MILTON SUPERMARKET, represented by Napoleon Milton, Appellant, v**. CITIBANK, N.A.,** represented by its Resident Vice President, A. G. Hageman, Appellee.

APPEAL FROM THE DEBT COURT FOR MONTSERRADO COUNTY.

Heard: March 24, 1983. Decided: July 6, 1983.

1. A civil action may be brought in a court of record in the county where one of the parties reside.

2. The procedure of the debt court and the method of enforcement of its judgments are the same as that of the circuit courts in civil actions.

3. A trial judge is duty bound to execute the orders of the Supreme Court.

4. Exceptions taken to any action of the trial court and not argued in the brief are deemed waived.

Appellant was sued in the Debt Court for Montserrado County by the appellee for a sum owed by the appellant taken from appellee under three separate loans. Judgment by default was rendered against appellant who appealed the case to the Supreme Court for final review. The appellant argued that as the parties resided in Nimba County, the action should have been brought in the debt Court for Nimba County rather than in the Debt Court for Montserrado County.

The Supreme Court affirmed the judgment of the lower court, holding, firstly, that the appellant had not rebutted the claim of the appellee in the amount sued for, and secondly, that as the appellee head office was in Monrovia, it (appellee) had the right to bring the action in the debt Court for Montserrado County.

Stephen B. Dunbar, Sr. appeared for the appellant. Clarence E. Harmon appeared for the appellee.

MR. JUSTICE SMITH delivered the opinion of the Court.

This case has come before this Court on appeal from the Debt Court for Montserrado County on a ten-count bill of exceptions filed against the several rulings and final judgment of the lower court, adjudging the appellant liable to pay the principal amount sued for by the appellee, plus six percent (6%) interest.

We do not attach importance to counts two to seven of the bill of exceptions which relate to the rulings of the trial judge on objections to questions because, in our opinion, they have no material relevance to the fair and impartial determination of the case, i.e. whether or not the appellant is in fact indebted to the appellee. We shall, however, consider counts one, eight, nine and ten of the bill of exceptions. But before doing so, let us look at the history of the case and see how the said case came to this Court.

The appellee bank, represented by and thru its vice president, A. G. Hageman, has its principal place of business in the City of Monrovia, Montserrado County, where its vice president resides. Appellee also has a subsidiary branch in Yekepa, Nimba County, where the appellant resides. In 1970 and 1972, respectively, the defendant/appellant effected two loans from the plaintiff/appellee's Nimba branch totaling $26,000.00, upon two letters of understanding executed by the appellant, marked as appellee's exhibits "A" and "B", and attached to the complaint. These documents were offered and admitted into evidence at the trial. The appellant in 1978 effected the third loan at the appellee's head office in Monrovia, Montserrado County, in the amount of $35,000.00 for which he executed a promissory note marked exhibit "C", and attached to appellee's complaint. The said promissory note was also introduced and admitted into evidence at the trial. These loans accrued interest from the effective date as shown in the ledger which was also introduce and admitted into evidence. the loans were subject to fifteen percent (15%) collection fee and aggregated $83,250.00, for which the debt action was instituted against the appellant, he having failed and neglected to repay the said loans despite several demands.

The defendant/appellant having been served with a writ of summons filed an answer to the complaint. In his four-count answer, the appellant put up a general denial and termed the averments of the complaint as being misleading, false, untrue and unmeritorious, and prayed the court to dismiss said complaint. He did not admit having effected any loan or paid any amount to the appellee against any loan. He also did not admit issuing any document in connection therewith. However, in count one of the answer, appellant admitted concluding a negotiation withe appellee in Nimba County where the appellant and the appellee resided and carry on their respective regular business. Appellant contended in that connection that as a consequence of their residence, the action should have been brought in the Debt . Court for Nimba County and not in the Debt Court for Montserrado County. The appellant therefore prayed dismissal of the complaint because, according to him, it was venued in a wrong county. This was the only legal issue raised and the judge in ruling on the law issues did not sustain count one of the answer.

Despite the issuance and service of several notices of assignment for trial, the appellant failed and neglected to appear and defend his side of the case. When the case was called for hearing on the 13 th day of September, 1982, in keeping with assignment, the appellant and his counsel were again absent. The court therefore allowed thirty (30) extra minutes within which it was hoped appellant would appear. The thirty minutes having expired, the trial was resumed and still the appellant and his counsel had not appeared. Consequently, the court, upon application made by the appellee, entered default judgment against the appellant. Whereupon, the appellee, by leave of court, proceeded to produce evidence in support of the allegations set forth in the complaint. However, before appellee rested with the first witness, counsel for appellant appeared in court and was permitted to cross-examine

appellee's said witness and to thereafter participate in the trial. The case was continue on the 14th of September, 1982, with the production of another witness by the appellee, after which it rested evidence. The case was then suspended until the following day, being September 15, 1982.

When the case resumed on the 15 th of September, 1982, for the appellant to take the stand, he again did not appear. However, his counsel appeared and again asked the court to postpone the trial until the 23' day of September, 1982. He also prayed the court for the issuance of another subpoena on the appellant since the sheriff's returns to the first subpoena indicated that the appellant's witnesses could not be found to be served. The court granted the request and when the case was again called on the 23" of September for the appellant to take the witness stand and testify in his own behalf, he did not appear even though he had been served. Consequently, the court granted appellee's application to proceed to render final judgment, contending that the appellant had abandoned his defense. The case was again suspended for final judgment until the next day, September 24, 1982.

On the said 24th of September, 1982, the court proceeded to render final judgment. This is the case.

In count one of the bill of exceptions, appellant contended in substance that the trial judge erred when he overruled count one of his answer in which he contended that the negotiation appellee relied upon having been concluded in Nimba County and both parties being residents of that county, the debt action should have been venued in the Debt Court for Nimba County and not in the Debt Court for Montserrado County.

We have observed that besides the fact that the head office of the appellee bank was located in Monrovia, Montserrado County, its resident vice president, by and thru whom the action was instituted, also resided in Monrovia, Montserrado County, as evidenced by the caption of the pleadings in the case.

Under our law, a civil action may be brought in a court of record in the county where one of the parties reside. Here is the relevant law on the point:

"General requirement as to actions in circuit courts. Except as otherwise provided, an action in the circuit court shall be tried in the county in which one of the parties resided or was regularly employed or had his regular place of business when the action was commenced. If none of the parties then resided or had his regular place of business in any county of the Republic of Liberia, an action may be tried in any county designated by the plaintiff." Civil Procedure Law, Rev. Code 1: 4.1(1).

Section 4.2 of the Judiciary Law, Rev. Code 17: 4.2— Jurisdiction and Procedure in the Debt Court, provides that: "The procedure of the debt court and the method of enforcement of its judgments shall be the same as that of the circuit courts in civil actions." Regrettably,

appellant cited sec. 4.1 of the Civil Procedure Law, Rev. Code 1, above quoted, in support of his argument.

In our opinion, the head office and appellee's regular place of business, as well as its resident vice president, being in Monrovia, Montserrado County, when the action was commenced, the contention of the appellant that the action was venued in the wrong county cannot be sustained. Hence, count one of the bill of exceptions is overruled.

In count eight of the bill of exceptions, appellant contended that documents identified, confirmed, reconfirmed and marked by court "CM/1" and "CM/2" should not have been admitted into evidence because they were copies and the whereabout of the originals were not established at the trial by the appellee.

This contention is untrue because recourse to the trial file in the lower court, which was ordered, sent for by this Court, revealed that the court's marks "CM/1" and "CM/2" are all original copies which form the basis of the debt action. Count eight of the bill of exceptions is therefore not sustained.

In count nine, appellant contended that his counsel was disqualified by the trial judge from taking the final judgment for his client on the ground that he had not complied with the order of the Supreme Court to pay his taxation of $50.00 for the judicial conference which was scheduled to be held at the time, and claimed that this act of the judge was prejudicial to the interest of appellant.

On this point, we hold that the trial judge was duty bound to execute the orders of the Supreme Court, and if counsel for appellant intended to truly live up to his profession and appear to represent the appellant, or any of his clients for that matter, he should have complied with the order of the Supreme Court by paying his taxation of $50.00. His failure to have done so was intended to defy the order of the Supreme Court and prejudice appellant's interest, especially so when he was retained by the appellant to represent him at the trial.

Moreover, recourse to the records reveal that Counsellor J.

K. Burphy who was in court and had complied with the order of the Supreme Court, was appointed by the court to take the final judgment, and he accordingly announced an appeal for and on behalf of the appellant. The appeal was granted and counsel for appellant perfected the appeal which is now being reviewed by this Court. Therefore, no prejudice attached against the interest of the appellant. Count nine of the bill of exceptions is therefore not sustained.

Count ten of the bill of exceptions is against the court's final judgment adjudging appellant liable to pay to appellee the sum of $83,250.00 sued for, plus six percent interest. It is not stated in this count why the amount should not have been awarded and the appellant neither

argued this point in his brief nor presented any evidence to rebut the evidence adduced by appellee at the trial to establish appellant's indebtedness. We hold that an exception taken and not argued in the brief is deemed waived. Count ten of the bill of exceptions is therefore unwarranted and, hence, the judgment of the lower court should not be disturbed.

In view of the foregoing and the legal citations given hereinabove, it is our holding that the judgment of the trial court should be and the same is hereby confirmed and affirmed. Costs are assessed against the appellant. The Clerk of this Court is hereby instructed to send a mandate to the lower court commanding the judge presiding therein to resume jurisdiction over this case and to enforce its judgment. And it is hereby so ordered.

Judgment affirmed