IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA

SITTING IN ITS MARCH TERM A. D. 2006

BEFORE HIS HONOR: JOHNNIE N. LEWIS ..... CHIEF JUSTICE
BEFORE HIS HONOR: J. EMMANUEL WUREH ..... ASSOCIATE JUSTICE
BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR. ... ASSOCIATE JUSTICE
BEFORE HER HONOR: GLADYS K. JOHNSON..... ASSOCIATE JUSTICE

The Intestate Estate of the late Peter L. Dinsea, represented by its Administratrixes and Administrator, Mrs. Catherine K G. Dinsea, the widow, Comfort Z. Dinsea, J. Yeah Dinsea, Fania B. Dinsea Wonkehzi K. P. Dinsea, Kehleay P. Dinsea and Peter L. Dinsea, Jr., all of the City of the City of Monrovia, Liberia ..... Appellant)

versus) APPEAL

Ital Timber Corporation (ITC) represented by its President, Fabrizzio Colombo, also of the City of Monrovia, Liberia..... Appellee)

GROWING OUT OF THE CASE

Ital Timber Corporation (ITC), represented by ins President, Fabrizzo Colombo, also of the City of Monrovia, Liberia..... Movant)

versus) MOTION TO DISMISS

The Intestate Estate of the late Peter L. Dinsea, represented by its Administratrixes & Administrators, Mrs. Catherine K G. Dinsea, the widow, Comfort Z. Dinsea J. Yeah Dinsea, Fania B. Dinsea, Wonkehzi K. P. Dinsea, Kehleay P. Dinsea and Peter L. Dinsea, Jr., all of the City of Monrovia, Liberia.....RESPONDENT)

Heard: March 29, 2006 Decided: August 18, 2006

JUDGMENT REVERSED; CASE REMANDED.

MRS. JUSTICE JOHNSON DELIVERED THE OPINION OF THE COURT.

This case originated in the Debt Court for Montserrado County where it was dismissed upon motion by defendant on ground of lack of subject matter jurisdiction. It is here before us on a regular appeal from said judgment.

The allegations and circumstances of the case as contained in the complaint are as follows: one Peter Dinsea died seized of two pieces of farmland/forest located in Yarwen Mehnsonnoh District, Nimba County. Sometime in August 1992 while on a visit to the farmland/forest, Catherine Dinsea, the widow and one of the administratrixes and plaintiff/appellant herein, discovered that someone had unauthorizedly entered the forest, felled, and extracted a quantity of logs of various species. On investigation, it was discovered that it was Ital Timber Corporation, owned by Mr. Jabrizzo Colombo, that had felled and extracted the logs. When plaintiff/appellant confronted Mr. Colombo, he readily admitted and suggested that some of his employees, in collaboration with representatives of plaintiff/appellant, proceed to the forest and tabulate, according to species, the number of logs his company had felled and extracted from plaintiff/appellant's forest. This was done. Representatives of both parties signed the report, a copy of which was proffered and marked as exhibit "1" of the complaint.

The report revealed that the total number of logs felled was 1,321. Mr. Colombo there and then suggested that the report be taken to the local Forestry Development Authority (FDA) for evaluation. The result of the evaluation showed the value of the 1,321 logs to be US$224,460.00. Presented with the report, Mr. Colombo, defendant/appellant, according to the complaint, promised to pay at the end of August after selling some logs

and upon his return to Yekepa from Monrovia. Mr. Colombo then instructed his accountant to pay to plaintiff/appellant US$1000.00; the accountant however paid appellant LD$1000.00 instead. The promise to pay at end of August was not kept.

The complaint alleged further that plaintiff/appellant went as far as seeking the help of the then late Vice President of Charles Taylor Enoch Dogolea in collecting her money from defendant/appellee, and although at that conference Mr. Colombo again asked for time to settle the account, and even gave plaintiff US$500.00, that promise fell through also. It was then that plaintiff/appellant came to Monrovia and retained the services of the Gbaintor and Gbaintor Law Offices.

The records certified to this Court show that the Gbaintor and Gbaintor Law Offices wrote the following letter to Ital Timber Corporation, through its President, Mr. Jabrizzo Colombo:

June 11, 1997

Messrs. I. T. C.
Hotel Africa, Virginia
Liberia
Gentlemen:

We are legal counsel for Mrs. Catherine K. G, Dinsea. Our client has represented to us that your company I. T. C., extracted prime species of logs from her property in Nimba County in 1992, totaling 1,321. A list of the logs is hereto attached for your easy reference.

The total price of the logs is US$224,460.00 (Two Hundred Twenty-Four Thousand Four Hundred Sixty United States Dollars).

So as to amicably resolve this mater short of a long drawn litigation, we are inviting you to our offices for a conference on Saturday, June 14, 1997, at the Hour of 11:00a.m.

Kind regards.

Sincerely Yours,
Gbaintor & Gbaintor

William A. N. Gbaintor
Counsellor-At-Law

Cc: Mrs. Catherine K. G. Dinsea

Notwithstanding Gbaintor and Gbaintor Law Offices had invited Mr. Colombo to a conference, without responding to the letter, Mr. Colombo sent a verbal message by plaintiff/appellant to Gbaintor and Gbaintor Law Offices informing that he was traveling out of the country shortly, and that upon his return, he would make a substantial payment. He gave plaintiff/appellant US$500.00, for which plaintiff/appellant and her current husband, who had accompanied her to deliver the letter, issued a receipt to Mr. Colombo.

There was no further contact between Mr. Colombo and the plaintiff/appellant or her lawyer from June 11, 1997 until early 2005. Appellee seemed to have been out of the country all that time and upon his return, had changed location from the Villa to a Sinkor residence. Acting upon information about defendant/appellee's new location in Sinkor, Counselor Gbaintor and the plaintiff/appellant paid an unscheduled visit to defendant/appellee's residence where they met defendant/appellee, his wife, and one Shirley, the Special Assistant to defendant/appellee. When Counselor Gbaintor announced that the purpose for the visit was to collect the balance of plaintiff/appellant's money for the logs, according to plaintiff/appellant, the defendant/appellee got in a rage and told Counselor Gbaintor to go to Charles Taylor for his client's money because Charles Taylor had taken his logs and his equipment. Defendant/appellee further said that he, too, would go to his own lawyer who was even bigger than Counselor Gbaintor. There and then Counsellor Gbaintor advised his client, plaintiff/appellant, that they should leave the premises. While they were about to leave, the defendant/appellee's wife, the Special Assistant as well as himself begged their pardon, and appealed to Counselor Gbaintor and the plaintiff/appellant to reduce the amount to a reasonable figure. Defendant/appellee also offered plaintiff/appellant and Counselor Gbaintor drinks which they accepted. Before their departure, defendant/appellee offered plaintiff/appellant US$100.00.

On February 28, 2005 Counselor Gbaintor, after consultation with the plaintiff/appellant, addressed the following letter to defendant/appellee:

February 28, 2005

Mr. Fabrizzio Colombo
President I.T.C.
Monrovia, Liberia

Dear Mr. Colombo:

Based on your request last week that Mrs. Dinsea should give you a reasonable figure for the final settlement for the price of the logs your company extracted from her bushes, Mrs. Catherine K. G. Dinsea has instructed us to submit to you US$100,000.00. However, Mrs. Dinsea says if this is not agreeable, then you may state an amount you think is reasonable; so that we can conclude this matter once and for all.

According to Mrs. Dinsea, because she intends to do more business with you, in that she has decided to give you her entire forest in Yarwein District, Nimba County and considering all other surrounding circumstances, she thinks that the above amount represents a reasonable settlement.

We await your response.

Kind regards.

Sincerely yours,

William A. N. Gbaintor
Counselor-At-Law

Cc: Mrs. Catherine K. G. Dinsea

Again, without responding to Counselor Gbaintor's letter, and without the knowledge of Counselor Gbaintor, defendant/appellee invited the plaintiff/appellant to his office. When plaintiff/appellant, in company of her two daughters and her husband, arrived at defendant/appellee's office, defendant/appellee's attendant refused entrance to all except the plaintiff/appellant, at which time the defendant/appellee presented a check of US$1000.00 to plaintiff/appellant with the promise that as soon as his business is improved, he would settle with her. He then told plaintiff/appellant to go with his Special Assistant Shirley to the bank to encash the check and then proceed to his lawyer's office to issue a receipt. At the lawyer's office, plaintiff/appellant's husband and her children were

denied any participation in the transaction even though she informed the lawyer about her illiteracy and of her desire to have her daughters enter and read the alleged receipt. Plaintiff/appellant therefore asked the lawyer to read the receipt to her, but the lawyer failed to oblige. He in fact said it was just the receipt for the US$1000.00. Plaintiff/appellant then signed the receipt and the defendant/appellee's assistant and the lawyer's secretary witnessed it. Upon arriving at Counselor Gbaintor's office with the US$1000.00 cash and the "receipt," Counselor Gbaintor informed the plaintiff/appellant that the "receipt" was not only a receipt, but rather a release that she had signed that exonerated defendant/appellee from all present and future claims and obligations for the US$224,460. Appellant then and there declared: "They tricked me." At this juncture, Counselor Gbaintor decided to institute an action of debt against the defendant/appellee.

Counsel for defendant/appellee has raised several legal issues in his answer and in the motion to dismiss the complaint, among which were that the facts alleged in the complaint did not support an action of debt but rather an action of damages for trespass and that same being the case, the Debt Court had no jurisdiction over the subject matter. After hearing arguments pro and con on the motion to dismiss, the Judge granted the motion and dismissed the complaint for lack of subject matter jurisdiction. Hence, plaintiff/appellant has come before this Court on a regular appeal for the determination of the case, on a bill of exceptions containing the following 10 counts:

1. That appellant says that Your Honor's ruling on movant's motion to dismiss, which dismissed respondent/plaintiff's amended complaint in the action of debt filed against the defendant/appellee, according to the ruling, on the basis of counts three (3) of the amended complaint only, ignoring and disregarding the averments in the other eighteen (18) counts of the amended complaint was prejudicial; and Your Honor thereby committed a reversible error.

2. That appellant says that the averments contained in the other eighteen (18) counts of the amended complaint clearly pleaded defendant/appellee's admission and acknowledgment of appellee's indebtedness to plaintiff/appellant. Some of the eighteen (18) counts also pleaded part payment made by the appellee to appellant from time to time; all in the presence of living witnesses. Therefore, Your Honor's neglect, failure and refusal to consider the averments contained in the eighteen (18) counts of the amended complaint was prejudicial and constitutes a reversible error.

3. That appellant says that Your Honor misconstrued the opinion of the Honorable Supreme Court of the Republic of Liberia in the case *Blamo vs. Zulu*, 30 LLR (1983) when Your Honor equated the facts and circumstances in that case with those which obtain in the intestate estate of the late Peter L. Dinsea vs. Ital Timber Corporation. Your Honor therefore committed a reversible error by Your Honor's misconstruction of the principle announced in the *Blamo vs. Zulu* case.

4. That appellant says that the fact that Your Honor ignored and disregarded the acknowledgment of the indebtedness by the defendant/appellee, the several part payments made by the defendant/appellee and the questionable and fraudulent release drafted by the defendant/appellee, after it had paid US$1,000.00 to one of plaintiff's administratrixes in March, 2005, so as to exonerate defendant/appellee from the payment of the balance of its indebtedness to plaintiff/appellant herein. Your Honor's refusal to accept the payment as a part payment of the appellee's debt to appellant is clearly a reversible error.

5. That appellant says that Your Honor's refusal to defer the hearing and determination of the motion to dismiss in keeping with section 11.2(2) of 1 LCLR was an abuse of Your Honor's discretion, in that appellant invoked the above cited law so as to permit appellant to establish those elements of the appellee's indebtedness which do not comprise instrument. Those elements are appellee's admissions to its indebtedness to appellant in the presence of witness; acknowledgment of appellee's indebtedness to appellant in the presence of witness; and, several part payments made by appellee to appellant, with a definite promise to pay the balance at a definite time in the future, all in the presence of witnesses; which witnesses were willing and ready to testify to those transactions in court, but Your Honor's abrupt dismissal of the amended complaint prevented them from doing so. Appellant submits that although appellant invoked section 11.2(2) of 1 LCLR., so as to permit it to produce testimonial evidence to prove those debt elements enumerated herein above, Your Honor denied the request and went on to hear and determine the motion to dismiss summarily, thereby denying appellant the opportunity to fully establish its case. Appellant says that Your Honor's denial was prejudicial and an abuse of Your Honor's discretion. Your Honor therefore committed a reversible ever.

6. Appellant says that Your Honor's conclusion reached in paragraph 6, page 4 of Your Honor's ruling that: "This Court has not seen any contract entered into between plaintiff and defendant for the payment of money as compensation of logs allegedly felled and extracted from plaintiff's farm land." Your Honor's conclusion herein was prejudicial and unfounded, in that Your Honor having denied appellant the opportunity as aforestated to prove its case by showing by testimonial proof

contained in counts 4 through 18 of the amended complaint, Your Honor thereby committed a reversible error.

7. That appellant submits that Your Honor committed a reversible error when Your Honor refused to credit the US$500.00 payment receipt it issued to appellee, as documentary evidence, copy of which appellant annexed to plaintiff's amended complaint. Furthermore, Your Honor committed a reversible error when you refused to accept as documentary evidence the receipt/release drafted by appellee's lawyer and signed by appellant's administratrix for appellee's payment of US$1,000.00 to appellant on March 11, 2005, copy of which was annexed to plaintiff's amended complaint.

8. That appellant maintains that Your Honor committed a reversible error when Your Honor concluded in paragraph 2, page 5 of Your Honor's ruling that: "Although movant/defendant admitted, receiving the release from plaintiff's representative for the consideration of US$1,000.00, no where does the said release mentioned (sic) any other amount of money that would have otherwise been paid by defendant to plaintiff but for the release."

9. That appellant says that Your Honor's conclusion as contained in paragraph 4, page 5 of Your Honor's ruling lacks supports in law, as plaintiff's amended complaint contains 19 counts, with various independent averments; so Your Honor's conclusion that:
"Although plaintiff's action is captioned action of debt, this court is not convince (sic) that averment of plaintiff's amended complaint supports an action of damages over which this court, that is to say the Debt Court for Montserrado County, has no jurisdiction." Your Honor's conclusion herein apparently being based solely and only upon the averment in count 3 of plaintiff's amended complaint, constitutes a reversible error.

10. That appellant contends that Your Honor's refusal of jurisdiction in plaintiff's action of debt is an abuse of Your Honor's discretion and, therefore a reversible error; for reason that Your Honor's decision is based on only one of the 19 counts comprising plaintiff's amended complaint. That count is count 3 of the amended complaint; thereby ignoring and disregarding the averments contained in the other 18 counts of the amended complaint, which invariably pleaded different elements of debt.

With this, we shall now quote the judge's ruling, which is the subject of this appeal.

. . .

"The Supreme Court has nevertheless clearly spoken on the matter. In *Blamo vs. Zulu*, 30 LLR 586, 595 (1983), the Supreme Court held that 'an action of debt is defined as an action to enforce the payment of a sum of money which the defendant has contracted to pay to the plaintiff.'

"The Supreme Court quoting Black's Law Dictionary (4th edition) defined debt as 'a contractual obligation to pay in the future for consideration received in the present.' *Ibid.*

"The Supreme Court went on to say that the word 'debt' carries with it the requirement of certainty the foundation of promise by expressed contract.

. . .

"The Supreme Court then proceeded to serve more bearing boundary and prerequisite for the complaint in a debt action as follows:

"A complaint in an action of debt ... must aver: (1) a written obligation or promise to pay; (2) The refusal to pay the same; or it must state that the

defendant owes the plaintiff money upon account made in the normal course of business transaction, in which case plaintiff must annex to his complaint the account made, stating distinctly and intelligibly the articles with which the plaintiff intends to charge the defendant so as to give the defendant due notice of the facts the plaintiff intends to prove."

"Let us now lay plaintiff's amended complaint alongside the foregoing requirements.

"Count number 3 of plaintiff's amended complaint which sets the basis of plaintiff's action reads:

> "'In August 1992, the defendant Ital Timber Corporation fell and extracted one thousand three hundred and twenty one logs of various species from plaintiff's property located in Yawein Mehnsonneh District Nimba County, when plaintiff's administratrix, Catherine K. G. Dinsea, and others, contacted Mr. Fabrizzo Colombo, president of the subject corporation, he admitted in the presence of several witnesses that it was his corporation, Ital Timber Corporation, that had felled and extracted the logs and that his company was willing to pay for the logs. On the spot Mr. Colombo instructed a number of his employees to accompany plaintiff's representatives on *(sic)* plaintiff's property to count the logs. Plaintiff submits that the joint representatives of plaintiff and Mr. Colombo visited the bush and later submitted a report that a total of 1,321 logs of various species were felled by ITC. Hereto attached as plaintiff's exhibits "P/3" is a tally submitted by the joint representatives of the parties hereto to form a material part of plaintiff's complaint.'

"The foregoing complaint sounds like a wrong one; an unauthorized act carried out allegedly by movant/defendant against respondent/plaintiff for which damages will lie.

"The amount of money and its certainty are visible element to an action of debt according to the definition outlined by the Supreme Court as follows:

"'Action of debt is an action to enforce the payment of the sum of money which defendant has contracted to pay to plaintiff.'

"This Court has not seen any contract entered into between plaintiff and defendant for the payment of money as compensation for logs allegedly felled and extracted from plaintiff's farm land.

"Plaintiff is urging this Court that a document of receipts for US$500.00 allegedly issued by plaintiff's representative in June 1997, to defendant's president, and release/receipt dated 11th March, 2005 are evidence of a contract between the plaintiff and the defendant.

"This Court cannot agree with respondent/plaintiff for the following reasons:

"1. Movant/defendant denied ever paying plaintiff the US$500.00, and even the said payment was admitted no where in the said receipt on any figure amount mentioned as a balance to be paid.

"2. Although movant/defendant admitted receiving the release from plaintiff's representative for the consideration of US$1,000.00, no where does the said release mention any other amount of money that would have otherwise been paid by defendant to plaintiff but for the release.

"3. The contract which will give rise to the action of debt must be, according to the Supreme Court by expressed contract and not one implied as plaintiff is requesting this court to do. *Id.* at 595.

"Although plaintiff's action is captioned "action of debt," this Court is convinced that the averment of plaintiff's amended complaint supports an

action of damages over which this court, that is to say the Debt Court for Montserrado County, has no jurisdiction."

After perusing the Judge's ruling, we are in agreement with appellant's contention in court one of the bill of exceptions and conclusion that the Judge relied on the narrow and strict definition of the word "debt" and dismissed the complaint. We are further in agreement with the appellant that the word "debt" has a broader meaning than is relied on in the *Blamo* case. The ordinary legal sense of the word as noted in Corpus Juris Secumden states:

"Although the word 'debt' is usually limited to liabilities arising out of contract, and in its common signification imports the money obligation to a person incurred in his private capacity, or from his individual acts, and no such obligations are imposed upon him by law in his public relations, or in common with all other citizens, yet it needs not be confined to obligation for the payment of money arising on contract; but in particular connections, it has been defined as any just claim, or demand, for the recovery of money; every obligation by which one is bound to pay money; a liability to pay a sum certain, it makes no difference how the liability arises, whether by contract or imposed by law without contract, for it has been said that having money that rightfully belongs to another, creates a debt, and, wherever a debt exists without an express promise to pay, the law implies a promise; and so that the term has been construed to include all kinds or obligations, such as obligation arising from implication of law. 26 C.J.S., *Debt*, sections 3-4.

In the *Blamo* case, the Supreme Court held that "it is from the averments of the complaint that the cause of action is determined and it is from the cause of action that the subject mater over which the court has jurisdiction in order to render a valid judgment is determined for the averments of the complaint whether or not the title agrees with the agreement." *Id.* at 596. Generally, both the caption and the averments of an action are supposed to be in harmony. 20 Am. Jur. 2d. *Courts*, section 105. We hold that to be the case in this matter.

Where there is a conflict between the title of the action and the averments of the complaint, the averments will be given precedence and thus prevail over the captioned title. 20 Am. Jur. 2d. *Judgments*, section 19.231S

The *Blamo* case and the case at bar are not analogous. The complainant in the *Blamo* case instituted an action of debt to recover the money value of items left in an automobile when he was arrested. He also listed other items: air travel, boarding maintenance, and then filed an action of debt. The Supreme Court held that the averments in his complaint would support an action of damages and not of debt. In the case at bar, the averments constituting the complaint as have been meticulously laid out, support an action of debt as contemplated and embraced by the general and legal sense of the word "debt." Plaintiff/appellant presented a claim to defendant/appellee for the sum of $224,690.00 representing the value of the logs felled and extracted from her property. Defendant/appellee neither denied, rejected nor challenged the validity of the claim. Instead; he pleaded with the plaintiff/appellant for a reduction in the claim amount. On several occasions, he offered the plaintiff/appellant small sums of money, and finally he had the plaintiff/appellant execute a release of all claims, present or future that the plaintiff/appellant may have against defendant/appellee after tendering the plaintiff/appellant US$1000.00. The Debt Court Judge committed a reversible error when he equated the two cases and dismissed the action of debt. The US1000.00 paid to the plaintiff/appellant was an admission of an existing obligation.

The learned judge was again in error when he ruled that the $500.00 receipt and the release/receipt could not support an action of debt on ground that the defendant denied the validity of the $500.00 receipt and that the release/receipt did not indicate a balance to be paid. We hold that releases do not show balances, that is why they are so referred to.

Counsel for defendant/appellee argued strenuously that the circumstances of this case would support an action of damages, which position was upheld by the Judge of the Debt Court.

We hold that an action of damages would not lie in a case where a claim presented for payment of a certain sum of money is neither challenged, disputed nor denied. An action of damages will not lie when the one to settle offers to

negotiate the amount of the claim and goes even further as to make some payment(s). Any activities and suggestions intending to negotiate the amount of the claim or any payments made removes the cause out of the realm of an action of damages into that of an action of debt. We hold further that the defendant/appellee, by his own action in presenting a release/receipt with a US$1000.00 consideration, set the stage to be pursued for payment of the actual amount claimed whether or not a balance was or not stated.

At this point we shall define the word "Release".

> "1. A writing or an oral statement manifesting an intention to discharge another from an existing or asserted duty. The relinquishment, concession or giving up of a right, claim, or privilege, by the person in which it exists or to whom it accrues to the person against whom it might have been demanded or enforced. . . .
>
> "2. A discharge of debt by act of party as distinguished from an extinguishment which is a discharge by operation of law, and in distinguishing release from receipt, "receipt" is evidence that an obligation has been discharged but "release" is itself a discharge of it. Black's Law Dictionary, *Release.*

In order that we may obtain a clear picture of the release/receipt That was executed by appellant, we consider it appropriate to quote said instrument:

REPUBLIC OF LIBERIA)
MONTSERRADO COUNTY)

RELEASE/RECEIPT

TO ALL WHOM THESE PRESENTS MAY COME OR CONCERN, GREETINGS:

KNOW YE, that I, Catherine K. G. Dinsea, of the City of Monrovia, Montserrado County, Republic of Liberia, for myself, my heirs, administrators, executors, and legal representatives, in consideration of the amount of One Thousand United State Dollars (US$1,000.00), the receipt and sufficiency of which is hereby acknowledged, do hereby fully and forever release and discharge ITAL Timber Corporation (ITC), its management, owners, agents affiliated or associated

companies, legal representatives, successor, assigns, officials, employees, Fabrozio Colombo, his assigns, heirs, and legal representatives from all claims, demands, suits, actions, rights of action of whatever kind or nature, both in law and equity, which I now have or may hereafter have, arising out of, in consequence of or on account of the alleged extraction of logs from my forest, located in Yarwein Mehsonneh District, Nimba County, by Ital Timber Corporation (ITC).

I hereby warrant, guarantee, and confirm that neither I nor anyone on my behalf shall at any time attempt to institute any action or proceedings, civilly, administratively or otherwise, against Ital Timber Corporation (ITC) and/or Fabrizzo Colombo, by reason of, arising out of or in consequence of or an account of the aforesaid alleged extraction of logs.

I understand that Ital Timber Corporation (ITC) and Fabrizzo Colombo simply desires to compromise the matter, and that payment by Ital Timber Corporation (ITC) of the above stated sum is not to be construed as an admission of liability on the part of Ital Timber Corporation (ITC) and/or Fabrizzo Colombo. Ital Timber Corporation and Fabrizzo Colombo expressly deny liability therefore and intend merely to avoid unnecessary dispute with respect to said claim.

I agree that in making this release, I am relying on my own judgment, belief and knowledge and that I am not relying on representations, statements or commitments made by the said Ital Timber Corporation (ITC) or anyone representing it or Fabrizzo Colombo or anyone representing him. And this Release has been fully read and understood by me. This Release is binding on me, my heirs, administrators, executors, and legal representatives.

In witness whereof, I have executed these presents at Monrovia, on this 11th day of March A. D. 2005.

IN THE PRESENCE OF:

Sherley Yeanay

Catherine K. G. Dinsea

C. Fecker

Counsel for plaintiff/appellant argued that the above quoted release/receipt is an admission of debt. Counsel for defendant/appellee thinks otherwise and in support of his argument had this to say in count 11 of his anended answer to the amended complaint.

"Count 11"

"As to counts 12, 13, 14 and 15 of the plaintiff's amended complaint, defendant admits making a payment of US$1,000.00 to Mrs. Dinsea, but says that this payment did not amount to an admission that defendant owed plaintiff anything. Quite to the contrary, defendant says that after continuous appeals by Mrs. Dinsea that she needed some money to pay her daughter's college tuition, defendant agreed to make

the payment. It was in an effort to avoid future harassment and embarrassment by plaintiff, defendant insisted that Mrs. Dinsea should execute a release in its favor, forever discharging and relieving defendant of all claims that plaintiff allegedly had against defendant."

Let us now see how we can untangle this web of legal supposition advanced by counsel for defendant/appellee. Counsel has denied that his client ever entered appellant's forest, ever felled logs therefrom, ever made any promises or acknowledgements or admission of obligation to appellant and denies that his client ever made any part payment in settlement of any money owed. Yet, the same counsel admits that his client did give appellant US$1,000.00, but only as a contribution to plaintiff/appellant's daughter's education. Although we do not question why defendant/appellee became such a humanitarian, we do enquire why the release instrument did not reflect that the US$1000.00 had been tendered on purely humanitarian grounds, rather than on its face and for all intent and purposes recited that it was releasing defendant/appellee, Mr. Colombo, and his company, Ital Timber Corporation, and their assigns from all claims, and obligations and, "to avoid unnecessary dispute with respect to said claim?" Which said claim or what dispute or long drawn-out litigation as stated elsewhere in the "release" was the release alluding to? We are aware of no legal or moral justification for a kind-hearted giver to demand a release from all future harassment and embarrassment by a beggar.

Counsel for defendant/appellee in the said count 11 of his amended answer wants this court to accept his explanation that his client never did or discussed any business with plaintiff/appellant other than the kindness he did by giving US$1000.00 towards her daughter's education. The release/receipt however says otherwise. A question that arises from the reason for the release/receipt, as stated in the quoted count 11 of the amended answer, is whether a reasonable man would harass, embarrass or institute an action or a claim and engage in a long drawn-out litigation with one who has given him/her a gift and that in order to prevent such occurrence the benefactor

should demand a release/receipt from the beneficiary, and as was done in this case, binding not only on the beneficiary but her representatives, her heirs, assigns and legal representatives?

We hold that counsel's assertions before this Court has miserably failed the reasonable man's test, that the explanation in said count 11 was an attempt to toy with the intelligence of the readers --- this Bench, which attempt has also failed miserably. The US$1,000.00 paid and the release/receipt issued were a transaction related solely to plaintiff/appellant's claim, which claim defendant/appellee and his counsel tried to obtain a discharge of. The wording of the release/receipt clearly speaks for itself. It needs no other words to explain its intent or purpose.

Therefore, the release/receipt for US$1,000.00 as consideration for the release sought, having been very much far less than the amount of plaintiff/appellant's claim of US$224,460, cannot serve as a final payment for which a release from all payment, claims or obligations would lie, especially when taken into account the circumstances surrounding its execution. The release/receipt was executed in the absence of counsel for plaintiff/appellant, and taking into consideration its inadequacy could not have and did not exonerate the defendant/appellee of the plaintiff/appellant's claim. We consider, therefore, the document titled "Release/receipt" as a receipt only for US1000.00; for the plaintiff/appellant had no intention to release defendant/appellee and his company of all claims. It was only the defendant/appellee who had that intention, and where there is no meeting of the minds and no mutuality of understanding, there cannot be a binding contract. "A release, when intended as a contract can not be binding in the absence of these elements." Bong Mining Company v. Bah, 35 L.L.R. 586 (198).

We hold further that the US$1,000.00 paid to plaintiff/appellant and the unreasonableness of the explanation for the gesture was an admission of

defendant/appellee's indebtedness, and that the amount represented part-payment against the plaintiff/appellant's claim.

Wherefore, and in view of the foregoing, it is the judicious decision of this Honourable Court that the complaint was well founded in debt. It was an error on the part of the Judge to refuse jurisdiction. Accordingly, the Judgment is hereby reversed and the case reminded to the Debt Court of Montserrado County for trial on its merits. It is hereby so ordered.

Judgment reversed; case remanded.

Counsellor William A. N. Gbaintor of the Gbaintor & Associates Law Firm appeared for the Appellant while Counsellors James E. Pierre and N. Oswald Tweh of the Pierre, Tweh & Associates, Inc. appeared for the Appelles.