

The **Korean Garage**, represented by and thru its General Manager, Mr. J. Park, of the City of Monrovia, Liberia MOVANT VERSUS The **Intestate Estate of the late Mattie Branch Reynod**, Represented by and thru the Administrator and Administratrix, all of the city of Monrovia, Liberia RESPONDENTS

MOTION TO DISMISS

Argued: November 19, 2008 Decided: January 28, 2009

MR. JUSTICE JA'NEH DELIVERED THE OPINION OF THE COURT

On February 18, 2005, respondents/appellants filed a petition for cancellation of an agreement of lease before the Sixth Judicial Circuit for Montserrado County sitting in its March Term 2005. The motion to dismiss appellant/respondent's appeal grew out of the said petition.

Certified records to this Court indicate that the respondents, petitioners below Tommy D. Branch, Sr., Miatta Pearl and Gloria Pearl, administrator and administratrixes of the intestate estate of the late Mattie Branch Reynolds, in their petition for cancellation questioned the legal validity of what they referred to as purported agreement entered June 1, 1997, between the late Mattie Branch, lessor and Korean Garage, lessee, represented by its proprietor, Mr. Jung Dal Park.

For the benefit of this Opinion, counts 3, 4, 5 and 6 of petitioners' six count petition, are 'quoted as follows:

"3. That in the year 1997, the year in which the purported lease was executed, the alleged lessee and the petitioners herein were already in court, meaning that the petitioners could not have signed an agreement with a party that he was already in litigation. Copy of the records in 1996 is hereto attached and marked as petitioner exhibit "P/3".

"4. That Mattie Branch Reynolds never in her lifetime executed any lease agreement with the respondent; and so the so-called lease agreement of June 1, 1997 is fictitious. That Korpu Garfua in 1997 controlled the property in question. The addendum to the lease agreement of November 1989 — 2009 between Madam Korpu Garfua and Jeong fah park was made and executed by these two parties in November 1999. With this, how then can respondent enter into another lease agreement with petitioner in 1997? Does the respondent have two lease agreements with his former landlady, Korpu Garfua and the petitioner at the same time for the same subject property? The answer is No. Besides the addendum, other transactions between the respondent and Madam Korpu

Garfua; and 2003 assessment reports of Civil Law Court are clear evidence that Madam Korpu Garfua and not the petitioner was in control of the property in 1997. Annexed as exhibit "P/4" in bulk are copies of the addendum, 2003 assessment report of Civil Law court and receipts between respondent and his former landlady, Madam Korpu Garfua, forming cogent parts of this petition."

"5. Further to count two (2) above petitioners also say that the Supreme Court opinion in factor of the late Mattie A. Branch Reynolds was handed down in May 2003. It was from the year 2003 that Mattie Branch Reynolds assumed effective control over the estate. The purported agreement dated 1997 could not have been signed because the matter was already in court."

"6. Further to counts three (3) four (4) and five (5) above, petitioners say that Mattie A. Branch Reynolds could not have possibly signed an agreement in 1997 when she was 87 years old at the time and that she was senile without the participation of any near relative because of her condition at the time. If the signature that appeared on the lease agreement was that of a third party, same would have been spelt out on the agreement. Otherwise, for any other person to have signed the name of Mrs. Reynolds without her consent and approval is fraudulent and this court should nullify and set aside the said agreement without day and date."

On March 10, 2005, the movant/respondent Korean Garage filed a seven count returns to the petition for cancellation. Counts 2, 3, 4, and 5, being worthy of our attention, are quoted as follows:

"2. That further as to the entire petition especially the contention that the signature of the late Mattie Branch Reynolds which appeared on the lease agreement was forged, respondent says that the said contention cannot hold water in that the late Madam Reynolds signed the said agreement in the presence of her lawyers in person of Cllr. Richard F. McFarland and Philip Brumskine. Respondent prays this honorable court to take judicial notice of the fact that the said lease agreement was witnessed by Cllr. McFarland. Is Cllr. Kruah who does not even know the facts of this case suggesting that the signature of the Late Reynolds was forged by her lawyer?"

"3. That further as to count 2 above, respondent says that like the lease agreement, Cllr. McFarland witnessed all the receipts for the payment of rent for the premises. Hereto attached and marked exhibit R/1 in bulk a copy of the receipt dated July 1, 1998 and a copy of the receipt dated June 18, 2004."

"4. That further as to counts 2, and 3 above respondents says that Cllr. McFarland, one of the three counsels for the Late Madam Reynolds wrote Cllr. Garlawolo a letter acknowledging that the lease agreement which is the subject matter of these preceding is authentic hereto attached and

marked and exhibit R2 is a copy of the said letter which is dated May 20, 2003."

"5. That further to counts 2, 3 and 4 above and count 3 of the petition, respondent says that it was not a party to the case between the late Madam Reynolds and Madam Korpu Garfua so it decided to do business with all the parties to the case because it invested a lot of money in the property and did not want to lose its investment. The fact that Cllr. Kruah is contending in count 3 of the petition that respondent was a party to the litigation is a clear manifestation that he does not know the facts of this case. He needs to consult Cllrs. Mcfarland, Nigba and Justice Korkepor for clearer understanding of the facts of the case between the Late Madam Reynolds and Madam Garfua."

When both parties rested, the special jury, on June 13, 2007 was charged and retired to their room of deliberations. The jury concluded their deliberations on the same day and date and returned a majority verdict in open court. On order of the court, said verdict was read, the jurors pulled and the verdict ascertained to be true and correct. The verdict as returned reads: "Respondent is liable to petitioner, lease agreement should be cancelled". Counsel for respondents excepted and the verdict was ordered recorded.

Immediately after the recording, counsel for respondent made the following submission:

"At this stage, Cllr. Beyond D. Howard has just been informed that the forelady of the empanelled jury and the secretary hereof, went to the business premises of the respondent in these proceedings requesting bribery to return the verdict in favor of the respondent. Because the respondent refused to give him bribery, this is the reason why they have returned the verdict in favor of the petitioner against the respondent and the verdict is tainted with bribery. Respondent counsel is prepared to prove this allegation, hence, [request that] the petit jury [should] not be discharged until a full investigation is conducted by this honorable court as provided for by law."

Notwithstanding application of appellee's counsel, the trial judge, in "his sound discretion" discharged ten jurors believed not to be implicated in the bribery allegation and ordered the remaining two jurors investigated.

On June 14, 2007, same being the following day, Judge Emery Paye, presiding by assignment, conducted special investigation. The judge thereafter set aside the verdict and awarded a new trial.

To this ruling vacating the verdict, counsels for respondents/appellants have excepted and announced an appeal to the Honorable Supreme Court of the Republic of

Liberia, sitting in its October Term, 2007.

The salient issue determinative of these proceedings is:

Whether under the circumstances of this case, the trial court's conclusion on jury tempering, setting aside the verdict and awarding a new trial, was justifiable under the law controlling?

As to the issue respecting the trial court's conclusion, vacating the verdict and awarding a new trial, movant/Appellee/Informant has contended that the Honorable Supreme Court should refuse jurisdiction in the appeal proceedings as the ruling of the judge on the jury tempering was interlocutory.

The counsel has insisted that if this Court were to entertain the appeal, it will amount to determining factual matters that are still pending in the trial court. In support of his argument, counsel for movant has cited a number of decisional laws including Baaklini and Metropolitan Bank s.a.l. v. Henries, Younis et. al. 39 LLR 303, 310 (1999), where the Supreme Court defined interlocutory as:

".....order or decree ... which does not finally determine a cause of action but only decides some intervening matter pertaining to the cause, and which requires further steps to be taken in order to enable the court to adjudicate the cause on the merits." [Emphasis supplied].

According to movant's counsel, in every such case, the Supreme Court has held that the order is not directly appealable. *Ibd.* P. 310.

This Court is unimpressed with movant/appellee's argument. The records before us, including this motion to dismiss and an appeal originated from a trial which was regularly conducted. During the regularly conducted trial, the trial court passed upon the pleadings filed by the parties, evidence was adduced by both parties and a verdict returned in favor of the respondents/appellants. The special investigation conducted by the court into alleged jury tampering, subsequent to determination of the issues raised in the pleadings, resulted in the setting aside by the judge of the verdict. To the mind of this Court, the verdict was returned based on determination by the jury of the merits of the case.

This Court has held that: *"raj judgment is on the merits when it amounts to a decision as to the respective rights and liabilities of the parties, based on the ultimate fact or state of facts disclosed by the pleadings or evidence, or both, and upon which the right of recovery depends, - irrespective of*

formal, technical, or dilatory objections or contentions." Liberia Trading Corporation v. Abi-Joudi, 14 LLR 43, 50 (1960).

The jury trial was intended to address the issue of fraud allegedly perpetrated in the signing and execution of the agreement of lease between the parties. Issue of fraud being basically a factual issue was determined by the jury as judges of facts. The jury, said this Court, is the judge of facts and where there is no clear showing that the facts as presented to the jury were insufficient, or their verdict falls within one of the proscriptions of the statute relating to granting new trial, the verdict of the jury and the judgment of the court in conformation of that verdict must be allowed to stand. Haider v. Kassas, 20 LLR 324, 329 (1971).

We hold therefore that the merit of this matter have been determined and this Court as final arbiter may properly exercise its appellate authority by reviewing and rendering the judgment which should have been entered by the trial court. On review of the records in respect of the judge's conclusion, we have been unable to discover any factual or legal basis for his ruling vacating the verdict.

The records in fact indicate that during the special investigation, three witnesses, including movant/appellee/informant's general manager, Hisenbuah K. Dargbe, testified in support of the jury tempering allegation.

In his testimony in chief, the witness informed the court that the sheriff contacted him via phone around 4 p.m. on the 12th of June, 2007, to "discuss with [me] so I said okay". Thereafter, the forelady and secretary of the jury, accompanied by the sheriff visited his office. He also said the sheriff introduced the people to him saying:

"[This is the] big woman who controls the jury and the person sitting next is her secretary, and one of the jurors and also my born son. But we came to you; we do not want to fool you that the case is in your favor. We listened to the case keenly, but you need to give us money. You people had error in the case. So you have to give money for the case to be in your favor. I asked how much do you need. She told me, ask the jurors themselves. Her son who is the secretary told me that they are fifteen jurors in number. [He said] "If you can offer the amount of US\$250.00 [for each juror], that will be okay for us." So I said that is impossible. We have a genuine lease agreement with Mattie Branch Reynolds and we make payments [of our rents]. We can't pay that money. The US\$250.00 is not within [my] power. They asked how much can you offer and I said I did not know; but actually we are not willing to give any money for the case. Later on, they got up to go...I told her [Sheriff] I will call you later but I do not have any idea of what you are saying because I am not lawyer neither a court officer. So they left. But actually I took that to be a fun. Yesterday when we came to court, after

all the proceedings, when the judge was about to charge the jury and I was still outside there, then the sheriff came to me again and said Mr. Dargba, the forelady called me more than three times asking me if you brought the money that we told you about or any amount you are willing to offer. We are the ones in the court guiding the jurors. So I laughed. And I said I did not bring any money to court. Then she said do not play fun of what I am saying. If you do not give the money, any decision that the jurors render against your company, do not blame me. So I said (again) I did not bring any money I [asked] her, 'are you threatening me?' She said that is not a threat; but you don't know what is going on in the court. But I told her I did not bring money. So she left me.

Later on, she came back to me again and said 'Mr. Dargbe, the people are fussing in the jury room; so if you brought money, give it to me so I will go to them to straighten things out...' I left her and went downstairs to my car to charge my telephone. By the time I came up, I heard the noise and she (sheriff) ran to me and said 'you know what I was telling you; the people ruled against you.' I said oh because of money they turned justice down? That's how I ran to my counselor to give him the information about what happened. After I gave him the information, we all left the court, got in the car and went home."

Movant/appellee' other two witnesses testified to the effect that they saw the accused at the movant's offices.

On the other hand, six witnesses testified for the accused jurors and court's officer. In their testimonies in chief, the witnesses informed the Court that movant/appellee attempted to influence their verdict by offering bribe.

One of the two accused jurors, Aletha Weah, on the cross, was asked the following questions:

"Ques: Madam witness, are you familiar with Cllr. Beyan D. Howard and the two court officers in persons of Mary Neufville and Emman Washington as well as the Foreman and the Secretary of the just disbanded empanelled jury?" "Ans: Yes." "Ques: Madam witness, are you also a member or former member of the disbanded jury, sitting on the cancellation case of which this action grew?"

"Ans: Yes."

"Ques: Madam witness, Cllr. Beyan D. Howard, who you say you know has accused the foreman and the secretary of the jury and the two court officers, sitting in the dock of allegedly soliciting bribe from the informant for the purpose of handing down verdict in its favor; meaning the Korean Garage. You are taking the witness stand on behalf of those respondents. You will tell this Honorable Court all that you know touching on this matter. You may now proceed."

"Ans: When we went to the room to bring the verdict down, the first thing we did was to pray. After praying, we started to look at the documents/papers. When we got through, we told the forelady to put the paper down for signing. Then, Bill Boyce got up and said: "ladies and gentlemen of the jury, I got something to say here." We said what? He said they gave me money, 1,500 US dollars. I asked him, who gave you this money?, and he [answered] "one of the counselors". We all asked him, "who is this counselor that gave you this money?" He said that it was Counselor Beyan D. Howard. We said for what? He said for us to give the verdict to him and to bring it in his favor. By that time, he (Bill Boyce) was having the money in his hand. So I, Aletha said, "Bill, you failed to know that the counselors are not the ones that kissed the Bible. We are the ones that kissed the Bible. We are suppose to do the right thing."

By that time, he said, "let us check this money and give the verdict in his favor." We said no, how can you say that? You were sitting on the bench and you heard all the explanations from witnesses and others that were testifying. This verdict is not for the defendant. We said it is for the plaintiff. That was the time when the paper was on the table. Amelia took the paper and said that no one was signing. But we told her to put the paper down. She put the paper down. We told the forelady to hold the file. The file was in her hand and by that time, she wanted to go in the bathroom to ease herself. Bill Boyce wanted to rush in the bathroom to take the file from her. So we told him that he could not go in the bathroom with the forelady. When the forelady came out, we told her, let us sign and get out of this room. She said: "put the paper down for signing". Then Bill Boyce said "Oh! you don't want the money?" We said yes, we do not want the money. He (Bill Boyce) took his phone and called, saying on the phone: "counselor, the people refused the money and they do not want to sign in your favor." So I said Bill, why are you so particular about this counselor. What is between you and this counselor? Bill abused me in the room. He said: "Look at this stupid woman here. When we give this man the case, he said he will find something for us after the case." So there was noise in the room. After we quieted the noise, we took the pen and eight of us signed. Bill Boyce, Musu Davies, Amelia, Oretha, four of them never signed. We took his money US\$1,500 and give it back to him. That was the time the noise was so heavy that the judge left and went to the room to us and asked whether we had finished signing; and we said yes.

The four people causing the confusion said no. The judge said: "You go back in the room and settle everything." When we got [back] in the room, we were just sitting down. We were finished signing. So the forelady knocked the door and the sheriff came and opened the door. We came outside and were sitting on the bench. When they brought the verdict, they asked: "Is this your verdict?" The eight of us accepted the verdict. The four persons who were causing the trouble in the room sat down. When counselor excepted to the verdict, he said "The jury asked and accepted bribe from me that is why they never gave the verdict in my favor". By that time, Bill Boyce, was on the bench, the money was with him (Bill Boyce). So we told the forelady on the, bench; "put your hand up, let the judge

know that Counselor Howard gave US\$1,500.00 to Bill Boyce to give it to us. This is why the noise was in the room. Let the Judge know about it. When the forelady put her hand up, no attention was paid. She said let the investigation start now as the money was still with Bill Boyce.

So the Judge said that we should come on the next day.we said, "Sister Emman, Bill is having the money with him. They went behind Bill all four of them that were causing the trouble. When they brought him, and while talking to him, I left this is all I know."

The witness was further asked:

"Madam Witness, will I be correct to say that the heavy noise that you jurors were causing in your room of deliberations on the night of June 13, 2007, was about money business?"

"Ans: Yes, it was about the money that you sent in the room to us by Bill Boyce."

"Ques: Madam witness, did I understand you to say also that the US\$1,500.00 that was brought into the room of deliberations allegedly by Bill Boyce was received, rejected and returned to him Bill Boyce?"

"Ans: Yes, we gave Bill Boyce his money back."

"Ques: Madam witness, what stopped you from bringing to the attention of the judge and the two lawyers in the case, who accompanied the judge into your room of deliberations on the night of June 13, 2007, that juror Bill Boyce brought an amount of US1,500.00 to bribe you jurors in-order to bring the verdict in favor of counselor Howard's client." "Ans: When we came outside, you said we were bribed; that's why we told the forelady to put her hand up for the judge to know that Bill Boyce was having US\$1,500.00 with him (which] he told us that Cllr. Howard gave to him to give us."

"Ques: So you are telling this court that you would not have made any attempt to expose the fact that Bill Boyce allegedly attempted to bribe you people in your room of deliberations on the night of June 13, 2007, if Cllr. Howard had not informed this court that the verdict which you returned against the respondent was tainted with corruption, bribery and fraud. Is this not so?"

"Ans: We were going to tell you right here;they did not give us the chance."

Madam Sarah Merrian and member of the disbanded jury, offered the following testimony:

"That day, they gave us the file, and we went in the room of deliberations. The forelady called us

(and said] "we are in the room, here is the file, let everybody have the right to see everything in it While checking the papers in the file one by one, a juror called Bill Boyce, who I was sitting behind by the window, [was] talking over the phone. I said who are you talking with on the phone? Go and look at the papers. He told me "everybody here, for he and she, I am talking with somebody." I got up and went to the forelady and I said, "Madam forelady, what are you saying now?" Because everybody finished looking at the papers, everyone of us in this room has conscience; no one here for somebody to force in this one case. We heard both sides. So if you understand the case, no need coming in the room spending three hours; so you people should bring the file. Forelady, please give me your pen let me put my name on the paper. 11 was asked] Oldma, whose side you are on?" I said if I put my name down, then you people will know. They started laughing. I put my name on the paper. So I left and sat down."

"I said you people should go to put your name with your conscience. Then this same Bill Boyce called [on the phone], saying: "I get the money with me; but the people I am seeing putting their names down, it is not in your favor. I asked the question; "is [the] money in this room? Bill Boyce said yes, I have the money here; and he took the money out of his pocket. He counted the amount of US\$1,500.00. I said: "this money on the table, is that what we came to look for? When you take it the right way, God will bless you. You kissed the Bible and swore; [the swear] is not coming on your one, [but also] your children and your grand children. As for me, I am not on his side." Then the Oldma said [to Bill Boyce], "take your money". And that is how he took the money and put it back in his pocket. And we came outside. This is what happened in the room. That is why the money noise was being caused. The judge said the noise is too much. You people should go and settle. We said that we have finished. We closed the door. I started talking to them to let us go outside and we came outside.Ur. Howard excepted to the verdict. Then later he said the jurors had been bribed because, the sheriff and the juryman and the secretary went to the office (Korean Garage) to go for money; because I do not give them money, this is why he did not win the case. After he finished talking, I put my hand up.... And the judge said that [we] should go home. We started talking no. We wanted to get into the case that night. And the judge said tomorrow. While we were making the noise, the boy who was given the money jumped outside. Then [one of the boys] came and started saying Bill Boyce has given the money to another person when he came out of the room, because they were four persons. But before we could pass around, I saw another three persons running and Bill Boyce followed; and we all left. This is all I know."

On cross examination, the witness answered to the following questions:

"Ques: Madam witness, in an answer to a question, you said "they send the money to us...", please refresh your memory and tell this court if you know who you referred to in that answer?"

"Ans: the youngman who had the money after I said you people should go sign the paper, then said,

old-ma: "they sent money to us"; then I [asked] "to do what?"; he said, "money for us to share so we should give the case to Counselor Beyan D. Howard". I said the one I understand is what I am putting on the paper, everybody has conscience."

To the mind of this Court, these testimonies seem to establish at minimum that there was an attempted bribery of the jurors in order to return a verdict in favor of the movant/appellee/informant. From the records before us, it is clear that the intent of the attempted bribery was to secure, through fraudulent and unlawful means, a verdict in favor of the movant/appellee, Management of Korean Garage. The scheme seemed however to have failed, if the records are anything to go by, as the majority jurors, apparently guided by a spirit of justice and fair play, maintained a position which appeared un-influenced by momentary considerations and benefits.

We must also note that during the special investigation, appellee's witnesses informed the trial court that both the forelady and secretary of the jury visited appellee Management soliciting US\$250.00 (two hundred fifty United States dollars) as bribe for the verdict. According to these witnesses, this incident occurred on the 12th of June, long before the jury was charged and retired to their room of deliberations. Movant/Appellee company's general manager testified that he was in court on the 13th of June, when the jury was charged and they proceeded to the room in order to arrive at a verdict. Yet the records before us are void of any showing that he reported any information about the reported visit and solicitation of bribery to the court. According to him, he reported nothing to his lawyer also. But surprisingly, the witness elected to disclose this vital information only after a verdict was returned against the party he represented, the movant/informant/appellee.

It is also an interesting observation that during the investigation, that assuming, arguendo, there was solicitation of bribe, shouldn't a reasonable mind ponder why the appellee elected to keep this vital information to himself without any proper and timely disclosure to the trial tribunal as mandatory legal requirement? (cite law? 40 LLR 295, 304, 2 LLR 210, 214 "He who remain silent assents?). Such a vital information should have been properly brought before the trial tribunal. Constance & Continental General & Insurance Company v. Aiavon et. al. 40 LLR 295, 303 (2000). This failure constitutes negligent of a party's duty to the court and it is truly reprehensible by all intent and purpose.

In the face of this strong evidence linked to movant/appellee, Korean Garage, that movant in fact planned and executed the attempted bribery scheme, said party sought to file information before the trial court accusing jurors of soliciting bribes. This is an attitude similar to being disingenuous and also an unethical means to set aside a verdict.

The records transmitted to this Court of final arbiter are tempting to support the conclusion that had the verdict being otherwise returned, that is in favor of the movant/appellee, the issue of jury tempering most probably would never have come to the fore.

This Court holds that under these circumstances, the granting of informant/movant/appellee's information was reversible error on the part of the trial judge. We also hold that his ruling setting aside the verdict and awarding a new trial amounts to allowing the wrongdoer to benefit from his own wrong.

In Jackson et. al. v. Trinity 17 LLR 631, 637-638 (1966), this Court pronounced as follows:-

"... The jurisdiction of a court of equity assumes that a power of decision should be exercised when the principles of law by which the ordinary courts of law are guided give, a right, but the

powers of those courts are not sufficient to afford a complete remedy or the mode of proceedings are inadequate to the purpose. Courts of equity administer to the ends of justice (1) by restraining the assertion of doubtful rights in the manner productive of a irreparable damage; (2) by preventing injury to a third person by all acts, omissions and concealments which involve a breach of legal or equitable duty, trust or confidence, justly reposed and are injurious to others, or by which an undue and un-conscientious advantage is taken of another."

In *Daqber v. A. Molley* 26 LLR 422, 426 -427, (1978), this Court also held:

"When the mistake of law by one party is induced, aided, or accompanied by conduct of the order more positively inequitable, and containing elements of wrongful intent, such as misrepresentation, imposition, concealment, undue influence, breach of confidence reposed, mental weakness, or surprise, a court of equity will lend its aid and relief from the consequences of the error."

In his ruling dated June 23, 2007, granting the information, Judge Paye observed:

"Perhaps it is due to the refusal of the respondent in the cancellation proceedings to have bribed each of the jurors with the amount of US\$250.00 (two hundred and fifty United States Dollars) through the forelady and the secretary that led to the manner in which the verdict was turned against the respondent. More so, the forelady and the secretary did vote in their room of deliberations against the respondent evidenced by the verdict before court. It is therefore fair, just, and proper that the majority [verdict] be set aside and same is hereby set aside and a new trial is hereby awarded."

But the judge's ruling as quoted above is unsupported by the facts and the law controlling. The evidence places the attempted jury tampering squarely at the feet of the movant/informant/appellee. This Court shall not allow a party under these circumstances to benefit from an apparent conscious manipulation of a court of law.

Accordingly, the ruling of the trial judge, vacating and setting aside the jury verdict,

being reversible error, both in law and fact, is ordered reversed and the verdict reinstated for all intent and purpose.

The Clerk of this Court is hereby ordered to send a mandate to the court below ordering the Judge presiding therein to resume jurisdiction and give effect to this judgment. IT IS HEREBY SO ORDERED. Costs against the movant/appellee.

When this case was called for hearing, Movant was represented by Dlr. Counsel Beyan D. Howard of Legal Consultant, Inc., while respondent was represent by Cllr. Cooper W. Kruah of the Henries Law Firm.

Mr. Justice Korēpor recused himself because he was lawyer for one of the parties prior to his appointment to the Supreme Court Bench; while Mrs. Justice Wolokolie, having traveled during the hearing of the case, did not participate and therefore did not sign this judgment.