University Printing Press, represented by and thru its General Manager, Mr. Mohammed J. A. Idriss of the City of Monrovia, Liberia, APPELLANT VERSUS **Blue Cross Insurance Company**, represented by and thru its General Manager, Mr. Naji Eid, also of the City of Monrovia, Liberia, APPELLEE

LRSC 43

APPEAL

Heard: April 16, 2014 Decided: August 14, 2015

MR. JUSTICE BANKS delivered the Opinion of the Court.

This is the second time that this case is before this Court for review of the disposition made by the lower court. At the first hearing by this Honorable Court, sitting in a Special Session in 2011, the appellant, Universal Printing Press, plaintiff in the court below, prayed this Court to reverse the lower court's ruling dismissing the complaint and the entire action of the plaintiff when disposing of the law issues. In that first appeal proceeding, the appellant alleged that the judge of the lower court, the Sixth Judicial Circuit Court, Montserrado County, when disposing of the law issues, rather than confining himself to the law issues raised in the pleadings filed the parties, as was his prerogative to do, proceeded instead to pass upon the factual issues, a province that is legally reserved solely to the jury, unless a jury trial is waived by the parties. More specifically, the appellant alleged that the trial judge, in dismissing the complaint and the action, had relied on factual allegations made by the appellee/defendant in its answer. This, the appellant asserted, was in violation of the Civil Procedure Law which clearly prescribed that trial court must first dispose of the issues of law before it proceeds to any hearing or disposition of the facts presented in the case, noting especially that where there are issues of fact or mix issues of law and fact, the judge must reserve the issues of fact and submit same to a jury trial.

In its Opinion, delivered on March 2, 2012, this Court, speaking through Mr. Justice Philip A. Z. Banks, III upheld the contention of the appellant and held that the trial judge was in error in dismissing the plaintiff's/appellant's complaint and the action at the stage of the disposition of the law issues. The Court agree with the appellant that the trial judge should have limited himself to the law issues rather than relying on the factual allegations advanced by the parties in their pleadings as the basis for determining that the plaintiff could not maintain the action.

Superficially, this Court opined that the trial court could not dismiss the plaintiff's complaint on the ground that the facts stated in the complaint by the plaintiff, highlighted and disputed by the defendant, showed that the insurance contract, relied upon by the plaintiff for the damages claimed by it, had expired one year and one-half years before the incident in which the plaintiff alleged it had suffered losses and for which it sought damages against the defendant. The Court noted that as the plaintiff and the defendant disputed whether the insurance contract, subject of the litigation, had expired and whether there was a new contract concluded between the parties, the said dispute involving issuer of fact, Warranted and the trial judge should have allowed, the case to go to a jury for trial on the issues of fact. The Court expressed the view that the trial judge, ruling as he did, had in effect accorded greater believability and credibility to the allegations made by the defendant than those made by the plaintiff; that the trial judge, by his action, had invaded and usurped the province of the jury; and that the action by the trial judge constituted error of such a magnitude that it justified a

reversal of the ruling of the trial court. Accordingly, the Court remanded the case with instructions to the lower court that the law issues should be disposed of anew and that the factual issues should be submitted to a jury trial whereat the jury, triers of the facts, would determine the liability or non-liability of the parties, as they had the legal authority to do.

It was predicated upon the foregoing and the mandate of this Honourable Court that the lower court resumed jurisdiction over the proceedings, disposed of the issues of law as instructed, and submitted the case to an empanelled petit jury for trial. The trial having been conducted before the empanelled jury, where at evidence was presented by both sides, the jury thereafter deliberated upon the facts presented and returned a verdict in favour of the defendant/ appellee, Blue Cross Insurance, Inc., to the effect that the defendant was not liable to the plaintiff/appellant, Universal Printing Press. A motion for new trial having been filed, resisted and denied, and judgment having been entered by the trial judge affirming the verdict of the jury, the plaintiff/appellant noted exceptions thereto and announced an appeal to this Court of denier resort for a review and reversal of the verdict of the empanelled jury and the judgment of the lower court. This is the premise upon which the case is again before the Supreme Court.

Although this Court had in its previous Opinion quoted the pleadings filed by the parties, we believe that given the fact that we are, in these second proceedings before the Court, addressing a new set of issues, factual and legal, coupled with the fact that this time the case was determined by the lower court on the strength of the evidence presented by the parties, at a trial held before a jury, there is need to again recap the pleadings in the case so that a comparison is made between the allegations set forth in the pleadings and the evidence adduced at the trial court in substantiation of those allegations; that the case is put into a proper perspective and an appropriate context for the analysis subsequently undertaken in this Opinion; and that there is a full appreciation of the position taken by the Court in determining whether to affirm the verdict of the jury and the judgment of the trial court or to reverse the s me.

Accordingly, we herewith quote the complaint, as follows:

"1.. Plaintiff says that it is a commercial entity operating and doing business in the City of Monrovia, Montserrado County, Republic of Liberia, as will more fully appear from copy of its business registration certificate issued by the Ministry of Commerce in Monrovia, herewith made proffered and marked Exhibit "A" to form a part of this complaint.

2. And plaintiff further complains and says that by virtue of its operation a commercial entity it deemed It appropriate and expedient to insure its business, and accordingly on December 18, 2003, plaintiff insured its business with Blue Cross Insurance, Inc., defendant in these proceedings, for an amount of Five Hundred Thousand (US$500,000.00) Dollars, and the said defendant issued to plaintiff insurance Policy No. BCFB 2003-42, copy of which is hereto annexed and marked Exhibit "B" to form a part of this complaint.

3. And plaintiff further complains and says that as a result of a rainstorm which hit plaintiff's Randall Street premises in September 2003, leaving a large accumulation of water on the floor of the printing press, machineries, equipment, raw materials and prir1ting accessories were damaged. Accordingly, plaintiff on September 26, 2003 notified defendant of the damage caused by the rainstorm, and requested defendant to urgently send its investigator(s) to inspect the premises and assess the damage caused by the water brought in by the storm, as will more fully appear from copy of said letter of notice herewith proffered and marked Exhibit "C' to form a part of this complaint.

4. And plaintiff further complains and says that because of defendant's derelict in sending its investigators(s) to inspect plaintiff's premises and assess the damage caused by the rainstorm, plaintiff was obliged to write a second letter to defendant on September 29, 2003,copy of which is also proffered herewith and marked Exhibit "D" to form a part of this complaint; and whet defendant still refused to take any action alleviating the damage, plaintiff on October 28, 2003 was compelled to file a formal claim under the Insurance Policy No. BCFB-2003-042 in the amount of US$344,540.00, as shown by copy of said claim hereto attached and marked Exhibit "E" to form part of this complaint.

5. And plaintiff further complains and says that after submitting its claim on October 28, 2003, which was followed-up by a letter which plaintiff wrote to defendant on November 11, 2003, defendant shamelessly wrote to plaintiff on November 12,2003, rejecting plaintiff's claim on the purported allegation that at the time the losses allegedly occurred the policy had lapsed and was no longer in effect due to the non- payment of premium", despite on March 17, 2003 defendant had issued to plaintiff Invoice No. 117 for $4,000.00 for Policy No. BCFB 2003-042 which, plaintiff concluded with defendant, and which was followed by the payment on April 19, 2003, of fifty percent. (50%) of the premium for the period January to December 2003, as shown by copy of said invoice and cheque No. 00088389 which defendant deposited Into its account at the ECOBANK and same was duly encashed by said Bank, hereto attached and marked Exhibits "F" and "F-1" respectively to form part of this complaint. Further said invoice and cheque were buttressed by the LOSS PAYEE CAUSE which defendant executed in favor of plaintiff on March 19, 2003.

6. And plaintiff further complains and says that because of defendant's willful breach of the insurance contract which it entered into with plaintiff, plaintiff was compelled to retain the services of a legal counsel to institute this action so as to recover the loss it sustained during the week of September 22, 2003,which not only subjected plaintiff to additional expense to cover litigation, but loss of revenue it would have realized from the operation of its business between the period September 22, 2003, up to the determination of this case, had defendant honoured its side of the insurance contract. In addition, plaintiff has suffered inconvenience and embarrassment at the instance of defendant because of its failure and refusal to justly and timely compensate plaintiff in keeping with the policy it executed to plaintiff."

WHEREFORE, plaintiff has instituted this action and prays this Honourable Court to enter judgment against defendant, awarding plaintiff special damages of Three Hundred Forty Four Thousand, Five Hundred Forty (US$344,540.00) Dollars, which is the amount of special losses sustained by plaintiff, and general damages commensurate with the loss of revenue intake defendant has caused plaintiff to sustain by virtue of its failure and refusal to compensate Plaintiff in keeping with the insurance contract, as well as the inconvenience and embarrassment plaintiff has suffered at the instance of defendant, granting unto Plaintiff all other relief in the premises as justice and right demand."

We also quote herein below, for the record, the defendant's/appellee's nine-count answer, wherein it prayed the lower court to dismiss the plaintiff's complaint, setting forth as the basis for the prayer, as follows:

"1. That as to count one (1) of the compliant, defendant says that it is without knowledge sufficient to form a belief as to the truthfulness of the allegations therein contained.

2. That as to count two (2) of the complaint, defendant says that it is without knowledge sufficient to form a belief as to the truthfulness of the allegations therein contained, except that it denies that plaintiff was covered under

defendant insurance Policy when the losses complained of were allegedly sustained. In other words, plaintiff states in count (2) of its complaint that it insured its business with defendant on December 18, 2003,when according to count three (3) of the complaint, the alleged losses occurred in September 2003. Because of this admission by plaintiff that it had no coverage at the time of the alleged loss, the complaint together with the entire action are dismissible, and defendant so prays.

3. Further to count two (2) above, defendant says that the entire plaintiff's complaint is dismissible because plaintiff's own Exhibit "B" clearly shows that the policy period on which this unmeritorious action is based (December 18, 2001-December 17, 2002) does not cover September 2003, the time the plaintiff's alleged losses were incurred Defendant request Your Honor to take judicial notice of the plaintiff's complaint as Exhibit "B".

4. That as to count three (3) of the complaint, defendant prays for the dismissal of the action because the Insurance Policy does not cover damages sustained due to the negligence of the plaintiff himself. In other words, when, defendant dispatched its investigator (H. Momo Fortune) to the premises on September 30, 2003, the president of plaintiff's company, Mr. Mohammed J. A. ldriss, admitted to the inspector that the losses were caused by ceiling of the premises defendant cannot be held liable for Plaintiffs negligence in not keeping the septic tank and the ceiling of the premises in a state of repair. Defendant says that because of the reckless, gross and wanton negligence of plaintiff, which is not covered under defendant's insurance policy, even if the policy was in effect at the time the losses allegedly occurred, there can be no recovery under the existing circumstances, and the entire unmeritorious action is dismissible ab initio. Defendant so prays. Hereto attached is a copy of "Inspection Visit/Report", marked defendant's Exhibit "D/1", to form a cogent part of this answer.

5. That as to counts (4) and five (5) of the complaint, defendant says that it is without knowledge sufficient to form a belief as to the truthfulness of the allegations herein contained.

6. Further to count five (5) of the complaint, defendant says that, assuming without admitting even if plaintiff made part payment of Fifty percent (50%) of the premium for the period January to December 2003, as alleged, such amount could only represent premium for January to June 2003 and not up to September 2003 as plaintiff is contending. Hence defendant says that because of this wrong calculation by the plaintiff this action should be dismissible ab initio. Defendant so prays. Attached hereto as Exhibits D/2 and D/3, respectively, letters dated November 12, 2003 and May 21, 2004 from Mr. Naji Eid, General Manager of Blue Cross Insurance Inc. and Counsellor David A.B. Jallah of the David A. B. Jallah Law Firm to form a cogent part of the answer.

7. That as to count six (6) of the complaint, defendant says that it is without knowledge sufficient to form a belief as to the truthfulness of the allegations there contained, except that it denies the existence of an insurance contract between the parties at the time of the occurrence of the alleged losses allegedly sustained by the plaintiff.

8. That the plaintiffs complaint dismissible because its claim of US$344,540.00 (Three Hundred Forty-Four Thousand Five Hundred and Forty United States Dollars) is speculative. Under Liberian Law special damages must be pleaded with peculiarity and supported by documentary evidence and then finally established by a preponderance of the evidence at the trial. The complaint has failed to meet those standards.

9. And also because defendant denies all and singular the allegations of both facts and laws contained in plaintiff's

complaint which are not made a subject of special traverse herein.

WHEREFORE and in view of the foregoing, defendant prays that Your Honour will dismiss the plaintiff's action and grant unto defendant such further relief that Your Honour will deem proper, equitable and legal in this matter as well as rule all costs of these proceedings against plaintiff."

In response to the answer, the plaintiff/appellant, rather surprisingly, filed a one-count reply in which it made a general denial of the allegations set forth in the answer and reconfirmed the allegations asserted in the complaint. For the benefit of this Opinion, as with the other pleadings filed by the parties we quote herein below the plaintiff's reply, as follows:

"Plaintiff in the above entitled cause of action denies the legal and factual sufficiency of the defendant's answer to prevent a recovery against it for the following reasons, to wit:

1. That as to the answer in its entirety, plaintiff denies the averments therein contained and confirms and reaffirms its complaint in its entirety and prays that the answer being unmeritorious should be dismissed and plaintiff so prays."

The instruments quoted above formed the allegations, legal and factual, upon which the law issues were disposed of and the case ruled to trial by a jury, and based upon which the parties were expected to present evidence to substantiate their respective claims and allegations. They formed the basis upon which the jury, after listening to the evidence, concluded that the plaintiff had failed to sufficiently meet the required burden of proof standard in such cases, as would warrant a verdict in its favor, and that the defendant, on the other hand, had in fact met its burden of proof satisfactory to the jury to justify a verdict in favour of the defendant. It was also the same evidence that similarly formed the basis on which the trial judge, upon his review of the motion for new trial and the evidence presented in the case, concluded that the jury was correct in bringing a verdict in favour of the defendant, and that therefore the motion for new trial should be denied, the verdict affirmed, and judgment entered thereon in favor of the defendant.

Because the judgment is rather short and scanty, not representative of what is expected of a trial court judge in a case such as the instant case, but also given the fact that (a) the judgment entered by the court was the direct result of the court's denial of the motion for new trial, (b) the appellant has placed tremendous emphasis on the trial court's denial of the motion, and (c) this Court, in its analysis of the issues presented in the appellant's bill of exceptions, has referenced the motion for new trial, we deem it important that we expose the full content of the motion for new trial, the resistance thereto, and the judgment of the trial court, all of which we quote below verbatim. Firstly, we quote the motion for new trial:

"Movant in the above entitled cause of action most respectfully prays unto this Honorable Court to grant him new trial pursuant to section 26.1of the Civil Procedure law For the following reasons, to wit:

1. That one of the jurors, in person of Mercy Kandakai, lied during jury selection in that above captioned case when she represented that she had not served on any panel of jury for the past two years. Consequently, she was selected to serve as a juror in this case. Movant request this Honorable Court to take notice of the minutes of this Court in this case.

2. That on February 15, 2011, the same Mercy Kandakai appeared in Criminal Court "C" Montserrado County in the Case, Republic of Liberia Versus Cleopatra Bruce Davis et al. and was selected as one of the empanelled jurors. Attached hereto are copies of sheets ten (10) of February 15, 2011 and sheet twelve (12) February 16, 2011 respectively, minutes of said Criminal Court "C", marked in bulk as M/1 and made part of this motion.

3. That the action of Juror Kandakai is improper, dishonest, corrupt and conflicts with section 18.2 of the ACT TO AMEND CHAPTER 18 OF THE NEW JUDICIARY LAW, CHAPTER 22 OF THE CIVIL PROCEDURE LAW, AND CHAPTERS 20 AND 23 OF THE CRIMINAL PROCEDURE LAW TO PROVIDE FOR THE ADMENDMENT OF THE LAW RELATING TO JURIES WHICH STATES THUS: "Section 18.2: Qualifications of Jurors: In all cases; Any citizens of the Republic, male or female, who has attained the age of twenty-one year is competent to serve as a grand or petit juror in the county in which he or she resides unless: (d) He or she has served on a jury within the preceding year." Movant maintains that the presence of juror Mercy Kandakai, who by law is incompetent and manifestly dishonest, polluted and corrupted the jury, rendering the verdict rendered by said Jury is fruit of a poisonous tree. Hence, it must be set aside and a new trial granted so that a fair trial can be held in the name of justice.

Wherefore, movant prays for a judgment setting aside the unmeritorious verdict entered by the petit Jury in this case, same being manifestly contrary to the weight of the evidence, set the defendant free, and grant unto movant such other relief as this Honorable Court may deem just and equitable. "The defendant/appellee, responding to the motion, filed a seven-count resistance, which, as indicated above, we also quote, as follows:

"Respondent in the above entitled cause of action prays Your Honour and this Honourable Court to ignore, dismiss and deny movant's motion for new trial for the following factual and legal reasons to wit:

1. That as to the entire motion, respondent says that same should be dismissed in that said motion is filed in bad faith, a misrepresentation of the statute controlling and contrary to intent and purpose of the framer of the statute with respect to Section 18.2 of the ACT TO AMEND CHAPTER 18 OF THE NEW JUDICIARY LAW, CHAPTER 22 OF THE CIVIL PROCEDURE LAW, AND CHAPTER 20 AND 23 OF THE CRIMINAL PROCEDURE LAW.

2. That as to count one (1) of movant's motion, respondent submits and says that movant suffers waiver and laches in that movant knew or had reason to know and could have done a diligent search prior to the selection of the jury for the trial of the case.

3. That as to count two (2) above, respondent avers and says that movant is estopped from raising such assertion in that had the jury brought a verdict in its favor, such revelation would not have been brought to attention of this court. This is because the position of movant has changed by bringing down of a not liable verdict in favor of the defendant/respondent; the issue of juror, Mercy Kandakai is brought to the court's attention.

4. Still further as to count two (2) of movant's motion, respondent says that consistent with trial and practice procedure hoary with age within this jurisdiction whenever an individual serves as juror, such person would be ineligible to serve as juror for one (1) year; in the instant case according to movant's own exhibit, Mercy Kandakai served as juror during the February term, A. D. 2011 and by calculation the service of juror Mercy Kandakai is not in violation of the jury that as to the entire motion, respondent says that the ruling of the empanelled jury should not be disturbed in that the respondent maintain that the submission of the list of the jurors to the court was predicated upon communication received from local authorities such as township commissioners, city mayors and the like over which neither of the parties had any control assuming without admitting that juror Kandakai made a false declaration to the court, there are remedies available to the court but not to set aside the verdict of the empanelled jury would not be in the interest of

substantial justice in that neither of the parties contributed directly or indirectly to the submission of the names of prospective jurors to the court.

6. Further, assuming without admitting that there is a Mercy Kandakai who served as juror in the February, A. D. 2011 Term of Court in Criminal Court "C" as alleged, the juror who served in the March, A. D. Term, 2012 is Mercy S. Kandakai, Mercy Kandakai is separate and distinct from juror Mercy S. Kandakai. Respondent request Your and this Honorable Court to take judicial notice of movant's own exhibit vis a vis the court's own records which is not be the same and Identical person that is being referred to by the movant.

7. That respondent denies all allegations of both facts and law as contained in movant's motion not made a subject of special traverse."

It was supposedly based on the contentions and issues raised by the parties in the motion for new trial and the resistance thereto that the trial judge, having entertained arguments by the parties pro et con, entered a ruling denying the motion. Because the appellant raised serious contentions regarding the judge's denial of the motion, and the judge's subsequent entry of final judgment confirming the verdict, we believe it appropriate that both the ruling on the motion and the judgment are quoted, and we proceed so to do, as follows:

"This motion is predicated upon a hearing of the matter out of which it grew by a jury impaneled to hear and determine the facts based upon which the said impaneled jury returned a unanimous verdict of not liable in favor of the respondent herein. Basically, the movant herein challenged the verdict on the grounds that the same does not conform to the facts and evidence adduced at the trial. The court says that under the law, for a court to set aside a verdict, it must be established that the evidence adduced during the trial was not sufficient to support the verdict. In passing upon a motion of this nature, the court is not called upon to determine the weight to be placed on the evidence nor is the court called upon to determine the veracity of the evidence adduced during the trial. The burden placed upon the court by a motion of this nature is for the court to determine whether there exists sufficient evidence to support the verdict as returned by the impanel jury. After thoroughly reviewing the pleadings in this matter and the evidence adduced by the parties during the hearing of this matter, this court is convinced that there exists sufficient evidence to support the verdict as returned as by the jury impaneled to hear this matter and therefore this court sees no justification whatsoever to disturb the said verdict.

Wherefore, and in view of the foregoing, the court hereby deny the motion for new trial as filed by movant/plaintiff herein and by that confirm and affirm the verdict as returned by the jury impaneled to hear and determine the facts in this matter. AND IT IS HEREBY SO ORDERED."

Immediately following the above ruling, to which exceptions were noted by the appellant, the judge proceeded to enter the court's final judgment. We quote herewith the said judgment:

"After fully considering the evidence adduced during the trial of this matter in light of the pleadings of the parties, and giving due consideration to the verdict as returned by the jury impaneled to hear motion and determine this matter, and further giving due consideration to the motion for new trial, the resistance thereto and this court's ruling on the same, this court hereby adjudge the defendant herein not liable for damages in this matter and then the cost of these proceedings rule against the plaintiff. So ORDERED."

It is from the quoted judgment that the appellant noted its further exception; announced an appeal therefrom to this Honourable Court praying that this Court review the verdict and the judgment. The appeal was granted by the trial Court, and thereafter, within the time allowed by the appeal statute the appellant filed a three-count bill of exceptions challenging, in certain respects, the ruling and other actions by the trial court. We quote the bill of exceptions; verbatim since it forms the parameters within which this Court can delve into the issues presented for its consideration and reflects the issues which the appellant deems sufficiently important to warrant the attention of this Court. This is what the appellant set forth in the bill of exceptions as the issues for the determination of this Court:

"Plaintiff in the above entitled cause of action most respectfully submits and presents the following bill of exceptions for Your Honour's approval to enable it to perfect its appeal already announced and thereby have the Honourable Supreme Court review the prejudicial and erroneous ruling of your Honour and showeth the following, to wit:

1. Plaintiff says and contends that Your Honour was in superb error when you denied and dismissed the plaintiffs motion for new trial, failing to take cognizance of the Act to Amend Chapter 18 of the new Judiciary Law which provides that" any citizen of the Republic of Liberia, male or female, who has attained the age of twenty-one years, is competent to serve as a grand or petit juror in the county in which he or she resides unless he or she has served a jury within the preceding year. SEE FOR RELIANCE SECTION 18.2, QUAUFICATIONS OF JURORS. Even though one of the jurors had violated this Law. Your Honour dismissed the motion for new trial, thereby rendering the entire ruling reversible and reviewable, and plaintiff so prays.

2. And also because plaintiff further says that during the trial of the case, it testified to the authenticity of certain relevant documents in support of his side of the case which documents were objected to; which objection you granted, thereby preventing the said documents from being admitted into evidence in violation law, practice, and procedure in this jurisdiction. This Honourable Supreme Court in the case Henry Boima Fahnbulleh vs. Republic of Liberia, 19 LLR, text at page 99, Syl.4, stated "that once the authenticity of an instrument has been established by facts and circumstances, it may be admitted into evidence". Therefore, by you granting the objection renders the ruling reviewable and reversible.

3. Furthermore, plaintiff submits and says that you were in gross error when during your ruling on the motion for new trial, you stated that for a court to set aside verdict, it must be established that the evidence adduced during the trial was not sufficient to support the verdict. This is not true in all cases. For the pollution of a jury, as in this case, equally pollutes the verdict thereby the verdict returned and a judgment therefore emanating from the said verdict, is dismissible. To therefore refuse to dismiss the case when the verdict was polluted renders your Honour's ruling on the motion and the final judgment reviewable and reversible and plaintiff so prays.

WHEREFORE and in view of the foregoing facts and circumstances, plaintiff submits these exceptions for Your Honor's approval to allow plaintiff to perfect its appeal and have the Supreme Court review said ruling and final judgment."

The foregoing outlines the background of the appeal to this Court. We note that in their briefs filed before this Court, each party, the appellant and the appellee, presented three issues they believed to be determinative of the matter. Because the issues presented by the parties are structured in a manner that renders them dissimilar, and while we shall attempt to amalgamate those we believe show resemblance, we deem it necessary, for the purpose of fully appreciating how the

parties view and approach the issues before this Court, we shall reference the issues in their entirety as couched by the parties in their respective briefs. Here is how the appellant framed the issues:

1. Whether the trial judge committed a reversible error when he denied plaintiff/appellant's motion for new trial even though plaintiff/appellant's allegation that one of the trial jurors, Mercy Kandakai had served on a panel of jury in Criminal "C" within the preceding year was not denied.

2. Whether the trial judge committed reversible error when he denied admission into evidence, certain instruments, including returned checks, invoices, communications, etc. that had been testified to by plaintiff/appellant's witnesses on ground that they were not previously attached to the pleadings at the time of filing of the complaint?

3. Whether the trial judge erred when he entered judgment confirming the verdict even though same was contrary to the weight of the evidence?"

The appellee, on the other hand, stating the issues differently, has elected to frame them in this manner:

"1. Whether or not appellant had a valid insurance policy to constitute coverage at the time of the alleged losses under which claim could be made.

2. Whether or not plaintiff was covered under the insurance policy attached to its complaint when the losses complained of allegedly occurred?

3. Whether claim of special damages which is speculative, not pleaded with specificity and not supported by documentary evidence can lie?"

Those are the issues, as viewed by the parties, and which they desire that this Court will address. Our observation of the issues is that those presented by the appellants are basically legal issues, except for the last, which is a mixed issue of law and facts. Whereas, on the other hand, the issues presented by the- appellee go strictly to the facts of the case, with only the last issues being one of mixed law and fact.

The position generally assumed by this Court in disposing of the issues presented to it by the parties to an appeal before the Court is that the Court need not address all of the issues presented, but can opt to focus only on those it deems germane, necessary and relevant to the disposition of the case. Republic v. Nbolonda, Supreme Court Opinion, March term, 2014, decided August 14, 2014; Halaby et al. v. Cooper, 41 LLR 136 (2002). We reaffirm that position in the instant case, believing that only the issues germane to the determination of the case are worthy of this Court's consideration. As part of that determination, the Court mat redesign or reconfigure the issues as reflected from the pleadings, the facts, the evidence presented by the parties, the circumstances and the manifold rulings of the trial judge, and finally, the verdict of the trial jury and the judgment of the court. This is what we believe to be warranted in the instant case.

Accordingly, this Court says that from the examination of the bill of exceptions and other instruments referenced herein, a review of the facts and circumstances attending the proceedings in the lower court, and a scrutiny of briefs filed by the parties before this Court the following three issues reveal as primary warranting the consideration of the Court:

1. Whether the trial Judge committed a reversible error in not sustaining the plaintiff/appellant's contention that service on the trial jury panel by Mercy Kandakai, who had served on a panel of Jury in Criminal "C" within the preceding year,

constituted a sufficient basis for awarding a new trial?

2. Whether the trial judge committed reversible error when he denied admission into evidence "certain relevant documents", allegedly testified to by plaintiff's/appellant's witnesses, on ground that they were not previously attached to the plaintiff's pleadings?

3. Whether the jury's verdict of not liable in favor of the defendant was against the weight of the evidence, and that therefore the trial judge erred in affirming the said verdict?

The last issue encompasses the entire three issues advanced by the appellee in its brief and, hence, this Court does not believe that there is need to treat separately the three issues presented, or as presented, by the appellee, but rather to amalgamate them into the third issue designed by this Court. With the clarification provided above, we shall now proceed to address the three issues we deem to be properly before this Court for its consideration. The first issue, as stated above, is whether the trial judge committed a reversible error in not sustaining the plaintiff/appellant's contention that service on the trial jury panel by Mercy Kandakai, who had served on a panel of Jury in Criminal "C" within the preceding year, constituted a sufficient basis for awarding a new trial? Stated in the alternative, the issue is whether it is legally permissible for a juror who is alleged to have sat on a case in another circuit court in a term within a preceding year is allowed or may be permitted to serve as a juror in a current case? The appellant, both in its bill of exceptions and the brief filed before this Court, answered the query in the negative. In that respect, the appellant alleged that one of the jurors, in person of Mercy Kandakai, had served on a jury panel in a criminal matter within the preceding year; that this act by the juror named herein was a violation of Section 18.2 of the New Judiciary Law and was tantamount to a pollution of the jury; and that the act, being in violation of the law governing the selection and service of jurors, presented a legal and valid reason for the trial judge to set aside the verdict of the jury and award a new trial as prayed for in the motion for new trial. The appellant argued further that the statement of the judge, to the effect that it is only where the verdict is against the weight of the evidence that the court may overturn or set aside the verdict of the jury, was not just clearly erroneous, but also that the refusal of the judge to award a new trial on, that erroneous ground was of such magnitude as to constitute a reversible error and therefore warrants a reversal of the judgment affirming the verdict. This is what our Judiciary Law, at Sub-section 18.2(1) (d) says in regard to the issue: Any citizen of the Republic, male or female, who has attained the age of twenty-one year, is competent to serve as a grand or petit juror in the county in which he or she resides unless … (d) he or she has served on a jury within the preceding year." The provision, Sub-section 18.2(1) (d), to which reference is made and which the appellant relied, being an integral component of the Judiciary Law, approved May 10,1972 and published June 20,1972, was, unlike other provisions, unaffected by and indeed re-echoed in the amendment made to chapter 18 of the Judiciary Law, approved on January 14, 2006 and published on January 16,2006. And it is the argument of the appellant that Ms. Mercy Kandakai, in serving as a juror within less than a year prior to her last service as a juror, had acted in violation of the quoted provision of the Judiciary Law and that therefore a ground was set forth for setting aside of the verdict of the jury and granting of the motion for a new trial.

We note that although that plaintiffs/appellant's motion for new trial does not specify whether the juror in question, Ms. Mercy Kandakai, was an alternate or regular juror, our inspection of the records does indicate that she was not

named by the trial judge as an alternate juror, and hence the conclusion that she was one of the regular jurors. [See Minutes of Court, April 23, 2012, p.5.] We note also that it was on application of counsel for plaintiff/appellant the jury panel was selected to try the case. Unfortunately, however, because under the, practice of selection of the jurors, records are not recorded with regard to queries made of the prospective jurors, especially as to whether a juror was asked if he or she had served on a jury panel over the last twelve months, we are unable to say whether the juror whose service was questioned in the motion for new trial told an untruth in answer to a question.

What we can say is that the section relied on by the plaintiff/appellant in challenging the service on the jury by Ms. Mercy Kandakai does not stand in strict isolation by itself but rather that it operates in correlation to other law especially Chapter 22 of the Civil Procedure which also deals with the selection and qualification of jurors. Thus, while Section 18.2 of the Judiciary Law outlines the qualification for service as a juror, Chapter 22 of the Civil Procedure Law, at several sections, outlines the process by which the qualifications are ascertain d and the challenges which may be asserted against a person who claims to have met the qualification for service. We note further that when the correlation of the two 'laws is carefully reviewed and analyzed, one is able to decipher the intent of the legislature.

Accordingly, we take recourse to the relevant sections of Chapter 22 of the Civil procedure Law which were the governing laws of the Republic prior to the enactment of recent amendments that set for a new process for the selection of jurors and a new set of qualification criteria. Section 22.3 to 22.7 lay out how the process, as follows:

Section 22.3: Selection of jurors

The appropriate official of each commonwealth district, municipal district, city, and township shall submit quarterly to the clerk of the Circuit Court of the judicial district in which such official performs his duties a list of names of a number of persons whom he believes to be qualified to serve as jurors in his judicial district, to be nonexempt, and to be intelligent, honest, fair-minded, good reputation, and capable of rendering satisfactory service. The clerk of the Circuit Court shall select from the list submitted to him the names of forty-two persons to compose a venire of grand and petit jurors for the following term of court. The names selected by the clerk shall be those of persons from the various commonwealth district, cities, municipal districts, and townships in the judicial district in proportion to the number of inhabitants as nearly as can be estimated. Such persons shall be summoned to attend at the opening day of the term in accordance with the provisions of section 22.4. On the opening day of court, the judge of the Circuit Court shall designate fifteen of the forty- two persons composing the venire to serve as grand jurors. Before the trial of each civil case during the term, the names of each of the remaining twenty- seven per-sons composing the venire shall be written on a separate piece of paper of the same size and appearance as all of the other pieces. Each piece shall be folded to conceal the name thereon and shall be placed in a box, which the sheriff shall shake in order to mix the slips of paper as well as possible. The names shall be drawn by the sheriff in the presence of the court. The persons whose names are drawn shall be subject to examination and challenge as provided in sections 22.5 and 22.6. The twelve persons whose names are first and who are found acceptable shall serve as jurors and the three alternatives are next drawn and who are found acceptable shall be alternatives. The judge shall appoint the foreman. If the panel is exhausted before sufficient jurors have been selected, the sheriff, on direction court, shall summon a sufficient number of qualified persons as talesmen from the bystanders.

§ 22.4. Summoning jurors.

The forty-two persons composing the venire of grand and petit jurors shall be summoned to attend court on the opening day of the term. The summons shall be served by the sheriff ten days previous to the opening day by delivering a copy thereof to the person named therein or by mailing a copy to the person at his last known address by registered mail. If service is by mail, the addressee's receipt shall be attached to the return.

§ 22.5. Voir dire examination.

The court may conduct the examination of prospective jurors or may permit the parties or their attorneys to do so. If the court conducts the examination, it shall permit the parties or their attorneys to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions of the parties or their attorneys as it deems proper.

§ 22.6. Challenges.

1. Generally. An objection to the qualifications of a juror must be made by a challenge. A challenge may be made either to the entire panel on the ground that it was illegally drawn or to an Individual juror.

2. Challenges for cause or favor. A party may challenge a juror on the ground that he is disqualified under the Judiciary Law or by reason of any Interest or bias. The fact that a juror is in the employ of a party to the action, or, if a party to the action is a corporation, that he is a shareholder therein, shall constitute a ground for a challenge to the favor as to such juror.

3. Waiver on ground of disqualification. Failure by a party to challenge the panel or to challenge a juror under paragraph 2 of this section shall be deem a waiver of the right to object and shall foreclose the right to move for a new trial on such grounds; provided1that a party may be entitled to a new trial if he shows that a juror made false answers to material questions concerning his qualifications.

4. Rulings upon challenges. A challenge to a juror or to the panel must be heard and determined by the court subject to the right of the objecting party to save his objection.

5. Peremptory challenges. Each party shall be entitled to four peremptory challenges.

§ 22.7. Oath of jurors.

Immediately after the selection of the jury and before the commencement of the trial, all the jurors composing the jury, including, the alternates, shall take the following oath faithfully to try the cause and render a verdict according to the law and the evidence:

"You and each of you do solemnly swear that you will well and faithfully try the cause now before this court and a true verdict render according to the law and the evidence, so help you God.

We have quoted the above sections of the Civil Procedure law not only because there is a correlation between them and Sub-section 18.2(d) of the Judiciary law, but also because they form part of the premise for our disposition of the issue advanced by the of plaintiff/appellant in its, bill of exceptions as " basis upon which it insists the trial judge should have granted the motion for new trial and why this Court should reverse the judgment of the lower court on account of the trial judge's refusal to grant the motion for new trial.

The sections of the Civil Procedure law, quoted above, set up a process and procedure which the framers of the law

intended would provide some assurance that the qualification criteria laid in sub-section 18.2(d) of the Judiciary law will be adhered to and that the parties would thereby be assured that they could count on the system providing that assurance. It seem obvious to us that the process set forth in the Civil Procedure law was designed to ensure that the criteria laid in sub-section 18.2(d) of the Judiciary Law would not be corrupted, contaminated, polluted or ignored. This is why the law built in a mechanism that could be tested at very stage before a trial commenced. It presupposed a number of occurrences or events: (1) The community leadership would make the first effort at selecting persons who could serve as jurors; (2) the clerk of court would then edit the list to ensure that it was free from violations of the law; (3) the presiding judge would, by conducting an extensive examination of prospective jurors, with the assistance of counsels, ensure that the clerk had followed the law and that persons selected met the criteria laid down in the law; (4) that at each of the trials that followed the selection of the juror for the term, counsels on the particular case were vested with the right to challenge one or more jurors on ground, amongst others, that such juror or jurors are disqualified under the Judiciary Law; and (5) that each party is entitled to four peremptory challenges, for no cause, to any of the jurors; and (6) that the jurors, before embarking on the responsibilities assigned to them by virtue of having been selected to serve as jurors, must take an oath, not only to faithfully try and case and bring in a true verdict, but which also presupposed that the juror was selected predicated upon he or she having told the truth upon enquiry prior to being selected.

These are the guidelines which the Civil Procedure Law set forth to ensure that the qualification criteria stipulated by the Judiciary Law are met. But the guidelines presuppose further that the parties have attending obligations in ensuring that the guidelines are adhered to and they provide remedies on account of the failure to adhere to the guidelines. One such obligation impose" on the parties to a case is that they must exert due diligence to ensure that the jury selection process is not tainted with irregularities as would bring into question the neutrality of the jurors or open avenues for challenges to or accusations of dishonesty on the part of the jury or any member thereof during or after he trial of a case. This means that each party can and must examine the process that has unfolded and that finding any irregularities or actions that run contrary to the Judiciary Law, to immediately bring same to the attention of the court so that corrective measures can be taken by the court, and, should the court refuse to take the required and necessary corrective measure, to see remedial redress from the Supreme Court.

It means further, making specific reference to the instant case, that at the time of selection of the jurors, either at the opening of court or at the time of selection of the jurors preparatory to the commencement of the trial on the merits, and we note specifically that it was counsel for the plaintiff/appellant who made application to the court for the selection of a jury panel to try the case, the plaintiff had the opportunity to challenge any juror or jurors, peremptory or for cause, if there was evidence or even suspicion, and upon query being made of the juror, that any juror or jurors had served on a jury panel at a term of the court, whether in the same court or in another court, within the span of the preceding year. It does not seem to us that due diligence was carried out in the instant case by counsel for the plaintiff/appellant to ascertain if any juror or prospective juror was acting violation of the Judiciary Law in seeking to serve as a juror.

The statute is very clear that when such an issue is raised, and in a timely manner, the trial judge has the legal duty to

commence forthwith investigation into the allegation and to ascertain the truthfulness thereof, and if the investigation reveals the allegation to be true, to immediately have such person or persons; disqualified from service as jurors. But the law is also very clear that where a party, on account of a failure of due diligence, does not challenge the jury panel, particularly on the ground that the juror or prospective juror is disqualified under the Judiciary Law, or by reason of interest or bias, the negligent party waives the right to object and thereby "foreclose the right to move for a new trial on such grounds". The only exception to this dictate of the statute is where the "juror made false answers to material questions concerning his qualification." Civil Procedure Law, Rev. Code 1:22.6.

In the case Tolbert v. Republic, 30 LLR 3 (1982) wherein the defendant/ appellant was charged with murder, tried, convicted and sentenced to death, he appealed the judgment of the trial court to the Supreme Court, stating in his bill of exceptions that certain of the jurors had not met the qualification laid down in the Judiciary Law for service as jurors. Although the defendant/appellant did not include or pursue the contention or traverse the issue in his Brief filed before the Supreme Court, and the Court therefore regarded same as a waiver of the contention, it nevertheless felt the need, in passing, to address the issue. This is what the Court said of the issue presented: "The said two counts of the bill of exceptions not having been traversed in the appellant's brief and argued before us, they must be treated as having been waived. However, we would like to observe only in passing that appellant could not have successfully argued on appeal that some of the empanelled jurors could not read or write their names, especially so when he participated in the selection of the empanelled jury and raised no objection to any of them. A party may challenge a juror on the ground that he [or she] is disqualified under the Judiciary law or for reason of an interest or bias. Such a challenge may be made only before the jurors are sworn except that the court may, for good cause, permit it to be made after the jurors are sworn, but before any evidence is presented. Failure by a party to challenge the panel or to challenge a juror shall be deemed a waiver of the right to object and shall foreclose the right to move for a new trial on such grounds or to raise the objection at any subsequent time." ld., at 14. Although the quoted opinion involved a criminal trial, the same principle applies to civil matters, as clearly noted from section 22.6 of the Civil Procedure law.

In the motion for new trial, the plaintiff/appellant alleged that juror Mercy Kandakai had lied, when during the jury selection process, she stated that she had not served on any jury panel for the two years preceding her selection. The plaintiff/appellant further alleged that it was in consequence of the lied told by juror Kandakai that she was selected to serve as juror. We note that without referencing any specific date and sheet, the plaintiff/appellant requested the court to take notice of the minutes of the court. It is the opinion of this Court that such notice to the trial court was faulty, and indeed our inspection and review of the file of the trial revealed that no such record was ever made, either at the time of the selection of juror Mercy Kandakai or any time thereafter, until the filing of the motion for new trial. Thus, contrary to the allegations made by the plaintiff/appellant that the records showed that juror Mercy Kandakai was asked about her previous service on a jury panel within the last twelve months, the records before us state only that following the granting of the plaintiffs/appellant's application by the trial judge for the selection of a jury panel to try the case, a fifteen member jury panel was selected by counsels for both parties. Nothing in the records show that any question was asked of the juror Mercy Kandakai or any other jurors as to how long it had been since they last served as jurors, and that she or any other jurors responded that it had been over two years since they had last served.

Further, nowhere in the records is it revealed that during the entire trial the issue was raised or brought to the attention of the court that a juror had lied when being questioned to see if the juror had met the qualification for service stipulated in the Judiciary Law. We can therefore not take the allegation made by the plaintiff/appellant in the motion for new trial, the bill of exceptions and the brief that juror Mercy Kandakai was asked the question as to her last service on a jury panel and that she had lied in her response to question, to be true, on its face, in the absence of records verifying or substantiating the allegation. Robertson and Reeves v. Quiah Brothers, Supreme Court Opinion, October Term, A. D. 2011. The Supreme Court can only take cognizance of matters appearing in the records made in the records in the lower court and certified by the Clerk to the Supreme Court. National Milling Company of Liberia v. Pupo and Miatta Family Center, 34 LLR 639 (1988). Also, the Supreme Court, in the case Kamara et al. v. The Testate Estate of the late Isaac K. Essel, decided Jury 5, 2012, at the March Term, A. D. 2012, said: "The circuit court, being a court of record, this Court cannot review any act attributed to that court where the evidence of the commission of such act is lacking in the records of the court." See also First United American Bank v. Ali Saksouk Textile Center, 38 LLR 327 (1997); Trokon International et al. v. Reeves et al. 39 LLR 626 (1999).

Thus, to accept or endorse the contention of the plaintiff/appellant, in the absence of such records or evidence to support the allegation, would be tantamount to indulging in and endorsing speculation and conjecture, an act this Court has said repeatedly it is not prepared to countenance. This Court has repeatedly said that it cannot and will premise its decision upon or indulge in speculative allegations. Sirleaf v. Republic, Supreme Court Opinion, March Term, A. D. 2012.

Thus, in the absence of such records, the Supreme Court would be acting in clear violation of the statute governing challenges to a jury selection were we to accept as true, without any appearance in the records of any challenge having been made at the time prescribed by statute, and would be acting solely on the basis of speculation and allegations without proof, the net effect of which would be the overturning of the statute or restricting its application. The Supreme Court has frowned on such a course in a number of opinions. In the case Hussenni v. Brumskine, decided August 1, 2013, at the March Term, A. D. 2013, this is how this Court addressed the matter: "For as much as this Court would like to probe into the merits of each case brought before it, and acts committed by the trial judge or other officers of the trial court may provide a basis for the temptation to indulge in such probe, this Court must make it clear, as it has; done in previous cases, that it is not prepared to sacrifice the statute laws of the land, not declared to be unconstitutional by the Court, to accommodate and turn a blind eye to the errors made. To probe into the merits of the case, under the circumstances, would in effect be tantamount to overriding or overturning the statute or to making law, both of which this Court has said in a wide variety of cases it is without the authority to do. Kontoe and Williams v. Inter-Con Security Systems, Inc., 38 LLR 414 (1997)."

Further, this Court has also opined that questions relating to irregularities on the part of a juror must be raised before the jurors are disbanded. This is what this Court said in the case Brown et al. v. Republic, Supreme Court Opinion, October Term, 2009, delivered January 21, 2010: "A proper basis for inclusion i1 n a motion for a new trial and the bill of exceptions of a complaint regarding jury tempering or irregular behavior is that it first be raised while the jury is still empanelled, and where a party fails to follow this procedure the issue will he considered to be improperly brought before

the Supreme Court for review." The same principle applies to the situation raised by the appellant in the instant case.

We should emphasize further that no allegation is made by the appellant of jury tampering as would have necessitated an investigation by the trial judge. Had such an issue been raised, and before the jury was disbanded (Constance et al. v. Ajavon et al., 40 LLR 295 (2000)), any refusal or failure by the trial judge to conduct an investigation into the allegations would have constituted a reversal error and thus would be a basis upon which we would reverse the verdict and the judgment and order a new trial. Fangi v. Republic, 42 LLR 74 (2004); Instead, as distinct from jury tampering, the allegation set forth by the appellant is that one of the jury had lied in stating that she had not served on a jury panel within twelve months of the time of her service in the instant case. As stated earlier, not only was the allegation not supported by the records as to whether the question was even asked of the juror, but the right to challenge was definitely waived when not shown to have been made at the time the jurors were being selected. The allegation and the count wherein the allegation is made cannot therefore be sustained by the Court.

We do not say, by the above, that Mercy Kandakai may not have violated the statute or that she did not tell a falsehood. We say only that there is nothing in the records to substantiate the allegations made by the plaintiff/appellant and that in the absence of such substantiation we cannot presume the same to be true. What we do say further is that, as prescribed by the law, where a party has failed in its due diligence obligation and has allowed a person to be selected as a juror without objections, that party waives the right to subsequently question the service of the juror or seek a new trial on that account. It seems to us that counsels for the plaintiff/appellant, not having done their homework seek, by the belated challenge made in the motion for new trial, to have the Plaintiff/appellant fall within the exclusion or exception specified by the law for awarding a new trial to a losing party in a trial.

However, as noted before, in order to have the appellant fall within the ambit of the exclusion or exception regarding the qualification of a juror, the records must clearly show that the question on the juror's qualification was asked of the juror and that the juror had lied in her response to the said question. The records do not reveal that any such question was posed to juror Mercy Kandakai or that an untrue answer was given by her, as alleged by the plaintiff/appellant.

Accordingly, and for the reasons stated above, we hold that the contentions raised by the appellant, both in its bill of exceptions and brief filed before this Court, regarding the service on the jury panel by Ms. Mercy Kandakai not having been raised or challenged at the time of her selection for jury service or service on the jury panel in the instant case before the court commenced taking evidence, lack legal merits and are therefore not sustained.

This brings us to the second issue, which is whether the trial judge erred in denying the admission into evidence of certain documents which the appellant alleged were testified to and authenticated? The trial judge, in denying the admission of the documents into evidence, stated as the ground for the denial that the documents were not attached to the complaint. The appellant, excepting to the judge's action, takes the position and makes the argument that the judge was in error since "certain" documents were "relevant" to the appellant's case and had been testified to and authenticated by appellant's witness, they should have been admitted into evidence so that the jury could accord them the requisite consideration. We note that, other than stating in the bill of exceptions that the judge was in error in not admitting "certain relevant" documents into evidence, no mention was made of the specific documents which the appellant considered relevant to its claim. But we shall deal with that aspect later in this opinion.

This Court's first response to the argument made by the appellant that the trial judge erred in denying the admission into evidence of "certain relevant documents" because, although they had not been pleaded or were not attached to the plaintiff's/appellant's pleadings, they were testified to and authenticated by plaintiff's/appellant's witness, is that it defies logic, it misses the basic tenet of the statute the appellant seeks to rely on for support, it ignores the manifold pronouncements of the Supreme Court on the principle of notice enshrined in the annals of the jurisprudence of the Republic, and it misinterprets the case law as to which acts of a trial judge are mandatory or compulsory and which are within the discretion of the trial judge.

Before addressing the points alluded to by this Court, in response to the appellant's assertion of errors allegedly made by the trial judge, let us reference how the appellant propounded or crystallized its contentions on the issue, verbalized in its bill of exceptions. Here is how the appellant worded its disputation of the issue: "(2) And also because plaintiff further says that during the trial of the case, it testified to the authenticity of certain relevant documents in support of [its] side of the case, which documents were objected to which objection you granted, thereby preventing the said documents from being admitted into evidence in violation of law, practice, and procedure in this jurisdiction." In arguing that its view found support in Liberian case law, the appellant cited the case Fahnbulleh v. Republic, 19 LLR 99 (1969), from which it quoted the Supreme Court as saying: "Once the authenticity of an instrument has been established by facts and circumstances, it may be admitted into evidence, even though its proof is by indirect means."

Because the appellant relied on the Fahnbulleh case, quoted above, to support its argument that the trial judge was in error in denying the admission into evidence of "certain relevant documents", we believe that it is important that we first disabuse the appellant of the basis of its reliance before proceedings to address the substantive elements of the appellant's core argument. In that respect, we note that in the Fahnbulleh case, the Supreme Court specifically used the word "may", as opposed to the word "shall", in determining whether the trial court was mandatorily required to admit into evidence the documents objected to or whether the court had the discretion in determining the admissibility of the documents in question. But more than that the case must be viewed in the context in which the Court used the quote attributed to it. In the Fahnbulleh case, a criminal case, the defendant had objected to the admission into evidence of a number of documents which had been testified to and authenticated and intended to demonstrate the state of mind of the defendant, but the trial court had overruled the objections and had admitted the documents into evidence. It was in this context that the Supreme Court, in addressing the issue, stated that the trial court "may" meaning that it could have admitted or denied the admission of the documents into evidence, under the circumstances presented in the criminal case. In other words, the Supreme Court was of the view that, in the circumstances of that case the trial court had the discretion of determining whether to admit the documents into evidence or to deny the admission of the documents into evidence. Our reading of the Circuit's opinion is that absent an abuse by the lower court of its discretion, the trial court could admit or deny admission of the documents into evidence, and that where no such abuse was shown to have been committed by the trial court, the Supreme Court would not disturb the exercise of discretion by the trial court in admitting the documents into evidence. This impression of this Court as regards its previous opinion is squarely in harmony with other opinions of this Court wherein it has drawn

a distinction between the word "may" and the word "shall". Hence, the appellant's reliance on the Fahnbulleh case can be deemed to be one of "mistaken reliance".

Thus, while some foreign courts have equated the word "may" to be synonymous with the word "shall" or "must", reasoning that to do so effectuates legislative intent (see Black's Law Dictionary, 1066, 9th Ed.), this Court has to the contrary taken the view that whenever the word "may" is used, it connotes a vesting of discretionary power or authority in regard to action to be taken by a court rather than a mandatory command on the court in deciding whether to grant or not to grant a request or perform an act. Hence, in a case where discretion is left to a lower court or a judge of a subordinate court, this Court has said it will not interfere with the decision of that court or judge except where it is shown that the court or judge abused the exercise of the discretion. The Supreme Court eloquently captured the concept in the case Brewer v. Mathies and Herring-Cooper, 41 LLR 229 (2002), wherein Mr. Justice Wright, speaking for the Court, and citing the authority of Black's Law Dictionary, said: A discretionary duty imposed upon the trial judge is not subject to review except in circumstances of a glaring abuse of judicial discretion", adding that judicial discretion is "a liberty or privilege to decide and act in accordance with what is fair and equitable under the peculiar circumstances of the particular case, guided by the spirit and principles of the law, and exercise of such discretion is reviewable only for an abuse thereof." ld., at 235.

Here is how this Court has viewed the term "may", in counter distinction to the word "shall", in its interpretation with specific reference to the Liberian appeal statute: "This Court has also opined in the interpretation of this statute that the word 'may', as used in the provision of the appeal statute, grants to this Court the discretionary power of determining whether or not to dismiss an appeal for noncompliance with all of the procedural steps for perfecting an appeal." International Bank (Liberia) Limited (IBL) v. Leigh-Parker, 42 LLR 140,146 (2004). The principle holds true in respect to the use of the term 'may' in other judicial situations. We do not see, from our examination of the records in the instant case, that the trial judge's denial of the admission into evidence of the alleged "certain relevant documents", was an abuse of the discretion granted the trial judge in such instances, including as articulated by this Court; the Fahnbulleh case, but especially given that while this Court has held repeatedly that the view enunciated by it to the effect that once a documents has been testified to, marked by court and confirmed by the witness, it should be admitted into evidence and forwarded to the jury for their consideration Neuville v. Killen, 31 LLR 587 (1983); Gibson v. Williams, 33 LLR 193 (1985); Liberia Electricity Corporation v. Tamba, 36 LLR 225 (1989); Momolu v. Cumming, 38 LLR 307 (1996), it has also made it clear that that conclusion is premised on the fact that the documents involved were not only pleaded but were attached to the pleading or notice given that the documents will be produced at the trial. Lamco J. V. Operating Company v. Gbezon Transport Company, 29 LLR 225 (1981). This is how the Court, speaking through Mr. Justice Mabande, in the Lamco J. V. Operating Company case, addressed the issue, with respect to the Walker case:

"In count eight of his brief, appellant's counsel argued that the trial judge committed reversible error by refusing to admit into evidence on the objections of appellee's counsel, documents offered for admission by appellant Lamco. He contended that the documents" were material and relevant to the issue that was before the court. The documents objected to, according to the records of the court, were documents that were not pleaded by appellant Lamco. To admit

same into evidence would have violated the law of notice, which rule has been strictly adhered to by this Court for a period of more than a century. Resort to appellant's own pleadings, indicates that no letters from co-defendant Lamco Mine Workers' Union to defendant/appellant Lamco or from the Ministry of Labour to appellant Lamco were ever proferted and annexed to the answer. In support of his argument, appellant Lamco's counsel cited this court to the case Walker v. Morris, 15 LLR 424 (1963) which holds that all documentary evidence which is material to the issues of tact raised in the pleadings should be presented to the jury. The rule in Walker v. Morris presupposes that all such documentary evidence must have previously been pleaded and annexed to the pleadings exchanged, or notice for its production at the trial was given in the pleadings exchanged by the parties in order that the procedure may conform with the requirement of notice to either party of what is being intended to be proved. This appellant Lamco's counsel failed to do. The Cavalla River Company v. Fredericks, 2 LLR 375 (1920)." [Emphasis supplied]

The Fahnbulleh case therefore provides no comfort to the appellant and certainly does not lend support to the contention that the trial court, under the circumstances of this case, was in error in denying the admission into evidence of the "certain relevant documents" which the appellants alleged were testified to and authenticated.

Having determined the appellant's interpretation of the Fahnbulleh case was misplaced and that therefore that case could not be relied upon by the appellant in support of its argument, let us now take recourse to the core contention, which is that the trial judge erred in denying admission into evidence of "certain relevant documents" that had been identified and authenticated by the appellant's witness.

As noted earlier, this contention, first articulated in the bill of exceptions, is not just grossly flawed procedurally and a misreading of the law, but it seem to have this Court act contrary to the law in this jurisdiction and indulge in the realm of speculation and conjecture. Let us firstly address the ambiguous and speculative nature of the contention, as set forth in the bill of exceptions. We do so with the backdrop of the long standing principle enunciated by this Court that a bill of exceptions must state with precision the exact, particular and unambiguous recitation of the violations attributed to the trial judge such that the appellate court not only has a clear picture of the alleged erroneous acts of which the trial judge is accused but also that the Court can easily identify in the records the said act which is the subject of challenge by the appellant. MIM Timber Corporation v. Johnson, 31LLR 145 (1983).

In the case C. F. Wilhelm Jantzen, 31 LLR 343 (1983), this Court, speaking through Mr. Justice Morris ,said the following: "A bill of exceptions in a case on appeal must show with particularity the alleged errors committed by the trial court; otherwise, the counts making the allegations against the trial court will not be sustained." ld., at 345. The holding of the Court in that case was in response to the appellant's allegation in count one of the appellant's bill of exceptions, which stated only that "the trial court judge failed to pass upon any of the points raised", and which the Court said "failed to state the point allegedly raised and which the judge had failed to pass upon."

Similarly, in the case Insurance Company of Africa/Intrusco Corporation v. Fantastic Store, 32 LLR 366 (1984),the Supreme Court opined, as it had done in many other prior cases, as follows:

"In our opinion, appellant, who claimed that the testimony of the witness was contrary to that of the appellee, should have stated with particularity and shown in the bill of exceptions, among other things, the date and sheet number on which the appellee's witness gave 'contrary' testimony and what the appellant intended to prove or disprove by

this question for the information of the Court. He was not leave the burden on the Court to search through the records for such information. This Court has held in several opinions that a bill of exceptions in a case on appeal must show with particularity the alleged error of the lower court. Quai v. Republic, 12 LLR 402 (1957). It is not enough to state merely in the bill of exceptions that the trial judge sustained or overruled the objection and that exceptions were noted thereto. The legal error allegedly made by the trial judge must be pointed out with particularity for appellate review. Moreover, it is our opinion that the relevancy of this particular question is too remote to perceive Its materiality to the case In point, and hence we mu!;t sustain the ruling of the trial judge thereon." ld., 372-73.

In the instant case, the bill of exceptions, at count two, references no particular documents that were testified to and authenticated and which the trial court had denied admission into evidence. It refers to the documents only as "certain relevant documents", without naming or describing the certain relevant documents". Clearly, this was in violation of the basic law and principle governing bills of exceptions, as enunciated by this Court.

The Supreme Court, relying on Section 51.7 of the Civil Procedure Law, Title 1, Liberian Code of Laws Revised, has defined a bill of exceptions as a specification of the exceptions made to the judgment, decision, order, ruling sentence or other matters of the trial court excepted to, and relied upon for the appeal, together with a statement of the basis of the exceptions. Wiah v. Republic, 38 LLR 385 (1997). In the Wiah case, the Court went further to state the object of a bill of exceptions. This is how the Court framed the object of a bill of exceptions: "the object of a bill of exceptions is to put the controverted rulings or decisions upon the recorded for the information of the appellate court." ld., at 389. The Court, citing and relying on the earlier decided case of Johns v. Cess-Pelham and Witherspoon, 8 LLR 296 (1944) said additionally of the bill of exceptions that: "A bill of exceptions is substantially a pleading of the exceptant before the appellant court and where the bill of exceptions is unintelligible, confused or conflicting, it will be interpreted against the appellant and in support of the judgment." ld. Relying on its articulation of the definition and object of the bill of exceptions, the Court stated of the appellant's complaint in the bill of exceptions as follows: "it is so vague that it leaves one with the impression that counsel or the appellant merely filed the bill of exceptions to fulfill the requirements of the appeal process." The same can be said of the bill of exceptions in the instant case, with specific reference to the averment that the trial judge erred in denying the admission into evidence of "certain relevant documents".

The foregoing distinctly conveys the idea or view that the appellant, in the instant case, should have specifically named and identified the documents which it deemed "relevant" to its case and not leave it to the Court to speculate as to which of the "certain" documents the appellant considered "relevant" to its case; it requires that the appellant gives the particulars in the minutes (i.e. date, page, etc.) where the trial court is alleged to have committed the act complained of rather than impose on the appellate court the task of searching the records to find what documents the appellant has made reference to or which the appellant says is supportive of its case, and therefore should have gone to the jury; it requires further that the appellant not impose on this Court an obligation which by law is imposed on the appellant or to burden the Court with the task of searching the records to see and speculate what unspecified and unnamed documents the appellant has made reference to and where in the records the acts complained of by the appellants can be found. We are prompted to ask the question, how is this Court to know which of the documents the

appellant has referenced or considers " relevant" to its case? In the case Keller v. Republic, 28 LLR 49 (1979), this Court said: "a bill of exceptions must state distinctly the grounds upon which the exception is taken; and it is improper to place upon the appellate court the burden of searching the record in order to discover the exception taken and the ground therefor. An exception should be so taken upon its face as to inform the appellate court of the ground upon which it is based, and so as not to necessitate the appellate court referring to the records in order to discover the ground therefor. The Supreme Court will not consider any exception in a bill of exceptions if the ground is not distinct, set forth." ld., at 61-62.

We do not believe that the exception, as couched by the appellant in the bill of exceptions, meets the required standard to warrant this Court sustaining the contention contained in count 2 of the bill of exceptions. The count does not name any particular documents which it deemed to be "relevant", as opposed to those which it may not have considered to be relevant; and it does not state the day's jury sitting, the date, and/or the page of the minutes of court where at the trial court took the action. We gather the impression, from the failure ' the appellant to fully inform the Court of the specific documents which the appellant referred to as "relevant", that the appellant expects this Court, on its own and without the appropriate or proper legal guidance as to what the appellant has reference, to search the minutes of the trial court to find out what the appellant is specifically referring to and whether there is truth to the allegation that the act complained of was committed. Even then, because the documents are not named by the appellant, it leaves to the Court the task of speculating as to which of the documents that the trial judge denied admission into evidence are "relevant" and which are "irrelevant". This Court, as in prior opinions, is not prepared to indulge in such speculative adventure. See Firestone Plantations Company v. Paye et al., 41LLR 12 (2002).

The error made by the appellant, articulated above, is further compounded by the appellant's other argument that the Civil Procedure Law does not require a plaintiff to attach or annex any documents or exhibits to the complaint., and that under the laws of this jurisdiction, once in the course of the presentation of its side of the case at the trial, the plaintiff's witnesses had testified to, identified and authenticated "certain relevant documents", which "certain relevant documents" were not attached to the pleadings, the trial judge should have admitted the said unnamed "certain relevant documents" into evidence so that they were presented to the jurors for their consideration in the course of their deliberations. Therefore, it says, the refusal by the trial judge to admit the said document into evidence was an error and that, as such, the verdict and judgment should be reversed and a new trial granted.

This is how the appellant framed the argument: The Civil Procedure Law, it said, requires only that "a pleading which sets forth a claim for relief, whether an original claim or a counterclaim, shall contain (a) a short and plain statement of the claim, showing that the pleader is entitled to a relief, and (b) a demand for judgment for the relief to which he deems himself entitled." Nowhere in the statute, the appellant asserts, is there any requirement “that all pieces of evidence for proof be attached to the pleadings", the only requirement being that there is "a plain statement of the case and a demand for relief. This is what appellant did in this case. What would happen in an action for assault and battery where [a] defendant [is] alleged to have used a piece of wood? Would the piece of wood be attached to the pleading? The answer is obviously no because the statute does not require it. However, the trial judge may allow the piece of wood into evidence is a material witness testifies to it and if its admission would be necessary to establish plaintiff’s case and promote the

ends of justice." Using this narrow circumscribed interpretation of the statute, the appellant advances the further argument, which it says supports its position: "[T]hat none of the 25 forms of pleading included in the annex of the Civil Procedure Law contains evidence of proof as an attachment. They are all plain statement of the case as laid out in the complaint and a demand for relief." The appellant maintains, therefore, that it did exactly what the statute required of it, and hence, there was no need for it to attach any documents, as exhibits or annexes, to the complaint. Accordingly, the appellant concludes that the trial judge was in error in denying admission into evidence the unnamed "certain relevant documents" referenced in the bill of exceptions, and which it said had been testified to and authenticated by the appellant's witness.

We reject the contention, not only because it lacks legal merit and defies both law and logic, but also because it seeks to destroy and desecrate the fabric and foundation of the principle of notice, enshrined, in the annals of the jurisprudence of the legal system of this jurisdiction for more than one and one half centuries. We would like to make it clear that the fact that the pleadings forms, annexed at the end of the final sections of Civil Procedure Law, do not show exhibits attached to the forms does not and cannot be interpreted to mean that when allegations are made of specific matters allegedly based on a contract, there is no need to attach the contract to the pleading to substantiate the allegations made by the plaintiff. This Court, in no ambiguous or uncertain term, says that the contention of the appellant is a complete misinterpretation of the Civil Procedure Law and it therefore rejects the said contention without the slightest hesitation.

Indeed, the argument by the appellant fails in two important respects. It seeks firstly to have this Court disavow the enshrined principle of notice, as enunciated, adhered to and subscribed to by this Court, from the very inception of this Court and the Republic. See The Garnett Heirs v. Allison, 37 LLR 611(1994). In the case Bontraco v. The Liberia Baptist Missionary and Educational Convention, decided on December 22, 2006, at the October Term of this Court, this is what Mr. Justice Ja'neh, speaking for a unanimous Court said: This Court has held in a line of cases that giving notice to the adversary party is anchored in legal requirements precedent to said party answering a complaint. We reiterate here that notice is a legal necessity to the fair and impartial hearing of any pleadings. George v. George, 9 LLR 33, 38 (1945); Salala Rubber Company v. Onadeke, 24 LLR 441, 444 (1976); Karoui v. Peal, 28 LLR 254, 259 (1979).

The contention of the appellant would have this Court adopt in the stead of the notice principle a new principle that would allow a plaintiff claiming title to a parcel of land not to be required or to have a legal obligation to attach as an exhibit to the complaint the transfer deed or other instruments upon which the plaintiff relies for claiming title to the land and which form the basis and t core of the plaintiffs claim to ownership to the property. If this Court were to subscribe to such argument, it will mean that this Court no longer requires that a plaintiff who makes a claim based on a written contract exhibits the contract upon which the claim is made. Under this new theory, advocated by the appellant, all that a plaintiff would be required to do is make an allegation in the complaint, deprive a defendant of the right to notice, as defined by the jurisprudential authority of this jurisdiction and universally accepted, and the opportunity to traverse in any meaningful way the allegations made by the plaintiff, as for example, the transferred deed or the contract upon which the plaintiff relies. Under the theory advanced by the appellant, all that a plaintiff is legally required to do is to set forth a claim, with no supporting documents, and later, at the trial, produce the instruments

supportive of the claim (such as a transfer deed or a contract), which is then identified and authenticated by a witness and confirmed by the court; and that by those acts the trial judge would be legally obligated to have the said deed or contract admitted into evidence and submitted to the jurors for their consideration. Under the theory, it doesn't matter that by the plaintiff's failure to attach the instruments to the complaint or the reply, a defendant is deprived of the right and the opportunity to challenge the instrument relied on by the plaintiff, both as to its genuineness, authenticity, defectiveness, non-compliance with the law or any other fault as would render the instrument illegal, unenforceable or unacceptable in law, or even as would give the defendant notice such that the said defendant could introduce instruments to support his or her position or as would render his or her instrument superior to that of the plaintiff. This would be a clear affront to the notice principle followed by this Court for more than a century. And while is true that the law should adapt to the changing times, developments and circumstances, such adaptation must conform to the basic tenets of justice, as this nation has and continues to value. The principle of notice has served as one of the pillars of the laws of the Republic. We see no legal, social or tangible reason presented by the appellant for discarding the principle now. Indeed, to do so would clearly violate some of the core protective right provisions of the Liberian Constitution.

But even the wood example provided by the appellant is seriously misplaced and fails because the notice requirement in this case is in reference to documentary evidence. Plus, regarding the wood, the notice requirement would have demanded that notice be given in the complaint that the party intend to produce the wood.

We do not dispute that this Court has said in a great number of opinions that once a document is testified to, marked by court, authenticated, and confirmed, the trial judge should admit the document it to evidence and have same passed to the jury for consideration. In the case Jawhary v. Watts et al. 42LLR 474 (2005), quoting The Garnett Heirs et al. v. Allison, 37 LLR 611(1994), this Court proclaimed: "It is a rule of modern practice that when a pleading is founded on a written instrument, a copy thereof may be annexed, and made a part of the pleading by reference as an exhibit, and by statute, or rule of court, it is sometimes made obligatory on part of the pleader in such a case to annex a copy of the instrument to the pleading."

Yet, while the Supreme Court has said that documents testified to, identified, authenticated, marked by court, and confirmed should be admitted into evidence and submitted to the jury, the Court has made the unequivocal clarification that those holdings presupposed that the documentary evidence must have previously been pleaded, annexed to the pleadings exchanged or notification given for their production at the trial. See Lamco J. V. Operating Company v. Gbezon Transport Company, 29 LLR 225 (1981), quoted herein before.

This holding is based on the principle of notice, which allows the adversary party the opportunity to attack, take issue with, or challenge the attached document. This principle has not been recalled by this Court and remains and therefore remains the modus operandi in this jurisdiction on the issue. Thus, it is the holding of this Court that the trial judge did not err in denying the admission into evidence of the documents because the appellees were not given the requisite notice to determine how they would attack the document; the appellant intended to have admitted into evidence. We must reiterate that such a course can be interpreted as a denial of one of the cardinal elements of the due process of law as recognized in this jurisdiction.

This brings us to the last and final issue, which is whether the jury's verdict of not liable in favor of the appellee/defendant was against the weight of the evidence, and that therefore the trial judge, erred in affirming the said verdict? However, before we proceed to address the substantive elements of the issue, we would like to comment on a number of intrigues presented by the issue. Firstly, although properly and clearly couched in the appellant's brief as a challenge to the verdict for being against the weight of the evidence presented by the parties in the case, and thereby rendering the judge's affirmance of the verdict as being an error, the issue is not so clearly similarly couched in the appellant's bill of exceptions. Here is how the appellant references the issue in its bill of exceptions: "Furthermore, plaintiff submits and says that you were in gross error when during your ruling on the motion for new trial, [you] stated that for a court to set aside a verdict, it must be established that the evidence adduced during the trial was not sufficient to support the verdict. This is not true in all cases. For the pollution of a jury as in this case, equally pollutes the verdict thereby the verdict returned and a judgment therefore emanating from the said verdict is dismissible. To therefore refuse to dismiss the case when the verdict was polluted renders Your Honour's ruling on the motion and the final judgment reviewable and reversible and plaintiff so prays."

The quoted phrase, from it wording, is susceptible to two interpretations. In the one case, it could be interpreted to mean that it was intended to allude solely to the allegations made in count one of the bill of exceptions that one of the jurors serving on the jury panel had served on a jury panel within a period of less than a year after a prior jury service. On the other hand, the statement could also be interpreted as a challenge to the judge's conclusion in his ruling on the motion for new trial that he was satisfied that the evidence adduced by the appellee/defendant during the trial was sufficient to support the verdict of the jury as opposed to the evidence produced by the appellant/plaintiff. The former interpretation would narrow the context of the reference to the verdict being against the weight of the evidence, would limit the evidentiary issue solely to a resolution of the issue of whether service on the jury by Mercy Kandakai in the circumstances of the case violated the law and therefore rendered the verdict as being against the weight of the evidence. Under this former interpretation of the allegation made by the appellant in the bill of exceptions, if this Court rejected the contention of the appellant, this Court would be precluded from exploring any further the merits of the case or the evidence produced by the parties to determine if in fact the verdict was against the weight of the evidence, and it would have to deny the appeal at that point; for such is the law that where the appellant fails to state in the bill of exceptions the particular errors made by the judge, the court cannot look into any of the errors not specifically noted.

Indeed, such a view finds strong support in the decided case of the Supreme Court. This Court has said in numerous opinions that where the appellant has failed to specifically state in the bill of exceptions the exceptions to action taken or not taken by the trial court in the conduct of the including the verdict, judgment or other rulings or actions of the trial court, the Supreme Court will not address such issue, raised for the first time in the Brief filed by the party. In Jackson, et al. v. Mason, et al., 24 LLR 97 (1975), this Court, speaking through Mr. Chief Justice Pierre, and citing the cases Torkor v. Republic, 6 LLR 88 (1937) and Richards v. Coleman, 6 LLR 285 (1938), said of such situation that "[T]his Court has confirmed the rule many times, that points not made part of the bill of exceptions are deemed to have been waived." ld., at 121. Similarly, in the case The Heirs of the late S. B. Nagbe, Jr. v. The Intestate Estate of the late S.

B. Nagbe, Sr., 40 LLR 337 (2001), this Court said: This Court has been consistent and vehement in its stance that issues not raised during the trial will not be heard on appeal, Benson v. Johnson, 23 LLR 290 (1974), and that the Supreme Court will not review issues where no exceptions were taken in the lower court, or consider an issue not included in the bill of exceptions. Cooper v. Davis, supra, Syl. 2. Accordingly, that issue is overruled and dismissed." ld., at 348. See also Messrs. C. M. B. Transport of Belgium v. Messrs. Family Textile Center, 37 LLR 733 (1995), wherein this Court said: The Supreme Court cannot pass upon issues not raised in the answer or in the bill of exceptions" and Monrovia Construction Corporation v. Wazami, 23 LLR 58 (1974), wherein Mr. Justice Henries, speaking for the Court, and relying on the cases Anderson v. Mclain, 1 LLR 44 (1868) and Bryant v. African Product Co., 7 LLR 93 (1940), espoused: At the onset it must be observed that the appellant's brief is not based or its bill of exceptions. Nor does the first count quoted state with particularity the several issues of law which are overruled by the trial judge. In appeals the bill of exceptions must set forth the points upon which it is believed the court decided erroneously and contrary to law.... For only such matters as are interposed in the lower court and appear in the bill of exceptions can be taken cognizance of in the appellate tribunal." ld., 61.

This Court spoke extensively of the matter in the case Wolo v. Sambollah, 21LLR 22 (1972). Mr. Justice Henries, speaking for the Court in that case, opined: when the allege second ruling denying the motion for a new trial was made, appellant, a Counsellor-at-law, was in court representing himself and being assisted by Counsellor James Doe Gibson, yet both failed to except to the adverse ruling on the motion and, therefore, did not include it in the bill of exceptions. He also failed to include his exceptions to the verdict and the final judgment. When asked why he did not include them in his bill of exceptions, he argued that this Court had declared in one of its opinion that it would consider exceptions taken at a trial, though not included in the bill of exceptions. Needless to say he failed to find such an opinion. In this jurisdiction the law is, and always has been, in appeals the bill of exceptions must set forth the points upon which it is believed the court decided erroneously Anderson v. McLain,: 1 LLR 44 (1868); exceptions taken and noted during a trial, but not included in the bill of exceptions, are considered as having been waived Torkor v. Republic, 6 LLR 88 (1937); appellant must confine himself only to complain set out in his bill of exceptions, Richard v. Coleman, 6 LLR 285 (1938);only such matters as were interposed in the lower court and appear in the bill of exceptions as record can be taken cognizance of in the appellate tribunal Bryant v. The African Produce Company, 7 LLR 93 (1940); and finally, points not raised in the appellant's bill of exceptions will not be considered by the Supreme Court, Jackson v. Trinity, 17 LLR 631(1966). The only exception to the rule on the inclusion of exceptions in the bill of exceptions is that omissions or errors in a bill of exceptions are not deemed waived in a criminal appeal on a capital offense." Johnson v. Republic, 15 LLR 66 (1962).

This is how the Supreme Court, speaking through Mr. Justice Morris, repeated its stance on the issue in the case Scanship (Liberia) Ltd. v. Sebleh et al., 31 LLR 13 (1983): 11Exceptions taken and not included in the bill of exceptions are deemed waived; further, the Supreme Court will not review issues where no exceptions were taken in the lower court, or consider an issue not included in the bill of exceptions even though excepted to." ld., at 20.See also Francis v. The Mesurado Fishing Company, Ltd., 20 LLR 542 (1971); Obi v. Republic, 20 LLR 166 (1971).

The foregoing has always been the position of this Court where a party has failed to particularize in the bill of exceptions

the errors said to have been made by the trial judge. We reaffirm that position and reiterate that we fully subscribed to the principles stated in the opinions cited above.

However, we believe that the instant case presents a series of different elements and scenarios from the cited cases as have persuade us to give greater credence to the second interpretation offered for the allegations set forth in the bill of exceptions by the appellant. Firstly, while we acknowledge that the primary focus of the motion for new trial centered on (a) the service c the jury by Mercy Kandakai, who was alleged to have done similar jury service in less than a year of the prior jury service and (b) the denial by the trial judge of the admission into evidence of certain documents testified to, identified and authenticate, the prayer of the appellant, as couched in the motion was very explicit that the basis for the motion was that the verdict was against the weight of the evidence. This is what the prayer said: "Wherefore, movant prays for a judgment setting aside the unmeritorious verdict entered by the petit Jury in this case, same being manifestly contrary to the weight of the evidence, set the defendant free, and grant unto movant such other relief as this Honorable Court may deem just and equitable." It was this prayer of the appellant that set the tune for and formed the core of the judge's ruling denying the motion for new trial and entering final judgment affirming the verdict of the trial jury. This is how the judge responded to the appellant's prayer: "that under the law, for a court to set aside a verdict, it must be established that the evidence adduced during the trial was not sufficient to support the verdict"; secondly, that the court is not called upon to determine the weight to be placed on the evidence nor is the court called upon to determine the veracity of the evidence adduce during the trial; thirdly, that burden placed upon the court by a motion of this nature is for the court to determine whether there exists sufficient evidence to support the verdict as returned by the impanel jury; and fourthly, that "after thoroughly reviewing the pleadings in this matter and the evidence adduced by the parties during the hearing of this matter, this court is convinced that there exists sufficient evidence to support the verdict as returned as by the jury impaneled to hear this matter and therefore this court sees no justification whatsoever to disturb the said verdict."

Reading the trial judge's ruling, excerpts of which we quoted immediately, above, we hold the view, the same as we believe the appellee does, and we note that it is the appellee that is contesting the appeal, that the reference made by the appellant to the error in the judge's ruling in holding that the verdict was not against the weight of the evidence, is in fact one of the issues which the appellant seeks a resolution to from this Court. Indeed, not only does the appellee not raise an issue or contention asserting that the appellant failed to state in clearer terms in the bill of exceptions that the verdict was against the weight of the evidence, but the three issues presented in its brief and the entire arguments in the brief directly address the evidence and thereby seeks to justify the verdict in terms of the weight of the evidence presented by the parties, leaving the impression that the appellant and the appellee accord the same interpretation to the appellant's reference to the verdict being contrary to the weight of the evidence. Accordingly, for the reasons stated herein above, and even more importantly because the interest of justice dictates that we address the issues on the merits of the case, as presented by the parties without contestation as to whether the issues are properly before the Court, we proceed to determine whether the verdict of not liable returned by the jury in favor, the appellee/defendant, affirmed by the judgment of the trial judge, was against the weight of the evidence. Let us therefore now proceed to an examination and analysis of this last and final issue.

In proceeding to resolve the issue, we take note of the fact that the appellee, in addressing the issue, has chosen to divide same into sub-sets. The first sub-set, the appellee says, is whether or not the evidence showed that the appellant had a valid insurance policy such that the appellant was covered or insured at the time of the losses which the appellant alleged it had incurred as a result of the incident stated in the complaint. The appellee answered the question in the negative, stating that at the time of the water damage, for which the appellant claimed damages, the appellant was without any insurance coverage with the appellee. In that respect, the appellee makes the argument that as the appellant had not paid the remaining fifty percent for the year coverage the policy has lapsed after the first sixth month. Hence, as the water damage occurred after the lapse of the first months of the coverage, the appellant was under no insurance coverage. We disagree with the appellee and hold that contrary to the appellee's contention, the facts presented in the case and the law governing such insurance coverage clearly indicate that at the time of the water damage to the appellant's premises the coverage was still in force and effect, and that accordingly, subject to the evidentiary substantiation of the extent of the damage to the appellant's premises, the appellee was obligated to compensate the appellee for the damage in accordance with the policy.

For the purpose of justifying the conclusion reached by us and stated above, let us review the records in the case and the law governing such matter. The records reveal the following sequence of events: (1) That on December 18, 2001 Plaintiff/appellant Universal Printing Press secured from defendant/appellee Blue Cross Insurance, Inc. an insurance policy, No. BCFB-2001-71 for period of one year, commencing December 18, 2001 and ending December 17, 2002, subject to renewal;(2) that on March 17, 2003 the parties concluded what they agreed was a further insurance policy, NO. BCFB 2003-042, to commence March 17, 2003 and to end March 17, 2004, for which Universal Printing Press was to pay an amount of United States Four Thousand (US$4,000.00) Dollars; (3) Universal Printing Press alleged that it issued two separate checks of US$2,000.00 each Blue Cross for coverage for the period March 2003 to March 2004, but exhibited only one check NO. 00088389, drawn on Ecobank, bearing date 19-04-03. Although the appellee initially denied that it had received this check, it subsequently admitted that indeed it had received the check but argued that as the check was only for half of the premium amount, it covered only the period March 17, 2003 to September 17, 2003, and lapsed as of the latter date, which was one week prior to the date of occurrence of the incident in which the appellant's premises were damaged by flood water. The appellant maintained, therefore that the appellant was not covered at the time it suffered the damage complained of; and (4) that an invoice was provided plaintiff/appellant evidencing that a policy was concluded and that the plaintiff/appellant was to make payment of an amount of US$4,000.00 to cover the period of one year of coverage. This was the amount regarding which the Plaintiff/appellant had made the initial payment of US$2,000.0 shown by check No. 00088389. The appellant claims to have issued a further postdated check in payment of the balance remaining on the premium, but we have seen no evidence in the records that any such check was issued or payment made otherwise. Hence, we have discounted that any such further payment was made up to the date of the floods that damaged the plaintiff/appellant's premises, equipment and other property; and (5) that on September 23, 2003 a heavy storm occurred which flooded the plaintiff/ appellant’s premises and caused substantial damage to the premises, equipment, supplies and other property said to be covered under the insurance policy.

The foregoing are the facts upon which the first sub-issue presented by the appellee is centered. Can it be said that a valid and operating insurance policy existed at the time of the occurrence of the flood that damaged that plaintiff/appellant's premises, equipment and supplies? We indicated before that we believe and therefore hold that a valid insurance policy did exist at the time of the occurrence of the flood and the damage. We refuse to accept and indeed reject the appellee's contention that since at the time of the flood the appellant only paid half of the amount owed for the insurance coverage, and since in that case the appellant's equipment, supplies and other property were protected by the plan for only the first six months, which means that the coverage would have expired on September 17, 2003, less than a week before the floods, the appellant was therefore not covered and is accordingly not entitled to a damage award.

We have extensively examined every element of the insurance policy, subject of these proceedings. We take cognizance that the policy is very clear and unambiguous that it is for a period of one year, commencing March 17, 2003 and ending March 17, 2004. Nowhere in the policy, which in form, format and wordings was designed exclusively by the appellee, does it state that the policy automatically lapses where there is a default by the insured. To the contrary, the policy states that in the event of default the insurer will inform the insured of the default and notify the insurer that the policy may be cancelled within sixty days of the date of the notice. Here is how the policy provision regarding termination reads: "This policy may be canceled at any time by this Company by giving to the insured a sixty days (60) days; written notice of cancellation."

Our reading of the provision is that if the appellee intended to cancel the coverage after six months, appellant should have received a notice of cancellation by July 19, 2003. However, the certified records from the trial court show that no notice of cancellation was provided to the appellant by that date or any other date. The appellants learned of the cancellation only after their claim had been submitted to the Insurance Company. Notice is appropriate when cancelling an insurance contract because that provides the insured with knowledge that their property will no longer be protected after a certain date, thereby giving them an sufficient opportunity to obtain the applicable insurance. In this case, no notice was offered, which leads this Court to believe that the insurance contract between the appellant and appellee was still in effect.

We reiterate that we interpret the policy termination or cancellation provision to mean that the policy will remain in full force and effect until terminated by the insurer, upon sixty days' notice of the intent to cancel. Nowhere in the facts of the case and in the records of the court do we see that at any point following the coming into force of the policy up to the occurrence of the rain floods that damaged the appellant's premises, equipment and other property the insurer informed the insured [the appellant] that it was in default and that the appellant was being notified that the policy would be terminated to take effect within sixty days. Indeed, the facts reveal that it was only after the occurrence of the floods and the insured communication to the insurer of the claim that that insurer informed the insured that it was in default; that as a result of the default the policy had lapsed; and that therefore the claim could not be honored.

In Lloyd's Insurance Company v. The African Trading Company, 24 LLR 70, 79-80 (1975), this Court held that "a policy of insurance is a contract whereby for an agreed premium one party undertakes to compensate the other for loss or damage from a specified peril. In relation to property, it is also a contract whereby the insurer becomes bound for a

definite consideration to indemnify the insured against loss or damage to the property named in the policy." See also Flood v. Conneh, 3 LLR 257 (1931). When interpreting the terms of an insurance policy, this Court has determined that the language shall be construed liberally in favor of the insured and strictly against the insurer, the reasoning for which this Court expounded on by stating, "The rule that a policy or contract of insurance is to be construed liberally in favor of the insured and strictly against the insurer is based upon various reasons. The one most frequently advanced is that an insurance contract, like any written agreement, should, in case of doubt as to the meaning thereof, be interpreted against the party who has drawn and is responsible for the language employed therein. Among other reasons mentioned are that a liberal construction in favor of the insured is most conducive to trade and business and, moreover, probably most consonant with the intention of the parties, and that in accord with the presumed intention of the parties, the construction should be such as not to defeat, without a plain necessity, the insured's claim to the indemnity which it was his object to secure and for which he paid a premium." lntrusco Corp. v. Tulay et al., 32 LLR 36, 51-52 (1984).

It is with the foregoing principles in mind that this Court concludes herein that the policy [contract] between the appellant and the appellee, worded as it did in clear and unambiguous terms, was for a period of one year, and that it did not reduce that period, except as it specifically provided in the policy cancellation clause, to six months of coverage merely because only half of the annual premium was paid at the time of the flood event. Nowhere is language found in the policy that would support the interpretation advocated by the appellee. But even more than the fact that the language of the policy is crystal clear as to the duration of the coverage and the occasions which would shorten that period, this Court asserted in the lntrusco case in unmistakable and unequivocal terms that an insurance contract will be interpreted against the party whet drafted the instrument. If in the instant case the appellee intended that the making of half payment of the annual premium by the appellant meant that coverage was for only the first six months of the plan, then terms to that effect should have been inserted into the policy so that there was a clear caveat to the one year period stated in the policy.

In the absence of such clear language, this Court is persuaded by the language in the policy that the policy was for a period of one year, and that it is only upon certain conditions being performed by the insurer in the event of default by the insured in the payment of the premium that' the contract could be said to have lapsed or be exposed to termination by the insurer.

Indeed, the conclusion we have reached that the policy is not automatically cancelled or terminated because of default in the payment of the premium as provided for in the policy is further buttressed by the fact that the policy itself gives to the insurer the option to cancel or not to cancel. The cancellation provision of the policy clearly states that [t]his policy may be canceled." This Court, as previously stated in this Opinion, has said on numerous occasions that the use of the word "may" leaves an option rather than an obligation to do an act. Thus, the use of word "may" clearly indicate that the policy could not lapse or terminate of its own accord prior to the end of the period of the coverage stated in the policy. The termination or cancellation could only occur by action of the appellee and that action could only be valid if in compliance with the notice requirement stated in the policy. Any other course would be invalid and without any legal effect; and we so hold.

The second sub-set of the issues presented by the appellee is more of a technical nature. It begs answer to the question

whether the plaintiff/appellee can recover under the insurance contract attached to the complaint. The appellee answers the query in the negative. It states as the reason for the negative answer that the insurance contract attached to the complaint is in fact the first i1nsurance contract concluded between the appellant and the appellee for the coverage period December 18, 2001to December 17, 2002. The incident predicated upon which the appellant seeks damages, the appellee says, occurred On September 23, 2013, when the policy was no longer in effect and had lapsed of its own accord by virtue of the end of the coverage period stated in the policy or contract. We view this as a mere technical issue which does not affect the merits of the case or of the claim since in fact and indeed that appellee; admits that the appellant did secure insurance with the appellee on March 17,2013 and that it was this policy which the appellee claimed had lapsed by virtue of the fact that appellant had failed to pay the balance half of the premium for the year. The fact that the appellant attached the wrong policy therefore did not detract from the fact that it had a policy with the appellee, predicated upon which it had made a claim and had resorted to legal action; it did not detract from the fact that the appellee admitted to the existence of such policy and that it had acted on the basis of that policy in denying the appellant's claim. It therefore serves no utility in belaboring the Court's time and energy in giving any further attention to this unmeritorious contention by the appellee. We accordingly reject the said contention and proceed to the final sub-set of the appellee's presentation, which is that the jury verdict was not against the weight of the evidence adduced at the trail by the parties.

The appellee asserts that the appellant had failed to substantiate the claim of the amount of the damage sought by it; that the appellant had failed to prove by a preponderance of the evidence the special damages which it claimed to have suffered; and that in the absence of such proof the appellant is not entitled to any award of damages. Hence, it says, the jury, having listened to the evidence and deliberated on the issue, returned the correct verdict, a verdict that is not against the weight of the evidence, but rather conforms to the evidence presented by the parties. The appellant, on the other hand, although not saying extensively how the verdict of the jury is against the weight of the evidence, has nevertheless maintained the position that the evidence is indeed against the weight of the evidence. The evidence, the appellant says, is that it had an insurance contract with the appellee for the coverage of the appellant premises and other property; that the policy was in force and effect at the time the flood consumed the appellant's premises; that the appellee was informed of the damage to the appellant's premises and its equipment and supplies; that the appellee had sent its investigator to the appellant's premises and that the investigator had confirmed the damage done to the appellant's premises and property. The appellant claims that it presented evidence to corroborate all of the foregoing and that the jury ignored these and brought a verdict that did not reflect the evidence. Hence, it would have this Court overturned the verdict and the judgment of the lower court confirming the said verdict.

In deciding on the issue of whether the verdict is against the weight of the evidence, we feel the need to reiterate a few very important principles of law which the Supreme Court has enshrined in the annals of the legal jurisprudence of this country. The first of these principles is that mere allegations are not proof; such allegations must be substantiated by evidentiary proof at the trial, for it is evidence alone that enables a court to decide with certainty the matter in dispute. Morgan v. Barclay, 42 LLR 259 (2004); American Life Insurance v. Holder et al., 29 LLR 143 (1981); Kamara et al. v. The Heirs of Essel, Supreme Court Opinion, March Term, 2012, decided July 5, 2012. The second principle which the

Supreme Court has adhered to for as long as the Court has existed is that the burden of proof lies upon the person or party who alleges a fact, and that in the absence of such proof, a recovery cannot be had Jackley v. Siaffa, 42 LLR 3 (2004);United States Trading company v. Richards and Brown, 41LLR 205 (2002); Kollie v. Jarbo, Supreme Court Opinion, October Term, 2013, decided January 22, 2014; see also Civil Procedure Law, Rev. Code 1:25.5. A further principle that has governed this Court in the disposition of cases wherein special damages are sought is that the plaintiff must show with specificity the real and actual damages suffered and that in the absence of such specificity and proof, the damages cannot be awarded. Firestone v. Kollie, Supreme Court Opinion, March Term, 2012, decided August 19,2012;Dopoe v. City Supermarket, 34 LLR 343 (1987); Lerchel v. Bio, 34 LLR 64:8 (1988); Meridien BIAO Bank v. Mano Industries, Supreme Court Opinion, October Term, 2012, decided January 3,2013. It is not enough merely for the plaintiff to assess or state special damages in an amount made out by himself; he must prove his claim by a preponderance of the evidence as to the damages sustained. Swissair v. Kalaban, 38 LLR 49 (1995) [CITATIONS].

In the instant case, the plaintiff has made allegations which its owner has not only testified to and provided evidence of as far as the existence of an insurance policy and that its premises were damaged due to a storm flood. The plaintiff/appellant also exhibited and testified to the value of the policy being a maximum of US$500,000.00. None of these have been disputed by the appellee, and therefore finds acceptance by this Court that the burden has been met as far as the existence of a contract is concerned and that the plaintiff suffered damages as a result of the flood to its premises, equipment and other property. These were confirmed by witnesses for both the plaintiff/appellant and the appellee/defendant, although the appellee/defendant makes the claim that it was due to the negligence of the appellant/plaintiff that the damages were exacerbated. Under this argument by the defendant, the inference is that the damages would or should be mitigated. The basic question is what is the extent of the specific or special damages suffered by the appellant as a result of the flood? This Court recognizes that consistent with the principles stated above it is not sufficient that the plaintiff/appellant alleged in the complaint that as a result of the flood it suffered damages to the value of US$344,540.00; or that it attached a copy of a letter sent to the appellee showing a breakdown of how it arrived at the amount of US$344,540.00. The mere statement of these would not meet the threshold or standard set by this Court regarding proof of special damages.

However, we see in the records two key occurrences. The first is that on notification by the plaintiff/appellant, the defendant/appellee ordered an inspection of the damaged premises by an independent adjuster. That inspection was carried out on September 29, 2003 and a report prepared and submitted to the defendant/appellee the following day. We note that while the report is not conclusive as to the extent of the damage, it did verify that there was a flood, that the flood had caused damage to the plaintiff/appellant's premises, that part of the damage caused was to the equipment located in the plaintiff/appellant's premises, and that there was other damage to supplies and other materials located on the premises which the plaintiff/appellant's manager claimed to have disposed of because they had been consumed or destroyed by the water from the flood. There was therefore no disputing that there was a flood and that the flood had cause damage. What is interesting is that the witness, who had been engaged by the defendant/appellee to inspect the premises and the damaged on the premises, and who was a witness for both the plaintiff and the defendant, stated that he had recommended to the defendant/appellee that it should have a professional appraisal

assess the full extent of the damage since he lacked the competence to perform such a task. The records do not show that there was any such undertaken by the defendant/ appellee. Instead, the defendant/appellee took the position that as the coverage on the plaintiff/appellant's premises had lapsed, it had no obligation to honor the plaintiff/appellant's claim. The responsibility of having the damaged assessed therefore felt upon the plaintiff/appellant.

We find in the case file a report bearing date October 23, 2003, done on the letter head of Liberia Fiti Plastic Inc., and over the signature of one Serawit (Israel) Mengistu, Chief Mechanical Engineer, in which the named institution stated that it had undertaken and conducted an assessment of the damage that was done to the plaintiff/appellant's premises, equipment, supplies and other materials. The report is addressed to the plaintiff/appellant and was apparently done at the instance of the plaintiff/appellant since, as noted above; the defendant/appellee had disclaimed and rejected any responsibility or liability, for the damage to the plaintiff/appellant's premises. The report showed that four machines were damaged and it itemized the costs associated with replacing the parts for each of the damaged machines as follows: (1) Heidelberg Machine 468 HGT 62711, for a total spare parts costs of US$21,380.000; (2) Heidelberg Machine 468 HG7 59182,for a total spare parts costs of US$21,380.00; (3) Kord Machine 314056 for a total spare parts costs of US$23,946.00; and (4) Kord Machine 319826, for a to al spare parts costs of US$23,945.00; (5) Cutter CF equipment No. 250021 for a total spare parts cost of US$1,610.00;and (6) Letter Machine, No.106396,for a total spare parts costs of US$2:L,380.00. The report further stated that there were other pieces of equipment (camera, plate maker, two Stichie Mechines and Perforate Machine/ REXEL). that were completely out of use, meaning that they could not be repaired and would therefore have to be completely replaced. However, the report indicated no costs of replacement for those items. It is worth mentioning also that the inspector institution stated a fee of US$9,500.00 for the, inspection and maintenance of the machines."

Lastly, we have found in the records a listing of items termed as “Stock Damaged After Water Entered" and “Finished Product damaged After Water Entered". For the first set of items, a total value is stated at US$100,000.00 and for the second set of items a total value is stated at US$97,900.00. However, these items do not seem to have formed part of the report of inspector, Liberia Fiti Plastic Inc. Rather, they seem to have been prepared by the plaintiff/ appellant it based on what it believed it had on the premises and which it alleged were damaged as a result of the flood.

The above, the plaintiff/appellant stated, formed the breakdown for the amount lit demanded from the defendant/appellee, growing out of the damage to its premises, equipment, supplies and other stocks. On the other hand, the defendant/appellee asserts that the special damages sought by the plaintiff/ appellant are speculative and therefore not allowed under the law.

As stated earlier in this opinion, the Supreme Court has held and maintained as a governing principle in cases where special damages are alleged, they must be stated with particularity and specificity and they must be proved at the trial. This means that each item for which the plaintiff seeks special damage, the plaintiff must not only allege the damages but that at the trial plaintiff must also prove each item for which the special damages are sought. It means that the real and actual damages suffered by the plaintiff must be proved and that in the absence of such specificity and proof, the damages claimed as special damages cannot be awarded by the jury.

In the instant case, the plaintiff alleged and demand special damages to the tune of US$344,540.00. It attached in support

of the demand the report of the professional and qualified institution that inspected the damages to the premise; The institution issued out a report not only attesting to the fact that the premises were damaged by flood, a fact which the defendant/appellee did not deny, but also itemizing each of the machines and other items that were damaged; the institution itemized each item that needed to be replaced on each of the damaged machines and it attached a value to each of the items that needed to be secured for the repair of each of the machines. We believe that these were particularized sufficiently to meet the standard set by this Court to meet the burden of proof for a claim for special damages. We believe this to be especially true since the defendant/appellee did not question the professional competence or integrity of the institution that carried out the inspection. The total value of the items needed for the repair of the machines was placed at US$113, 1541.00 and the costs of repairing the machines was placed at US$9, 5010.00. The total of the two items amounted to US$123,141.00. We do not believe that there can be any doubt that in regard to those items, the special damages were shown to the value stated herein. However, as to the camera, plate maker, Stichie Machine and the Perforate Machine/REXEL, no value was stated and hence they remained within the realm of speculation, and as special damages cannot be granted predicated upon speculation, the plaintiff/appellant cannot be said to be entitled to any award regarding those items. We therefore deny the prayer for such award.

We also have difficulty adjudging that the plaintiff is entitled to any award regarding the stock damage and the damage said to have been done to the finished product. For such damage to be awarded, the plaintiff/appellant would have had to show some evidence of the purchase of those items and the order that had been laced with it regarding which it had finished the producing the ordered products. But no such evidence was presented and therefore there can be no certainty as to whether those items actually were in the premises and were damaged or destroyed. As noted above, these latter listings were prepared by the plaintiff/appellant and not by the inspecting institution. This Court has said on numerous occasions that the mere preparation of a list by the plaintiff is insufficient to form the basis upon which special damages can be awarded. Saba Bros. v. Fredericks, 15 LLR 18 (1962); Ghaida Shopping Center v. Arnous, Supreme Court Opinion, March Term, 2009, decided July 23, 2009. There must be better and greater evidence of the existence of the products and of the value which the plaintiff attach to each product. In the absence of those, the special damages cannot be said to have been proved and therefore cannot be awarded. Accordingly, we deny the plaintiff/appellant's claim to such damages.

However, notwithstanding our denial of certain of the special damages prayed for by the plaintiff/appellant, we do not deny that as a consequence of the behavior of the defendant/appellant, the plaintiff/appellant has suffered inconveniences, embarrassments and lost opportunities, for which general damages will lie. We have therefore carefully considered the period that has elapsed since the damage to the plaintiff/appellant's premises and its equipment and we are of the considered view that general damages are warranted under the circumstances.

This brings us to the issue of the judgment of the lower court affirming the verdict of not liable returned by the empanelled jury in favor of the defendant/appellee. We are aware of the manifold decisions of this Court that the trial jury are the triers and determinants of the facts in a case, and that its verdict should therefore not ordinarily be disturbed. Watamal et al. v. Kieta et al., Supreme Court Opinion, October Term, 2012, decided January 4, 2013; Momolu v. Cummings, 38 LLR 307 (1996). But this Court has also held that where the verdict of the jury is so adverse to the

facts that it cannot be sustained this Court will not hesitate to set aside the said verdict and enter such judgment as it believes the lower court should have entered. Emirates Trading Agency Co. v. Global Africa Import & Export Company, 42 LLR 204 (2004}; Sibley v. Bility, 33 LLR 548 (1989); Johnson-Maxwell v. Mitchell et al., 35 LLR 609 (1988). It is in this light that this Court, having determined that from the evidence presented it is clear that the plaintiff/appellant did have an insurance can be no certainty as to whether those items actually were in the premises and were damaged or destroyed. As noted above, these latter listings we prepared by the plaintiff/appellant and not by the inspecting institution. This Court has said on numerous occasions that the mere preparation of a list by the plaintiff is insufficient to form the basis upon which special damages can be awarded. Saba Bros. v. Fredericks, 15 LLR 18 (1962); Ghaida Shopping Center v. Arnous, Supreme Court Opinion, March Term, 2009, decided July 23, 2009. There must be better and greater evidence of the existence of the products and of the value which the plaintiff attach to each product. In the absence of those, the special damages cannot be said to have been proved and therefore cannot be awarded. Accordingly, we deny the plaintiff/appellant's claim to such damages.

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The Clerk of this Court is ordered to send a mandate to the lower court to have the judge presiding therein to resume jurisdiction over the case and to enforce the judgment of this Court consistent with law. Costs are adjudged against that appellee. AND IT IS HEREBY SO ORDERED.

Counsellor J. Laveli Supuwood appeared for the appellant. Counsellor Nyenati Tuan of the Tuan Wreh Law Firm and Counsellors David A. B. Jallah and J. Bima Lansanah of the David A. B. Jallah Law Firm appeared for appellee.