Gennady F. Medvedev, a Russian Ship Owner, M/V Zolotisa of the City of Monrovia, Liberia APPELANT Versus The **Management of the National Port Authority (NPA**), also of the City of Monrovia, Liberia APPELLEE

ACTION: APPEAL

HEARD: March 26, 2007 DECIDED: May 11, 2007

MR. JUSTICE KORKPOR, SR. DELIVERED THE OPINION OF THE COURT

On June 18, 2002, the Appellant (Plaintiff in the court below) Gennady P. Medvedev, filed an Action of Damages for Wrong at the Civil Law Court, Sixth Judicial Circuit, Montserrado County, against the Appellee (Defendant below) the National Port Authority (NPA).

The complaint alleged that the Appellant is a Russian national and owner of a ship known as M.V. Zolotisa with engine # DBC Ixhvo-48 Intermediate-Rauge Trawler, constructed in Klaipeda, USSR; that the ship came to Liberia in April 1998, and in July 1998 the Management of NPA impounded it for non-payment of port tax at the Freeport of Monrovia. The complaint further alleged that while the ship was still impounded under the custody of NPA, the Management of NPA used it in transport and commercial activities between Monrovia and Harper, Maryland County, for the benefit of the Management of NPA; that when the vessel could not be seen at the NPA, the Appellant made an appeal to the then President of Liberia, His Excellency Charles Taylor, who ordered an investigation to ascertain the whereabouts of the ship; that as a consequence of the former President's intervention, representatives of the National Port Authority, Bureau of Maritime Affairs, the Liberia National Police and other relevant agencies of Government convened a meeting on July 3, 2000, at the NPA, after which a team of investigators was dispatched along with people from the independent media, to Harper, Maryland County where they met the vessel, M.V. Zolotisa, docked at he

Port of Harper. The complaint also further alleged that upon investigation by the team sent to Harper, Maryland County, it was revealed that the Appellant is the owner of the ship; that the Appellant himself later went to the Port of Harper, Maryland County in April, 2001, where he saw the ship which had been dismantled by unknown people. The Appellant therefore sued the NPA and prayed Court for One Hundred and Fifty Thousand United States Dollars (US$150,000.00) as special damages, which the complaint alleged, represents the cost price of the ship. The Appellant also prayed Court to award him Two Million United States Dollars (US$2,000,000.00) as general damages for losses, inconveniences, and mental anguish he said he suffered, all due to the alleged wrongful act of the Appellee.

The Appellee filed an Answer in which it denied impounding the Appellant's ship at the Freeport of Monrovia for non-payment of tax; the Appellee also denied using the vessel for transport and commercial activities. The Appellee maintained that M.V. Zolotisa was berthed at the Port of Harper, Maryland County, sometime in 1998 by a Russian Captain who also claimed that he was the owner of the ship. The Appellee further stated that due to lack of fuel and maintenance, the ship could not move; that it later developed leakage and mechanical problems and is still berthed at the Port of Harper, Maryland County; that as a result of prolonged stay at the Port of Harper, the ship accumulated port charges in the amount of One Hundred and Ninety Thousand United Sates Dollars (US$190,000.00). The Appellee prayed Court to dismiss the Complaint because according to the Appellee, the Appellant did not plead and prove specific damages as required by law.

The Appellant, Plaintiff in the court below, filed his Reply and pleadings rested.

On May 24, 2004, the trial judge denied the Motion for Summary Judgment filed by the Appellant and the case was ruled to trial. The trial was subsequently held and the Jury brought a verdict of "not liable" in favor of the Appelle on February 22, 2005. A Motion for New Trial was heard and denied, and the trial judge

entered final judgment in the case from which an appeal was announced to this Court.

In his brief filed and argued before this Court, the Appellant through his counsel, contended that the ship was ordered impounded by the NPA at the Freeport of Monrovia for non-payment of tax and since the tax for which it was impounded has not been paid, the ship should not have been permitted to leave the Freeport of Monrovia. The Appellant further argued that the ship was at all times, while so impounded, under the exclusive custody and care of the NPA, thus NPA cannot be exonerated from liability for damages done to it at the Port of Harper, Maryland County, because the NPA knew or ought to have known how the ship left the Freeport of Monrovia and got to the Port of Harper, Maryland County.

The Appellant also contended that during the course of the trial of the case in the lower court, he brought to the attention of the trial judge that the jury was seen dividing huge sum of money in the bathroom of the Civil Law Court, but that the trial judge failed and/or refused to investigate the allegation of bribery before the jury was discharged. This, according to the Appellant was a reversible error.

The Appellee, on the other hand through his counsel contended that it never impounded the vessel and therefore should not be held liable in damages to the Appellant.

The Appellee maintained that the prolonged stay of the vessel at the Port of Harper, Maryland County where it had berthed, was due to the apparent lack of funds by the Captain to buy fuel and repair the leakage and mechanical problems the ship had developed. The Appellee further maintained that the Appellant did not establish capacity to sue, and that during the entire trial he did not prove that he was the legitimate owner of the ship. The Appellee informed this Court that another Russian National who was the captain of the ship also claimed ownership to the same ship; that unfortunately he died in Harper, Maryland County, before

trial commenced in this case. The Appellee argued that the Appellant failed to plead and establish proof of special damages as required by our law.

On the allegation of jury tampering, the Appellee contended that the Appellant claimed he had knowledge of the jury tampering allegation long before the matter was concluded and submitted for final argument. Yet, he did not timely bring the matter to the attention of the trial judge for investigation.

For the determination of this case, the issues are:

1. Whether or not the Appellant pleaded and established proof of action of damages as required by Liberian law.

2. Whether or not the allegation of jury tampering was timely brought to the attention of the trial judge for investigation?

Concerning the first issue — whether or not the Appellant pleaded and established proof of action of damages as required by Liberian Law, we hold that he did not. It is well established that he who alleges must provide proof. This principle of law requires the party who files a civil suit to prove his/her case by the preponderance of evidence. After he has successfully done this, the task of carrying the burden of proof then shifts to the defendant. Our statute provides that *"When items of special damages are claimed, they shall be specifically stated."* Section 9.5(7) 1 LCLR Civil Procedure Law**.** And this Court has held in many opinions that where special damages are claimed, they must be particularly alleged and affirmatively proved. Bility vs. Sirleaf, 34 LLR 552, 561 (1988); Thorpe and Shammout Brothers vs. Liberia Electricity Corporation, 34 LLR 400, 404 (1987); Swissair vs. Kalaban 35 LLR 49, 56 (1988).

But as stated earlier, the Appellant did not satisfactorily carry the burden of proof.

Firstly, the Appellant sued claiming to be the owner of the ship, M.V. Zolitsa, but he did not show any title document. Besides copies of different local newspaper clippings carrying stories about the vessel, the only other exhibit attached to the complaint is a copy of a document which is in a foreign language and not translated. Even at that, the said document does not carry the name of the Appellant. The Appellant contended that all his documents, including title documents for the ship, were left on board the ship when it was taken to Harper, Maryland County. Assuming without admitting that this was true, he could have communicated with whomsoever the seller of the vessel was to give him copy of the purchase document for the purpose of this case; or he could have even provided oral testimony of witnesses to establish that he was indeed the owner of the vessel, but he did not.

Secondly, the Appellant alleged in Count 8 of his complaint that upon investigation by the team dispatched to Harper, Maryland County where the ship was docked, it was revealed that he was the legitimate owner of the ship; he gave notice in the same Count 8 of his complaint that he will prove this averment at trial. But during trial, no investigation report establishing that the Appellant was the owner of the vessel was produced into evidence.

Thirdly, on the cross-examination, the Appellant was asked the following questions:

"Q. Mr. Witness, I suggest to you that you are claiming the ship, M. V. Zolotisa, because it is a Russian ship and you are a Russian, am I correct?"

"A. Zolotisa is my ship because I paid money to buy the ship."

"Q. By that answer, Mr. Witness, am I correct to say that you got copy of the receipt for buying the ship?"

"A. All the documents were on the ship when the ship was arrested and impounded. All the papers were in care of Dan Morias. Up to now, I have not seen the documents again. It was in 1998, that Interpol Gabon wrote to Interpol Russia and Interpol Russia conducted an investigation and they found out that Zolotisa is my ship and sent the papers to Gabon; the Gabon Interpol sent all the papers to Liberia Interpol since 1998.

From the foregoing, we wonder why Mr. Dan Morias, who the Appellant alleged was in possession of his ship documents was not subpoenaed and brought to court to produce said documents or copies thereof if any, in his possession. In fact, the Appellant stated in his testimony in chief that he received report that Mr. Dan Morias looted his ship and took away the engine and generator and all shipping documents. (See Sheets 6 and 7, Monday, January 31, 2005, 30TH Day's Jury Sitting).

As to why Mr. Dan Morias was not even made a party defendant to this action, only the Appellant knows. But we wonder further why the Appellant did not make any effort to obtain copies of his ship documents which, according to him, were at divers times in possession of first, the Russian Interpol, and then the Gabon Interpol and said documents were, according to him, sent to the Liberia Interpol. No efforts were made to have the appropriate personnel of the Liberia National Police testify and/or produce copy or copies of the documents which Appellant said were in the possession of the Liberia National Police.

Two other witnesses testified for Appellant, but their testimonies did very little to impact the Appellant's case. Witness Caesar Padmore, testifying for the Appellant made statement as follows:

"…I came from the United States in the year 1996, I started work with a newspaper called Analyst. When I read another paper concerning the ship, I thought it wise to have an interview with him (Appellant) and in doing so, I asked him how the ship business was going.... He told me what I read from the papers, he is the one who gave the information to the papers, how the

ship was impounded by the Freeport of Monrovia ... this is all I know about the case." (See Sheet 6, Monday, February 7, 2006, 366 Day's Jury Sitting)

The Appellant's last witness was D. Sonpon Weah, **II** who testified that as a working journalist, he heard from the British Broadcasting Corporation and Radio Geneva in 1996 that the ship, M.V. Zolotisa, was stolen and that the stolen ship was occupied with Liberian refugees and other nationals from Liberia traveling to Ghana and that the Ghanaian Government refused the ship in the territorial waters of Ghana. He said he took interest in the story. He also said that when he heard that the same ship was in Liberia, he contacted the Appellant who told him that the ship belonged to him and that all documents for it were on board the ship. He further said that the Appellant went on hunger strike for the ship; that he later saw the Appellant begging for food to eat, clothes to wear, and place to sleep in Monrovia. The witness testified further that at some point, the Appellant was arrested by the National Security Agency (NSA), beaten, jailed and released. (See Sheet 3, Wednesday, February 9, 2005, 30 th Day's Jury Sitting).

As seen, the testimonies given by the two witnesses summarized above do not corroborate the testimony of the Appellant himself on the issue of ownership, wrong committed by the Appellee or the cost of the ship.

The Appellant contended that the NPA impounded his ship at the Freeport of Monrovia and used it in transport and commercial activities between Monrovia and Harper, Maryland County. The Appellee, the NPA on the other hand, vehemently denied the allegation that it impounded the Appellant's Ship at the Freeport of Monrovia and used it for transport and commercial purposes. Yet again, the Appellant did not present any evidence to establish this point.

Then there is the issue of the cost price of the vessel. This is what the Appellant stated in the prayer of his complaint on the issue: ***....*** *Plaintiff prays Court for US$150,000.00 as special damages for the cost price of the ship....."* [Emphasis supplied.] However, when the following question was posed to the Appellant on the re-cross

examination, he said that One Hundred and Fifty Thousand United States Dollars (US$150,000.00) is actually the scrapped value of the ship.

"Q. Mr. Witness, in response to a question put to you during re-direct examination, you told this Court that you sued the Defendant for damages for US$150,000.00 as special damages, for the benefit of this court and the jury, since indeed you have not produced a receipt to constitute the cash value of the ship as US$150,000.00. Mr. Witness, my question to you is how do you arrive at US$150,000.00 as special damages?

"A. The US$150,000.00 is the scrapped price of my ship ...."

When asked to reconcile the averment in the prayer of his complaint which says that One Hundred and Fifty Thousand United States Dollars (US$150,000.00) represents the cost price of the ship and his answer to a question on the cross examination that the same amount of One Hundred and Fifty Thousand United States Dollars (US$150,000.00) is the scrapped value of the same ship, the Appellant said: *"When the ship was taken to Guinea, at the Free Port, and the Port of Harper, I don't know what equipment was taken out of the ship."*

The question is, how did the Appellant conclude that the scrapped value of the vessel is One Hundred and Fifty United States Dollars (US$150,000.00) when he had clearly stated that he does not know what equipment were stolen or taken from the ship which may have caused depreciation to the ship?

To our mind, the Appellant did not conform to the standard of pleading action of damages with particularity and proving it affirmatively at the trial as required by Liberian law. He did not provide any document to show that he is the owner of the vessel ; he did not establish proof of any wrongful act on the part of the Appellee to warrant the award of damages he claimed; and his statements that One Hundred and Fifty Thousand United States Dollars (US$150,000.00) represents cost price as well as scrapped value of the ship are so contradictory and

speculative that they give no clue in deciding the award of special damages. And where no wrongful act is established, no general damages will lie.

This Court cannot do for a party what a party ought to do for himself. Under the circumstance, we hold that the trial jury was not wrong in bringing unanimous verdict of "not liable" in favour of the Appellee. We too, like the trial jury, are not convinced that the Appellant provided proof of the wrong he said was committed by the Appellee against him; neither did he establish that he is the legitimate owner of the ship. We will therefore refuse to confer ownership on him, especially so in the face of a statement by the Appellee that another Russian, who captained the ship, in question also claimed ownership to it before his demise. We hold, however, that when and if the Appellant shall present genuine title document(s) in his own name, establishing that he is the real owner of the vessel, the law shall recognize him as such.

Concerning the issue of jury tampering, this Court says that this is a serious allegation. Where jury tampering is alleged, courts are under obligation to conduct full scale investigation and if established, not only to set aside the verdict brought by the jury, but also to administer appropriate penalty to those found guilty. This Court has held that:

"When a charge has been raised by one of the parties of jury tampering, the trial court should suspend all other proceedings to properly investigate this serious allegation. Ginger vs. Bai *19 LLR 372, 375 (1969).*

The allegation of jury tampering was raised by the Appellant in Count 3 of the Motion for New Trial, on February 24, 2005 in the court below. Count 3 of the said motion states:

"3. Movant further says that he has received credible information to the effect that on the day and date this case was argued and prior to this court calling the case for announcement of representation of the parties as well as calling the Jurors to take their seat in their usual panel

seats, the Jurors were seen dividing huge sum of money in the bathroom of the court house on the left when entering the court room. This huge sum of money cannot be considered otherwise than bribery which act of the Jury is a sufficient ground to set aside the bogus verdict and award new trial in addition to punishing them for their act of unfaithfulness and traversing transparent justice; hence, this Motion for new Trial so that Movant/Plaintiff will have a free and fair Verdict void of any influence being used on Jurors as it is in the instant case."

The main case was argued on the morning of February 22, 2005, and on the same day the petit jurors brought a verdict of not liable in favour of the Defendant. If, as stated in Count 3 of his motion for new trial quoted above, the Appellant had credible information prior to the commencement of argument in the case that the jurors were bribed, why did he wait until the case was argued, the jury brought their verdict and the court discharged them before the matter was brought to the attention of the trial judge?

Would the Appellant have raised the issue of jury tampering had the verdict been in his favour? Clearly, the allegation was not timely made. We hold that the moment the information concerning the alleged jury tampering was known to the Appellant, he should have brought it to the attention of the trial judge.

Moreover, and as ruled by the trial court on this issue, the Appellant did not provide proof of the allegation that the jury was dividing money. The Appellant did not say that he personally saw the jurors while dividing money. On the other hand, he did not name the person who saw the jurors in the act. Therefore, in the absence of proof the trial judge was not wrong by disregarding the allegation of jury tampering. The Supreme Court has held that "Where issue of jury tampering is raised upon the jury return of a verdict but for the first time in a motion for a new trial and the defendant fails to produce any evidence to substantiate the allegation, the ruling of the trial judge in dismissing the allegation will be held to be proper." Emojorho vs. Republic**,** 41 LLR 355, 360 (2003). Therefore, the trial judge in this case did not err by dismissing the allegation of jury tampering.

The Action of Damages for Wrong filed by the Appellant is hereby dismissed without prejudice. The Clerk of this Court is ordered to send a mandate to the trial court to resume jurisdiction over this case and give effect to this opinion. AND IT IS HEREBY SO ORDERED.

JUDGMENT AFFIRMED.