

**ALHAJI MOMO LARMIE SHERIFF, Defendant/Appellant, v. THE ESTATE OF THE  
LATE ALHAJI S. CAREW, Plaintiff/Appellee.**

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

Heard: April 15, 1986. Decided: May 30, 1986.

1. At the close of evidence, or at an earlier time during the trial, any party may request of the court, in writing, to instruct the jury on the law as set forth in his request. No party may assign as errors the given, or the failure to give, an instruction unless he objected thereto before the jury retired to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objections.
2. The denial or granting of a motion for a new trial rests in the sound discretion of the judge.
3. Issues or allegations in the written pleadings should be detailed in such a manner that a judge would be able to 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.
4. As a general rule, copies of documents are inadmissible, unless and until there is a showing as to the existence or whereabouts of the original.
5. Deeds and other writings shall be admissible against all parties to them and shall also be evidence against all mankind of the transfer of all titles or rights transferred by them.
6. The admissibility of evidence is with the court, and the credibility and effect with the empaneled jury.
7. The verdict of the jury should be secret until it is delivered and ordered recorded by the court. It should not be interfered with by the judge or anyone else. Any issue which is not understandable to and is queried by the jury, although not queried by or any of the parties, may be clarified by the judge giving additional instructions to the jury and have it returned to its room to deliberate further and return with a unanimous, independent verdict, and announce same in open court.

10. The court may of its own motion, even though the question is not raised by the pleading, or is not suggested by counsel, recognize the want of jurisdiction, and it is its duty to act accordingly by staying proceedings, dismissing the action, or otherwise noticing the defect, unless the petition be reformed where it can be done.

11. Any demurrer or plea a party may desire to raise in a case should be pleaded in the answer, and should not be raised by motion when the case is called for trial.

Since the will of the late Alhaji S. Carew, Sr. was contested, the judge of the Monthly and Probate Court of Montserrado County had the case transferred to the Civil Law Court, Sixth Judicial Circuit, Montserrado County, for trial by jury.

When the jury returned with its verdict, the judge, in open court, asked the foreman to clarify the verdict, which he did. The defendant/ appellant objected to the action of the judge and, subsequently, filed a motion for a new trial contending, among other things, 1) that the verdict was against the weight of evidence and, 2) that the judge had committed a reversible error by asking the jury to clarify its verdict in open court. The defendant's motion for a new trial was denied and a judgment rendered in favor of plaintiff/appellee, to which judgment the defendant appealed.

In spite of several irregularities of the trial judge, noted by the Supreme Court, the case was remanded to the Monthly & Probate Court with instructions to render final judgment in keeping with the verdict of the empaneled jury. Essentially, the Supreme Court *affirmed* the judgment of the lower court.

*The Maxwell and Maxwell Law Offices* appeared for defendant/appellant. *The Bull Law Firm* appeared for plaintiff/appellee.

MR. JUSTICE DENNIS delivered the opinion of the Court.

This case, which had its origin in the Monthly and Probate Court, Montserrado County, has come to us from the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, Monrovia, Liberia. The said case was ruled to jury trial on the 25th day of January, A. D. 1984 by Her Honour Luvenia V. Ash-Thompson, then judge of the People's Monthly and Probate Court, on "counts one and six of

transmitted the records to the Civil Law Court, Sixth Judicial Circuit, Montserrado County, for jury trial.

On March 20, 1984, in the then People's Sixth Judicial Circuit Court, fifteen good and lawful citizens were duly selected, sworn, and empaneled as jurors to listen to, and disposed of mixed factual and legal issues ruled to trial by the judge of the Monthly and Probate Court. After the production of evidence, pro et con, comprising both oral and written evidence, and the required trial procedural steps having been conducted and pursued, such as the resting of the evidence, addresses of counsels to the jury, instructions of the trial judge to the empaneled jury, the clerk of the court was ordered to ascertain from the empaneled jury as follows: "The court: 'Mr. clerk, you will now ascertain from the jury as to whether they have arrived at a verdict and, if so, receive same, read it and poll the jury, and so ordered.' The court: 'Mr. Foreman and members of the empaneled jury, please explain what do you mean.' Sanusi Carew is entitled to the property of the late Alhaji S. Carew?' Foreman: "we mean that the petitioner is entitled to all the properties of the late Alhaji S. Carew, including the property at Gurley Street on lot No. 36 and we submit." The verdict was excepted to by the respondent after having been read once and recorded by the clerk of court.

A careful perusal of the empaneled jurors' verdict is as follows: ". . . after a careful consideration of the evidence adduced at the trial of the said case, we do unanimously agree that Sanusi Carew is entitled to the property of his late father, Alhaji Carew in the action dated 23rd day of March, 1984." In consequence thereof, the respondent, by and through his counsel, being dissatisfied with the verdict of the empaneled jury, moved the court for a new trial, as provided for by the statute: Rev. Code 1: 51.5, p. 250; *idem*, page 209, sections 26.3 and 26.4.

In the three-count motion for a new trial, respondent/movant raises the following issues:

1. That the verdict was vague and ambiguous to the extent that it did not refer to the subject matter of the controversy.
2. That it was improper and illegal for the jury to be called upon to explain its verdict in open court, instead of being sent back to its room of deliberation with additional instruction, if so requested by the jury.
3. That the explanation of the foreman in open' court as to the intent and meaning of its verdict is against the weight of evidence in said case, and in violation of the statutory provision in said case relating to correction and explanation of a verdict being only as to form or technical words, and not substance.

2. And also because respondent argued that the exhibit marked "P-1", and admitted by Court, 'a deed from Salia Jarsana to Alhaji S. Carew for lot No. 36, is credible evidence that the late Alhaji S. Carew did own lot No. 36, located on Gurley Street which entitled his son, Sanusi Carew, to the inheritance thereof. This, respondent submits, the jury has a duty to consider as evidence in its deliberation.
3. Further, respondent maintains that among the pertinent issues ruled to trial by jury is whether or not the subject property lot No. 36 of Gurley Street belonged to the late Alhaji S. Carew, entitling his legatee or lineal heir, Sanusi Carew, thereto.

Respondent also deny that the trial judge erred by requesting clarification from the trial jury in open court after the verdict had been read. The trial judge denied the motion for a new trial on two grounds: 1) that the verdict of the empaneled jury was not against the weight of evidence and, 2) that the granting or denial of a motion for a new trial rests in the discretion of the court. The Court hereby comments and observes that this discretion is not arbitrary, as it must be sound and based upon law. Vide: BLACK'S LAW DICTIONARY 419 (5 th ed).

On the 4th day of May, A. D. 1984, the trial judge of the Civil Law Court of the Sixth Judicial Circuit rendered final judgment based upon the verdict in this case to the effect that defendant Alhaji Momo Larmie Sheriff is hereby adjudged liable for wrongfully withholding lot No. 36 on Gurley Street, Monrovia, being portion of the intestate estate of the late Alhaji S. Carew of the City of Monrovia. The clerk of the court was ordered to issue a writ of possession in favor of the plaintiff, Alhaji S. Carew, to have him placed in possession of the said lot No. 36 lying and being on Gurley Street, Monrovia, Liberia, which final judgment was excepted to by the defendant and an appeal announced to this Court.

Pursuant to the defendant's contention that the trial was allegedly irregular and contrary to trial procedures and practices, he filed a nine-count bill of exceptions with this Court. In substance the nine-count bill of exceptions raises the following issues to wit:

- a) That the subject property of litigation had been disposed of by this Appellate Court during its March Term, A. D. 1985 by way of information which had been denied by the trial court.
- b) That the trial judge incorrectly traversed the legal principle of *stare decisis* by simply asserting: "Ability of party an issue in the case".
- c) That the trial judge further erred by the denial of appellant's motion for a new trial, and by stating

e) And also because the trial judge is said to have erred when he rescinded his previous ruling rejecting the Archive's copy of the Will of the late Alhaji S. Carew before appellant objected thereto on the grounds that it was not the original, the whereabouts of the original not having been shown.

f) The trial judge also erred in the denial of the application for the admissibility into evidence of the official records of the Monthly and Probate Court, having been testified to by the clerk of said court, based upon the issuance and service of subpoena *duces tecum*.

g) That the verdict of the empaneled jury was contrary to the weight of the evidence adduced at the trial, hence it was erroneous for the trial judge to have denied the motion for a new trial.

h) That the trial judge omitted to have instructed the petit jury on the effect of the judgment of the Supreme Court consisting of the same parties in the self same cause of action.

i) And finally the trial judge failed to reduce his instruction or charge to the jury to writing so as to enable the parties to have excepted thereto, if so desired.

All of the above counts of the bill of exceptions are related to irregularities in the conduct of the trial of the case, but not evidentiary.

Disposing of these issues in the reverse order, we begin with the issue of the omission by the trial judge to reduce his instructions to writing. The relevant statute provides as follows: "Instructions to the Jury: At the close of the evidence or at an earlier time during the trial any party may request in writing that the court instructs the jury on the law as set forth in his request. No party may assign as error the given or the failure to give an instruction unless he objected thereto before the jury retired to consider its verdict stating distinctly the matter to which he objects and the grounds of his objections." 1 LCLR, 22.9, 187.

There is no showing in counts eight and nine of the bill of exceptions, nor does the records indicate compliance with the above cited and quoted statute. Consequently, these counts of the bill of exceptions, in this respect, are hereby overruled.

On issue (h), or count eight of the bill of exceptions, alleging that the trial judge omitted to have instructed the petit jury on the effect of the judgment of the Supreme Court concluding the interest of the parties or their privy, the appellant has failed to show the Court verifications in the records that a request was made in writing for the trial judge to do so. Hence the omission of the trial judge is not

The denial or granting of a motion for a new trial rests in the sound discretion of the trial judge.

In respondent/movant's motion for a new trial, it is therein averred that the verdict was vague and ambiguous and unrelated to the case at bar. It is further averred that the procedure of correcting the verdict in open court was irregular, and that the same could have been corrected in the jury's room of deliberation, based upon request for additional instructions, when and if desired and requested by the empaneled jury. The jury should not have been queried as to the import or interpretation of its verdict by the trial judge unless so requested by a party, if considered to be dubious.

Finally respondent/movant maintains that the verdict is contrary to the weight of evidence. The Court is of the considered opinion that the issues or allegations in the written pleadings should be detailed in substance, as it is not enough for one party to merely aver that the verdict is contrary to the weight of evidence adduced at the trial.

Issues contained in count two of the motion for new trial, and count four of the bill of exceptions, referred to the following exchange between the judge and the jury in open court: "The court: 'Mr. Foreman and members of the empaneled jury, please explain what do you mean that Sanusi Carew is entitled to the property of the late Alhaji S, Carew?' Foreman: 'We mean that the petitioner is entitled to all the properties of the late Alhaji S. Carew including the property of Gurley Street on lot No. 46 and we submit.'"

When the empaneled jurors arrive in court, the clerk is to ascertain whether they have agreed upon a verdict and, if their answer is in the affirmative, the trial judge after having been handed the same by the clerk of court, returns the said verdict to the clerk of court with the order to read it. Thereafter, upon request of a party or an order of court, the jury is polled. Since the verdict was not dubious, this question was less necessary. Moreover, even though the jury was not sent back to its room of deliberation, there was no infraction of the statutes in this respect. Nevertheless, it was irregular to so query the jury. Vide: *Rule 13 of the Revised Rules of the Circuit Court of 1972*.

The other issue dealing with the irregularity committed by the trial judge has to do with the general principle that copies of documents are not admissible under the rules of evidence, unless and until there is showing as to the existence or whereabouts of the original. Vide: Rev. Code I: 25.6.

Further to the issue of the admissibility, a copy of an official records is admissible once signed by an officer having the custody of such an official record, and this refers to wills, deeds, agreements and other entries. Rev. Code 1: 25.10. The Civil Procedure Law also provides, as to the admissibility and conclusiveness of judgments, under the sub-caption "*Deeds and Other Writings as Evidence*, that "deeds

The legal characteristics of a verdict of an empaneled jury are as follows: that it is the unanimous, independent action or decision of the jury, that it is intelligent or understandable, and above all, it is based upon the evidence of the trial of the case. Until the trial jury delivers the verdict, and until it is ordered recorded, it should remain secret and not be interfered with by anyone, including the trial judge. Prior thereto, any issue of the case which is not understandable by the empaneled jury, and is not brought out by query from any of the parties or the empaneled jury to the said trial judge, requires additional instructions from the trial judge upon request of the empaneled jury. The additional instruction should be given to the jurors who, thereafter, should be sent back to their room of deliberation to return later with a unanimous and independent verdict to be announced in open court. Another factor or indispensable element of the verdict is secrecy, which is to be strictly observed.

It is our considered opinion that it was erroneous and irregular for the trial judge to have called upon the empaneled jury to correct the verdict in open court, instead of giving the jurors an additional charge and requesting them to return to their room of deliberation. Vide: *Vianini Ltd. v. AkBorough*, [1968] LRSC 40; 19 LLR 39 (1968).

Reverting to the other issues, the court has the inherent right to rescind its ruling provided, however, it is done within term time and with the knowledge of the other parties. Vide: *Voss v. Hooke*, [1915] LRSC 2; 2 LLR 183 (1915).

The most salient and fatal jurisdictional issue which the Court may recognize, even if not raised when it is made to satisfactorily appear, is that the Civil Law Court should have returned the verdict of the empaneled jury to the monthly and probate court for the rendition of final judgment. It was erroneous not to have done so. Vide: Decedents Estates Law, Rev. Code 8:105.2; *King v. King*, 22 LLR106 (1973); *Pratt v. Phillips* [1947] LRSC 25; 9 LLR 446,457 (1947): In the latter case, this Court said: "The court may of its own motion, even though the question is not raised by the pleadings or is not suggested by counsel, recognize the want of jurisdiction, and it is its duty to act accordingly by staying proceedings, dismissing the action, or otherwise noticing the defect, unless the petition be reformed where it can be done".

Prior to concluding this opinion, the most pertinent and relevant issues to a judicious and just termination having been resolved, it is necessary to point out that there seems to be a growing tendency towards irregularity, quite contrary to the Civil Code of pleading and practice, which provides that all controversial issues, especially defenses, on which a party litigant relies in a given case be pleaded in the answer, and not by motion, information, submission, bill of exceptions and the brief.

A bill of exceptions is limited to a complaint against the trial judge's conduct of the trial; an information

Based upon the above enumerated irregularities in the conduct of the trial of the case the same is hereby remanded with instructions to the Monthly and Probate Court of Montserrado County to render final judgment in this case based upon the verdict of the empaneled jury. Cost to abide final determination of the case.

*Judgment affirmed*