Liberia Baptist Missionary & Educational Convention (LBMEC), by and thru its President, Rev. Jeremiah W. Walker, also of the City of Monrovia, Liberia DEFENDANT/APPELLANT VERSUS **BONTRACO**, by and thru its President, Nicholas M. Fayad of the City of Monrovia, Liberia PLAINTIFF/APPELLEE

APPEAL. JUDGMENT CONFIRMED WITH MODIFICATION

HEARD: OCTOBER 24, 2006 DECIDED: DECEMBER 21, 2006

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

Certified records of this case transmitted to this Court of final arbiter show that the Appellee, Plaintiff below, instituted an Action of Debt in the amount of US41, 462.81 (United States Dollars Forty One Thousand Four Hundred Sixty Two and Eighty-One Cents) on July 11, 1995, against the defendant/appellant, at the Debt Court of Montserrado County, sitting in its August Term 1995.

In its 5-count complaint, the plaintiff/appellee averred that it was contacted in 1992, by defendant/appellant, Liberia Baptist Missionary and Educational Convention, through its President, Rev. J. K. Levee Moulton to renovate a building intended to be used as Regional Training Center. Plaintiff/Appellee also alleged that based on a "February 1992 contract" between the parties, herein named, plaintiff/appellee carried out assessment on the building and thereafter submitted said report to the defendant/appellant who accepted same. A letter dated April 2, 1992, written over the signature of Rev. J. K. Levee Moulton, President of Liberia Baptist Missionary & Educational Convention (LBMEC), wherein it is stated that plaintiff has submitted a detailed estimate of renovation work to be executed and same has been endorsed by the defendant, was proferted to form a cogent part of the plaintiff/appellee' s complaint.

The complaint further alleged that following commencement of the renovation work, defendant paid and plaintiff received US$ 4,000.00 (United States Dollars Four Thousand) as part payment for its work.

A letter dated July 16, 1992, also signed by Rev. Moulton as President-LBM&EC, addressed to one Dr. Denton Lotz, General Secretary, Baptist World Alliance and referring to payment of said US$ 4,000.00 (United Dollars Four Thousand) in favor of plaintiff BONTRACO, was also attached as part of the complaint.

It was further contended in the complaint that as renovation work progressed, plaintiff submitted a bill of US$ 41,462.81 (United States Dollars Forty One Thousand Four Hundred Sixty Two Dollars Eighty-One Cents) to defendant, allegedly representing defendant's indebtedness to plaintiff for work done up to the period of filing of this case. It was this balance amount defendant was said to have out-rightly refused to pay, despite several demands made to that effect by plaintiff

A careful review of the case records further reveal that the Debt Court issued a Writ of Summons along with accompanied documents on July 11, 1995. Returns of the Sheriff shows that the Writ of Summons was served on the defendant, Liberia Baptist Missionary & Educational Convention and returned served on July 12, 1995. Debt Court's records also reveal that defendant filed

its answer at the Court on July 21, 1995. However, there was no showing in the records that said answer was ever served on the plaintiff.

The defendant/appellant having failed to show any evidence of service of his answer on the plaintiff, a motion to dismiss the answer was filed on October 3, 1995.

In the 3-count motion to dismiss, plaintiff/movant argued that under the law, service of an answer or reply is required to be made, *section 8.3 1 LCLR* within ten (10) days of the service of the pleading to which it responds; and that such service must be made by delivering the paper to the attorney, or if the attorney cannot be found by delivering to the party himself, or to the attorney's office leaving same with a responsible person. The movant/plaintiff argued that violation of this fundamental legal principle at the instance of defendant/respondent in this case, made its answer a fit subject for dismissal.

In its resistance, spread on the minutes of court, respondent/defendant in substance argued that its answer was taken to the plaintiff's home and delivered to his houseboy. Respondent also contended that both the plaintiff and his attorney could not be found. No receipt of any alleged service was shown in the records.

On the strength of these records and consistent with the controlling law herein stated, the Debt Court Judge, His Honour John H. Mathies on January 8, 1997, could not have ruled properly otherwise, had he not ordesred, as he did, defendant's answer stricken from the records, thereby placing defendant on bare denial of the facts in the complaint.

This Court has held in a line of cases that giving notice to adversary party is anchored in legal requirements precedent to said party answering a complaint. We reiterate here that notice is a legal necessity to the fair and impartial hearing of any pleadings. *George Vs. George, 9 LLR 33,38 (1945), Karout Vs. Peal, 28 LLR 254, 259 (1979), Salala Rubber Company Vs. Onadeke 24 LLR 441, 444 (1976).*

Regarding service as a means of legal notice, the relevant provisions of our statute read:-

SERVICE OF PAPER

1. *General requirement.* Every order required to be served, every pleading, every written motion other than one which may be heard ex parte and every written notice, appearance, demand, offer of judgment, and similar paper shall be served upon each of the parties affected thereby; but no service need be made on parties in default for failure to appear except as provided in section 9.2(2).

UPON AN ATTORNEY: Except as otherwise required by law or order of court, papers required to be served upon a party in a pending action shall be served upon his attorney by one of the following methods:

(a) By delivering the papers to the attorney personally;

(b) By mailing the papers to the attorney by registered mail at the address designated by him for the purpose or, of none is designated, at his last known address;

(c) If the office of the attorney is open, by leaving the paper with a person in charge;

(d) By leaving the papers at the residence of the attorney within the Republic with a person of suitable age and discretion; providing that the person the paper is delivered is then residing therein. Service upon an attorney shall not be made at his residence unless service at his office cannot be made. Receipt of the paper may be proved by a receipt by the party to whom the paper was delivered. *Sec. 8.3 (1 & 3) (1LCLR) Page - 103*

On January 9, 1997, Defendant filed a 3-count motion to rescind court's ruling on motion to dismiss defendant's answer.

Because of the importance of what would seem as admission made by movant/defendant which invariably supports the legal accuracy of the Debt Court's ruling to dismiss defendant's answer, we quote verbatim count 2 (two) of said motion to rescind court's ruling. It reads:

"Defendant/Movant further says eventhough it is required by law that the answer should have been served on the plaintiff within the ten (10) days allotted by law, said answer was filed within statutory period on the 21 st day of July, 1995. Defendant/movant further says the complaint of the defendant carries "The Dugbor Law Firm" with two (2) signatures that are not recognizable and as such, it became difficult for plaintiff to know on what counsel and/or counsellor said answer should have been served. It was incumbent upon plaintiffs counsel to have written out their names and thereafter placed their signatures thereon. Defendant/Movant therefore was left in a vacuum and did not know on whom, that is, the specific counsellor or counsel to serve said answer. As the answer was taken several times to the Dugbor Law Firm and no-one agree to sign for same. Had the complaint carried the name of the counsel and/or post office address, defendant/movant would have had said answer served on the specific counsel"

Because of their relevance, counts-3 (three) and-4 (four) of respondent/plaintiff s resistance are also quoted verbatim:

"As to count 2 of movant/defendant's Motion to Rescind, Respondent/Plaintiff says that same is baseless, untrue, unmeritorious and a calculated machination to deceive the Court, in that, not only were the signatures of plaintiffs counsel appearing on the complaint clear and recognizable, but also that the movant/defendant's counsel had every reason to be familiar with the signature and name also appeared on the affidavit.

Further, the two counsels of the Dugbor Law Firm whose signatures appeared on the complaint have more than twice exchanged pleadings and other forms of communications with defendant's counsel which fact disputes and undermines movant/defendant's claim of difficulties in recognizing their signatures. Count 2 'should therefore be overruled."

"Further to count 2, Plaintiff says that movant/defendant's allegations as set forth that the answer was carried to the Dugbor Law Firm several times, with no one willing to sign for it is misleading, in that, there has been no time where employees of the aforementioned Firm have refused to sign any pleading or precept or any other communication designed for and addressed to the Firm.

Count 2 of defendant's motion to rescind should therefore be overruled and the entire motion vacated."

On January 27, 1997, the motion to rescind ruling was argued before the Presiding Judge, His Honor, John H. Mathies, who reserved ruling. On May 23, 2000, that is to say three (3) years following hearing of the motion to rescind ruling, entered in favor of plaintiff on January 8, 1997, Judge Mathies ruled dismissing said motion to rescind ruling.

We agree with the ruling of the court that it lacked legal authority to modify or rescind its ruling in the instant case. It is a settled principle of law that a court may modify or rescind a ruling or judgment in term time in which the Judge is sitting. In the case *Raymond International Versus Dennis, 25LLR 131,142 (1976),* Justice Horace speaking for this Court said: "A judge may modify or rescind a ruling or judgment in the term in which he is sitting, but this must be done properly, that is, upon notice duly served on the parties to the litigation." The same principle of law is affirmed in: *Robert Cheng & American International Underwriters (AIU) Versus Mulbah Tokpa 29LLR 22, 28 (1981). Universal Press Corporation Versus Kennedy & Scai Scamba International 28LLR 243, 246 (1979).*

The case was subsequently assigned for regular trial for the August 2000 Term of Court. Three (3) notices of assignment were issued, for August 3, August 14, and 25th A.D. 2000, respectively. Returns of the Sheriff indicate refusal by the defendant to sign for and receive the notices of assignment as well as lack of cooperation by defendant's counsel with the Debt Court.

Consistent with practice and procedure, regular trial commenced on September 8, 2000. Upon observing the absence of both Defendant and his Counsel at the Court, Counsel for Defendant invoked Rule No. 7 (Seven) of Circuit Court Rules as Revised which govern all such conduct in Circuit Courts. Said Rule No. 7 reads in part:

"…the issues of law having been disposed of in civil cases, the Clerk of Court shall call the Trial docket of these cases in order.

Either of the parties not being ready for trial, shall file a motion for continuance, setting fault therein the legal reasons why the case might not be heard . at the particular term of court, the granting or the denying of which shall be done by the court in keeping with law, and its discretion.

A failure to file a motion for continuance or to appear for trial after returns by the Sheriff of a written assignment, shall be sufficient indication of the party's abandonment of a defense in the said case, in which instance the court may proceed to hear the plaintiff's side of the case and decide thereon or, dismiss the case against the defendant, and rule the Plaintiff to cost, according to the party failing to appear. ." (Emphasis supplied)

Accordingly, the court entered a default judgment against defendant to be perfected by plaintiff.

During the trial, conducted on September 8, 2000, Plaintiff BONTRACO produced two (2) witnesses, Mr. Nicholas Fayad, President of the Company and one Monica Young.

Nicholas Fayad testified in chief that he was approached in December 1991 by Mrs. Helen Summerville in her capacity as Treasurer of Liberia Baptist Missionary and Educational Convention (LBMEC) to renovate a school building situated on Duport Road.

He informed the Court that he went with Mrs. Summerville and visited the school building and within few weeks an estimate cost of the renovation work was made by his (BONTRACO) engineers in the amount of US$78,224.70 (United States Dollars Seventy Eight Thousand Two Hundred Twenty Four Dollars & Seventy Cents). Witness Fayad also testified that due to a motor accident resulting in the hospitalization of Mrs. Summerville, she (Mrs. Summerville) referred him to Robert Moulton to begin the job as she wanted said renovation work completed before the raining season approached.

The witness further testified that he thereafter visited Rev. Moulton, President of Liberia Baptist Missionary and Educational Convention (LBMEC) who awarded (BONTRACO) the renovation contract, in the presence of one Emma Jean Kollins.

The witness also said that Rev. Moulton told him that "since Sister Helen Summerville tried hard to convince our Baptist World Alliance to finance this project and since the Baptist World Alliance has agreed to finance this project and since they had already disbursed to us the amount of USD 4,000.00 (United States Dollars Four thousand) to start this project, I have the pleasure to award you this renovation contract."

He also explained to the Court that as renovation work progressed, BONTRACO, on June 3, 1992, submitted a bill of USD 19,776.26 (United States Dollars Nineteen Thousand Seven Hundred and Seven-Six Dollars Twenty & Six Cents) to Rev. Moulton and within a month received USD 4,000.00 (United States Four Thousand Dollars) as part-payment, leaving an outstanding balance in the amount of USD 15,776.26 (United States Fifteen Thousand Seven Hundred and Seven-Six Dollars & Twenty-Six Cents).

According to witness Fayad, on July 16, A.D. 1992, Rev. Moulton visited the renovation site and said to him that due to the crisis in Monrovia, "it was apparent that the Baptist World Alliance was reluctant to spend any more money until the war is over." At this point, Rev. Moulton advised him to stop the job and submit their bill.

Three (3) instruments, two of which were over the signature of Rev. Moulton, President of LBMEC and addressed to Dr. Denton Lotz, General Secretary, World Baptist Alliance, dated April 2, and July 16, 1992, respectively, and the third one addressed to Rev. Moulton, President of LBMEC signed by the President of BONTRACO dated July 20, 1992, were produced at the trial, testified to by the witness Fayad confirmed and duly admitted into evidence.

The second and last witness taking the stand to prove Plaintiff's case was one Monica Young. The principal question posed to her on the stand was this: "Madam Witness, do you confirm and affirm the testimony of the Plaintiff in these proceedings?" To this question, Witness Young responded, simply saying: "Yes, I confirm and affirm said testimony in their totality."

Due to its importance in the final outcome of this case, we will revert to the testimony of the second witness later in this opinion.

In its final ruling, the court observed that even though a notice of assignment was issued out of the Debt Court on August 29, 2000, for the commencement of the trial on September 8, 2000 at the hour of 10:0'Clock A.M., the defendant LBMEC and its counsel were absent. The ruling also noted that the Returns of the Sheriff to said August 29, 2000 notice of assignment reveals that it was served on defendant and its counsel and that both refused to sign and receive same.

Accordingly, the court said relevant rules, anchored in law and practice, were invoked and the application by plaintiffs counsel granted. A plea of not liable was entered in favor of defendant and an imperfect judgment ordered entered in favor of plaintiff to be made perfect by production of evidence.

The court further narrated the difficulties that obtained during the trial and observed that on the basis of both the oral and documentary evidence adduced at the trial of the case, the court was satisfied that plaintiff has proven defendant's liability to it in the sum certain of US$ 41,462.81 (United States Forty One Thousand Four Hundred Sixty -Two Dollars & Eighty-One Cents) plus six percent interest along with cost of proceedings associated therewith.

A bill of cost against the defendant was ordered and same prepared in the amount of US$ 45,710 (United States Forty Five Thousand Seven Hundred Ten Dollars) plus LD 1,311.00 (Liberian One Thousand Three Hundred Eleven Dollars). Said bill of cost was taxed by plaintiffs counsel and approved by the Debt Court Judge on September 20, 2000 as the Sheriffs Returns shows that the defendant again refused to tax said bill of costs.

The case file also indicates that three (3) months following the rendition of court final ruling on September 8, 2000, plaintiff/appellee on December 8, 2000 filed a 3-count motion for the enforcement of judgment through execution.

In substance the motion contended that subsequent to the rendition of final judgment, respondent/defendant had deliberately refused to tax the bill of costs and to discharge its obligation there under.

Movant prayed court to enforce said judgment consistent with Sections 44.31 and 44.39 of title I, 1 LCLR, the Civil Procedure Law. To this Motion, Defendant/Respondent appeared and also filed a 3-Count Resistance.

In its resistance, defendant/respondent argued that the judgment of September 8, 2000 was rendered on the basis of prejudice, biasness, illegality and misrepresentation of fact, such conduct not being in conformity with law; notwithstanding that the judgment sought to be enforced was a consequence of default. Respondent/Defendant further contended that movant's motion for the enforcement of judgment through execution should be dismissed as said motion did not comply with Sections 44.33 and 44.39 of 1 LCL Revised.

While this latest motion for enforcement of judgment through execution was pending undetermined, defendant/respondent on February 19, 2000 filed at the

Debt Court another motion, this time a motion to rescind final judgment based on newly discovered evidence.

In a 3 (three)-count motion to rescind final judgment based on newly discovered evidence, defendant/movant, in substance, argued that at no time did plaintiff and defendant enter into any contract for the renovation of any premises as alleged in the complaint. In an attempt to support its allegation, Defendant/Movant attached two instruments, dated January 12, 1994 and January 27, 1993, respectively, one addressed to Mr. Nicholas Fayad and the other to Reverends John Peterson, .Levee Moulton and Emile Sam-Peal and also Mr. John M. Fayad. In filing this Motion, Movant cited 1LCLR Section 41.7 as reliance.

We reproduce verbatim these instruments hereunder in order to later examine their materiality in the final determination of this case.

BAPTIST WORLD ALLIANCE

Washington DC Office:
6733 Curran Street
Mclean, Virginia 22101-3804.USA
Phone: 703/790-8980: Cable: Baptist
FAX: 703/893-5160

January 12, 1994

Mr.Nicholas M. Fayad
Bontraco
P.O. Box 10-1567
1000 Monrovia 10
Liberia

Dr. Denton Lotz has asked me to reply to your Christmas card and note to him dated December 1, 1993.

My fax to you dated January 27, 1993 is our reply to you on this matter.

With Christmas greetings,

Kind regards,
Paul Montacute
Director of Finance

PM: 1 h

CERTIFIED TRUE COY

(Signature & Seal Affixed)
Notary Public Commonwealth of Virginia

My Commission Expires April 30,2003

BAPTIST WORLD ALLIANCE

Washington DC Office

6733 Curran Street

McLean, Virginia 22101-38084.
USA Telephone:
703/790-8980: Cable: Baptist
FAX:703/893-5160
FAX TO REV. JOHN PETERSON
REVS LEVEE MOULTON AND EMILE SAM-PEAL
MR. JOHN M. FAYAD

FROM PAUL MONTACUTE Page 1 of 2

January 27, 1993

I am attaching a copy of a fax sent today to Mr. Nicholas Fayad of the Bontraco Bong Trading Company in Monrovia, Liberia.

This letter clearly explains that the Baptist World Alliance is in no way responsible for settling any outstanding accounts with this company.

Will you please assist in sharing this information with our friends in Monrovia, as I am not sure that they will receive my fax.

395/fayad127.fax

CERTIFIED TRUE COPY
Signed & Sealed
Notary Public Common Wealth of Virginia
My Commission Expires: April 30, 2003

On March 29, 2001, defendant/movant's motion was called for hearing. Against the resistance of defendant/movant, plaintiff/respondent was allowed to spread its resistance on Court's minutes. The plaintiff/respondent prayed court to dismiss said motion in its entirety because the instrument attached to the latest motion could not constitute a basis for rescinding a ruling based on newly discovered evidence, as contemplated under 41.7 1LCLR. Respondent further contended that the purported newly discovered evidence had no bearing to the case, nor do the attached instruments relate to the party-defendant in the debt action, out of which the motion grew. Respondent further contended that the instruments attached by defendant/movant were from the Baptist World Alliance whereas the party-defendant is the Liberia Baptist Missionary & Educational Convention.

Following entertainment of arguments, pros and cons, the Judge on March 24, A.D. 2001 ruled on the motion. Because this Court fully agrees that same is in conformity with practice and procedure, we reproduce verbatim said ruling hereunder as follows: "Under our Law 1LCLR page 212, Section 41, Sub-section 2 (b) at page 213, it is provided:

Newly discovered evidence which, if introduced at the Trial would probably have produced a different result and which by due diligence could not have been discovered in time to move for a new trial under the provision of Section 26.4 of this Title." Continuing his ruling, the Judge said:

"This statute is one of the grounds for relief from judgment nevertheless we have further observed that on January 8, 1997, this Court ruled on the Motion

to Strike Defendant's Answer. We relied on 1LCLR page 104, section 8.3 sub-section 1 & 3 sub-sections A, B, C, and D as well as the holding in "Haikas vs. Saleebly 14LLR 537, and the answer of the defendant was ordered stricken and the defendant ruled to a bare denial of the facts as contained in plaintiffs complaint and reply."

"The main issue which this Court must pass upon for the determination of this motion to rescind court's final judgment based on newly discovered evidence is whether or not the defendant whose answer has been stricken for failure to serve a copy on the plaintiff, can legally introduced affirmative evidence having been ruled to bare denial of the facts of the complaint and the reply?

"We say we cannot introduce any affirmative matter since he is ruled to a bare denial. The placing of the Defendant on a bare denial bars introduction of affirmative matter as held in Haikas Vs. Salleeby 14LLR, found at page 537. Therefore on February 19, 2001, at 11:30 A.M. when defendant/movant filed its Three counts motion to rescind Court's final judgment based on newly discovered evidence he was barred from introducing any affirmative matter."

"WHEREFORE AND INVIEW OF THE LAWS CITED ABOVE THE FACTS AND CIRCUMSTANCES surrounding this Motion to RECIND Final Judgment based on newly discovered evidence, we are unable to discover any reasons that would justify granting the motion to rescind. The motion to rescind final judgment based on newly discovered evidence is therefore denied. costs ruled against defendant/movant. AND IT IS HEREBY SO ORDERED."

(SEE SHEET TWO OF THE MINUTES OF COURT WEDNESDAY, JANUARY 8, 2007)

The Judge having dismissed the motion, proceeded to entertain arguments on the motion for enforcement of judgment through execution. Relying on Section 44.31 and Sub-Sections 1 & 2, the Court ruled granting the Motion for Enforcement of Judgment thru Execution and dismissing Defendant/Respondent's Resistance thereto.

It is from this final ruling of the debt court that defendant/appellant filed a 3(three)-count bill of exceptions before this Honorable Supreme Court for final review. It reads:

"1. That Your Honor erred when you did grant the Motion of Plaintiff for the enforcement of judgment through execution, knowing fully well that the law cited 1LCLR pages 228-229, Section 44.31 Sub Sections 1 and 2 are not ground to grant said motion."

"2. Further, Your Honor erred when you quoted Subsections 29, 44.31 in your Ruling said section also is erroneous because it is specifically provided by our Statute how a motion for the enforcement of judgment through execution should be filed."

"3. Also, Your Honor erred when you used 1 LCLR Section 44.39 Subsections 1, 2 and 3 as found on pages 235 and 236 in support of your Ruling, you ruling was therefore erroneous and prejudicial to the interest of the defendant."

In the mind of this Court, there are two issues germane to the logical determination of the case at bar:

1. Whether a contract existed between the parties on the strength of which a debt action to recover Money judgment will lie?

2. Whether the legal requirements to perfect a default judgment by preponderance of evidence as a basis to recover were satisfied in the instant case?

As to the first issue; that is, whether a contract existed between the parties on the strength of which a debt action to recover money judgment may lie, we hold that there was clearly a showing of mutual meeting of the minds of the parties herein reliance on which induced Appellee to transfer benefits to appellant. In the case *Bestman Versus Acolaste, 24LLR 126, 139-140 (1975),* this Court re-affirmed the basic requisites to the formation of a contract. For interactions between parties to considered a contract, Mr. Justice Azango speaking for this Court, in the referenced case, said:

"There must have been the mutual assent of two or more persons competent to contract, founded on a sufficient and legal consideration to perform some legal act or to omit to do something, the performance of which is not enjoined by law. " The Supreme Court has affirmed this principle of law in a line of cases including the case, *Robert I Francis Versus Liberian French Timber Corporation 22LLR 168, 176 - 177 (1973),*

Renovation of the Regional Training Center by the appellee based on the request of the Appellant constitutes sufficient consideration binding the two parties to a contract. "Consideration is clearly sufficient where there is a benefit to the promisor as well as a detriment to the promisee." *Pennoh Vs. Pennoh 13LLR 480, 485 (1960).*

Further examining the case at bar, the evidence is convincing that appellee/plaintiff carried out some renovation work on the building identified by appellant/defendant and intended by the appellant to be used as a regional center. In our mind, this work was done based on a meeting of the minds of the two parties, to the benefit of appellant/defendant and to the forbearance and detriment of appellee/plaintiff. Counsel for appellant conceded during argument before this Court that indeed the appellee has certainly done some work for the appellant/defendant but yet argued vehemently that no contract existed between the parties. But recourse to the case file makes that argument a total futility.

A letter dated July 16, 1992, signed by Rev. J. K. Levee Moulton, President, Liberia Baptist Missionary And Educational Convention, Inc. and addressed to Dr. Denton Lotz, General Secretary, Baptist World Alliance, marked as Exhibit P-2, is an instrument assuming such importance that we quote the said instrument in its entirety as follows:

Liberia Baptist Missionary And Educational Convention, Inc.
Corner of Ashmun and Center Streets
Monrovia, Liberia

July 16, 1992

Dr. Denton Lotz
General Secretary
Baptist World Alliance
McLean, Virginia 22101

Dear Dr. Lotz:
SUBJECT: RENOVATION OF THE REGIONAL TRAINING CENTER, R. L.

Greetings in the name of our one Lord Jesus Christ!

This is in reference to my earlier letter to you, dated 2 April 1992, relating to the subject matter. Being transmitted herewith is Bontraco's bill of US$19,776.26 for work done on the Center during April and May 1992, as indicated.

To date, Liberia Baptist Missionary and Educational Convention has disbursed the entire US$4,000 to Messrs. Bontraco, as part-payment for work being done on this project. According to their bill, our present obligation remains at US$15,776.26, as you can see. Work still being in progress, we are expecting another such bill for the months of June and July until now. In my letter to them today, I have asked Bontraco to stop further work on the center. (Emphasis Ours) You will recall that following the Peterson's visit to Liberia, this was the only project for which we received some assistance. The Center is presently being partly used, as an indication of the present demand for the same.

In view of the foregoing, we are again appealing to your reasonable judgment for further needed assistance to this project. Our office will be forwarding its report of the $4,000 expended, to the Alliance.

Kindest regards,

Faithfully yours,
(Signature) Rev. J. K. Levee Moulton PRESIDENT

Attachment: BTC/051/'92
This instrument did not only allude to a mutual understanding reached between the parties to carry out renovation work; but on the face of it Appellant clearly admitted its indebtedness to Plaintiff in the amount of US$19,776.26, of which amount US$4,000 was paid, as clearly stated in this letter, to Plaintiff by the very Appellant.

We therefore hold that a contract existed and that the parties herein so conducted themselves. In consideration of this agreement, and relying on this contract, appellee/plaintiff did carry out renovation work to the benefit of the defendant. That benefit to the appellant legally created obligation on said appellant to plaintiff/appellee. Under the circumstances, an action of debt will lie to collect money debt accrued under said contract, especially given that there has been part payment made to the appellee.

This takes us to consideration of the second issue before us, which is: whether in the conduct of the trial had by the Debt Court, the plaintiff/appellee, perfected its default judgment by a preponderance of evidence, as required by law.

Again we take recourse to the record in this case. The plaintiff's first witness Nicholas Fayad testified in chief about the renovation work done on the regional training center. He also testified to the effect that a first bill was submitted to the defendant, followed by a second and final bill when BONTRACO had been advised to stop all further work by Rev. Moulton.

In all of his testimony, there is nothing upon the face of the record to show that the witness detailed how BONTRACO arrived at those bills to which he testified and sought to admit into evidence. No purchase receipts were attached to show materials purchased and probably used in the said renovation, nor was any other positive evidence shown as to the size, nature and character of the work and all of its associated expenditures.

But of even greater interest was the testimony of plaintiff's second and last witness. For the benefit of this opinion, we produce her testimony in its entirety.

"Q: Madam Witness, what is your name and where do you live?"

"A: My name is Monica Young and I live at Matadi Estate."

"Q: Madam Witness, Do you confirm and affirm the testimony of the plaintiff in these proceedings?

"A: Yes I confirm and affirm said testimony in their totality."

This Court finds this sort of testimony quite bizarre and leaves us to wonder whether this witness confirming and affirming another witness' testimony in their totality, was in fact in court when the testimony she sought to affirm and confirm in their totality. Was she present in court and listening to the testimony of the first witness? How was she privy to this testimony when said testimony was made a few minutes before she herself was put on the witness stand? In our opinion, it is not reasonable that an ordinary person, who should testify only as to his or her certain knowledge, would all of a sudden confirm and affirm a testimony regarding technical matter that may be outside his or her certain knowledge.

Further, no professional relationship was shown between the witness and the plaintiff to put her in the position to speak to the issue of renovation and to the extent to which such renovation work was carried out and the legitimate costs associated therewith. How could the Witness establish the financial obligation now being sued and sought to be recovered from Defendant/Appellant in a Debt Action, growing out of this renovation work?

In the mind of this Court, there was no convincing and positive evidence clearly establishing and proving the claim of plaintiff to support the amount contained in the default judgment. That a default judgment has been entered in favor of a party is neither a constructive and conclusive evidence of proof of such party's claims, nor an automatic entitlement to recover said claims.

Section 42.6, 1LCLR under the caption (PROOF) specifically requires that proof be given of the facts constituting the claim, the default and the amount due. This principle of law was again upheld by this Court in the case *"The Management of the Forestry Development Authority (F.D.A)" VS. Moses B. Walters and the Board of General appeals, Ministry of Labor, 34LLR 777, 783 (1988),* wherein it said:

"In this jurisdiction it is evidence alone which enables the court, tribunal or administrative forum to pronounce with certainty the matter in dispute and no matter how logical a complaint might be stated, it cannot be taken as proof without evidence. It is required that every party alleging the existence of a fact is bound to prove it by preponderance of the evidence. Neither does the granting of a Default Judgment entitle the complainant to relief without proof of the allegation"

However, there is clearly an admission by appellant in its letter of July 16, 1992 as being indebted to Appellee in the amount of US$419,776.26, of which part-payment in the amount of US$4,000 has been made to Appellee. The balance thereof in the amount of US$15,776.26 could not thereafter be considered, by a reasonable standard, as being in dispute. In other words, there is no disagreement/question of said amount constituting part of appellant's legitimate debt obligation to appellee.

The above notwithstanding, there is absence of showing by preponderance of evidence or proof to justify the remainder US$25,46.81 of the US41,462.8, adjudged by the trial Court as proven part of LBMEC's liability to BRONTRACO.

At the same time, evidenced by the same July 16, A.D. 1992 letter, there is no disagreement that additional work was being done which further obligates Appellant to Appellee.

Taking all the facts and circumstances of this case into consideration, we hold:

1) That Appellant is indebted to Appellee in the sum certain of US$15,776.26 and said amount is hereby affirmed and ordered paid, with legal interest of 6% attached thereon per annum, as of the date it was due, being latest June 30, A.D. 1992;

2) That Appellee so far failed to establish by preponderance of evidence proof of its legitimate entitlement to the US$25,462.81, same being remainder of the full money judgment of US$ 41,462.81 entered in favor of Appellee by the trial Court. This portion of the trial Court's judgment is hereby modified without prejudice.

The Clerk of this Court is hereby directed to send a mandate to the Court below to resume jurisdiction and give effect to this judgment. Costs ruled against Appellant. AND IT IS HEREBY SO ORDERED. (Confirmed with modification)