

SEKOU BILITY, Appellant, *v.* **ISAAC LEWIS**, Appellee.

APPEAL FROM THE DEBT COURT FOR MONTSERRADO COUNTY

Heard: November 23, 1982. Decided: February 3, 1983.

1. Issues raised in a bill of exceptions, to which no exceptions were noted, cannot be reviewed by the Supreme Court.
2. Evidentiary matter arising out of a case after pleadings are rested and after the disposition of law issues, may be introduced in evidence.
3. It is unethical for a lawyer to negotiate or compromise a matter with a party represented by counsel, in the absence of the counsel, and any such compromise is inadmissible into evidence.
4. The Supreme Court will not consider counts in a bill of exceptions which mention only the alleged erroneous rulings of the trial counsel without stating specifically and distinctly the reasons for the exceptions to the ruling.
5. It is the duty of litigants for their own interest, to so surround their causes with the safeguard of the law as to secure them against any serious miscarriage and thereby save the way to securing of the great benefits which they seek to obtain under the law. Litigants must not expect courts to do for them that which it is their duty to do for themselves.

An action of debt was instituted in the Debt Court for Montserrado County for default on a \$8,000.00 promissory note. The trial, which commenced with counsel for both parties present, was thereafter suspended. When the trial resumed as per notice of assignment, defendant's counsel absented himself without the permission of the court and the knowledge of his client. Request for postponement made by defendant himself was denied, whereupon plaintiff continued the production of evidence, rested and moved the Court to render final judgment according to the evidence produced. It is from the final judgment rendered by the Debt Court that defendant excepted and announced an appeal to the Supreme Court.

The Supreme Court affirmed the judgment of the trial court, holding that the contentions of the appellant were without legal merits. The Court noted that certain issues raised by the appellant in the bill of exceptions and before the Court, especially regarding the trial judge's

ruling on the law issues, were not excepted to in the trial court, and, hence, they could not be entertained by the Supreme Court. The Court also opined that while the appellant has accused the trial judge of errors in certain of his rulings during the trial and in the rendition of final judgment, appellant had failed to state specifically and distinctly the reasons for the exceptions. The Court therefore held that under the circumstances it could not give credence to those counts in the bill of exceptions. Observing that the appellee had proved his case, the Court *affirmed* the judgment of the lower court.

M. Fabnbulleh Jones appeared for appellant. *S. Edward Carlor* appeared for appellee.

MR. JUSTICE YANGBE delivered the opinion of the Court.

Appellant issued \$8,000.00 a promissory note in favour of appellee. A part payment of the amount was to be made through the office of the Deputy Speaker of the Peoples Redemption Council on Capital Hill in Monrovia on the 20th of March 1981, at 3:p.m. The amount was a compensation for bodily injuries sustained by appellee as a result of an automobile accident in which appellee was involved. It would appear that appellant defaulted, and appellee consequently brought this suit in the Debt Court for Montserrado County to recover the entire amount. The pleadings exchanged in the case only contained factual contentions; therefore, on February 10, 1981, the trial judge ordered the parties to produce evidence to prove the contentions raised in their respective pleadings.

Although the records show that all the parties were represented in Court as of record, no exception was noted to the ruling by either side. Thereafter, about six different notices of assignment were served and acknowledged by each party for trial of the case. Finally, on the 11th of June, 1982, the hearing commenced with the participation of appellant and his lawyer.

On the 15th of June, 1982, the case was again called as per assignment, but counsel for appellant failed to appear without leave of Court. The appellant was dismayed and said he did not know why his counsel had not appeared, although he was aware of the assignment. However, appellant requested a postponement until the 10th of August 1982, but appellee interposed an objection which was sustained; whereupon, appellee continued production of evidence, rested and the case was suspended. When the hearing resumed, counsel for appellant again failed to appear without excuse, but his client, appellant, alone appeared. Consequently, counsel for appellee moved the court to proceed to render final judgment according to the evidence adduced, in view of the failure of appellants' counsel to show up for trial. The request was granted.

Accordingly, final judgment was rendered adjudging appellant liable to appellee in the sum

of \$8,000.00, together with costs of court. Exception was noted, appeal announced and granted; hence, the case is now before this Forum for review and final decision.

There are several issues raised in the bill of exceptions; however, we will deal with the salient points for appellate review and final determination of this case.

Counts 1 to 3 of the bill of exceptions attacked the trial judge for his ruling on the issues of law, but no exception was noted to the ruling by either party in keeping with Civil Procedure Law, Rev. Code 1: 51.7. Therefore, we refrain from reviewing same.

In count four (4) of the bill of exceptions, appellant blamed the trial judge for his refusal to take judicial notice of the notice of withdrawal signed and filed by appellee together with a release. The records show that when appellant attempted to call the attention of the court to the notice of withdrawal and the release, appellee interposed objections thereto on the grounds of irrelevancy because the case had already been ruled to trial subsequent to the date of the release and for unethical behavior on part of counsel for appellant in dealing with appellee directly on the subject of the case in the absence of counsel for appellee.

Rule 9 of our Code of Moral Ethics reads thus:

"A lawyer should not in any circumstances communicate upon the subject of controversy with a party represented by counsel; much less should he undertake to negotiate or compromise the matter with him, but should deal only with his counsel. It is incumbent upon the lawyer most particularly to avoid everything that may tend to mislead a party not represented by counsel, and he should not undertake to advise him as to the law without being retained".

Whilst it is true that evidential matter arising out of a case after pleadings are rested and after the disposition of the issues of law may be introduced in evidence in accordance with the procedure in case of newly discovered evidence before trial, Civil Procedure Law, Rev. Code 1: 9.11, the filing of the release and the notice of withdrawal of the case were not proper. The aforesaid release purportedly signed by appellee in this case, with the view to compromising the case, unknowingly to and in the absence of counsel for appellee, are contrary to Rule 9 of the Code of Moral Ethics hereinabove quoted. Hence, the documents are ineffectual; and consequently, the release is inadmissible into evidence. Therefore, the trial judge did not err when he sustained the objection of appellee thereto on said grounds.

Counts 5, 6, 8, 9, 10, 11, 17, and 18 of the bill of exceptions, merely mentioned the alleged erroneous rulings of the trial Court together with the rendition of final judgment, but

without stating specifically and distinctly the reasons for the exceptions thereto in keeping with Civil Procedure Law, Rev. Code, 1:51.7; *Sampson and Johnson v. Republic*, 11 LLR 135 (1952) and the holding of this Court in *Keller v. Republic*, 28 LLR 49 (1979). Therefore, we will not consider said counts of the bill of exceptions.

Appellant complained against the trial judge in counts 12 and 13 of the bill of exceptions to the effect that his counsel requested for postponement which was denied and he was not given an opportunity to cross-examine witness Kennedy. In this case, many postponements were requested for by appellant which caused unreasonable delay of the final determination of the matter. When the case was resumed, the date on which Witness Kennedy was deposed, appellant's counsel absented himself without permission of the court and the knowledge of his client, appellant, who, although present in court, said to the court that he had nothing to say when he was called upon to speak. In *Blackledge v. Blackledge et al.*, 1 LLR 371 (1901), this Court held that:

"It is the duty of litigants, for their own interest, to so surround their causes with the safeguards of the law as to secure them against any serious miscarriage and thereby pave the way to securing of the great benefits which they seek to obtain under the law. Litigants must not expect courts to do for them that which it is their duty to do for themselves".

The nonappearance of counsel for appellant on the date Witness Kennedy testified and the failure of appellant himself to testify and produce evidence in his own behalf, cannot be blamed on the trial judge as error, but to himself and, of course, his counsel. Count 4 of the bill of exceptions is therefore not sustained.

In view of what we have narrated hereinabove, and the law citations, we have no choice but to confirm and affirm the judgment of the court below. The Clerk of this Court is therefore instructed to send a mandate to the trial court to resume jurisdiction over the case and enforce the final judgment, with all costs to be paid by appellant. And it is so ordered.

Judgment affirmed