INTERNATIONAL AUTOMOBILE CORPORATION, by and thru its President, SAMUEL B. GRIFFITHS, Appellant, v. **GABRIEL W. NAH**, Appellee.

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

Heard: November 1, 1983. Decided: December 21, 1983.

1. Where issues of law or facts raised in the pleadings are common, in order to avoid unnecessary delay, the court may, sua sponte or upon the request of party, orders consolidation of the claims or issues.

2. A reply may only be filed to an answer which contains counterclaims or affirmative matter.

3. Averments in a pleading to which a responsive pleading is required are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required shall be taken as denied or avoided.

4. In an action of damages, the jury must pass upon facts and it is an infringement upon the sacred rights of due process of law for the court, while disposing of issues of law, without production of evidence, to decide facts.

5. In all cases, all issues of law raised in the pleadings must first be decided by the court before trial of facts.

The plaintiff, now appellant in this case, filed in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, an action of damages for injury to personal property. As an ancillary to the principal case, an application for a writ of attachment against the property of the defendant/appellee was also filed, and the writ of attachment issued and served, attaching certain property of appellee. Thereafter, appellee filed a motion to vacate the attachment. No responsive pleading was filed to the answer and no resistance was filed to the motion to vacate the attachment. During the disposition of the issues of law, the trial judge abated the entire action, together with the attachment, and ruled the plaintiff to all costs. The appellant thereupon excepted to the judgment and appealed from the same to the Supreme Court.

On appeal, two primary issues were presented: (a) whether the trial court erred in consolidating the motion to vacate and the issues of law raised in the complaint and the answer rather than disposing of the motion before hearing the issues of law: (b) whether the trial court erred in dismissing the action without first affording the parties the opportunity of presenting evidence relating to the factual issues raised in the pleadings.

On the first issues, the Supreme Court determined that under the Civil Procedure Law, the trial judge had the right to sua sponte consolidate the motion to vacate and the law issues

raised in the pleadings avoided unnecessary delay. However, with regard to the dismissal of the action without first taking the testimony of any witness, the Court disagreed with the trial judge, noting that once factual issues were raised in the pleadings, the trial judge was obligated to take the testimonies of witnesses before determining whether to dismiss the action or not. The Court therefore reversed the trial court's judgment and ordered that the case be remanded for further action by the trial court..

John A. Dennis of the Morgan, Grimes and Harmon Law Firm, appeared for the appellant. M Fahnbulleh Jonesappeared for the appellee.

MR. JUSTICE YANGBE delivered the opinion of the Court.

The plaintiff, now appellant in this case, filed in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, an action of damages for injury to personal property. As an ancillary to the principal case, an application for a writ of attachment against the property of the defendant/appellee was also filed and the attachment served, to which'a motion to vacate the attachment was filed. No responsive pleading was filed to the answer and no resistance was filed to the motion to vacate the attachment. During the disposition of the issues of law, the trial judge abated the entire action together with the attachment and ruled the appellant to all costs. The appellant appealed from the judgement of the trial judge, which appeal was perfected and the case is now before us for our review and fmal decision.

In the three-count bill of exceptions, the appellant asserted essentially thus:

(1) that the trial judge should have initially decided the motion to vacate the writ of attachment before passing upon the issues of law raised in the main case; and

(2) that although the complaint contained factual matters, the judge dismissed the action without hearing any evidence.

Where the issues of facts and law tendered in the pleadings are common, the court may sua sponte consolidate the same in disposing of the issues. In this case, the issues raised in the motion to vacate the attachment as well as some of the issues asserted in the answer were legal; consequently, the judge had the right upon his own initiative to consolidate same in the ruling on the issues of law to avoid unnecessary delay. See Civil Procedure Law, Rev. Code 1: 6.3(1). Count one of the bill of exceptions is therefore not sustained.

It is procedurally significant to observe here that the subject of this review is a twin ruling and we have already overruled count one of the bill of exceptions relative to that phase of the ruling which vacated the attachment. Hence, the ruling of the lower court on the attachment is confirmed. Accordingly, we will now focus our attention solely on the remaining counts, beings counts two and three of the bill of exceptions, and the dismissal of the action on the facts stated in the complaint and the answer by the lower court without taking the testimony of any witness.

A further perusal of the ruling which abated the action clearly showed that the trial court did recognize the factual averments in the complaint and the answer in these words:

"The answer filed by the defendant in count one attacked the complaint to the effect of being false and misleading for the fact that plaintiff in count one of his complaint averred that he rented from the defendant dwelling house paying rent of $200.00 per month. Wherein, in the answer, defendant averred that he rented to plaintiff an apartment in his dwelling house. These are two conflicting averments and to satisfy the court, we have searched the records and found out that instead of a dwelling house it is an apartment in the dwelling house leased to the plaintiff by the defendant. Count one of the answer is sustained."

As a prerequisite to rule the case to be tried by a jury, the learned judge below was only disposing of the issues of law when, without production of a single evidence, he decided the facts raised in the complaint and the answer. Therefore, we wonder what records the learned trial judge searched at the time he was passing upon the law issues, which according to him, established the facts in the pleadings and which justified resolution of the two conflicting facts alleged in the pleading? This is very strange because, the trial of all questions of mere facts shall be by a jury under the direction of the court. Beysolow v. Coleman, 9 LLR 156 (1946).

The counsel for appellee has contended that the issues at laws as well as facts raised in the answer were not denied in the absence of a reply. He cited numerous authorities in support of this argument. Hence, the crucial question that presented itself is, under what circumstances is a reply to an answer necessary? In order to answer this question, we quote the Civil Procedure Law, Rev. Code 1: 9.1, as follows:

"Except as provided in paragraph two, there shall be a complaint and an answer; and there shall be a reply to an answer which contains affirmative matter or a counter claim. No other pleading shall be allowed."

Therefore, to warrant a reply to an answer there must be a counterclaim or an affirmative defense raised in the answer. Certainly, no counterclaim or affirmative matter was raised in the answer filed in this case, and, therefore, a reply was unnecessary.

The next section of the statute cited by counsel for appellee is section 9.8 (3) of the Civil Procedure Law, Rev. Code 1, which deserves our comments, and it reads as follows:

"Averments in a pleading to which a responsive pleading is required are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required shall be taken as denied or avoided."

As we have stated above, there is no affirmative defense or counterclaim interposed in the answer, the legal issues and facts raised in the answer were therefore deemed denied or

avoided by implication in the absence of a reply. The learned counsel for the appellee cited several reported cases namely: Roberts v. Howard et al., 2 LLR 226 (1916); Cavalla River Company Ltd. v. Pepple, 3 LLR 436 (1933); Chenoweth v. Liberia Trading Corporation, 16 LLR 3 (1964); Alpha v. Tucker, 15 LLR 561 (1964); and Horton v. Horton, 14 LLR 57 (1960). But careful study of those cases he cited showed that there were responsive pleadings or returns filed in each in which the parties omitted to deny certain allegations contained in the pleadings to which the replies or returns were filed. To be specific, in Roberts v. Howard et al., supra, there was a stipulation filed by the parties in which the factual averments tendered in the responsive pleadings of the parties were expressly admitted, leaving only the questions of law to be decided by the court, whereas in this case, no responsive pleading was necessary nor filed because, no counterclaim or affirmative defense was raised in the answer.

Therefore, in our opinion, the cases as well as the statute cited by the learned counsel for appellee are not analogous in this case.

It is obvious that the complaint together with some of the counts in the answer contain both law and facts and it is mandatory that all the issues of law must first be decided by the judge alone without the aid of the jury. Civil Procedure Law, Rev. Code 1: 23. 3; Wolo v. Wolo, 8 LLR 36 (1942).

Therefore, the trial judge should have first passed upon all the issues of law raised in the answer and, if the case was not terminated on dilatory plead, to rule the same to trial by a jury.

The learned judge was therefore without any legal or factual authority to pass upon facts stated in the pleadings and to conclude thereon without a single production of evidence.

The fair procedures fundamental to a fair trial or hearing are fully enunciated by this Court in the celebrated case of Wolo v. Wolo, 5 LLR 423 (1937), wherein the essentials of the elements of due process of law were fully discussed and some of the constituent parts of the doctrine are the right to be tried by a jury.

Further, whether administrative, executive or judicial, the proceeding must be orderly conducted. The ruling of the judge of the lower court which dismissed the case on pure facts, without hearing evidence, is alien to all the judicial procedures known in our adversary system.

Predicated upon the most irregular manner in which this case was handled by the trial court, as pointed out hereinabove, the twin ruling of the judge is reviewed only as far as it relates to the issues raised in the complaint and the answer. We reiterate herein, however, that the portion of the ruling which vacated the attachment is sustained. We have no choice, therefore, but to remand the case with instructions to the lower court to resume jurisdiction

over the case and commence hearing the case with disposition of only the law issues raised in the answer. Costs to abide final determination of the case. And it is so ordered.

Ruling reversed; case remanded.