

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC
OF LIBERIA, SITTING IN ITS MARCH TERM, A.D. 2022

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SRCHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H.WOLOKOLIE ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA ASSOCIATE JUSTICE

Guaranty Trust Bank (Liberia Ltd.) by and thru its Managing Director of the City of Monrovia, LiberiaAppellant	}	
	}	
VERSUS)	
)	
Mr. Sie Edward Freeman, also of the City of Monrovia, Liberia.....Appellee	}	APPEAL
	}	
	}	
<u>GROWING OUT OF THE CASE:</u>	}	
	}	
Mr. Sie Edward Freeman, also of the City of Monrovia, Liberia Plaintiff	}	
)	
VERSUS)	ACTION OF DAMAGES
	}	FOR WRONG
Guaranty Trust Bank (Liberia Ltd.) by and thru its Managing Director of the City of Monrovia, LiberiaDefendant	}	
)	

Heard: November 30, 2021 Decided: September 23, 2022

MR. JUSTICE NAGBE DELIVERED THE OPINION OF THE COURT

This case comes before the Supreme Court of Liberia en banc for appellate review from the final ruling of the trial judge, His Honor Scheaplor R. Dunbar, Assigned Circuit Judge, Sixth Judicial Circuit, Civil Law Court "B", entered on June 3, 2020, in which he adjudged the appellant/1st defendant, Guaranty Trust Bank (Liberia Ltd.), liable to the appellee/plaintiff, Mr. Sie Edward Freeman, for injuries he sustained on August 28, 2018, on account of the tortious act committed by the 2nd defendant, Mr. Ayodeji Bejide, while serving as the Managing Director of the appellant/1st defendant.

Perusal of the records certified to this Court reveals that on October 2, 2018, the appellee/plaintiff, Mr. Sie Edward Freeman, through his legal counsel, the Consortium of Legal Practitioners, filed a formal complaint before the Civil Law Court, Sixth Judicial Circuit for Montserrado County, against the Guaranty Trust Bank (Liberia Ltd.), appellant, as 1st defendant, and Mr. Ayodeji Bejide, then Managing Director of the appellant as 2nd defendant, in an action of damages for wrong. On October 16, 2018, the plaintiff withdrew his complaint and simultaneously filed an amended complaint on the selfsame date.

In his amended complaint, the plaintiff/appellee alleged essentially that, on August 28, 2018, at about 11:0'clock a.m., he was summoned to the office of the Managing Director, Mr. Ayodeji Bejide, for their regular weekly one-on-one routine meeting in keeping with the bank's policy; that while the two, plaintiff and the Managing Director, were discussing the portfolio of the bank's public sector group, and given his daily management of the public sector accounts, coupled with his experience with the bank over the last eight (8) years, he disclosed to the Managing Director some strategies and next steps which, if not considered and acted upon, would expose the bank to immense risks; that whilst they were on the brink of concluding his recommendations, the Managing Director became visibly agitated, started screaming and yelling that the plaintiff knew nothing about banking, his position was nonsensical and recommendations made were of no interest to the bank; that between the sporadic outburst and insults of the 2nd defendant, he registered his apologies, citing that he did not intend to aggravate him but to respectfully make a recommendation which he believed was in the best interest of the bank; that while waiting for cue to leave, the 2nd defendant, Mr. Ayodeji Bedije, to the greatest shock

and consternation of the plaintiff, took a big calculator off his desk, knowingly, recklessly, and with the intention to harm, aimed same at his face.

The plaintiff continued in his amended complaint that, stunned and shaken by the action of the 2nd defendant, it took the pain on his lips to bring him to the realization that he had been assaulted and that he then used the facing of his phone as a mirror to see the damage caused by the 2nd defendant on his lips; that upon examination, he found his mouth bleeding from cut to his lips and that his lips started to swell; that to his greatest disbelief and a second shock, the 2nd defendant said "I am disappointed in you Edward, if I disagree with you doesn't mean you will lose your job but if you continue talking, you will lose your job", ordered him to "calm down" but in a very condescending and patronizing tone that convinced him that the 2nd defendant had no remorse but had intentionally assaulted him and therefore, walked out of the Managing Director's office; that in pain, bleeding and humble tears rolling down his cheeks, he walked through the banking hall and not only did his colleagues as well as customers of the bank overheard the humiliation that Mr. Bedije had subjected him to, but saw the evidence of the assault that had been committed against his person as evidenced by the barrage of questions pointed at him when he left the office.

The plaintiff further averred in his amended complaint that he reported the matter to the Liberian National Police and sought medical attention for the injuries sustained; that for the injuries he sustained and the humiliation and embarrassment caused by the wrongful conduct of the 2nd defendant, Mr. Ayodeji Bedije, the 1st defendant, Guaranty Trust Bank, is equally liable under the doctrine of respondent superior

because the injuries, humiliation and embarrassment caused by the 2nd defendant were done during the normal course of duty of the 1st defendant GT Bank and that the negligence of the employee is imputable to the employer if the relationship of principle-agent exists at the time of and in respect to the transaction out of which the specific injury arose; that as a result of the wrongful conduct of the 2nd defendant, he has become a laughing stock with the recordings of the incident going viral on social media; that the 1st defendant, GT Bank and the 2nd defendant, Ayodeji Bedije, are jointly and severally liable because at the time of the incident, 2nd defendant was an employee of

the 1st defendant and that the 2nd defendant was acting within the scope of his employment. Concluding, the plaintiff prayed the trial court to grant his complaint against the defendants, rule and award him general damages in the amount of not less than One Million United States (US\$1,000,000.00) Dollars; punitive damages in the amount of Five Hundred Thousand United States (US\$500,000.00) Dollars and special damages in the amount of Three Thousand, Eight Hundred Seventy-Five United States Dollars (US\$3,875.50) and Fifty Cents.

1

On October 12, 2018, the 1st defendant, Guaranty Trust Bank (Liberia) Ltd., answered and prayed the trial court to deny and dismiss the plaintiff's amended complaint in its entirety on grounds that:

“The 1st defendant cannot confirm knowledge of the discussion between plaintiff and 2nd defendant because [it] was not part of the exclusive meeting between the two that he “disclosed to 2nd defendant some strategies and next steps which if not considered and acted upon would have exposed the bank to immense risks”, which aggravated the 2nd defendant. However, the plaintiff claimed that he offered apologies to the 2nd defendant, but said 2nd defendant issued more shouts and

insults on the plaintiff; furthermore, the 1st defendant contended in its answer that it cannot confirm whether or not the 2nd defendant took a big calculator off his desk, knowingly, recklessly and with the intention to harm, aimed at plaintiff's face because [it] was not present in the meeting; that the video recording was done by the plaintiff and wonders how same of an exclusive meeting between the plaintiff and the 2nd defendant left the plaintiff's phone to be initially posted online which went viral; hence, the plaintiff should be held solely and personally liable for being the subject of online scorn and mockery; that the plaintiff's only reason for which he filed this action is to embarrass and extort money from the 1st defendant because 1st defendant was never informed officially of any misunderstanding or conflict between the plaintiff and the 2nd defendant; that if, for the sake of argument, there was an "assault by one employee against another, it was logical for plaintiff to formally make a written complaint to the 1st defendant but went ahead to post video online in order to lay a foundation for his extortionist claims".

Traversing the complaint further, 1st defendant averred that no complaint was made against [it] to the Liberia National Police (LNP) nor was [it] invited by the Police authorities for any investigation; that the plaintiff's decision to first report the matter to the police and then disseminate same on social media was in violation of the 1st defendant's policies and procedures. The 1st defendant also contended that the plaintiff's sole intent was to extort as much money as possible from the 1st defendant; that the medical report attached to his complaint, the 1st defendant cannot confirm nor deny its reliability or veracity because the individuals who signed as doctors are not licensed to practice medicine in the Republic of Liberia; that 1st defendant cannot and is not responsible for an unlawful action of any of its

employees while acting totally outside of his legitimate scope of authority; that the 6th edition of the Black's Law Dictionary states that "the doctrine of respondeat superior is inapplicable where injury occurs while employee is acting outside his legitimate scope of authority"; that the 1st defendant firmly asserted that respondeat superior, as a doctrine for attaching liability is not applicable in this case, as whatever misdeed or unlawful act may have occurred between the plaintiff and the 2nd defendant, same was neither authorized nor assented to by the 1st defendant.

The 1st defendant furthered that it is well established in this jurisdiction that where an employee's conduct is outside his scope of duty, or is outside the terms of reference, he is definitely responsible for his own acts and conduct; that the 2nd defendant's action cannot be imputed to the 1st defendant because the 2nd defendant, as Managing Director at that material time, his terms of reference did not permit him to engage in any such unlawful act as is being alleged in this instance; that the Supreme Court has clearly said that "a principal is not generally liable for the willful acts or misdeeds of agent where damage is done unless the principal originally commanded, or subsequently assented to the act; a principal is only liable if the agents are within the scope of authority as agent. It would work incalculable harm to make a company or corporation responsible for every unauthorized act of its agent, there would certainly be no end to the number of lawsuits that would arise if such claims were made lawful".

Answering further to plaintiff's complaint, the 1st defendant vehemently contended that it cannot confirm whether or not the injury and humiliation did happen, and if so, were caused by the 2nd defendant. Moreover, the 1st defendant averred in its answer that it did

not authorize the 2nd defendant nor give its assent to the alleged assault on the plaintiff by the 2nd defendant for which liability would attach against it; that plaintiff's complaint to the Police and subsequent investigation that led to the suit at the magisterial court which triggered this civil action of damages for wrong, did not include nor link the 1st defendant to the alleged injury; that the purported video evidence does not show any attack but shows plaintiff making a selfie" video of himself making a conversation which eventually went viral on his own account; hence, plaintiff cannot seek compensation for his action which allegedly made him a subject of scorn, mockery and ridicule. The 1st defendant further denied all the allegations contained in the plaintiff's amended complaint and prayed the trial court to dismiss same.

The 1st defendant, in addition to its answer, filed a motion to strike/dismiss the plaintiff's amended complaint. The 1st defendant contended principally that, the affidavit attached to the plaintiff's complaint was improperly verified in that, it was venued in the Civil Law

Court before His Honor Yussif D. Kaba, Resident Circuit Judge of the Sixth Judicial Circuit Court, Montserrado County, not before a Justice of the Peace. The 1st defendant maintained that it is an established fact that for a verification of a pleading to be valid, it must be sworn to before an authorized official and the jurat must be indicated; meaning that, an affidavit can only be venued before an officer authorized to administer oaths and not the judge of the Civil Law Court or a Justice of the Supreme Court; that the official before whom the plaintiff's oath was administered was not an authorized official to administer oath because he is not a Justice of the Peace; that under our laws, where a verified document is statutorily required to support a pleading, omission of the title of the officer whom the affidavit accompanying the

pleading was sworn to, is a ground for dismissal of the action. The 1st defendant therefore prayed the court to have the plaintiff's amended complaint stricken/dismissed because the person before whom the affidavit was sworn is not authorized by law and therefore the entire amended complaint is not verified as to the allegations of facts set out and contained in the plaintiff's amended complaint.

Also, on October 12, 2018, the 1st defendant filed a motion and prayed the court to drop it as a party defendant for reason that in the light of the factual circumstances of this case, the doctrine of respondeat superior is not applicable; that the 1st defendant further claimed that the plaintiff's belief and allegation that it is a party is a mere speculation and utterly unfounded in law because if the 1st defendant were a party or authorized the acts of the 2nd defendant, [it] should have been investigated by the Liberia National Police and brought under the jurisdiction of the Monrovia City Court; that the plaintiff failed to establish any basis for its inclusion as a party defendant and also failed to establish a prima facie case as to the liability of the 1st defendant; that plaintiff also failed to establish any basis for applying the doctrine of respondeat superior because a principle is not liable for the acts or misdeed of its agent where damage is done by the agent insofar the principal neither commanded nor assented to it.

On October 18, 2018, the plaintiff filed reply to the 1st defendant's answer. In his reply, plaintiff asserted that the fact that the 2nd defendant was in his office of official duty performing his official functions for the 1st defendant, and also because the cause of the meeting in the 2nd defendant's office was the performance of official and daily functions of the 1st defendant which caused the parties to meet as a normal and daily routine, the 1st defendant is liable to the

plaintiff as well as the 2nd defendant for the wrongful conduct of the 2nd defendant because it occurred in the normal course of duty; that the recording on social media of the mockery of the injuries sustained by the plaintiff as a result of the wrongful conduct of the 2nd defendant was not the work of the plaintiff; therefore, the action of damages for wrong will lie against the defendants. The plaintiff also maintained he was treated by medical practitioners and that they will appear in court to prove that he was assaulted by the 2nd defendant and that he denies all and singular the averments contained in the 1st defendant's answer and prayed the trial court to ignore and dismiss same.

On January 4, 2019, when the motion to drop was called for hearing, the respondent/plaintiff made application and the court allowed him to spread his resistance to the motion to drop on the records of the court, and thereafter, the trial Judge entertained argument. On January 16, 2019, the trial Judge ruled, denied and dismissed the motion to drop and ordered the case proceeded with. Subsequently, the 1st defendant filed a twenty-two count petition for a writ of certiorari before the Chambers Justice, Madam Justice Sie-A-Nyene G. Yuoh, who, after a conference with the parties, declined to issue the writ of certiorari on January 30, 2019, and ordered that the trial judge should resume jurisdiction and proceed according to law. On July 8, 2019, the 1st defendant again filed a three-count motion for severance which was resisted and, subsequently denied and dismissed. After all of the pre-trial formalities, including waiver of trial by jury, were exhausted, the case commenced on April 27, 2020.

The plaintiff produced three witnesses, namely: Sie Edward Freeman, Aloysius S. Tiklo and Togbe C. Bernard.

The plaintiff's first and principal witness, Sie Edward Freeman, took the stand and testified as follows:

Q. "Mr. Witness, you filed an action of damages for wrong against the defendant. Please refresh your memory and tell this court why you brought the action of damages for wrong against the defendant?"

A. "On August 18, 2018, as a matter of practice of custom, each departmental head has a schedule one-on-one meeting with the Managing Director of the bank in person of Mr. Ayodeji Bedije, the time of the meeting was 11: O'clock a.m. The basis of the meeting was to discuss key transactional activities of your department with specific emphasis from income generation meeting target for the month from yearly budget assigned to each department and to also discuss constraints associated with weekly activities of your department and the way forward. During the course of the meeting I had highlighted a few customers transactions and the income thereof. However, a customer made a request to consolidate his exposure or to see the possibility of the bank buying off an exposure or loan held with another financial institution since of course he had a larger exposure with GT Bank. This facility with the financial institution mentioned above was secured by hard collateral by the customer whilst the customer's exposure with GN Bank was secured by a life insurance bond or premium.

During the discussion, as every relationship manager would do, I pleaded with the MD to look into the customer's plight, during my plea or appeal I was thrown with a calculator. I noticed or felt sharp pain in my lip which prompted me to reach for my phone and put on the camera to see the level of damage of the throwing of the calculator might have caused me. I observed that I began to bleed profusely and during that time I was still seated attentively, respectfully honoring the position of my managing director and only asked why I was thrown with the calculator. When I asked the question, I was told to shut up and stop talking while my blood was almost dropping on my shirt, I was given other threat which led me to have recorded a portion of the discussion. The reason was, should in case I have to lose my job I could have evidence to what transpired in the MD's office. After I was hit with the calculator, I sat in the office still hoping and thinking that the

incident was a mistake but to my almost surprise there was no remorse shown. At least after been hit with the calculator, I remained in the office of the MD for more than 10 minutes, out of frustration I left the office bleeding and came down the banking hall, I walked through the banking hall in shame, agony and distress which led to not talking to anyone even though I was being asked until I reached outside the front of the bank by the side of the main car road where I thought I parked my car. During that time I incidentally came across two of my friends who are customers of the bank, these individuals are: Mr. Aloysius Bill Tiklo and Mr. James Bernard. They were on their way to do a transaction with the bank but did not continue because of the situation I was faced with.

Mr. Tiklo immediately told me to enter his vehicle that was still on the main car road directly in front of the bank and immediately called the current Police Director and told me that we were going to see the police director along with Mr. James Bernard. I was later transferred or send to the office of 103, and 103 subsequently requested to be sent to the current R1 but then he was not R1 I was not mistaking he was R3 where I made statement regarding the incident. I was later taken to a clinic on the SKD Boulevard Siamanah Medical Laboratory where I was medically examined, treated and given a medical report. I have or I had in my possession the recording and the medical report. That is what I can remember thus far and am open to any further question".

The plaintiff's second witness, Aloysius S. Tiklo, testified as follows:

Q. "Mr. Witness, Mr. Sie Edward Freeman, Jr. brought an action of damages for wrong against the Guaranty Trust Bank Liberia Limited and Mr. Ayodeji Bedije, former managing director of the G T Bank...please refresh your memory and tell this court and jury defacto what can you remember"

A. "It was some time August 28, 2018, between the hours of 11 - 12, I was driving toward G T Bank, surprisingly I saw one of the official of the bank who usually helps me at the bank walking bleeding and I asked him what was the situation and he explained that he was hit by the MD and he needed the authority aware of the situation. So I decided to bring him to the LNP to see the police director, after we met the director he told me to walk Mr. Freeman to 103 and he was bleeding from

the lip and we met 103 and he wrote the statement and then in the process he told us to come down while coming we met Musa Bility and the MD so they tried to talk to us and we left the scene with several lawyers behind and we went to Mr. Freeman; from there we went to the clinic and we got the medical report and I tried to console him as a friend. So far this is what I can remember.

Plaintiff's third witness, Togbe C. Bernard, also testified thus:

Q. "Mr. Witness, Mr. Sie Edward Freeman, Jr. brought an action of damages for wrong against the Guaranty Trust Bank Liberia Limited and Mr. Ayodeji Bedije, former managing director of the GT Bank...Mr. Freeman further said in his testimony that it was you who examined and treated him. Please refresh your memory and tell this court what did you observe, what did you do and what did you discover when Mr. Freeman visited your medical facility?"

A. "If I can recall sometime in August of 2018, Mr. Edward Freeman was escorted to our facility by some friends he was observed to be in severe pain, bleeding profusely from the lower lip and was very, very emotional or irritated I can say. Upon arrival we did intervene by calming him down first and then further instituted our medical intervention by bleeding control through direct pressure after which the bleeding was eventually controlled, the wound was given wound care with the application of stitches and bandage; we gave antibiotics, prophylaxis and pain killers. He was advised to follow up and during the follow up visit he was assessed and we realized that he presented post-traumatic stress disorder. Those signs include: absentmindedness, fatigue, irritability for which he was given some medication, further consulting was instituted and then a medical certificate was prepared advising him to have complete rest from work and then if these signs could not subside over the period of one month, he should go seek mental health clinician".

On May 6, 2020, the plaintiff rested with the production of both oral and documentary evidence and presented his side of the case for

argument. Subsequently, the 1st defendant, G T Bank (Liberia) Limited, produced a lone witness, Madam Saydah Miller-Duncan.

The 1st defendant's lone witness, Madam Saydah Miller-Duncan, Human Resource Manager of the 1st defendant Bank, testified that: "On August 28, 2018, I wasn't at the office when the incident occurred and I am not aware of any other misunderstanding between Edward Freeman and the then Managing Director. After the incident occurred on August 28, 2018, the then managing director was placed on indefinite suspension by the Board of Directors and our group office. He was later summoned by the group disciplinary committee and after his investigation, his services were terminated. Edward Freeman was given three months medical leave with pay after the incident".

On May 8, 2020, the 1st defendant rested with the production of both oral and documentary evidence and also presented his side of the case for argument. Thereafter, the trial court assigned the case for final argument for Tuesday, May 12, 2020. After the court had heard argument *pro et con*, it entered its final ruling on June 3, 2020, adjudged the 1st defendant liable to the plaintiff and awarded the plaintiff the amount of Two Hundred Fifty Thousand United States (US\$250,000.00) Dollars as general damages for the injuries, humiliation, emotional distress and mental anguish suffered by the plaintiff as a direct result of 2nd defendant's violent assault. The counsel for the 1st defendant noted exception and announced an appeal to the Honorable Supreme Court sitting in its October Term, 2020.

On June 12, 2020, the 1st defendant filed a ten-count bill of exceptions in which the appellant/defendant alleged principally that the trial Judge erred when he denied its motion to drop and ruled on the same motion that the 1st defendant was liable in damages for injuries the

plaintiff/respondent sustained without hearing the merit of the case; that the trial judge failed to pass on the law issues as to "when is a company or corporation responsible for the act of its agent? And "is respondeat superior applicable when an agent acts outside of his scope of authority"? You however ruled that under the doctrine of respondeat superior, the employer is the carrier of liability for the negligence and wrongful conduct of an employee acting within the scope of employment although the principals or the employers are not personally liable but failed to note that there is an exception to the doctrine of respondeat superior when an agent acts outside his scope of authority; that the trial judge denied its motion for severance, yet, he conducted the trial only with the 1st defendant and adjudged it liable to the plaintiff in the amount of Two Hundred Fifty Thousand United States (US\$250,000.00) Dollars with no reference to the 2nd defendant upon whose violent conduct 1st defendant is being held liable.

The 1st defendant further alleged that the trial Judge committed a reversible error when he did not consider that the 1st defendant took administrative decision by dismissing the 2nd defendant after a disciplinary committee hearing and subsequently paid plaintiff for three (3) months indicating the 1st defendant did not authorize the action of the 2nd defendant; that the amount of Two Hundred Fifty Thousand United States (US\$250,000.00) Dollars awarded as damages is contrary to the weight of the evidence adduced at trial in that it is not sufficient to merely allege an injury and claim damages, insofar the plaintiff failed to prove the injury complained of which did not commensurate with the damages claimed as there was no reasonable connection between the general damages and the injury sustained; that the award was simply because the 1st defendant is a commercial bank, that is to say, there was no evidence produced during trial to establish the extent of

injury or pain the plaintiff sustained; hence, the trial judge's final ruling was prejudicial.

Given all that transpired in the trial court, the matter has now come before the Supreme Court for appellate examination. Before going further, we must note here that when this case was first called for hearing on November 16, 2021, the counsel for the appellant filed notice of withdrawal, withdrew its original brief and simultaneously filed an amended brief for which the hearing was rescheduled for a later date. On November 30, 2021, when this case was called for hearing, the counsel for the appellant again filed and requested for postponement on account that she was travelling out of the bailiwick of the Republic. Predicated on this request, the Court was constrained to invoke the appropriate rule governing Argument as in the instant case. Rule IV, Part 6, under "Failure of Counsel to Appear" says in part that:

"...If the parties fail to appear but have filed briefs, the Court may open the records and at its selection render a judgment with or without opinion". "If a party appears, and the other party does not appear, but files a brief, the Court will proceed to hear the argument of the party appearing, and render its decision on the basis of the briefs filed and the argument of the party appearing. If one party appears, and non-appearing party has not filed a brief, the non-appearing counsel shall be given forty-eight (48) hours to file a brief and appear for hearing of the case, and the party shall be simultaneously informed of the non-appearance of this counsel and the postponement of the hearing for forty-eight (48) hours. If, when the case is again called for hearing, the party or counsel again fails to appear or file a brief, the Court shall proceed to hear the argument of the appearing party and rule thereon"; and

Rule VII, Part 2, under "Argument" says in part that "...in the discretion of the Court argument in a case might be disallowed; and the minutes of the court must show the decision of the Court for disallowing argument..."

In consonance thereof, the Court dispensed with argument, reviewed the files and entered upon the records its decision consistent with the laws cited supra.

Two issues form the basis for determining this case given what we have gathered from the records, and they are:

1. Given the facts and circumstances in this case, whether or not liability will lie against the 1st defendant, G T Bank (Liberia) limited, in light of the doctrine of respondeat superior? and
2. Whether or not the final ruling of the trial judge awarding Two Hundred Fifty Thousand United States (US\$250,000.00) Dollars as damages is supported by the records in this case and therefore should not be disturbed?

Traversing the first issue: whether or not given the facts and circumstances in this case, liability will lie against the 1st defendant, G T Bank (Liberia) Limited, in light of the doctrine of respondeat superior, this Court says, under torts law, injury to an employee by the action of the employer occurring in place of business raises the issue of vicarious liability, if established by the facts would subject the employer to liability. The Black's Law Dictionary, 9th Edition, defines vicarious liability as the "liability that a supervisory party, such as the employer, bears for the actionable conduct of a subordinate or associate, such as the employee, based on the relationship of the parties out of which the doctrine of ***respondeat superior*** grows which holds an employer or principal liable for the employee's or agent's wrongful act against the employee committed within the scope of the employment or agency".

This takes us to a further review of the certified records in this case to establish the truthfulness of the allegations of the plaintiff contained in his amended complaint which was a subject of trial before the court below. The undisputable facts are that on August 28, 2018, as a regular

weekly routine/activity, the 2nd defendant summoned the appellee/plaintiff to his office on a one-to-one meeting which has been the practice consistent with the policy of the appellant Bank. The appellee claimed that while they were in discussion, the Managing Director of the appellant, Mr. Ayodeji Bedeji, 2nd defendant, got infuriated by a "recommendation" from the appellee, Edward Freeman, and to his dismay, the Managing Director threw a calculator at him which wounded his lower lip; that the 2nd defendant did not show remorse for his act but chose to threaten that he would lose his job; that the 2nd defendant was dismissed by the 1st defendant as a

consequence of his vicious act meted against him for which the trial court, after hearing from the parties and taking evidence, adjudged the 1st defendant, the GT Bank, liable to the plaintiff for the wrongful conduct of its Managing Director.

Notwithstanding the averments contained in the amended complaint and the unrebutted testimonies of the appellee and his witnesses, the appellant bank vehemently denied and rejected the ruling of the trial court on the basis that it should not be held vicariously liable for the wrongful act of the 2nd defendant because such wrongful act though committed by the 2nd defendant, was not committed in line with his prescribed authority nor did the appellant ratify such unwarranted behavior. The appellant further rejected that it cannot be held vicariously liable for the wrongful conduct of its Managing Director named 2nd defendant in this case because when the appellee reported the incident to the Liberia National Police, he did name the appellant a party of interest; hence, should not be held liable for the wrongful conduct of its Managing Director. The appellant also contended that to demonstrate its disapproval of the wrongful act of its Managing Director meted against the appellee, it suspended him for time

indefinite and subsequently dismissed its Managing Director; but, on the contrary, the appellant granted a three-month medical leave to the appellee and paid him his salary for three months after the incident occurred. This Court disagrees with the contentions of the appellant bank because first and foremost, the appellee was a licensed visitor to the office of the appellant's Managing Director and the appellee was present in his office in a regular course of business as sectional head of the appellant bank attending a regular weekly one-on-one meeting with said Managing Director, an agent of the appellant. The certified records in this case established that the meeting of the two was necessary to enhance the effectiveness of the services being provided by the appellant to its customers. It was one of such meetings that the appellant's Managing Director, named 2nd defendant in this case, used his authority or portfolio to abuse the rights of the appellee. It should be clearly stated that the 2nd defendant committed this wrongful act against the appellee on the premises of the appellant and the meeting so arranged was in line with the scope of duty and authority of the Managing Director of the appellant, so such a wrongful act committed by its Managing Director under the doctrine of *respondeat superior*, vicarious liability will be imputed against the appellant as in this case.

The law governing vicarious liability enunciated in 30 Corpus Juris Secundum (CJS), 206, page 257 states that generally, "the doctrine of respondeat superior is usually the basis of an employer's liability for injuries to third persons caused by employees' act; the doctrine is one of vicarious liability, allowing the employer to be held liable for the acts of employees. The doctrine imputes liability to the employer for the employee's tortious act to ensure that the loss be equally borne by those who benefit from the enterprise that gave rise to the injury and are in a better position to absorb the costs of doing business". It goes

further to state that persons to whom employer is liable - "the respondeat superior doctrine may result in an employer being liable for injuries negligently inflicted by an employee on a licensee or invitee, and it has been held that an employer has a special duty to persons who have been invited to submit their comfort and safety to one's employees". *Ibid* 208, page 258. Just as we stated in one of the preceding paragraphs, the appellee was a licensed visitor for whom the Managing Director had a duty to guarantee the safety and comfort of the appellee during the meeting in his office.

What is also of interest in this case is that, the appellant nor its lone witness, the Human Resource Director, did not deny that there was indeed an occurrence as alleged by the appellee but rather buttressed the fact that indeed and in truth the appellant's Managing Director assaulted and wounded the appellee, the gravamen of his amended complaint in the court below as manifested in the testimony of the lone witness of the appellant as summarized thus:

"After the incident had occurred on August 28, 2018, the then managing director was placed on indefinite suspension by the Board of Directors and our group office. He was later summoned by the group disciplinary committee and after his investigation his services were terminated. Edward Freeman was given three months medical leave with pay after the incident".

Moreover, this Court is yet to fathom the contention of the appellant for disagreeing with the final ruling of the trial court holding it liable under the doctrine of respondeat superior for reason and among others that at the volition of the appellant after the incident took steps aimed at mitigating and amicably resolving the matter void of litigation. Hence, on Tuesday, March 24, 2020, during the 6th day jury sitting, counsel for the appellant made an application at the call of the case and spread on records the following:

"At this stage, counsel for the defendant says that from the inception of this case, we have made repeated overtures to the plaintiff so as to have this matter resolved short of litigation. Counsel says that the defendant has not given up on its desire to have this matter resolved short of litigation, so we are kindly asking this court to grant the parties at least one week from today's date so that the parties can have a meeting of the minds and arrive at a solution in this case. Accordingly, counsel begs this court to grant this time so that this matter can be finally resolved. Counsel so prays and submits".

Why did the appellant elect to take all these steps if it fears no liability; that is, if its Managing Director could be personally liable to the appellee for his wrongful act? But the position assumed by the appellant imposes on it a duty because its Managing Director acted and committed the wrong against the appellee on its premises and in his official portfolio doing business for the appellant, consistent with its employment relationship, when he committed the very act against the appellee. Hence, this Court does not need any empirical evidence to establish the liability of the appellant in this case. It is our holding therefore that vicarious liability will lie.

We will now proceed to discuss the second issue: whether or not the final ruling of the trial Judge awarding Two Hundred Fifty Thousand United States (US\$250,000.00) Dollars as damages is supported by the records in this case and therefore should not be disturbed?

In his amended complaint, the appellee is claiming One Million United States (US\$1,000,000.00) Dollars for general damages, Five Hundred Thousand United States (US\$500,000.00) Dollars for punitive damages and Three Thousand, Eight Hundred and Seventy-Five United States Dollars (US\$3,875.50) and Fifty Cents for special damages. The certified records in this case do not contain any evidence that prove to establish that the appellee expended money or suffered losses particularly pleaded that should be awarded in the sum of Three Thousand, Eight Hundred and Seventy-Five United States Dollars (US\$3,875.50) and Fifty

Cents as special damages, for the statute provides that "when items of special damages are claimed, they shall be specifically stated" 1LCLR page 109. The only ground to establish special damages in this case is a demonstration of a medical report backed by evidence which the appellee failed to produce that could have formed the basis for his claim of special damages in the amount of Three Thousand, Eight Hundred and Seventy-Five United States Dollars (US\$3,875.50) and Fifty Cents. This Court is not therefore inclined to grant special damages to the appellee.

The law defines damages as "pecuniary compensation or indemnity which may be recovered by any person who has suffered a loss, detriment, or injury whether to his person, property or rights, through the unlawful act or omission or negligence of another". *Intrusco Corp. v. Osseily*, 32 LLR 571 (1985); *Firestone Liberia, Inc. v. G. Galimah Kollie*, Supreme Court Opinion, March Term, A.D. 2012. As we have stated in preceding paragraphs that liability will lie, we still hold that owing to the facts that there existed a principal/agent relationship between the appellant and its Managing Director, prior to the commission of the wrongful act against the appellee which occurred on the premises of the appellant, we are still inclined to award the appellee compensation; but what is troubling is the trial judge, in his ruling did not lay down the basis for the award of the Two Hundred Fifty Thousand United States (US\$250,000.00) Dollars as opposed to the claim of One Million United States (US\$1,000,000.00) Dollars as general damages, Five Hundred Thousand United States (US\$500,000.00) Dollars as punitive damages and Three Thousand, Eight Hundred and Seventy-Five United States Dollars (US\$3,875.50) and Fifty Cents as special damages that could

remove the veil for this Court to see clearly the rationale for the award.

We quote excerpts from the final ruling of the trial court:

"...where the plaintiff had produced clear and cogent evidence in support of its allegation, he is entitled to judgment in his favor. *Dahn v. RL*, 34 LLR 565 (1983). Plaintiff presented sufficient evidence during trial in support of his allegation against the defendant and is entitled to judgment as a matter of law. Wherefore, and in view of the foregoing, 1st defendant is adjudged liable to plaintiff for the injuries he sustained on August 28, 2018. 1st defendant is ordered to pay the amount of Two Hundred Fifty Thousand United States (US\$250,000.00) Dollars as general damages for injuries, humiliation, emotional distress and mental anguish suffered by plaintiff as a direct result of 2nd defendant's violent assault..."

There is no doubt in the mind of this Court that the appellee did suffer injury by the unlawful conduct of the Managing Director of the appellant and therefore entitled to some sort of compensation but the award must bear a reasonable connection with the injury sustained. The Supreme Court of Liberia has repeatedly held that "it is not sufficient to merely allege an injury and claim damages but the appellee is required to prove the injury complained of and in proving damages,

there should be a reasonable connection between general damages awarded and the injury sustained". *Lonestar v. Wright*, Supreme Court Opinion, March Term, A.D. 2014; *Comium Liberia v. Sumo Flomo*, Supreme Court Opinion, October Term, 2014. That is, the gravity of the injury sustained has to be established. On the cross examination, the medical personnel who received into his medical facility and treated the appellee was asked the following question: "How many times the plaintiff visited your medical facility?" He responded thus "to answer your question I am under medical obligation to uphold patient confidentially so in this regard whether or not Mr. Freeman visited my facility 100 times or more I am not here to disclose that". In this case

the appellee is claiming One Million United States (US\$1,000,000.00) Dollars in damages in the absence of proof of the injury sustained and the extent thereof that could lay a basis for a reasonable compensation as general damages, so the award of Two Hundred Fifty Thousand United States (US\$250,000.00) Dollars remains a puzzle that this Court must settle.

Additionally, the appellee is claiming Five Hundred Thousand United States (US\$500,000.00) Dollars as punitive damages. This Court is also inclined to believe that the Managing Director, 2nd defendant named in this case should be penalized to serve as a deterrent to avoid or to prevent an employer abusing or insulting his subordinate employee. But the question which must be answered by this Court is whether or not such punishment should be meted against the appellant (employer) or its corporate officer who committed the wrongful act. However, we need not further pass on the issue of punitive damages and the award of it in the amount of Five Hundred Thousand United States (US\$500,000.00) Dollars because the trial judge did not make that a point of interest neither did the appellee note and take exception to the portion of the ruling awarding Two Hundred Fifty Thousand United States (US\$250,000.00) Dollars.

We must conclude this Opinion with the question whether or not the award of Two Hundred Fifty Thousand United States (US\$250,000.00) Dollars to the appellee by the trial judge should be sustained and affirmed by this Court? To address this issue, we take recourse to the certified records in this case, specifically; count 16 of the plaintiff's amended complaint which we quote herein under:

"still traversing count fifteen (15), plaintiff says the injuries, humiliation and embarrassment caused by the 2nd defendant were done during the normal course of duty to the 1st

defendant GT Bank as evidenced by the fact that at the time, 2nd defendant, Ayodeji Bedije was engaged in an assignment on the Bank's premises (regular sectional meeting) and said meeting was proper, necessary usual and incidental to accomplishing the aims of the 1st defendant, GT Bank. Accordingly, plaintiff says that the act of the 2nd defendant imposes vicarious liability on the 1st defendant, and both defendants must be held jointly and severally liable for the injuries, humiliation and embarrassment suffered by the plaintiff because (1) at the time of the incident 2nd defendant, Ayodeji Bedije was an employee of the 1st defendant, Guaranty Trust Bank, and (2) the 2nd defendant was acting within the scope of his employment when the act occurred".

In fact, the averments contained in count 16 of the amended complaint of the appellee were confirmed by the counsel of the appellant in his application to the trial court requesting the court to allow the parties to reach a compromise because the injury committed by its Managing Director against the appellee really occurred and on the premises of the appellant. However, this Court must take cognizance of how it grants or affirms awards to claimants because doing so without the existence of coherence between the facts and the evidence adduced during trial, there is a potential for unjust enrichment. Moreover, if we must agree with the principle of law that says "there is no yardstick to measure mental anguish and distress, insult and indignity", this Court could award damages so astronomical to the effect that it bears not relations to the injury sustained; such award would be unjust and inequitable. Having thus said, it is the holding of this Court that given the facts, circumstances and evidence in this case, the award of Two Hundred and Fifty Thousand United States (US\$250,000.00) Dollars by the trial court is excessive; hence, the amount so awarded will not be sustained by this Court.

The law hoary with age in this jurisdiction says that "court to which an appeal is taken may reverse, affirm, or modify, wholly or in part, any

judgment before it, as to any party. The court shall render a final determination or, where necessary or proper, remand to the lower court for further proceedings". Civil Procedure Law, Rev. Code 1:51.17; *Kesselly et al v. SN Brussels Airlines et al.*, Supreme Court Opinion, October Term, 2008, case decided January 2009. Exercising the authority in this Court vested; the judgment of the trial court is hereby affirmed with the modification that the award of general damages of Two Hundred and Fifty Thousand United States (US\$250,000.00) Dollars is ordered reduced to One Hundred Thousand United States (US\$100,000.00) Dollars as compensation for the assault, humiliation and indignity suffered by the appellee/plaintiff.

Wherefore, and in view of the foregoing facts and circumstances, the judgment of the trial court is affirmed with the modification that the award of general damages in the amount of Two Hundred and Fifty Thousand United States (US\$250,000.00) Dollars is hereby ordered reduced to One Hundred Thousand United States (US\$100,000.00) Dollars. The Clerk of this Court is hereby ordered to send a Mandate to the court below commanding the Judge presiding therein to resume jurisdiction over this case and give effect to this Opinion. Costs are ruled against the appellant. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellor Betty Lamin-Blamo of the Lex Group Liberia, LLC, appeared for the appellant. Counsellor J. Augustine Toe of the Sayeh & Sayeh Law Offices, Inc. appeared for the appellee.