SUPER COLD SERVICES, by and thru its General Manager, NABIH RAZZOUK, Appellant, *v.* **LIBERIA AMERICAN INSURANCE CORPORATION,** by and thru its Resident Agent, IMAD HAGE, Appellee.

APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: April 15, 2004. Decided: August 17, 2004.

1. An exception shall be noted by a party at the time the court makes any order, decision, ruling, or comment to which he or she objects. A failure to note an exception to any such action shall prevent assigning it as error on review by the appellate court.
2. The party who excepts is entitled to have his or her exception noted in the minutes of the court.
3. After a trial by jury of a claim or issue, upon the motion of any party, the court may set aside a verdict and order a new trial of a claim or separable issue where the verdict is contrary to the weight of the evidence or in the interest of justice.
4. A motion made following a verdict shall be made within four days after the verdict; no extension of time shall be granted for the making of such a motion.
5. All judgments shall be announced in open court, except that a judgment in a jury case shall not be announced until four days after the verdict.
6. A judgment is entered when it is announced by the judge in open court.
7. Before announcing the taking of an appeal, a party in a jury case shall move for a new trial after the verdict and, in any case, shall except to the judgment.
8. A party, in order to have appellate review on a point of law or fact, is required to note an exception thereto at the time the court make any order, decision, ruling, or comment to which he objects.
9. The word "court" refers to the judge and not to the jury.
10. An attorney must still except to the order, decision, ruling, or comment of a judge if he desires to have the appellate court review thereon.
11. No exception or objection is required to be registered to the verdict of a jury prior to the filing of a motion for a new trial.
12. A jury verdict is clearly not an order, decision, ruling or comment of the court.
13. Issues or allegations in written pleadings should be detailed in such manner that a judge would comprehend and arrive at a logical conclusion.
14. To merely aver that a jury verdict is contrary to the weight of the evidence adduced at the trial is not detailed enough to enable the court to reach a conclusion.
15. A motion is not regarded as a pleading in the ordinary or technical sense even when it is reduced in writing.

16. It is the substance rather than language and form that determines the nature, effect and sufficiency of moving papers, for a motion generally is not subject to the requirements of the rules of pleading governing actions.
17. Motion documents must define the issues which will be raised but need not contain the detail statement of the facts on which the motion is based.
18. If the notice in the motion is sufficiently explicit to render mistakes impossible and to apprise the party served of the proceedings to be taken, relief may be granted notwithstanding some technical error in the papers.
19. A new trial may be sought on the ground of legal insufficiency of the evidence.
20. If the evidence was legally sufficient, but the preponderance of the evidence favored the defendant, a new trial should be sought in the interest of justice on the ground that the verdict was against the preponderance of the evidence.
21. The motion for new trial in effect gives the judge the opportunity to sit as a juror and to assess the weight of the evidence and the credibility of the evidence.
22. A motion for a new trial can be made on the ground of errors committed either at trial or in pretrial proceedings; it gives the court the opportunity to review and correct erroneous rulings or decisions.
23. A granting or denial of a motion for a new trial rests in sound discretion of the trial judge; it is the judge who must be satisfied that the verdict is manifestly against the weight of the evidence or that the jury has ignored or disregarded some of the court's instructions given to the jury.
24. The burden of proof is on the party who makes the allegation.

Appellant appealed to the Supreme Court for a review of the verdict of the jury and judgment of the trial court of not liable brought in favour of the appellee/defendant in an action of damages for breach of contract. The appellant had secured an insurance policy from the appellee covering the appellant's business premises. The appellant claimed that its premises were looted in the course of civil commotion and that it had suffered damages in an unspecified amount which under the policy the appellee was obligated to compensate it for. The appellee disclaimed any liability, stating that the appellant's premises were damaged and looted in the course of the nation's civil war and that under the polity secured by the appellant war risk was excluded from coverage.

The appellant contended that the trial judge erred in relying on provisions of the Civil Procedure Law which had been repealed and replaced with a new Civil Procedure Law to deny the motion for a new trial. The old Civil Procedure Law required that exceptions be taken to the verdict as a prerequisite for consideration of the issues on appeal to the Supreme Court. Moreover, the trial judge had denied the motion for new trial on the ground that the mere assertion by the appellant that the verdict was against the weight of evidence was insufficient to provide the appellee with the required notice to be able to respond.

On both issues, the Supreme Court sustained the contention of the appellant, noting that the new Civil Procedure Law did not require that exceptions be taken to the verdict before a motion for a new trial could be filed, and that a motion for a new trial was not a pleading, here was no requirement that it be as specific as information required in a pleading. Moreover, the Court said, the new Civil Procedure Law stipulated that exceptions be taken from an order, decision, ruling, or comment of the court to which the party objected. The word "court", it said, referred to the judge, not the jury; and that in any case the verdict of the jury was not an order, decision, ruling or comment of the court. Hence, no exception was required to be taken from the verdict.

Additionally, the Court opined that it was sufficient for the motion to merely state that the verdict was against the weight of the evidence. The motion, it observed, did give sufficient notice to the opposing party and the judge as to what the appellant wanted the judge to do, which was to reverse the verdict of the jury.

On the substantive issues as to whether the verdict was in fact against the weight of the evidence presented by the appellant, the Supreme Court however agreed with the jury and the trial court that the appellant had failed to meet the burden of proof by a preponderance of the evidence. The Court opined that the burden of proof rested on the party who makes an allegation. It noted that the appellant had failed to prove with particularity the special damages claimed, that the loss was not caused by the perils excluded from the war risk exclusion clause of the insurance contract. The Court averred that since indeed there was a state of war existing in Liberia, the appellant was required to prove that the loss it suffered was not the direct result of the excluded perils. This, the Court said, the appellant had failed to do. Hence, the Court affirmed the verdict and judgment of the trial court.

William A. N. Gbaintor of Gbaintor and Associates appeared for the plaintiff/appellant. *Pearl Brown Bull* appeared for the defendant/appellee.

MR. CHIEF JUSTICE COOPER delivered the opinion of the Court.

This matter is before the Supreme Court for the second time on appeal from the ruling in favour of appellee by the Judge of the Sixth Judicial Circuit for Montserrado County. In ruling on the law issues during the first proceeding, the circuit court judge dismissed the actions substantially on ground that it was time-barred and because the loss complained of was found to be not within the coverage of the insurance policy. On appeal, this Court reversed the circuit court's decision and remanded the case to be tried by a jury. *Super Cold v. Liberia American Insurance Corporation,* Decided December 21, 2001, October Term A. D. 2001). The judgment in the second circuit court trial, from whence this appeal arises was also rendered in favour of appellee.

The records show that appellant Super Cold Service of Randall Street, Monrovia, Liberia, (Super Cold) took out a policy of insurance (# 200/56-3 6) on appellant's business premises and its contents from Appellee Liberian American Insurance Corporation (LAIC) on May 2, 1990, for a period of one year. According to the records, on February 2, 1991, Super Cold's workshop and warehouse were allegedly burglarized and looted by unknown person(s) who broke in and carried away its entire stock of goods; that during subsequent "civil commotion" in Monrovia, its business and residential building was partially damaged to the extent of Twenty-Five Thousand, Seventy-Four United States Dollars and Seventy-Four Cents (US$25,074.75); that the matter was reported to the Police on March 7, 1991, according to the Police Confirmation Clearance dated August 14, 1991, and duly investigated; that by letter dated May 12, 1992, Super Cold's legal counsel informed LAIC about its loss, claiming complete loss of stock of goods to the limit of the policy in amount of Three Hundred Fifty Thousand United States (US$350,000.00) plus compensation for partial damage to the building of Twenty-Five Thousand United States Dollars (US$25,000.00) or a total of Three Hundred Seventy-Five Thousand United States Dollars (US$375,000.00) under the insurance policy. Upon LAIC's failure to compensate Super Cold for its alleged loss, the action of damages for breach of contract was filed against LAIC on May 30, 1992, for a claim of Three Hundred Seventy-Five Seventy-Four United States Dollars Seventy-Five cents (US$375,074.75), as special damages.

In its answer, LAIC prayed for dismissal of the complaint, substantially on grounds: that the claim was time barred since the insurance contract included a provision for the commencing of action for recovery within one year after date of loss; and that the alleged loss was not covered by the Policy which specifically excluded coverage for such loss. LAIC averred that the Insurance Policy did not include a war risk provision and that "beginning December 1989, there existed a state of civil war within the Republic of Liberia which intensified continuously up to and beyond the period February 2, 1991, the period of the aforesaid loss which Plaintiff [is] alleged to have suffered." LAIC also answered that Super Cold had further breached the contract provision which required the insured to give immediate notice to LAIC of any loss sustained. LAIC therefore denied any liability under the policy.

Super Cold replied stating, amongst other things, that it reported its loss to the Police on March 7, 1991, yet the Police was not able to complete its investigation until August 14, 1991; that LAIC could not be found anywhere in Liberia for purpose of bringing the alleged loss to its attention as provided in the policy until May 1992, when the claim was promptly brought to its attention; and that the loss sustained was the result of civil commotion in Monrovia, not civil war. Super Cold announced that in any case, the war risk exclusion clause in the Policy was in fine print so that if there be a conflict between the fine print and the typewritten part of the policy, the provision of the typewritten part would determine the terms of the contract.

The Supreme Court gave two reasons for remanding the case for jury trial. First, that the action was not time barred because the Liberian statute of limitations is cleared that an action based on a written instrument may be commenced within seven (7) years as from the time the right to relief accrued (citing for reliance Section 2.13(1) of the Civil Procedure Law, 1 LCLR, actions based on written instrument). Secondly, that a contract clause further limiting the period for commencing actions based on the breach of contracts to one year or twelve months "is a usurpation of legislative function; as such, the clause of the insurance contract which is contrary to the above quoted stated provision [i.e. the statute of limitations] is therefore declared null and void and of no legal and binding effect...." Concerning the second issue whether or not the trial judge committed reversible error when he ruled that the loss complained of by the appellant was not covered by the insurance contract without a hearing by jury, the Supreme Court agreed with appellant that the question involves "issues of mixed law and facts which can be determined by a jury under the direction of the trial court;" and that the trial Judge erroneously invaded the province of the jury when he dismissed the action without hearing of the facts in the case by a jury. For reliance, the Supreme Court cited *Lartey et al. v. Konneh et al*, 18 LLR 177 (1967); *Haider v. Kassas*, 20 LLR 324 (1971); and *Dauber v. Motley*, 26 LLR 422 (1978).

The records show that at the conclusion of the testimony during the jury trial, the judge gave a charge to the jury to which appellant entered no objection. Only appellee objected to the judge's charge, on the question of the statute of limitations (See Sheet 4 of the 22nd day's of jury session, dated April 15, 2002).

The jury's verdict was unanimous for LAIC, the appellee/ defendant. Neither appellant Super Cold nor appellee LAIC registered any objection to the jury's verdict. The verdict was recorded and the jury was discharged and disbanded, and judgment was reserved by the court.

On the following day, April 16, 2002, Appellant Super Cold filed a motion for new trial on grounds that the verdict of the trial jury was manifestly against the weight of the evidence that Plaintiff adduced at the trial; and that the trial jury by ignoring and disregarding the court's instruction given it in aid of its deliberations had rendered a verdict unsupported by the evidence and law. Appellee LAIC objected to the motion for new trial by contending that appellant Super Cold had accepted the verdict when it recorded no objection or exception upon the return of the verdict; and that appellant Super Cold did not give appellee LAIC sufficient notice as to what instructions the trial judge gave the jury that were ignored and disregarded.

The judge denied the motion for new trial, expressing his full agreement with appellee's objections. He relied on I LCLR, Exceptions, Section 21.3, page 180-181, and the case Constance et al. v. Ajavon, decided by the Supreme Court on December 21, 2000. The court overruled the contention of Appellant that the verdict was against the weight of the evidence, and affirmed the verdict. Appellant Super Cold excepted to the ruling and

announced an appeal to the Supreme Court en *banc* on May 4th, 2002. On May 7, 2002, appellant filed a seven-count bill of exceptions contending principally that the denial of its motion for new trial is a reversible error since the court's denial is based on Section 658, Title 6, Civil Procedure Law, Liberian Code of Laws (1956), which had since been repealed and replaced by Section 26.4 of 1 LCL Revised (1973). Appellant further contended that an exception to jury verdict is not a prerequisite for making a motion for new trial; that the trial judge erred when he equated the jury to the court; and that the trial judge also erred when he held that appellant had failed to give notice to appellee as to the objectionable jury charge and evidence ignored. Appellant contended that sufficient grounds were clearly stated in its three-count motion for new trial and supported by its argument. Appellant completed the perfecting of the appeal on May 16, 2002.

Since the Supreme Court has already decided that this action was not time barred, we shall consider only two other issue: (1) Whether or not appellants' failure to except or object to the jury's verdict in favor of appellee was tantamount to an acceptance of the verdict so as to form ground for the denial of appellant's motion for new trial? (2) Whether or not the verdict was against the weight of the evidence adduced by the plaintiff, now appellant, at the trial?

First, we shall consider the issue of whether or not appellant's failure to except to the jury's verdict is tantamount to an acceptance of said verdict so as to form ground for the denial of appellant's motion for new trial. The repealed Civil Procedure Law (1956), Section 658, Title 6, I LCL (1956) provided, as follows: "If any person excepts to the verdict, he must enter his exception on the minutes of the court before the jury is discharged. Before doing so he may cause the clerk of the court to ask each juror whether such verdict is his own, as provided in section 657 above." Section 624 of the 1956 Civil Procedure Law also provided, as follows: "An exception is an objection to an order, decision, expression, ruling, or comment of the court. It must be taken at the time the action objected to is made, thereby saving the point for review by the appellate court. The party who excepts is entitled to have his exception noted in the minutes of the court." This entire old Civil Procedure Law, Title 6, 1 LCL (1956), was repealed by an Act of Legislature which became effective upon publication on February 1, 1973 of the new Civil Procedure Law, Title 1,1 LCLR (1973). Section 21.3 of the new title provides, as follows: "An exception shall be noted by a party at the time the court makes any order, decision, ruling, or comment to which he objects. Failure to note an exception to any such action shall prevent assigning it as error on review by the appellate court. The party who excepts is entitled to have his exception noted in the minutes of the court."

Chapter 17 under the 1956 Civil Procedure Law, entitled New Trials, was not carried forward in the New Civil Procedure Law. Chapter 26 of the new Civil Procedure Law now covers Trial and Post-Trial Motions. Sections 820 through 823, Chapter 17, of the old Civil Procedure Law entitled, respectively, new trials: grounds; time for motion for new trial;

terms on awarding new trial; and time for new trial, were replaced by one new provision in the 1973 New Civil Procedure Law entitled post-trial motion for new trial, which provides that: "After a trial by jury of a claim or issue, upon the motion of any party, the court may set aside a verdict and order a new trial of a claim or separable issue where the verdict is contrary to the weight of the evidence or in the interest of justice. A motion under this section shall be made within four days after verdict. No extension of time shall be granted for making a motion under this section." 1 LCLR Section 26.4.

The new Civil Procedure Law also includes the following new provisions: "Section 41.2 Rendition and entry of judgment.

1. *Time and manner of rendition.* All judgments shall be announced in open court. The judgment in a jury case shall not be announced until four days after verdict.
2. *What constitutes entry.* A judgment is entered when it is announced by the judge in open court;" and

Section 51.5. Prerequisites to appeal.

"Before announcing the taking of an appeal, a party in a jury case shall move for a new trial after a verdict, and, in any case, shall except to the judgment."

It is necessary to point out that when the New Civil Procedure Law Revised was first passed by the Legislature and published in 1963-64, judges as well as attorneys experienced problems in understanding and applying the provisions of the new law. Even after the New Civil Procedure Law was printed in hardcover and re-adopted in 1973, the courts and attorneys continued to have problems in interpreting and applying it, and in some cases continued with the old practice. Section 21.3 in the New Civil Procedure Law, quoted above, is clear that a party, in order to have appellate review on a point of law or fact, is required to note an exception thereto "at the time the court makes any order, decision, ruling, or comment to which he objects." It also appears clear to us that as used in Section 21.3, 1 LCLR, the word "court" merely refers to the judge, and not to the jury. An attorney must still except to the "order, decision, ruling, or comment" of a judge if he desires to have appellate court review thereon (Sec. 21.3, 1 LCLR, *supra)* but the old law requiring the making of exception to a jury verdict was long ago repealed, as stated above, so that no such exception or objection is today required to be registered prior to the filing of a motion for new trial. A jury verdict is clearly not an "order, decision, ruling or comment" of the court. We therefore recall that part of the *Constance* case *Supra,* relied upon by the court, which held to the contrary.

The second issue is whether or not the verdict was against the weight of the evidence adduced by appellant during trial. In discussing this issue, we will look first at Appellee's contention, sustained by the trial Judge, that Appellant Super Cold in its motion for new trial did not give Appellee LAIC sufficient notice as to the instructions in the trial judge's charge that the jury ignored and disregarded. Was it sufficient for the appellee to merely state in the motion that the verdict was manifestly against the weight of the evidence adduced at the

trial? Merely that the trial jury had ignored and disregarded the court's instruction given in its charge to the jury? This Court has ruled that "issues or allegations in written pleadings should be detailed in such manner that a judge would comprehend and arrive at a logical conclusion. To merely aver that the verdict is contrary to the weight of evidence adduced at the trial is not detailed enough to enable the court to reach a conclusion." *Sheriff v. The Estate of the late Alhaji Carew,* 34 LLR 3 (1986). The trial judge had relied on this rule when he denied the motion for new trial. Granted that motion papers need to be precise and clear, but we believe that the trial Judge wrongly relied on what is a rule of pleading when he was considering the sufficiency of the motion for new trial. A motion "is not regarded as a pleading in the ordinary or technical sense even when it is reduced in writing." 56 AM. JUR 2d, *Motion, Rules and Orders,* § 1. "It is the substance rather than language and form that determines the nature, effect, and sufficiency of moving papers, for a motion, generally, is not subject to the requirements of the rules of pleading governing actions." *Id.*, § 11. "It has been said to be difficult to frame a principle to apply in determining whether a party has been sufficiently specific in the recitation of the grounds for his motion. If a statute is relied on, its basic requirements should be stated; for example, on the ground that the action is barred because it was commenced more then two years after the cause of action accrued.' If a common-law principle is relied upon, enough should be stated so that a reasonable trial court would know to what principle, counsel was referring; for example, on the ground that the doctrine of *res ipsa loquitur* does not apply and plaintiff has failed to prove any specific acts of negligence upon the part of the defendant. The specificity required is best determined by consideration of the reasons for the rule requiring statement of the grounds — to give the trial court the opportunity to rule on the particular issue and to appraise respondent of the particular ground asserted." *Id.* § 11. (Underlining added)

"Generally, the motion or notice of motion states when and in what court the motion will be made, the grounds on which it will be made, and the papers, if any, on which it will be based. The document must define the issues which will be raised on the motion but need not contain a detailed statement of the facts on which the motion is based. If the notice is sufficiently explicit to render mistake impossible and to apprise the party served of the proceedings to be taken, relief may be granted notwithstanding some technical error in the papers." *Id.*, § 12, Notice of Motion (Underlining added).

"In theory, a new trial may be sought on the ground of legal insufficiency of the evidence If the evidence was legally sufficient, but the preponderance of the evidence favored the defendant, a new trial should be sought in the interests of justice on the ground that the verdict was against the preponderance of the evidence. This motion, in effect, gives the judge the opportunity to sit as a juror and to assess the weight of the evidence and the credibility of witnesses."

"A motion for a new trial can be made on the ground of errors committed either at trial or in pretrial proceedings. The motion gives the court the opportunity to review and correct

erroneous rulings or decisions. It is necessary to show that the error is material in that a different result would have likely ensured had the error not been committed." 75B AM JUR 2d, *Trial,* § 1955, pp. 664-665. Based on the above mentioned sources, we hold that the motion for new trial did in fact and law gives sufficient notice to the opposing party and the judge as to what appellant wanted the judge to do.

Notwithstanding the above holding, we do agree with the ruling in *Sheriff v. The Estate of the Late Alhaii Carew*, *supra,* to effect that a denial or granting of a motion for new trial rest in the sound discretion of the trial judge. *Id.*, at page 10. It is the judge who must be satisfied that the verdict was manifestly against the weight of the evidence or that the jury has ignored or disregarded some of the court's instructions given to the jury. As stated above, appellant did not object to the whole or any part of the judge's charge to the jury and appellant is not arguing that the charge was objectionable. We have reviewed the charge and find that it was properly made. Let us therefore look at the evidence produced by the appellant to see whether in fact and in law the verdict is manifestly against the weight of the evidence.

Appellant produced three witnesses at the trial. The first witness was the owner of the business who testified as to the making of the insurance contract concerning the looting and burglary of his business place and about his loss and insurance claim which had been denied. He admitted that he was not in the country when the premises were looted and damaged, and that he reported the matter to the police only after he returned to Liberia in March 1991. He presented in evidence the following insurance policy; a police clearance confirmation; an engineer's report detailing the extent of damage to the building and the cost of repairing same; a letter from his legal counsel to the insurance company reporting the loss and making a claim; a post office receipt showing that the letter had been properly mailed; and the Business Registration Certificate for his business. Although the claim was for special damages, he merely claimed that he had lost everything up to the limit of the policy without detailing the loss. He also claimed that LAIC could not be found to make the report of loss, required under the policy, which was the reason why LAIC had not been sued within the time period provided in the policy.

The next witness for appellant was his insurance adjuster who stated that he was hired in March 1991 and after his investigation, he advised appellant to notify the police. He also concluded that the loss was to the extent of the claim in the law suit and had resulted from perils covered under the Policy. He testified that in his view, the loss of appellant was a direct result of burglary, theft, and malicious damages associated with the burglary. He mentioned that his investigation had been confirmed by the police when it issued a report of the incident stating that the loss occurred during civil commotion. He also stated that he had taken photographs of the premises, but no photographs were ever put in evidence, nor any inventory of missing goods.

The third witness for appellant at trial was the Assistant Director of Police for CID Affairs, who admitted that he did not conduct nor was he in charge of the investigation. He

was not holding that office when the matter had been reported to the police. A review of his testimony led us to conclude that this police officer was not at all familiar with the facts of the matter. He admitted to this deficiency more or less on the record, when he noted in an excuse to the court that he had received the Writ to come to court about thirty minutes before the time he appeared and had had insufficient time to review the relevant police files. No other witness was presented.

Appellant's pleadings contained copy of appellee's newspaper notice to the public showing where its office was re-located to at the time when appellant claimed that LAIC could not be found. The engineer's report showed that the building had been damaged "by bullets and rockets during the civil conflicts." The above testimony and documents were the only evidence that the appellant produced.

On its part, appellee presented three witnesses. The first witness, a former Minister of Foreign Affairs of Liberia, testified that a state of war was existing in Liberia at the time of the alleged loss by appellant and that this state of war continued from December 1989 through elections in 1997. Said testimony appears not to have taken into consideration the obvious fact that not all parts of Liberia were in a state of war at the same time, a line of argument that counsel for appellant appeared from the records to want to pursue but did not. This weakness in the testimony was countered by appellant's own pleadings which included an Engineer's report of damage to the roof and upper part of appellant's building caused by "bullets and rockets." Additionally, on cross examination, appellant's owner admitted that residents on the street where his business is located all had cause to abandon the area at or about the time of the loss, because of the civil conflict.

The second witness informed the jury about the terms and conditions of the insurance contract. He testified as follows: "We offer our clients two types of insurance policies, namely, war policy, and non-war policy. Under war policy, the perils covered are war, civil war, insurrection, revolution, rebellion, missiles, bombs and rockets, explosions, of any terrorist any person acting from political motives. Also under the non-war policy, the perils covered riot, earthquake, burglary, and fire. In addition, under the non-war policy any loss of an insured that is caused directly or indirectly as a result of enemy armed attack and insurrection, rebellions, revolution, explosions from armed attack and insurrection, rebellions, revolution, explosions from mines, missiles, bombs and rockets are not covered. Mr. Nabil Razzouk of Super Cold Services, Inc., purchased a non-war policy number 200/56-36, this policy as I said is a non-war policy." He pointed out several contract provisions which appellant had violated so as to have resulted in a denial of the claim for loss under the Insurance Policy, and the records of this case confirm these violations.

The appellee third witness was waived since she was brought only to confirm the newspaper announcement as to the relocation of appellee's office in 1991 and counsels for both parties had stipulated on that point. By having submitted to court in its pleadings copy of appellee's office relocation notice, appellant even appeared to have defeate1 its own

contention that appellee could not be found after the occurrence of the loss for purpose of reporting the loss or starting a lawsuit within the time specified in the insurance policy. In addition, testimony was entered in favour of appellee concerning the provision of the Business Corporation Act which designates the Minister of Foreign Affairs of \Liberia as the Statutory Agent of all Liberian corporations for purpose of service of process when a corporation's office cannot be found. Although the Supreme Court ruled that the action is not time barred, the appellant overlooked the requirement of our law that a plaintiff must offer proof of his case in order to recover against a defendant.

Appellant was required to prove its case by a preponderance of evidence and special damages, claimed by appellant, must have to be specifically stated and proved with particularity *Knowdlen v. Reeves et al.*, 12 LLR 103 (1954); Section 9.5 (7), 1 LCLR; *Intrusco Corp. v. Osseily*, 32 LLR 58 (1985); *Bility v. Sirleaf*, 34 LLR 552 (1988). The burden of proof is on the party who makes the allegation. *Knowlden v. Reeves et al.*, *supra.*

This court observes that both parties agreed that at the time that appellant suffered the loss for which it has sued appellee, there was in existence a valid and binding insurance contract. In this connection, we hold that the war risk exclusion clause in policy number 200/56-36 is also a substantive and binding provision of the insurance contract between appellant and appellee. In order for appellant to recover under the policy, appellant would have to show by preponderance of evidence that the loss it suffered was not caused by any of the perils excluded from coverage under the policy; and that the loss was not a direct result of any of the excluded perils. He failed to do so. Appellant was further obligated to prove its claim for special damages, and it did not do so.

The trial judge ruled that the court agreed with the verdict of the jury because the court was "at a loss as to how the trial jury were to arrive at the amount of damages, special damages in the absence of evidence of the same." A review of the records reveals that appellant merely showed that it suffered loss but did not sufficiently prove such loss. We therefore uphold the ruling of the trial court that the verdict was not against the weight of the evidence adduced by appellant during the trial. We further uphold the trial court's ruling denying the motion for new trial.

Wherefore and in view of the foregoing and the law controlling, the judgment of the lower court is affirmed. The Clerk of this Court is ordered to send a mandate to the lower court to resume jurisdiction and enforce its judgment. Costs of these proceeding ruled against appellant. And it is hereby so ordered.

Judgment affirmed.