage, the appellant suspended appellee without an investigation on ground that the appellee did not deliver the consignment of fuel to the appellant's customer, Monrovia Breweries, Inc.

The evidence culled from the records further shows that the appellant suspended the services of the appellee in the latter part of October, 2013; that the suspension was partially lifted in February, 2014, when the appellant allowed the appellee to resume limited services of four of its tanker trucks, presumably, the four tanker trucks procured from the loan placed under the Family Line Transport, a competitor providing the same transport services to the appellant; and that in November, 2014, Family Line Transport complained that it could not continue to absorb the appellee under its name, therefore the appellee was dropped. Witness, Lawrence B. Mensah, who testified as a subpoenaed witness for the appellee and a general witness for the appellant, told the trial court that the

suspension of the appellee's services was verbally communicated with the appellee. We quote hereunder excerpt of the witness' testimony:

> "Q: Mr. Witness, during your direct examination, you told this court that you requested Stoner to produce clearance from the police before [its] suspension can be lifted. My question to you is: were you the complainant, that is Total, before the police, which forms the basis for your request for clearance?
> A: Total Liberia has a security firm that was providing security service for the company and our firm notified us regarding the scandalous behavior of one of our trucks, thereby informing the police about the situation.
> Q: So Mr. Witness, by the scandalous behavior, you mean Stoner Liberia was given 5,000 gallons of fuel to be delivered to [Monrovia] Breweries and they failed to deliver said fuel?
> A: Well, this scandalous behavior I'm talking about has to do with one of Stoner's trucks that is working for Total being involved with scandalous behavior and based on that, they asked Stoner to get a clearance from the police to continue to with us.
> Q: Did this scandalous behavior that you are making reference to have anything to do with the delivery of fuel to Monrovia Breweries?
> A: No, we had a tipoff that our truck was being involved with transfer of [product] and that alone constituted a violation of our regulation. So, based on that, we suspended Stoner until they could get clearance from the police.
> Q: So, Mr. Witness, was the suspension of Stoner done formally; did you write letter in which you indicated why they were being suspended?
> A: *It was communicated to Stoner verbally. Stone wrote and made mention of the suspension to the Ministry of Justice. So they got the information; we have copy of that.*
> Q: Mr. Witness, are you suggesting to this court that the suspension of Stoner Liberia was done verbally and was not written formally by the management of Total Liberia?
> Cllr. Sims: Objection, burden of records, the question seeks opinion and the question asked is irrelevant and immaterial.
> The Court: The objection overruled.
> Cllr. Sims: Note our exception.
> The Court: noted.
> A. There was a formal meeting held with Stoner and it was communicated with Stoner, and after Stoner, there was a meeting held with Stoner Management and Total Liberia communicated it with Stoner and after Stoner wrote the Ministry of Justice, indicating the date at which Total suspended them for the same [purpose]…
> Q: Mr. Witness, the incident that was the basis of this suspension of Stoner Liberia Incorporated centered around truck number BT2663. Is that correct?
> A: Yes.
> Q: Mr. Witness, was that the truck that took 5,000 gallons of fuel to the Monrovia Breweries?

A: The truck was issued 5,000 gallons to the Monrovia Breweries on the 11th. This incident took place on the 14th. So it's difficult to draw the link between Beer Factory and the incident.
Q: So, Mr. Witness, when the incident of the 5,000 gallons of fuel took place with BT2663; were you one of the managers that went to Beer Factory to investigate the matter?
A: No, I wasn't one of them." *Cross Examination of the appellant's Witness, Lawrence B. Mensah, Foliage nos. 206 – 204; emphasis ours.*

This Court notes that besides testifying that the suspension of the appellee was communicated verbally, the above testimony of the appellant's witness, Lawrence B. Mensah, sharply contradicted the testimony of the appellant's subpoenaed witness who allegedly witnessed the alleged "scandalous behavior'" of one the appellee's tanker trucks. We also reproduce this excerpt of the subpoenaed witness' testimony as follows:

Q: Mr. Witness, the plaintiff in these proceedings Stoner Liberia Inc. instituted an action of damages for wrong against the management of Total Liberia alleging among other things that Total Liberia wrongfully terminated its contract [while] on the other hand Total Liberia did not terminate the contract and submitted that Stoner Liberia was suspended because of its truck was involved in dubious transaction and the matter at the time was being investigated by the Liberia National Police. For the benefit of this court and the trial please say as a police officer what did you do during the month of October precisely on October 13, 2013 involving a truck bearing license plate #s: BT-2663 and BT1168. You may proceed to do so.
A: For the benefit of this court again my name is Victor Gboyah, [I'm] now the Chief of Patrol of the Republic of Liberia. The incident took place at that time I was serving as Assistant Senior Inspector of Police for Administration. On the 13th day of October 2013, I received a call on cell number 0886-000007 in person of Sam Siryon the [then] Chief of Intelligent of the Liberia National Police asking that I should assist him with police officer in arresting a truck that was belonging to Total Liberia Ltd, not to go further, I was not too far from the area so I decided to go there to found out what was unfolding, when I went there I meet Sam Siryon he identified this truck to be BT-2663 along with TT-1168 and there was huge [crowd] and the argument was not easy. When I got there I saw a long [tube] from the Total Truck into the commercial truck which was criminally done; in less than 15 to 20 minutes I receive a call from my best friend Pastor John asking me to intervene that the truck belong to his company and Sam Siryon just wanted to embarrass him that is what he told me, I told him because [of the crowd] I could not do anything so I advised him to meet me at the Freeport Police Station and it took an hour to get the truck from that place where I ordered the Freeport Police Commander along with PSU to join me to get the truck to Freeport. Finally we took the commercial truck with the fuel on board to the Freeport Police

Station along with four persons; the buyer of the fuel, the carboy, the truck driver and [passer-by] who was just passing. At the police station I meet Pastor John and we talked along with Darlington George. The next day since it was criminal matter, I decided to do my informative report and the case was turned over to the Crime Services Department of the Liberia National Police, Hon. Joseph B. Flomo the [then] Director of CSD. There I meet this Oldman in Col. Flomo's office and he said to me my son you don't know that my company truck there, and I say it not me but Sam Siryon. There where I end my part and turned the case over to the Criminal Services Department. So yes, the truck was arrested by me. If you want this reference number I can call and they will bring that book." *Foliage no. 231, Witness on Direct Examination.*

Q: Mr. Witness, in your testimony you told the court that you were called by Mr. Sam Siryon …,[my] first question is, was Mr. Sam Siryon working with the Liberia National Police?

A: My answer is no; Mr. Sam Siryon was a private security working for Total.

Q: I also take it that at the time Mr. Siryon made the call to you on October 13, he had already being dismissed from the Liberia National Police, is that correct?

Objection, the question calls for conclusion, speculative, opinionative.

The Court: Overruled.

Defendant: excepts.

The Court: noted.

A: That is a personal issue of Mr. Siryon I cannot respond to that.

At this stage, counsel for the plaintiff prays Your Honor to direct the witness to respond to the question posed to him because his answer was not responsive to the question.

A: Mr. Sam Siryon resigned since 2012 from the Liberia National Police. *Foliage nos. 246-245*

Q: You also told this court that although you went on the crime [scene] where two vehicles were allegedly involved in a commission of a crime but that Sam Siryon, a private security guard told you that you should arrest only Truck#TT-1168 because he doesn't want Total truck to be seen at the police station, is that correct?

Objection, asked and answer, intended to entrap the witness on the stand.

The Court: overruled.

Defendant excepts

The Court: noted.

A: Counsel, Mr. Sam Siryon at that time serving as complainant because he was the security consultant and the act was committed before him and the truck in question was identified so the Police SOP requires the safety of the truck and the item on board knowing the area based on that Mr. Sam Siryon signed for the truck [officially] and took it to Total and the next day it was delivered for investigation all parties involving was determined by the police. The

truck did not commit any crime it was the human being that committed the crime." *Foliage no. 243*

The appellant has argued both in its bill of exceptions and brief that the appellee failed to rebut the testimony on its involvement in a shady deal and subsequent arrest of its tanker truck; hence, the failure to rebut is deemed an admission.

The records being examined reveal to the contrary as follows:

> "Q: Mr. Witness, upon the oath you took and as a man of God, tell this court in clear terms the reasons for your suspension that was given to you by Total Liberia?
> A: I earlier stated that all transporters are losing enormous revenues that Total deducted from the transporters as shortages at their various gas stations around the country. Total Management was written many times to correct the issue because the cause was from their uncalibrated tanks. When they failed to address the issue, the transporters gathered together at the premises of one of the transporters, Princess Transport, for a meeting on how to deal with the issue since Total was not responding to their letter. The transporters saw it wise at their last meeting, decided to take a strike action against Total to draw the attention to the transporters' dilemma. Then the transporters agreed in general to stage the strike and they did so and it lasted for one day and a half. During the strike, Total called some of the transporters and asked them to prevail upon the rest to call off the strike with the promise to look into their complaint and address the matter accordingly and swiftly.
> Based upon this undertaking by Total, the transporters called off the strike and went back to work. Then Mr. Robert Fenec, called me and said that the management had information that Stoner and Princess' heads were the ringleaders of the strike action. That both of us were the ringleaders and the then managing director personalized the issue and said he was going to do everything in his power to remove Stoner and Princess Companies from Total's service. He did not stop there, he contacted the then managing director of Ecobank to tell him about the strike and that Stoner and Princess' heads were the headache. He boasted to me that anybody that touches Total, touches the Government of Liberia, then the managing director of Ecobank at the time by the name of Mr. Kolak Adelake, summoned a meeting of the six transporters for whom Ecobank bought trucks.
> In opening speech to the transporters, was that Total Management was very angry about the strike because it affected Total's business and reputation in Liberia. Then he said openly that I, Rev. Fidel Onyekwelu was the brain behind the strike and that Mr. Tonny Lawal, the head of Princess was the one who sponsored the strike. The transporters protested about that remark and asked Mr. Kolax if the meant that they themselves have no brains. The actions that

followed against Stoner were a calculated move to discredit Stoner in order to terminate their contract and services with Total.
So Mr. Fenec was acting through to his threats that he was going to do everything in his power to deal with Stoner and Princess.
Now, coming to the issue of the police's involvement, Stoner garage is situated Lower Virginia, Hotel Africa and the truck that police arrested with 500 gallons of fuel does not belong to Stoner nor does it belong to Total. And the argument that police had with the man was in Garderville. It was not Stoner's truck and was not even part of Total's fleet. It was an old private truck owned [by] someone else. The question of suspending driver does not arise because the truck was already parked. We, according to Total's policy, have to suspend the driver ourselves. In fact, the procedure if a customer does not receive his product, he will call Total Managemtn to inform that they have not received their consignment. Then our executive officer, the late Sam Vamack went to Monrovia Breweries to ascertain whether or not they actually received their consignment of 5,000 gallons of fuel. Their answer was positive (yes) and the exhibited a document in their file besides the delivery note that they indicated the date that they received their product in full. They also showed a voucher. So we have no reason to hold the driver responsible and if Total contended that Monrovia Breweries Inc. did not receive of which they signed, then of course, they were calling into question by their action, integrity of the management of Monrovia Breweries Inc.
And to clear the issue, nobody in Stoner or any company was charged to the Monrovia Magisterial Court as claimed by counsel for defendant for that issue. We delivered the product of 5,000 gallons of fuel to the Monrovia Breweries, Inc. and obtained a duly signed delivery note that they received their product. I will stand by that." *Foliage nos. 109-108, the appellee's principal witness on cross examination.*

This Court is of the opinion that the appellee's evidence which establishes that the 5,000 gallons loaded on Friday, October 11, 2013 was delivered on Monday, October 14, 2013 preponderates and overcomes the appellant's inconsistent evidence which tends to show that the said BT 2663 was arrested on Sunday, October 13, 2013 and turned over for police criminal investigation. It is also manifestly cognizable that the appellee's evidence of a delivery of 5,000 gallons of fuel to the appellant's customer also preponderates and outweighs the appellant's evidence that the appellee's tanker truck marked BT 2663 was involved in a shady deal and being investigated by the police. To the mind of this Court, shady deal as it is been mentioned in this case, reasonably implied that appellee's tanker truck was arrested during the commission of theft of the 5,000 gallons loaded aboard and scheduled for delivery to the appellant's customers.

Assuming that the appellant's oral evidence to the effect that the said BT-2663 was allowed to continue and deliver the content of the tanker truck, this Court is still at a loss as to the failure of the police to press criminal charges against the alleged perpetrators of the alleged "shady deal". The only reasonable inference that can be made from the evidence is that the police investigation into theft of fuel failed to establish a probable cause or that there is no truth in the appellant's evidence.

Also, assuming that the police had reasons to investigate BT-2663 involvement in a shady deal as presented by the appellant, the question that begs for an answer is whether the alleged act of the said tanker truck warrants the suspension of the appellee's services affecting six other tanker trucks owned and operated by the appellee in the course of business dealing with the appellant? In order to answer this query, this Court takes recourse to our laws controlling corporate criminal liability of corporation such as the appellee. Our search directed us to the *Penal Law Revised Code: 26:3.2* which reads as follows:

> "A corporation may be convicted of the commission of the offense if:
> (a) The conduct constituting the offense is engaged in by an agent of the corporation while acting within the scope of his employment and on behalf of the corporation unless the offense is one defined by a statute which indicates a legislative purpose not impose criminal liability on corporations. If the law governing the offense designates the agents for whose conduct the corporation is accountable or the circumstances under which it is accountable, such provisions shall apply;
> (b) The offense consists of an omission to discharge a specific duty of affirmative performance imposed on corporations by law, or
> (c) The conduct constituting the offense is engaged in, authorized, solicited, requested, commanded, or recklessly tolerated by the board of directors or by a high managerial agent acting within the scope of his employment and in behalf of the corporation.

This Court takes judicial cognizance of the limit of police power to arrest, detain and investigate a suspect within forty-eight hours or reasonably beyond forty-eight hours if the suspect is released under bond to appear for further investigation. However, it does not appear reasonable to the mind of this Court that the police arrest a suspect on October 13, 2013 in the alleged commission of a crime according to the appellant's testimony, but failed to press a charge for about three years, that is from the time of the alleged arrest on October 13, 2013

up to and including the filing of the appellee's complaint on December 12, 2016. The failure to press a charge against the appellee leads this Court to the conclusion that there was no probable cause for a corporate criminal liability against the appellee within the meaning of the above quoted statute. The appellant's testimonies on the alleged dubious fuel deal therefore failed the test for a rebuttal and denial of the appellee's evidence on the loading and discharge of the 5,000 gallons to the appellant's customer. We therefore hold that the suspension of the appellee by the appellant violates the appellee's equitable rights to the covenant of good faith and fair dealing implied in the course of business dealing. The appellee proved by the preponderance of the evidence that its suspension by the appellant was wrongful. In support of this holding, we note that damages, exemplary or punitive, for wrong as in the instant case, flows from the tortious conduct of the defendant for breached of covenant of good faith and fair dealing. *22 Am Jur 2d, Exemplary or Punitive Damages, § 575.*

Now, we consider whether the award by the trial judge was justified in light of the evidence. To resolve this issue also, we shall first determine whether the appellee proved special damages. The law extant is that the plaintiff in action of damages for wrong must not only plead the wrong complained of, but that the plaintiff must prove by the preponderance of the evidence that he suffered loss or injury as a result of the defendant's wrongful act. *Firestones Liberia Inc. v. G. Galimah Kollie, Opinion of the Supreme Court, March Term, A.D. 2012, Dopoe v. City Supermarket 34 LLR 343 (1987), Lerchel v. Eid, 34 LLR 648 (1988); Townsend v. C. V. Dyer Memorial Hospital 11 LLR 288.*

The appellee's evidence shows that it earned an average monthly income from the contract in the amount of US$61,983.30. The appellant's general witness, Lawrence B. Mensah testified that incomes from the transport contract are not fixed; the incomes depend on the quantity of load, distance travelled, season and rate based on distance; and in support of his testimony, the appellee's incomes for two months were admitted into evidence as follows: May, 2013 – US$84,694.60 and July, 2013 – US$39,273.00. We culled from the records the relevant evidence as follows:

Q: Mr. Witness, monthly bill of payments to Total Liberia is a photocopy. Do you know the whereabouts of the original?
A: The information is [stored] in Total Liberia's computer system.
At this stage, counsel for plaintiff prays court to place a temporary mark of identification on the copy of the monthly bills generated by Total Liberia for Stoner Liberia for the month of May 2013 and for the month of July 2013…and [order] issuance of subpoena duce tecum against Total Liberia Inc. for the bills that were generated for Stoner Liberia covering May 2013 with a gross figure of US$84,694.60 and July 2013 with a gross figure of US$39,273.00. *Foliage no. 80, Direct Examination of Witness Rev. Fidel Onyekwelu.*
Q: The Management of Total Liberia was served subpoena duce tecum requesting the Management to produce copy of three documents in connection with services that [were] rendered by Stoner Liberia, Inc. The three documents included monthly income for service rendered for the month of July and May and copy of delivery for supply that was delivered to the Monrovia Breweries, my question is whether you brought those instruments that were contained in the subpoena served on the management?
A: Yes sir, in my hands I have the statement of income for the months of May and July 2013...
At this stage, counsel for the plaintiff prays court to make a temporary mark were placed on these instruments permanent the Management of Total having confirmed same being the original copy of the monthly income state for July and may 2013 in favor of Stoner and copy of the delivery note also having been declared as genuine copy of the delivery made by Stoner Liberia, Inc. to replace the temporary mark.
The Court: application granted document which is the bill for Stoner for the month of May and July 2013 is hereby permanently P/2 in bulk on of two and two of three and the delivery note is hereby permanently marked. So ordered.
Q: Mr. Witness, the instrument that you identified has been by court as P/1 and P/2 in bulk with the permission of court I pass the document to you please say whether they are the same documents you just identified?
A: Yes.
At this stage, counsel prays court for mark of confirmation to be placed on those instruments confirmed by the witness.
The Court: Application granted and court's marked P/1 and P/2 in bulk are hereby confirmed. So ordered." *Foliage nos. 102-99, Direct Examination of Appellee's Subpoenaed Witness, Lawrence B. Mensah.*

However, the appellant has contended that the evidence is inconsistent with the averment specially pleaded by the appellee that it earned on the average US$70,000.00 per month from the course of business dealing. The appellant therefore attempts to impress this Court that inconsistency between the pleading and evidence adduced during trial is a ground to set aside the award of

US$2,800,000.00 entered by the trial court in favor of the appellee. We do not agree with the appellant's contention for reasons as follows:

> "So even if we were to accept, just for a moment, Appellant's contention that the figure, US$150.00 Appellee represented as daily loss of income, is not sustainable due to insufficient evidence, it is our opinion that Appellee would still be entitled to special damages in the amount proven by the evidence adduced. This Court, in Joseph Hanson & Sochne (*Liberia) Ltd. V. Tuning*, *[1966] LRSC 76; 17 LLR, 617, 619 (1966); Liberia Mining Co. V. Zwannah, [1968] LRSC 46; 19 LLR, 73 (1968); Kassabli v. Cole*, *[1969] LRSC 27; 19 LLR, 294, 297 (1969)* sustained special damages to the extent supported by the evidence. The Court laid down the principle in the cited cases that the insufficiency of evidence cannot be a sufficient basis to quash an award made in favour of an injured party; rather, this Court will affirm the award in a manner commensurate and warranted by a preponderance of evidence. Under this principle, the award is reduced to the amount supported by the evidence; not invalidated." *Firestones Liberia Inc. v. G. Galimah Kollie, Supreme Court Opinion, March Term, A.D. 2012*

Thus, from the evidence, the appellee proved with particularity the loss of income on a monthly average in the amount US$61,983.80 for the operation of seven tanker trucks. In other words, the appellee's evidence show a loss in the amount of US$185,816.40 for three months, that is, November, December, 2013 and January, 2014. Already the appellee had earned during the month of October, 2013 which we have excluded in this determination consistent with the appellate authority to affirm, reverse or modify the final judgments of inferior courts. *Wahab v. Helou Bros. 24 LLR 250 (1975), Ezzedine v. Sambola 35 LLR 239 (1988), Firestones Liberia Inc. v. G. Galimah Kollie, Opinion of the Supreme Court, March Term, A.D. 2012*

The appellee's evidence also shows that from February, 2014 up to and including November, 2014, that is ten months, four of the newly procured tanker trucks under the loan facility were allowed loads under the name of Family Line Transport while the appellee's other three tanker trucks were not permitted to load. It follows that the appellee lost incomes on the three tanker trucks as a result of the appellant's wrongful conduct to arbitrarily and illegally suspend the appellee's three tanker trucks. Considering the average monthly income of each tanker truck at US$8,854.82 as demonstrated by the evidence, it can be

reasonably computed that the expected income for the ten month period amounted to US$265,644.60; thus, making the proved special damages to sum up to the amount of US$451,461.00 (265,644.60 + 185,816.40). Therefore, we hold that the award of US$2,800,000.00 by the trial court was an error and the appellee's evidence proved special damages in the amount of US$451,461.00.

Relative to question touching on general damages, this Court now reaffirms the principle that general damages come about as the natural and necessary outcome of a wrongful act or omission; and that no yardstick of universal acceptability exists for accurate measurement of general damages awards. Therefore, the law has ordinarily assigned to the jury the task of determining such awards guided by reasonable standards. This apparent arbitrariness in determining the amount of awards for general damages is exclusively the jury's province. They are exemplary or punitive, intended by the law to provide compensation for injuries such as mental anguish and distress, insult, indignity and hurt to a party, which cannot be easily quantified or accurately estimated. It is recognized that a judicial yardstick is yet to be couched to measure mental anguish and distress, insult and indignity for which such damages are awarded as compensation. It is generally required that the awards bear some relation to the injury inflicted and the cause thereof. They should not be awarded where the amount of compensatory damages is adequate to punish the defendant. Where such compensatory damages are not adequate for the purpose of punishment, only such additional amount should be awarded as taken together with the compensatory damages will be adequate for the purpose of the punishment. *Introsco Corporation v. Osseliv 32 LLR 558 (1985), Firestone Liberia Inc. v. G. Galimah Kollie, Supreme Court Opinion, March Term, A.D. 2012*

Since the trial Judge presided over this case both as the trier of facts and law, his determination on the general damages award, though contended by the appellant as being arbitrary and unsupported by evidence, the principle pronounced hereinabove supports the trial Judge's finding and conclusion. Moreover, this Court is cognizant of the evidence in regard of the US$1,000,000.00 loan secured by the appellee based on the guarantee given by the appellant; and the assurance to finance the repayment of said loan from

incomes generated from the transport services rendered by the appellee to the appellant. The issue of loan arrangement not being contested, and there been no specific measurement for general damages, the amount to be awarded should commensurate with the injury suffered. Therefore, this Court not been in agreement with the amount of US$280,000.00 awarded by the trial judge, is reduced to One Hundred Thousand United States (US$100,000.00) Dollars to complement the special damages award as equitable relief to the appellee. We hold therefore, that the general damages award not been reasonable under the facts and circumstances of this case is adjusted accordingly. The total award of damages in favor of the appellee and against the appellant is Five Hundred Fifty-One Thousand, Four Hundred Sixty-One United States (US$551,461.00) Dollars.

The appellant has drawn the attention of the Court to its Opinion in the case *Total Liberia Inc. v. Princess Transport Inc., Supreme Court Opinion, March Term, A.D. 2019* as being analogous with the present case. However, given the fact and circumstances in the two cases, they are distinguishable. In the *Princess case supra*, the trial court determined that the appellant *Total Liberia Inc*. breached its contract with the appellee, *Princess Transport Inc.*, thereby adjudging the appellant liable in the amount of US$10,469,728.21 in special and general damages. This Court after review of the records held that *although the records do not support a formal or written contract between the parties,…the course of dealings between the parties was indefinite; that both parties were at liberty to enter and to terminate at will said course of dealings.* The Court went further and held that *oral commercial arrangement such as existed between the appellant and the appellee… with indefinite duration can be terminated anytime provided the terminating party provides reasonable notice.* On the contrary, the present case presents question that centers on the wrongfulness of the appellant's action to suspend the appellee's services without any legal justification thereby causing injuries and loss of incomes to the appellee including the exposure to the risks of foreclosure of the appellee's collaterals assigned with bank for loan secured the parties' course of business dealing.

WHEREFORE, and in view of the foregoing, the final judgment of the trial court is affirmed with the modification that the appellant is adjudged liable to the

appellee in the amount of Five Hundred Fifty-One Thousand, Four Hundred Sixty-One United States (US$551,461.00) Dollars in special and general damages. The Clerk of this Court is ordered to send a Mandate to the court below to resume jurisdiction over the case and enforce the Judgment of this Opinion. Costs are ruled against the appellant. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellors Golda A. Bonah-Elliott and Neto Z. Lighe of Sherman & Sherman, Inc. appeared for the appellant. Counsellors Cooper W. Kruah and D. Anthony Manson of Henries Law Firm appeared for the appellee.