

SINKOR SUPERMARKET, by and thru its Vice President, **ELIAS ABI-JAOUDI**,
Appellant, v. **BOIMA VILLE**, Appellee.

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

Heard: May 11, 1983. Decided: July 7, 1983.

1. The jury is the sole judge of the facts, and is competent to award damages in an amount sufficient to compensate an aggrieved party in the absence of any sum being prayed for by such party.
2. Where a definite sum is prayed for in the complaint or is prayed for as damages, it falls within the category of special damages and proof thereof is controlled by the rule of evidence governing special damages.
3. Where special damages are alleged, they must be proven as laid in the pleading with some degree of certainty.

The appellee who was in the employ of the appellant selling soft drinks was unable to give an account of \$8,000.00 found to be short from the sale of the drinks. This fact was revealed from an audit report. As a result of the findings contained in the audit report, the matter was reported to the C.I.D. The appellee was thereupon arrested and jailed for three days. After an investigation by the C. I. D., the appellee was released and a letter addressed to the appellant stating that the investigation had found no magnitude in the case, and that the appellee should either be reinstated or paid in accordance with the Labor Law. Thereafter, appellee was declared redundant and paid off Appellee, believing that his reputation had been tarnished as a result of the accusation against him and his arrest, filed in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, an action of damages for injury to the reputation.

Following the presentation of evidence, the trial jury returned a verdict in favor of appellee, holding the appellant liable in the amount of \$25,000.00 as punitive damages and \$20,000.00 as general damages. The verdict was affirmed by the trial court and judgment rendered thereon. On appeal to the Supreme Court, the judgment was reversed, the Court finding and holding that the evidence presented by the appellee at the trial, including appellee's own testimony, was completely devoid of any allegations of a definite sum of money to justify the award of \$45,000.00 prayed for by the appellee in the complaint. The Court rejected the argument that the award should not be disturbed since the jurors were the sole judges of the facts, noting that while the jury had the discretion to make awards, yet, where a specific amount is prayed for and the amount falls within the category of special damages, the proof thereof is controlled by the rule of evidence governing special damages, and therefore the sum stated by the plaintiff must be proved with some degree of certainty. That proof, the

Court said, was absent in the instant case. Consequently, it said, the award was without evidentiary support. The Court therefore reversed the judgment.

John Wleh Togba , II, appeared for the appellant. Roger C. H Steele and John A. Dennis appeared for the appellee.

MR. JUSTICE YANGBE delivered the opinion of the Court.

The appellee was in the employ of the appellant, selling soft drinks for the appellant. During the period of employment, predicated upon an audit report, it was discovered that appellee was short of about \$8,000.00. The matter was reported to the Criminal Investigation Division (CID), and later it reached the Ministry of Justice whereupon appellee was arrested and jailed for about three days. An investigation was conducted by the CID and as a result, appellee was released and thereafter a letter signed by the Assistant Minister of Justice for Litigation, Honourable Elwood L. Jangaba, Sr., was addressed to appellant advising it that no magnitude was found in the report. Therefore, he further advised, that appellant should either reinstate appellee or pay him in accordance with the Labor Law. Subsequently, appellee was declared redundant and paid off. Appellee feeling that his reputation was tarnished, consequently, filed this suit in the Civil Law Court, Sixth Judicial Circuit, Montserrado County, against the appellant. Here are the pertinent counts of the complaint: "Plaintiff further avers and says that he is a natural born Liberian of good moral standing who has never been arrested, indicted or convicted of any felonious crime or crimes during his entire life time; neither has he been charged with the commission of any misdemeanor whatsoever, but the above named defendant, without any just cause maliciously intending to injure plaintiff's good name, character and reputation and to expose plaintiff to public ridicule, disgrace and contempt, did falsely, maliciously intentionally and slanderously accuse plaintiff of theft of property and as a result of such false, scandalous and defamatory accusation, plaintiff has been greatly injured in his good name and reputation and is suffering mental pains and anguish to his great inconveniences, loses and damages.

And also because plaintiff further complains and says that the above named defendant intending to cause plaintiff to suffer unnecessary embarrassment, inconveniences and humiliation, did make a false and malicious report to the CID against plaintiff for theft of property on the 10' day of March A. D. 1981, and as a result of such wicked, false, scandalous and defamatory allegations, plaintiff was arrested by the CID, ...and imprisoned in the cells in Monrovia where plaintiff lingered for three (3) consecutive days without food, water or any other amenity of life and was only released to go back to work without any tangible reason for his false imprisonment." It is noted that in the conclusion of the complaint, appellee prayed to recover not less than \$25,000.00 as punitive damages and not less than \$20,000,00 as general damages, aggregating \$45,000.00. During the disposition of the issues of law, the trial judge virtually abated the entire answer of the defendant/appel-

lant, except count 6 but no exception is shown on the records from the defendant/appellant and the ruling on issue of law is not assailed; hence, it is not a controversial issue in this case.

The jury heard the evidence during the trial of facts and awarded appellee \$25,000.00 as punitive damages and \$20,000.00 as general damages, respectively. Exception was noted and later a motion for new trial and a resistance thereto were filed. The resistance was sustained and the motion was denied. The verdict of the jury was affirmed and appeal announced and perfected; hence, the case is now before us for a final decision.

Counts one and two of the bill of exceptions relate to questions and answers and the ruling of the trial court to objections interposed during the trial, which we do not consider vital to the fair and final determination of the case, therefore, we shall only direct our review of the case on counts three to eight of the bill of exceptions in the reverse order, which deal with evidence. Counts five, six, seven, and eight attacked the judgment of the court below as being contrary to the evidence adduced at the trial and for the same reason reference is also made to the denial of the motion for new trial. In his testimony in chief, the plaintiff/appellee testified that even though he was charged for the shortage of \$8,000.00, appellant requested him to pay \$7,000.00, and that in return appellant promised to drop the case, but he (appellee) refused. Appellee testified further that he was arrested upon the complaint of appellant and charged with theft of property amounting to \$10,000.00 and was again imprisoned. After probe by the C.I.D., the findings were sent to the Ministry of Justice whereupon appellee was released and a letter signed by Assistant Minister of Justice for Litigation, Honourable Elwood L. Jangaba, Sr., was addressed to the appellant advising that appellee should be reinstated or paid off in accordance with the Labor Law. The rest of the witnesses testified in substance to the same arrest, and imprisonment of appellee predicated upon the complaint of appellant and subsequent release of appellee.

We observe from the records that documents bearing marks of court RL/1, RL/2, RL/3 and RL/4, respectively, were offered in evidence by plaintiff/appellee, but were objected to on the ground that they were copies and the whereabouts of the originals had not been shown and the court sustained the objection. Thus, the jury could not pass upon the probative value of the documents.

The ruling of the court denying the admission into evidence of the copies of the documents is well supported by Civil Procedure Law, Rev. Code 1:25.6(2). The contention is therefore sustained.

In the entire evidence of appellee, including his own testimony, no mention whatsoever was made of any definite sum of money as damages sustained by the appellee, either as punitive or consequential damages, to justify the award of \$45,000.00 prayed for in the complaint.

Appellee argued that it is the duty of the jury to award damages, therefore, the court should not disturb the judgment. We are in agreement with the argument that generally the jury is the sole judge of the facts, and is competent to award damages. The jury may in the exercise of its sound discretion award an amount sufficient to compensate the plaintiff in the absence of any specific sum named. However, we hold the view that where a definite amount is named as in this case, whether in the complaint or in the prayer, it falls within the category of special damages and the proof thereof is controlled by the rule of evidence governing special damages; hence, the sum stated must be proven with some degree of certainty. This Court has held in several of its opinions, including *Lackmen v. Johns*, 1 LLR 455 (1905), that where special damages are relied upon, they must be proven as laid. Proof of the amount of \$45,000.00 prayed for in the complaint and awarded by the jury in this case, is entirely lacking. Consequently, the \$45,000.00 awarded in the final judgment is without evidential support, hence, the judgment is reversed. *Brant, Willie & Company (BRAWICO), v. Ralph Captan*, 23 LLR 98 (1974); *Levin v. Juvico Supermarket*, 24 LLR 187 (1975); 25 C.J.S., *Damages*, § 144, at pp 788-799.

The Clerk of this Court is ordered to send a mandate to the trial court, informing the judge therein presiding to resume jurisdiction over this case and to give effect to this judgment. Costs are disallowed. And it is hereby so ordered.

Judgment reversed