

SALEEBY BROTHERS, INC., Appellant, v.
BARCLAY EXPORT FINANCE COMPANY,
LTD., Appellee.

MOTION TO DISMISS APPEAL FROM THE DEBT COURT,
MONTSERRADO COUNTY.

Argued April 20, 1971. Decided May 27, 1971.

1. A motion for a new trial need not be made in the Debt Court as a prerequisite to appealing from the judgment of the court, since the Debt Court does not employ the service of a jury in determining questions of fact before it.
2. Only when a jury's verdict has been returned need a motion for a new trial be made by a party appealing a judgment.

Defendant was sued in the Debt Court and judgment rendered against it, from which an appeal was taken. A motion was brought to dismiss the appeal, primarily on the ground that a motion for a new trial had not been preliminarily made. *Motion denied.*

T. Gybli Collins for appellant. *Lawrence Morgan* and *Desaline Harris* for appellee.

MR. JUSTICE MITCHELL delivered the opinion of the Court.

This is a case in which appellant was sued in the Debt Court, Montserrado County. Judgment was rendered in the court below against Saleeby Brothers, Inc., and it appealed to the Supreme Court, sitting in its October Term, 1970.

A motion has been made to dismiss the appeal, alleging primarily that no motion for a new trial had been made in the lower court, improper service of notice of completion of appeal and an insufficient appeal bond.

In its opposition, the appellant said that appellee's motion is void of legal merit, because according to law where

a matter is heard and determined without the aid of a jury, a motion for a new trial is not a legal requirement, and hence, its failure to file a motion for a new trial is not a ground for the dismissal of its appeal. They further averred that the notice of the completion of the appeal taken in this case was served according to law, in that appellant's counsel posted the copy to the address of the appellee, since both appellee and its counsel were at the time outside the Republic. They also alleged that their appeal bond conforms to all of the statutory requirements, because it is accompanied by the required affidavit of sureties and the statement of their property valuation, which amounts to seventy-four thousand dollars, over and above the amount required by law for indemnification.

According to Judge Bouvier, the law does not require a motion for a new trial as a prerequisite to an appeal on a trial that is held without a jury. He defines the basis of a motion for a new trial.

“A re-examination of an issue of fact before a court and a jury, which has been tried at least once before the same court. A re-hearing of the legal rights of the parties, upon disputed facts, before another jury, granted by the court on motion of the party dissatisfied with the result of the previous trial, upon a proper case being presented for the purpose; it is either upon the same or different or additional evidence, before a new jury, and probably but not necessarily before a different judge. It is a re-examination of an issue of fact in the same court after a trial and decision by a jury.”

Also see *Jallah et ano. v. Miller*, 13 LLR 88 (1957).

The Debt Court is a court that decides issues without the aid of a jury. Hence, a motion for a new trial need not be taken before the Debt Court. Particularly so when a motion for a new trial either attacks a verdict on the ground that it is not in accord with the evidence presented at the trial or is contrary to the law and in-

structions of the court. Therefore, the basis of the motion is considered unmeritorious.

When this motion was argued before us, movent's counsel conceded the point that their other counts were less important because he was convinced that besides leaving the notice of completion of appeal at the office of appellee's counsel, a copy thereof had been posted to the address of the appellee; and the appeal bond strictly conformed to the statutes. Therefore, the other grounds of the motion are also without merit.

The motion to dismiss the appeal is denied, costs against appellee.

Motion to dismiss appeal denied.