

WILLIAM G. KNUCKLES, Appellant, v. THE LIBERIAN TRADING AND
DEVELOPMENT BANK, LTD. (TRADEVCO), by and thru its President, General
Comptroller, Chief Accountant, and all Corporate Officers, Appellee.

APPEAL FROM THE RULING OF THE CIRCUIT COURT FOR THE SIXTH
JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: April 9, 2001. Decided: July 6, 2001.

1. The Supreme Court need not pass on every issue raised before it, but that it will address only those issues which are really decisive of the case.
2. Issues that are not raised in the lower court cannot for the first time be raised or presented in the appellate court.
3. The failure of a party to promptly object to the announcement of an appeal by the other party from the ruling of a judge on a motion for a new trial deprives the trial judge of the opportunity to consider and pass upon the issue and thereby make it a part of the records for appellate review.
4. The failure of a party to object to an announcement of an appeal from a trial judge's ruling on a motion for a new trial deprives the appellate court of the opportunity to pass upon the issue.
5. Ordinarily the face of a judgment is the test of its finality.
6. A ruling on a motion for a new trial is interlocutory, and therefore not appealable.
7. A ruling on a motion for a new trial is interlocutory because in a jury case such a motion is made and ruled upon during trial or after a verdict has been brought in and before judgment is rendered.
8. While a trial judge has a duty to first pass upon all the issues of law raised in the pleadings, his ruling must be so comprehensive as to embrace all material issues raised by the pleadings, and where this is not done, the case will be remanded for proper disposition in the lower court.
9. A motion for a new trial must be made and ruled upon during the trial or after a jury verdict and before final judgment is rendered.
10. The plaintiff in a case has the duty or burden of proving his claim and to do so by the best evidence available to him.

11. Issues of fact concerning allegations of fraud made by one party and denied by the other party to a suit, and especially regarding alterations, handwritings, signatures, and account documents, are issues for the jury and not the judge, and a judge commits error in determining whether the accused party committed fraud or not.

12. Where witnesses have testified to allegations of fraud in a jury trial, the issue is rendered no longer one upon which the judge can decide as an issue of law, but must be left for the jury to decide.

13. Every party alleging a fact must prove it, and absent the best evidence being produced, even the best laid action will be defeated.

14. Mere allegations of a claim do not constitute proof, but must be supported by evidence so as to warrant a court or jury accepting it as true and enable the court to pronounce with certainty concerning the matter in dispute.

15. For general damages to be awarded, there must be some evidence of damages or loss, and the award must be somewhat proportionate to the actual damage sustained.

16. The general damages awarded must be between ten percent (10%) and one hundred percent (100%) of the special damages, and where there are no special damages, general damages cannot be awarded.

17. A complaint is the basis of a plaintiff's suit and as such must state in clear language what the plaintiff's grievances and demands are. Hence, each averment must be simple, concise, and direct, and be made in separate numbered paragraphs.

18. The purpose of writing and exchanging pleadings is to provide adequate notice to the opposing party and to remove the element of surprise.

19. Where a defendant has filed an answer and the plaintiff has filed a reply, no other relief can be introduced or awarded.

20. Where all the jurisdictional steps for the completion of an appeal are met, the appeal shall be deemed to be properly before the Supreme Court even though the ruling from which the appeal was announced was not appealable, this being the case because of the oversight and lack of alertness by the parties in raising objections to the announcement of the appeal.

In an action of damages for wrong, wherein the appellant demanded payment of the amount in his account with the appellee in United States dollars rather than in the Liberian dollars offered by the appellee, the jury returned a verdict in the appellant's favor, awarding him an amount in special damages in excess of the amount demanded in the complaint and an additional two million United States dollars as general damages. The trial judge, on motion filed by the appellee, set aside the jury's verdict and awarded a new trial. The judge stated as

the reason for the granting of the motion for new trial that the jury, in the award of the amount of special damages demanded by the appellant, had ignored the instructions given by him not to take into consideration the deposit of a United States dollar check which the appellant alleged he had made with the appellee. From this ruling, the appellant announced an appeal to the Supreme Court, with no objections from the appellee. The appeal was granted by the trial court and perfected by the appellant.

On appeal the appellee filed a motion to dismiss, contending that the ruling from which the appeal was taken was interlocutory and that no appeal could therefore be taken therefrom. The Court denied the motion to dismiss, holding that the failure of the appellee to promptly object to the announcement of the appeal deprived the lower court of the opportunity to pass on the issue and make it a part of the records for review, and by extensions, also deprived the appellate court of the opportunity to pass upon the issue. The Court questioned how the appellee could raise the issue that the ruling on the motion for new trial was interlocutory, and seek dismissal of the appeal based thereon, when the appellee had neither objected to the announcement of the appeal nor to the granting of the said appeal. Notwithstanding its denial of the motion to dismiss, the Court still denied the appeal on the ground that the ruling from which the appeal was taken was interlocutory. The Court held, however, that although it had denied the motion and the appeal, it would nevertheless review and determined the issues raised therein on the merits.

On the issue regarding the trial judge's instructions to the jury, the Court held that the judge had erred in directing the jury to ignore the United States dollar check which the appellant said he had deposited with the appellee to open his account and which the appellee had denied receiving, noting that this was the basis of the appellant's case, that it was material and relevant, and that it involved a factual issue which should have been determined by the jury. The Court observed that the check having been testified to, identified, and marked by the trial court, the judge should have permitted it to go to the jury to determine its credibility and sufficiency in establishing the appellant's case. The weight and value of the evidence, the Court said, was for the determination of the jury, not the judge, and that the judge's removal of the same from the determination of the jury was a usurpation of the function of the jury and an error.

The Court held that the issue of fraud raised by the appellant in regard to the appellee's handling of the disputed transactions, including the alterations (or rectifications) of certain records and touching on whether the appellants deposits were made in or its accounts kept in United States dollars or Liberian dollars, went beyond the ambit of law issues and could therefore only be decided by the jury. It was error for the judge to have made the determination thereof, the Court said.

Lastly, on the issue of general and special damages, the Court reaffirmed its previous holdings that special damages had to be proved by the party asserting the damages, that general damages could be assessed at only between ten percent and one hundred percent of the special damages, and that where there was no special damages, there could be no general damages. Accordingly, the Court ruled that the general damages awarded were excessive, even by the proof presented by both parties. Hence, it determined that because of the many irregularities committed by the trial court and the parties, the case should be remanded for a new trial, with the parties being given the option to decide if they desired to file new pleadings in the case.

Frederick A. B. Jayweh of the Civil Rights Association of Liberian Lawyers, in association with Snonsio E. Nigba of Legal Services Inc., appeared for the appellant. Stephen B. Dunbar, Jr. of Dunbar and Dunbar Law Offices appeared for the appellee.

MR. JUSTICE WRIGHT delivered the opinion of the Court.

This is the third time this case is before the Full Bench of the Supreme Court. The first was during the October Term, 1998, when this Court reversed the ruling of Judge C. Aimesa Reeves, who had dismissed the case on a motion to dismiss, filed by the appellee, the Liberian Trading and Development Bank (TRADEVCO). At that time, this Court remanded the case for trial on its merits. Thereafter, trial was held and resulted in a unanimous verdict of liable against the appellee and in favor of the appellant, William G. Knuckles. The appellee then filed a motion for a new trial, which motion was resisted by the appellant, argued by the parties, and granted by the court, which then proceeded to set aside the verdict and to award a new trial. The appellant excepted to the ruling and appealed therefrom to this Honourable Court, contending that in ruling on the motion for a new trial, the trial judge, His Honour Yussif D. Kaba, went beyond merely granting the motion and instead disposed of the contentious issues advanced by the parties, made a conclusion thereon, and decided the ultimate rights of the parties. He contended therefore that the ruling on the motion for a new trial constituted a final judgment which warranted review by the Supreme Court. Judge Kaba noted the exceptions and granted the appeal without any objections being raised by the appellee, in whose favor the ruling was made.

After the appellant had perfected his appeal to this Court, and while the appeal was pending, the appellee filed a motion to dismiss and deny the said appeal, contending that the ruling of the trial court granting the motion for a new trial was interlocutory, and hence, not appealable.

This Court, at its March Term 2000, heard and denied the appellee's motion to dismiss the appeal and ordered that the case be docketed for hearing of the appeal on its merits. Thus, this third hearing, except that now it is a full review of the case on the merits. The facts, culled from the records, revealed the following: On September 5, 1997, the appellant, William G. Knuckles, instituted in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, an action of damages for wrong against the appellee, TRADEVCO Bank, alleging substantially that on October 26, 1984, he had deposited his Chase Manhattan Bank manager's check, no. 062397, valued at US\$180,037.22, with the appellant bank. He proferted with the complaint the signature card and various deposit slips. (See counts one (1) and two (2) of the complaint).

The appellant also complained that after the initial deposit of the check, he made several additional cash deposits amounting to US\$19,000.00, thereby bringing his total deposits with the Bank to US\$199,037.22. (See count three (3) of the complaint). Further, the appellant alleged that to his injury and damage, the appellee unilaterally converted the denomination of the currency of his deposits from United States dollars to Liberian dollars. (See counts four (4) and seven (7) of the complaint). Therefore, the appellant demanded as special damages a refund of US\$199,037.22, being actual deposits made, as well as general damages of US\$2,000,000.00 (two million United States dollars) for the Bank's wrongful withholding and converting of his money without his knowledge and consent. (See counts eight (8) and nine (9), and the prayer of the complaint).

Appellee TRADEVCO Bank appeared on September 15, 1997 and filed an answer containing twenty-one (21) counts, essentially contending that the appellant had never deposited with it his Chase Manhattan Bank Check, no. 062307, valued at US\$180,037.22 on October 26, 1984 or at any other time thereafter. The appellee also contended that the signature card could not and did not substantiate or provide evidence of the currency or the amount of a customer's deposit, and that the best evidence which the appellant should have proferted were the interview sheet, dated October 26, 1984 and the Savings Account/Time Deposit No. 572, dated October 26, 1984 and October 29, 1984, respectively. The appellee averred that the Savings Account/Time Deposit No. 572 document confirmed that on October 29, 1984 the appellant deposited with the appellee bank \$180,037.22 in Liberian coins, which interview sheet and Savings Account/Time Deposit were voluntarily signed by the appellant as his (appellant's) initial deposit. The appellee alleged that these were done without any coercion or undue influence by the appellee over the appellant.

The appellee also contended that as proof that the appellant's account was a Liberian dollar account, all of the withdrawals made by the appellant from the mentioned account were in Liberian dollars, such withdrawals having occurred on August 6, 1992, August 11, 1994, September 12, 1994, and January 2, 1997. It also contended that deposits made into said account on April 28, 1989, and May 5, 1989 was in Liberian dollars. The appellee stated that

three of these deposits amounted to about L\$57,000.00. In denying that the appellant had deposited his check with the appellee bank, the appellee gave notice that during the trial, the National Bank of Liberia would be subpoenaed to advise as to any record or evidence on the said check ever being processed through the local clearing house system.

The appellee further contended that for a customer to maintain a foreign currency account with any bank in Liberia, there has to be a specific agreement to that effect, and that in the instant case no such agreement ever existed. Moreover, the appellee denied that it ever changed the appellant's account from a US dollar account to a Liberian dollar account. It asserted that under the circumstances, its only obligation to the appellant was the payment of any money lawfully circulating in Liberia.

Finally, the appellee contended that it had committed no wrong against the appellant, and that as such the appellant was not entitled to any kind of damages, since he suffered no injury at the instance of the appellee.

On September 24, 1997, the appellant filed his reply, reasserting his claims and resubmitting his demand for both special and general damages as laid in the complaint. Specifically, he denied that he had signed the signature card on October 26, 1984 and made the actual deposit on October 29, 1984, as claimed by the appellee. He contended that the day and date on which a would-be customer signs a signature card would also generally be the same day and date on which he makes his initial deposit to open his account, as was done in the instant case, in which his Chase Manhattan Bank manager's check is dated October 26, 1984 and his interview sheet is similarly dated.

On the issue of the check having been processed through the local clearing house of the banking system, the appellant contended that because a manager's check is equivalent to liquid cash, it does not need to be processed through the clearing house. The appellant maintained that the appellee admitted that in addition to the appellant's \$180,037.22, the appellant had made additional deposits into the account, and he asserted that since the appellee had not specifically denied the additional deposits amounting to US\$19,000.00, the appellee must be deemed to have conceded having US\$199,037.22 for him, which he said should be refunded.

Pleadings rested with the reply, and thereafter the law issues were disposed of and a trial had. The jury returned a verdict of liable against the appellee and in favor of the appellant. The appellee excepted to the verdict and filed a motion for a new trial. The court's ruling on this motion, in which it granted the same, has given rise to this appeal by the appellant.

The appellee's motion for a new trial contained 21 counts and raised a wide range of issues which, the appellee asserted, provided adequate basis for setting aside the verdict and awarding a new trial. In response, the appellant filed resistance containing 25 counts which advanced reasons why the verdict should not be disturbed. For all the reasons stated therein, the trial judge ruled granting the appellee's motion for a new trial, and predicated thereupon, he set aside the verdict and awarded a new trial. The appellant excepted to the said ruling and appealed therefrom to this Honourable Court. The trial court noted the exceptions and granted the appeal, without any objections from the appellee.

The appellant has submitted the following three issues for our consideration of his appeal:

1. Whether or not documentary evidence which has been testified to, identified by a witness, and marked and confirmed by the court during a jury trial, may legally be excluded by a trial judge for insufficiency, without allowing the jury to pass upon the said document?
2. Whether or not the jury, as triers of facts, may ignore an erroneous instruction of a trial judge respecting evidence submitted during trial and make a finding of fact based upon the weight of the evidence adduced at the trial, and does such action by the jury constitute an invasion of the province of the trial judge?
3. Whether or not the appellant proved fraud against the appellee respecting the manner in which alteration was made on the appellant deposit slip for the amount of US\$206,153.51?

In contrast to those issues, the appellee, on the other hand, has presented five issues for this Court's determination:

1. Whether or not Judge Kaba's ruling setting aside the verdict of the empaneled jury and granting the appellee's motion for a new trial is an interlocutory ruling or a final judgment?
2. Assuming that this Honorable Court should decide that Judge Kaba's ruling granting the appellee's motion for a new trial is a final judgment, whether or not the verdict of the empaneled jury awarding the appellant special damages in the amount of US\$206,143.51 and general damages in the amount of US\$2,000,000.00 was consistent with the law and the weight of the evidence adduced at the trial?
3. That further assuming that this Honorable Court should decide that Judge Kaba's ruling is a final judgment, whether or not the empaneled jury's total disregard of Judge Kaba's instructions, a judgment during trial having been granted as a matter of law that the jury should not consider and/or take into account the Chase Manhattan Bank manager's

check during its deliberation, was sufficient ground for setting aside the jury's verdict and awarding a new trial?

4. Whether or not the appellee's rectification of the appellant's deposit slip for the amount of US\$206,153.51 constituted fraud on the part of the appellee?

5. Whether or not the award of US\$2,000,000.00 as general damages is permissible in the absence of any evidence warranting such award?

We shall review the trial judge's ruling on those issues raised before him, and which have now also appeared before us. We note, however, that there is one issue in this appeal which was not raised before the judge, and that is, whether or not the judge's ruling was interlocutory or final. Before going further, we reemphasize that this Court has held on numerous occasions that it need not pass on every issue raised before it, but that it will address only those issues which are really decisive of the case. *Lamco J. V. Operating Company v. Verdier*, 26 LLR 44 (1978). This will be the guiding principle in the instant case, and keeping this principle in mind, we shall immediately proceed to address this last issue first.

First and foremost, we must reiterate the age-old general rule that issues not raised in the court below cannot for the first time be presented in the appellate court. Civil Procedure Law, Rev. Code 1:51.15, Scope of Review; also, *Benson v. Johnson*, 23 LLR 290 (1974); *Cooper v. Davis*, 27 LLR 310 (1978).

In the instant case, the judge granted the appellee's motion for a new trial and the appellant excepted to the judge's ruling and appealed therefrom to this Honourable Court. The appellee, in whose favor the ruling had been made, deliberately did not object to the appellant's announcement of an appeal. Hence, the judge granted the same. Now, in disposing of the appellant's appeal, the appellee contends that the appeal should be dismissed because the ruling granting the motion for a new trial was merely interlocutory. The failure of the appellee to have promptly objected to the appellant's announcement of an appeal from the judge's ruling, did not allow the trial judge to consider and pass upon the issue and thereby make it a part of the settled records for appellate review. Therefore, by the general rule, and the appellee's inaction, this Court was deprived of the opportunity to pass upon the issue. Having said that, however, the Court will nevertheless address the issue because it is germane to the resolution of this case.

The appellant contended that the judge's ruling, though on a motion for a new trial, was indeed a final judgment because it decided all the contentious issues between the parties and determined their ultimate rights, thus leaving nothing more to be decided in a new trial. He maintained that in such situation only the appellate court can review the ruling and

determine if the judge's findings and the ruling on the issues were legally correct. The appellant averred that to determine whether a judgment is final or not, one has to look at the face of the judgment, and not merely its caption. This Court has held in the past that the face of a judgment is the test of its finality. *Hunter v. Hunter*, 22 LLR 87 (1973), text at 98. In that case, Mr. Justice Horace, speaking for the Court, said: "... The fact that other proceedings of the court may be necessary to carry into effect the rights of the parties or that other matters may be reserved for consideration, the decision of which, one way or another, have the effect of altering the decree by which the rights of the parties have been declared, does not necessarily prevent the decree from being considered as final, unless there is some further judicial action contemplated by the Court."

The appellant also contended that the trial judge's ruling was a final judgment because when the judge excluded the Chase Manhattan Bank manager's check from the evidence, he legally implied that the appellant had not deposited that amount by that check with the Bank. According to the appellant, this was the essence of his suit, and once it had been decided, whatever ruling disposed of it was a final act because the merits of the case had been decided.

The appellee's argument or response to the appellant's contention was that a ruling on a motion for a new trial is not appealable. Further, and perhaps more importantly, the appellee contended that the judge was compelled to pass upon those issues of law once they were raised before him in the pleadings and that that accounted for why the judge ruled upon the contentious issues between the parties in a rather detailed fashion.

Generally, and at first glance, we would be in agreement in principle with the appellant that the nature of the ruling tends to lay to rest the issues and decides the rights of the parties, thus giving it the semblance or character of a final judgment, even though it is captioned a "motion for new trial". But there are a few problems. Generally, as contended by the appellee, a ruling on a motion for new trial is not appealable. The appellee apparently was not itself sure whether this ruling was indeed interlocutory or final and that most likely accounts for its failure to object to the announcement and even the granting of same by the judge. Equally, the judge himself must have thought his ruling was a final judgment because he granted the appeal; for had it been otherwise, he would have denied the appeal and let the party affected move by mandamus to compel him to grant the appeal.

This Court has held that in our practice, a ruling on a motion for a new trial is interlocutory, because in a jury case such a motion is made and ruled upon during trial, or after a verdict has been brought in and before judgment is rendered. *Stubblefield v. Nasseh*, 25 LLR 24

(1976), text at 27. This Court has also held that in addition to the trial judge's duty to first pass upon all issues of law raised in the pleadings, his ruling must be so comprehensive as to embrace all material issues raised by the pleadings. *Galliná Blanca v. Nestle Products*, 25 LLR 116 (1976), text at 121-122, and where that is not done, the case will be remanded for proper disposition in the lower court. *Zakaria Brothers v. Pannell, Fitzpatrick, Graham and Grewdson*, 19 LLR 170 (1969), text at 175. Our law further provides that a motion for a new trial must be made and ruled upon during trial or after a jury verdict and before final judgment is rendered, Civil Procedure Law, Rev. Code 1:26.4, and that the judge must pass on all legal issues raised in the pleadings before him.

In the instant case, the verdict had been returned and set aside and the judge, in his ruling on the legal issues raised in the motion for new trial, had held that the nature of the appellant's deposit was general deposit and not a special deposit in the absence of an agreement. He also ruled that the appellant did not maintain a US dollar account but rather a mixed account wherein the appellant respectively deposited and withdrew both Liberian dollars and US dollars inter-changeably on divers occasions, and that as such, the appellant could not refuse to be paid in Liberian dollars, as per the Revenue and Finance Law, sections 71.5 and 71.6.

Ordinarily, and as the appellant contended, it would have been sufficient for the ruling to conclude, as it did, that the jury erred when they disregarded the judge's instruction, and that the damages awarded were excessive and had no basis, and stop there. But the judge was constrained, as per the *Gallina Blanca* case, *supra*, to also pass upon all the other legal issues raised in the appellee's motion and resisted by the appellant. To go one step further, even were we to consider that the ruling was a final judgment, could the trial judge have enforced it? The judge had already set aside the verdict, leaving nothing before the court.

This appeal was legally unwarranted and really a waste because it could not have achieved, nor did it achieves anything. All parties to this appeal erred, including the trial judge. We are constrained therefore to remand the case for a new jury to hear the evidence anew and determine the rights of the parties.

Having thus ruled, we shall consider the other issues raised by the parties. The first is whether or not documentary evidence which has been testified to, identified by a witness, marked and confirmed during a jury trial, may legally be excluded by a trial judge for insufficiency, without allowing the jury to pass upon said document? The trial judge, in ruling on the appellee's motion for judgment during trial, decided to exclude the appellant's Chase Manhattan Bank manager's check, no. 2307, valued at US\$180,037.22, because there was not sufficient evidence that the appellant had deposited the said check with the appellee bank. The judge held that generally the weight and value of the evidence are matters for the determination of the jury, but equally it was provided that the legal sufficiency of the

evidence to take the case to the jury is a question of law for the trial court. He held that the question was not whether there was literally no evidence, but whether there was any evidence, which ought reasonably to satisfy the jury that the fact was established. He relied on 88 C.J.S., Trials, § 203(3) and 75 AM. JUR. 2d, Trials, § 492.

The appellant has argued that all documentary evidence testified to and identified by a witness, and marked and confirmed by the court during trial, shall be submitted to the jury to determine its sufficiency, credibility, and probative value. The appellant cited the case *Liberia Oil Refinery Company v. Mahmoud*, 21 LLR 201 (1972). Further, the appellant contended that it is the sole province of the jury in civil cases to determine what constitutes preponderance and sufficiency of the evidence. 39 AM. JUR., New Trial, § 133.

It should be noted that the appellant's whole case rested upon his having established his Savings/Time Deposit Account with the appellee, using his Chase Manhattan Bank manager's check as the initial deposit. The appellee's contention was that the appellant had cashed his check elsewhere and then brought the proceeds thereof in Liberian dollars in the same amount to the appellee bank and opened the account. This was an issue of fact to be established before the jury. The manager's check was material and relevant to the whole case, and we hold that once it was testified to and identified by the witness and marked and confirmed by the court, without any objections from the appellee, it should have been allowed to go to the jury, and that it was therefore a reversible error for the judge to exclude it from the evidence that went to the jury. We further hold that the trial judge usurped the functions of the jury when he determined that the check was insufficient evidence. The appellant, by our law, had the duty or burden of proving his claim and to do so by the best evidence available to him. Civil Procedure Law, Rev. Code 1:25.5 and 25.6(1). What would have been better evidence than for the jury to have examined the check and determine for themselves whether the check was deposited or otherwise encashed? And whether it was for United States dollar or Liberian dollars, which is the bone of contention?

The Supreme Court has been consistent throughout its several opinions on the subject in this line of holding. We therefore sustain the appellant's contention, relying on *Walker*

v. Morris, 15 LLR 424 (1963), text at 428; *Levin v. Juvico Supermarket*, 24 LLR 187 (1975), text at 192; *Dagber v. Molley*, 26 LLR 422 (1976); *Republic v. Eid et al.*, 37 LLR 761 (1995). Accordingly, we reverse the trial judge's ruling which excluded the appellant's check from going to the jury.

The next issue to be decided is that of fraud. In his complaint, the appellant alleged that after he had made the initial deposit of his US\$180,037.22 check and thereafter several other deposits, amounting to US\$19,000.00, for a total of US\$199,037.22, the appellee unilaterally

converted the currency of his account from US dollars to Liberian dollars. On the other hand, the appellee contended that it never changed the currency of the appellant's account, but that the appellant had opened his account with an initial deposit of only Liberian dollar coins in the same amount claimed in United States dollars by the appellant. The appellee argued, in that connection, that the interview sheet and the Savings Account Time Deposit, which were voluntarily signed by the appellant without any coercion or undue influence, did not show United States dollars deposit.

Another element of fraud alleged by the appellant was that the appellant's deposit slip was altered by the appellee from US\$206,153.51 to L\$206,153.51 and that his signature was forged on another deposit slip. He also said that after the currency was changed from the US dollar column showing \$100 bills USD written in green ink to the Liberian dollar column, the original account number of 572, which was written in green ink, was crossed out in blue ink and changed to number 605 in said blue ink. The appellee bank called these alterations "rectification of erroneous entries" made by the appellant on the deposit slip in question. These were all issues of fact which should have been left for the jury to pass upon, especially the alterations and handwriting, as well as what the signature card and the savings account time deposit reflected. It was therefore error for the judge to have concluded and ruled that the appellee bank did not commit any fraud. The appellant pointed out several testimonies of witnesses as well as the documents themselves of both parties to establish the commission of fraud by the appellee against the appellant. This was no longer an issue which the judge could decide as an issue of law. He should have left it for the jury to draw its conclusion thereon. See *Harmon v. Republic*, 24 LLR 176 (1975), text at 181. Accordingly, that portion of the judge's ruling is hereby reversed.

The next major issue is that of the damages awarded in both categories, special and general, being excessive. We shall first address the issue of the general damages. The appellee, in its motion for a new trial, averred that every party alleging a fact must prove it, and that absent the best evidence being produced, even the best laid action will be defeated. The appellee stated that the mere fact that the claim is alleged in the complaint does not constitute proof, but must be supported by evidence so as to warrant a court or jury accepting it as true, and that evidence alone enables the court to pronounce with certainty concerning the matter in dispute. This, it said, was the law and always has been. See the case *Jorgensen v. Knowland*, 1 LLR 266 (1895), text at 267; also *Levin v. Juvico Supermarket*, *supra*, text at 194. The appellee maintained that the appellant had failed to introduce evidence during the trial to provide a basis for the award of general damages, and hence, general damages should have been denied. It argued before this Court that there was no basis for the amount of

US\$2,000,000.00 claimed as general damages and it cited the case *ADC Airlines v. Sannoh*, 39 LLR 431 (1998), decided by the Supreme Court at its March Term, 1998, on excessiveness of damages and unjust enrichment.

We observed that in his complaint, the appellant demanded the amount of US\$2,000,000.00 as general damages for the appellee's wrongful withholding of the appellant's money and for unilaterally converting the appellant's money from US dollars to Liberian dollars, much against the business interest of the appellant. During the trial, the appellant testified that his oldest daughter, who had graduated from the College of West Africa (C.W.A.) and who was due to travel to the United States for college, had to forfeit the opportunity because the appellee bank had refused to pay the appellant US dollars, upon request made by the appellant at the time it was needed. In arguments before this Bench, the appellant stated further that his business was that of lending money at 25% interest and that the appellee's withholding of his money deprived him of the multiplier effect.

This Court reaffirms its holding in the *ADC* case, cited *supra*, that for general damages to be awarded there must be some evidence of damage or loss and that the award must be somewhat proportionate to the actual damage sustained. According to that rule, the general damages awarded must be between ten percent (10%) and one hundred percent (100%) of the special damages, and that where there is no special damages claimed, then general damages cannot be awarded. This issue of fact has to be resubmitted to the jury for consideration to determine whether any specific damages did occur and thereafter determine what, if any, proportion thereof to award as general damages.

The second aspect of the excessiveness of the award of damages is that of the special damages. The appellee, in its motion for a new trial, contended that the jury awarded an amount of US\$206,153.51, which was higher than the US\$199,037.22 that was demanded in the complaint. The judge agreed and ruled that the purpose of pleading is to present, define, and narrow the issues and notify the parties of the issues relied on so that the court may declare the law and dispose of the issues. Another aspect of the excessiveness of the special damages is that the judge, when ruling on the appellee's prior motion for judgment during trial, instructed the jury not to consider the appellant's Chase Manhattan Bank manager's check, valued at US\$180,037.27.

The appellee contended in its motion for new trial, and the court agreed in its ruling thereon, that the jury committed reversible error when they ignored the judge's instruction to disregard the appellant's claim based on the check, and that therefore it was error for the jury to include that amount in its award of special damages. In other words, the jury award of special damages should have been limited to the other deposits less the value of the check.

On the issue of the award being higher than the amount claimed, there is general agreement that the complaint is the basis of a plaintiff's suit and that it is the plaintiff who must state in clear language what his grievances and demands are. Our statute provides that each averment of a pleading shall be simple, concise, and direct, and that all averments of claim or defense shall be made in separate and numbered paragraphs. Civil Procedure Law, Rev. Code 1:9.3(2)(3). Using the foregoing as reliance, the appellee contended that the appellant was specific in his claim for relief, demanding the amount of US\$199,037.22 as special damages. Therefore, it said, the jury was bound by that claim instead of considering an amount higher than that. One of the purposes of writing and exchanging pleadings, it said, is to provide adequate notice and remove the element of surprise to the adverse party. Hence, since the appellee had filed its answer and the appellant had filed his reply no other relief could be introduced or awarded. We are in agreement with the judge's ruling on this point and same is hereby sustained. Having said that, however, there appears to be a little inconsistency here. The Court observed that during the course of the trial, and even in argument before this Court, the deposit slip, dated July 29, 1987, for the amount of \$206,153.51, which was altered (as per the appellant) or rectified (as per the appellee) from US dollar notes to Liberian dollar coins, was introduced by the appellant marked as exhibit "DE/5", and confirmed and reconfirmed as part of the evidence. This document, which was and should have been sent to the jury for their consideration, formed the basis upon which the appellant claimed fraud was perpetrated against him by the appellee bank. This document was not, and could not have been objected to by the appellee because it was the appellee who had proferted it.

Indeed, the document was accepted by both parties, admitted by the court, and passed to the jury. How then could the appellee contend, and the trial judge sustain the contention, that the jury erred when they considered the document and awarded the amount stated thereon, which amount happened to be higher than the amount originally claimed by the appellant in his complaint? If the appellee, by this document, confirmed that it had the amount reflected thereon for the benefit of the appellant, why was it then wrong for the jury to award the appellant the said amount, voluntarily admitted to by the appellee? This is one of the reasons for which this case has to be and is hereby being remanded for a new trial. Accordingly, we hold that the award of special damages was indeed excessive since it included the amount specifically ordered excluded by the judge.

As we conclude this opinion, we wish to further observe that basically there is no disagreement between the parties as to the face value of the appellant's check being US\$180,037.22. The point of dispute is that the appellant says he deposited the check as it was, and that this formed the initial deposit in opening his account, while the appellee says that the appellant never brought and deposited the check with the appellee, but rather that

the appellant went out, cashed his check elsewhere, and then brought the physical cash in Liberian coins to the appellee bank, where he deposited the coins as the initial deposit for his account.

Another observation we wish to make is that the appellant opened this account in 1984 and operated same up to and including the middle of the 1990's, and even up to the time of interposing his claim in this suit in 1997. Yet, in the complaint, the appellant claimed the amount of the initial deposit as well as the other deposits subsequently made into the account. It is strange that in spite of all the withdrawals and the intermingling of both US dollars and Liberian dollars in that same account, this fact was not made an issue by the appellee. Ordinarily, one would claim the current or last balance reflected in the record and not the initial deposit, except where it was a time deposit for a fixed period and there were no withdrawals. This is even more particularly true where the initial Savings/Time Deposit Account 572, opened by the appellant, was closed on July 29, 1987 and his money then in the said account was redeposited into a new account bearing the number 605, with a new deposit slip for this new balance of US\$206,153.51 on the same date July 29, 1987. It was when this (new) redeposit was made that the appellant wrote his figure of US\$206,153.51 in the US dollar column and after he had left that the appellee unilaterally changed the location of the amount and brought it down to the Liberian dollar column of coins and at the same time crossed out the old account number and wrote the new account number.

It is now our final holding that the jurisdictional steps for completion of appeals having been met, the appeal is properly before this Court, even though the ruling from which the appeal was announced was not appealable. We have allowed the appeal because of the oversight and lack of alertness by the parties and the judge.

In view of all the specific rulings on the various issues presented, this Court hereby rules denying the appeal because the ruling appealed from, even though having some characteristics of a final judgment, was nevertheless in its totality an interlocutory ruling. We are remanding the case for a new trial so that the many irregularities, both in the pleadings and proceedings, and the rulings which we have identified in this opinion, can be corrected by the parties and then referred to the court and jury for adjudication to bring consistency to all the facts and issues of contention, and thus enable a more enlightened determination to be made in a new trial. If the parties so desire, they are herein hereby permitted to file new pleadings, as the entire proceedings are legally set aside by virtue of a new trial having been awarded.

Wherefore, and in view of the foregoing laws, facts, circumstances, and reasoning, it is the holding and ruling of this Court that the appeal announced by the appellant from the trial judge's ruling is hereby denied as the ruling was merely interlocutory. Accordingly, the Clerk of this Court is hereby ordered to send a mandate to the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, ordering the judge therein presiding to resume jurisdiction over the case and conduct a new trial commencing from the disposition of the law issues. The judge should also be informed that, in the discretion of the parties, they are hereby permitted to file new pleadings to form the basis for the trial. Costs are to abide the final determination of the case. And it is hereby so ordered.

Appeal denied and ruling reversed.