

ROBERT CHENG and AMERICAN  
INTERNATIONAL UNDERWRITERS (AIU),  
Appellants, v. MULBAH TOKPA, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT,  
MONTERRADO COUNTY.

Heard: July 27, 1981. Decided: July 30, 1981.

1. A trial judge may not unnecessarily delay trial to permit a party who, with notice of the date, place, and time of trial, elects to leave the jurisdiction without prior excuse from the court.
2. Where a court without intent to harm a party, appoints a counsel to merely take a ruling in a civil case and the counsel so appointed acts negligently in the discharge of that duty, his conduct is not an act of the court *per se*, if it does not materially prejudice the rights of a party.
3. Where a court appoints a counsel in a civil case only to take a ruling and the counsel so appointed fails to except to the ruling against the party, the party may not suffer for the acts of the designated counsel.
4. When a trial court hears, decides a case and effects the adjournment of the term of court, it finally loses jurisdiction to redetermine any cause it had heard during the expired term. A trial judge may, however, amend his ruling, decree, or judgment only within the very term of court during which he rendered the decision but not after adjournment of court. Another judge cannot under any circumstance act for or in his stead in reviewing or amending his judgment.
5. Under our Civil Procedure Law, an aggrieved party may join his claim in equity and law in a single civil action. This rule prevents multiplicity of suits resulting in waste of time, energy and expense.
6. When a judgment is exclusively based on a statute which is thereafter repealed, that decision ceases to be *stare decisis*.
7. A trial court is not required to specifically rule on all issues raised in a pleading if the failure to rule on those issues does not materially affect the substantive rights of the parties, especially where the issues cannot be determined without reference to a factual matter.
8. The reason for requiring sufficient identification of documentary evidence in any legal proceeding is to avoid the admission of false and deceptive writing that may tend to distort the truth. Once a document is identified and admitted into evidence by the court, it becomes part of the entire record and must be submitted to the jury for its deliberation.
9. Under our new Civil Procedure Law, many causes of action arising out of the same transaction may be consolidated in a single suit.
10. The civil procedure laws should be construed to promote the just, speedy, and inexpensive determination of every cause.

These proceedings emanate from the final judgment of the Civil Law Court, from which appellants noted their exceptions and announced an appeal. Co-appellant Cheng was involved in a car accident in which appellee was severely injured as a result of which he was hospitalized, treated and discharged. Upon the discharge of the appellee from the hospital, co-appellant Cheng directed him to the American International Underwriters (AIU), co-appellant herein, for compensation for his fractured legs, other injuries and cost of treatment. Accordingly, appellee presented co-appellant AIU with the hospital bill given him on the day of his discharge from the hospital for treatment he had received, which amounted to \$650.00. Co-appellant AIU immediately issued appellee a check in the amount of \$656.00 (Six Hundred Fifty-Six Dollars) and a release was signed. However the check was never presented and cashed. When appellee returned to claim his full compensation asserting that the check and the release were only for his medical bills, co-appellant AIU refused to pay, whereupon appellee instituted an action of damages for the injuries he suffered and alleged that the release was obtained by fraud.

Appellants in their answer admitted involvement in the accident and the injuries appellee sustained, but asserted that the payment made to appellee and the release issued were a bar from further liability. In his reply to the amended answer, appellee asserted that appellants delayed payment against his health and that to evade their liability, appellants clandestinely caused appellee to sign a release form that was intended for only medical bill which was later filed by appellants.

After determination of the issues of law, a jury trial was held, and a verdict brought in favour of appellee, upon which a judgment was entered, and from which appellants appealed to the Supreme Court.

The issues presented by the parties before the Supreme Court included: (1) whether a court is under duty, where parties have signed the notice of assignment for the hearing of their case and one of them voluntarily leaves the jurisdiction, to grant counsel's request for reassignment to allow his return and presence at the trial; (2) whether or not where a court appointed counsel in a civil suit to take a ruling fails to except

to the ruling, may this failure affect the absent party; (3) whether a court after adjournment, may amend its ruling or judgment during a succeeding term; (4) whether a party who discovers fraud and deceit in obtaining his approval of a release, may unilaterally repudiate it and immediately sue for compensation without first going to equity for cancellation; (5) whether a court in ruling on the law issues, should rule on all issues alleged by a party as issues of law; and (6) under what circumstances may a judge affirm a verdict?

The Supreme Court, in passing on the aforesaid issues, held that the trial court violated no rule of procedure by denying the application for re-assignment of the case, and the exercise of its discretion under the circumstances was not arbitrary. The Court further opined that a trial judge may not unnecessarily delay trial to permit a party who with notice of the date, place, and time of trial elects to leave the jurisdiction without prior excuse from the court. The Supreme Court also held that, where a court, without intent to harm a party, appoints a counsel to merely take a ruling in a civil case, and the counsel so appointed, acts negligently in the discharge of that duty, the conduct of the counsel is not an act of the court *per se*, if it does not materially prejudice the rights of a party. In the case at bar, the Court opined that there was no prejudice against appellants, because every exception appellants were to make that was not noted has been included in their bill of exceptions and briefs without objection.

With respect to the refusal of the trial court to have the clerk of court enter appellant's exceptions to the ruling made during the previous term of court, the Supreme Court held that, when a trial court hears, decides a case, and effects the adjournment of the court, it loses jurisdiction over the case, and cannot re-determine any matters relative to it. A trial judge may, however, amend his ruling, decree, or judgment only within the very term of court during which he rendered the decision but not after adjournment of court. Another judge cannot under any circumstance act for or in his stead in reviewing or amending his judgment.

On the issue of the release being obtained fraudulently, the Supreme Court disagreed with the appellants that a party who

claims that a release is obtained from him by fraud should first sue in equity for cancellation of the contract before entering a suit for any claim of right. The Court held that under our Civil Procedure Code, an aggrieved party may join his claim in equity and law in a single civil action. This rule, the Court opined, prevents multiplicity of suits resulting in waste of time, energy and expense. Upon discovery of a fraud against the right and interest of a person, the party defrauded, must repudiate it at once and pursue legal remedies.

On the issue of the failure of the trial judge to pass upon all issues of law raised by the parties in their pleadings, the Court held that a trial court is not required to specifically rule on all issues raised in a pleading, if the failure to rule on those issues does not materially affect the substantive rights of the parties, especially where the issues cannot be determined without reference to a factual matter.

With respect to the allegation that the trial judge erred by submitting the release to the jury and by confirming the verdict of the jury, the Court held that the trial judge committed no error. The Court said that all documents attached to a pleading when identified by witnesses and marked by the trial court, should be submitted into evidence for the jury's consideration. It is within the province of the jury to give credibility to or disbelief of any evidence submitted for its determination.

In view of the aforesaid, and concluding that the trial was regularly conducted and the verdict was arrived at by virtue of the facts that were proven at the trial, the Supreme Court *affirmed* the judgment.

*Philip A. Z. Banks, III*, appeared for appellants. *S. Edward Carlor* appeared for appellees.

JUSTICE MABANDE delivered the opinion of the court.

On May 13, 1978, Co-appellant Cheng had a car accident involving appellee Tokpa who was severely injured. Appellee was hospitalized at the John F. Kennedy Medical Center, treated and discharged.

Co-appellant Cheng was insured by co-appellant American International Underwriters (AIU) to whom co-appellant Cheng directed appellee Tokpa for compensation for his fractured legs, other injuries and the cost of treatment.

On the day of his discharge from hospital, appellee was given a medical bill in the amount of \$650.00 (Six Hundred and Fifty Dollars) which he immediately and directly took to appellants for payment. A check dated July 19, 1978 bearing #927 in the amount of \$656.00 (Six Hundred Fifty-Six Dollars) was issued and a release signed. According to the records, the \$6.00 (Six Dollars) was for clutches to be used by appellee. The check has neither been endorsed nor cashed; the hospital bill remains unpaid. Appellee returned to claim full compensation asserting that the check and the release were only for his medical bills. Co-appellant AIU refused to pay. Appellee sued appellants for damages for the injuries he suffered, and alleged that the release was obtained by fraud.

Appellants in their answer admitted appellee's involvement in the accident and the injuries appellee sustained. They asserted that payment is a bar from further liability, that a release was issued, that no fraud was committed, and that all claims to have been asserted by appellee were included in and concluded by the release.

In his reply to the amended answer, appellee asserted that appellants delayed payment against his health and that to evade their liability, appellants clandestinely caused appellee to sign a release form that was intended for only medical bill which was later filed by appellants.

After determination of the issues of law, a jury trial was held, and a verdict brought in favour of appellee, from which judgment appellants appealed to this court.

The important issues presented by the parties before this Court are summarized as follows: (1) whether a court is under a duty, where parties have signed the assignment for the hearing of their case and one of them voluntarily leaves the jurisdiction, to grant counsel's request for reassignment to allow his return and presence at the trial? (2) whether or not the failure of a court appointed attorney in a civil suit to except to the court's ruling should adversely affect the absent

party on whose behalf the ruling is taken? (3) whether a court after adjournment, may amend its ruling or judgment during a succeeding term? (4) whether a party who discovers fraud and deceit in obtaining his approval of a release, may unilaterally repudiate it and immediately sue for compensation without first going to equity for cancellation? (5) whether a court in ruling on the law issues, should rule on all issues alleged by a party as issues of law? and (6) under what circumstances may a judge affirm a verdict?

As appellants neglected to number the paragraphs of their briefs, the issues raised therein shall not be referred to by counts.

In opening his argument, counsel for appellants argued that the trial court committed reversible error by denying an application for reassignment of the case for one week to enable co-appellant Cheng to attend the trial. Appellee's counsel contended that both the appellants and appellee were duly previously served with a notice of assignment of the cause after which co-appellant Cheng elected to leave the jurisdiction without any excuse from the court.

A trial judge may not unnecessarily delay a trial to permit a party who with notice of the date, place, and time of the trial elects to leave the jurisdiction without prior excuse from the court. A party may at any time choose not to attend a civil trial in person. Appellants were duly represented by counsel; hence, the court violated no rule of procedure by denying the application, and the exercise of its discretion was not arbitrary. Appellants further argued that the presiding judge in ruling on the issues of law, deputed a counsel to take the ruling on behalf of appellants, but that the said counsel negligently failed to except to the ruling against appellants and announce an appeal to the Supreme Court. Appellee contended that the appointment of a lawyer to take a ruling on behalf of a party where his counsel is absent, is a right conferred on a presiding judge by statute and a long standing practice in this jurisdiction and that its exercise does not constitute any ground for either reopening the case or a reversal of judgment.

We are of the opinion that where a court, without intent to harm a party, appoints a counsel to merely take a ruling in a

civil case, and the counsel, in the discharge of that duty, acts negligently, his conduct is not an act of the court *per se* if it does not materially prejudice the rights of a party. In the case at bar, there was no prejudice against appellants because every exception appellants were to make that was not noted has been included in their bill of exceptions and briefs without objection.

Appellants further argued that the trial court committed reversible error by refusing to have the clerk of court enter their exceptions to the ruling made during the previous term of court, but appellee contended that the term of court in which the issues of law were disposed of had expired, and the judge had left the jurisdiction, and a successor trial judge could not have legally allowed the entry of such exceptions.

When a trial court hears, decides a case, and effects the adjournment of court, it finally loses jurisdiction to re-determine any cause it had heard during the already expired term. A trial judge may, however, amend his ruling, decree, or judgment only within the very term of court during which he rendered the decision but not after adjournment of court. Another judge cannot under any circumstance act for or in his stead in reviewing or amending his judgment. *New York v. Seabreeze*, 2 LLR 26 (1909).

Appellants argued that a party who claims that a release is obtained from him by fraud, should first sue in equity for cancellation of the contract before entering a suit for any claim of right thereunder. Under our Civil Procedure Law, an aggrieved party may join his claim in equity and law in a single civil action. This rule prevents multiplicity of suits resulting in waste of time, energy and expense. Upon discovery of a fraud against the right and interest of a person, he must repudiate it at once and pursue legal remedies. Civil Procedure Law, Rev. Code 1:1.3 and 6.1; *Page v. Jackson*, 2 LLR 77 (1912).

Appellants' counsel argued that the trial court failed to pass upon all issues of law raised by the parties, and that failure to do so is a reversible error. In reliance to support or buttress his argument, he cited the Court to his amended answer and the judge's ruling. However, appellants' amended answer contains

no such averment; hence, it deserves no consideration.

The mesmeric phrase taken advantage of by lawyers in this jurisdiction to demand reversal of judgments mostly has been a complaint against a trial judge's failure to rule on all issues of law. A review of our cases on a judge's failure to rule is designed to give effect to the true spirit of the law. The cases in point are: *Williams v. Allen*, 1 LLR 259 (1894); *Schmitz v. Adam*, 2 LLR 484 (1924); *Monrovia v. Coleman*, 3 LLR 404 (1933); *Wolo v. Wolo*, 8 LLR 36 (1942); *Horace v. Harris*, 8 LLR 73 (1942); *Johns v. Witherspoon*, 8 LLR 462 (1944); *Reeves v. Knowlden*, 11 LLR 199 (1952); *Geeby v. Geeby*, 12 LLR 20 (1954); *Togai v. Johnson*, 12 LLR 176 (1954); *Wright v. Richards*, 12 LLR 423; (1957); *Johnson v. Dorsla*, 13 LLR 378 (1959); *Thomas v. Dayrel*, 15 LLR 304 (1963); *Clara-town Eng. Inc. v. Tucker*, 23 LLR 211 (1974); and *Blance v. Nestles Products Ltd.*, 25 LLR 16 (1976).

This issue has brought such a degree of delay of trials and additional severe grievances to litigants in spite of the existing laws that this Court should now address itself to a review of the whole issue from its genesis to the present.

In the case at bar, the trial judge, His Honour Frank W. Smith, considered the pleadings to have raised, and we quote, "only one issue to the effect that plaintiff had already been compensated by co-defendant Robert Cheng's insurer, the American International Underwriters (AIU) Incorporated, and that having being compensated, and having issued a release, the plaintiff is barred from entering a suit against the defendant. This is the issue raised."

The judge concluded by ruling that the issue is a mixed question of law and fact to be proven at the trial as evidence was necessary to establish whether or not fraud was perpetrated in obtaining the release, and whether the \$656.00 (Six Hundred Fifty-Six Dollars) check represented full payment for the injuries. It is against this ruling that the appellants claimed that His Honour Frank W. Smith committed reversible error.

A brief comment on the acts requiring the trial of issues of law by court is important at this moment of our Judiciary's strive for the attainment of the substantive rights of litigants. The relevant portions of chapter 7 of the Acts of the Governor



and the Council in January 1841 on the legal principles for the adjudication of controversies in this country read thus:

Section 1). "The trial of all questions of mere law, shall be by court;"

Section 2). "The trial of all questions of mere fact, shall be by a jury;"

Section 3). "The trial of all mixed questions of law and fact, shall be by jury." 2 HUB. 1542.

These principles were retained in our law by Article IV, Section 1 of the now suspended Constitution, which read:

"All laws in force in the Commonwealth of Liberia and not repugnant to this Constitution, shall be in force as the laws of the Republic of Liberia, until they shall be repealed by the Legislature."

The Act of 1856, commonly known as the Old Blue Book, established the order in which these issues should be disposed of by the court. Chapter 5, Section 1 of the Act read thus:

"If the defendant denies both the fact and the law, the question of law shall first be disposed of."

In succession to this law, the 1956 Code of Law provided:

"When the pleadings raise questions both of law and of fact, the court shall determine all issues of law before it tries the questions of fact." Civil Procedure Law, 1956 Code, 6:313.

This law prevailed until, after years of debate of the evils perpetuated by it, it was repealed. The procedural requirement for a trial judge to rule on all issues of law was based on past civil procedure laws which were repealed on December 6, 1968.

"Section 1, Title 6 of the Liberian Code of Laws of 1956, known as the Civil Procedure Law, as amended by the cumulative supplement through laws of 1957-58, and by the laws of 1958-59, the laws of 1959-60, and the laws of 1960-61, is hereby repealed, and there is enacted in lieu thereof a new Title 6, consisting of parts I, II, III, IV, V and appendices I and II to be known as the Civil Procedure Law of the Republic of Liberia. Section 2. This Act shall take effect immediately upon publication in handbills." Civil Procedure Law, 1963-64, ch. III.

The new Civil Procedure Law, enacted on December 6, 1968, with respect to issues to be decided by the court, reads:

"The court shall decide any issue not required to be tried by a jury." Civil Procedure Law, Rev. Code 1: 23.1

The law confines the trial court to deciding only issues that are not required to be tried by a jury.

It is a combination of the concepts that a court is required to rule on only issues that it can decide without reference to any evidence, to rule all other issues whether construed as mixed questions of law and fact or issues of law that stem from facts for the jury, that bewilder the lawyers of our jurisdiction.

In spite of the new Civil Procedure Law, lawyers continue to impress upon this Court the need to reverse judgments when trial courts view issues as mixed questions of law and fact. They argue that adherence to the old law and policy is binding in view of recent opinions and that it supports *stare decisis*.

It is our bounden duty as interpreters of the law to concur with all conclusions of this Court as the laws in force, but when a judgment is exclusively based on a statute which is thereafter repealed, that decision ceases to be *stare decisis*. *Stare decisis* does not impose multiplicity of errors by demanding this court to continue to use known former errors due to the oversight of the change of the law when those opinions were delivered. We are therefore not required to maintain the same mistakes and sustain new errors.

Under our common law pleadings, litigants were required to present a single issue for the court. To determine whether a purely issue of law is presented, was without much difficulty for the court.

Because of the technicalities that were clothed with common law actions, substantive rights of many were often defeated. The courts did not address themselves in many instances to the substantive rights of the parties but to the technicalities advanced by their counsel.

In order to arrive at a more just and equitable means of adjudicating the rights of litigants, judicial reform has been a constant and continual endeavour in our jurisdiction.

Under our new Civil Procedure Law, many causes of actions arising out of the same transaction may be joined in a single suit. In addition to this, alternative pleadings are now permissible; hence, the common law rule of single issue as well as its antagonism to alternative pleadings are abolished. With the enactment of the new law, the trial judge is often confronted with multiple issues of law and fact unlike his common law predecessors. Civil Procedure Law, Rev. Code 1: 9.6.

Courts are not unanimous on what issues of law or questions of fact are. The strict requirement that a court should rule on all issues of law is not unanimously favoured by courts. A failure to rule on the law of a case is regarded by some courts as equivalent to a negative ruling. Others hold that any ruling on an issue is the view of that judge. Hence, a trial judge should be free to decide for himself what issue is a conclusion of law or fact.

Other courts, however, hold that every issue of law may stem from some facts; hence, every issue of law may be factual in nature and may therefore be referred to a jury. Most courts and law writers hold that only purely issues of law are mandatory for consideration by the trial court. They hold that a pleading is purely an issue of law, only if a court may rule on it without the need to refer to any factual matter. A combination of all of these concepts find support among our trial courts and our current law.

From a review of cases in Anglo-American jurisdiction as well as ours, there is no logical distinction between pleadings that are classified by courts as issues of law or issues of fact. Classifications of issues of law and fact should obviously not be determined by mere logic but must be settled according to notions of judicial fairness and the need to preserve the substantive rights of the parties. 21 *Columbia Law Review*, 416 (1921); and 55 *Harv. L. Rev.* 1303, 1314.

The constant reversal of cases on account of a judge's failure to rule on all of the issues of law or his ruling of some issues as mixed questions of law and fact to be proven at the trial has continuously disturbed litigants. The long delay at trials, the expenses involved, the difficulties in having wit-

nesses available for a new trial, and all others that go along with the prosecution and defense of a case, necessitated the move to simplify court procedures. To obviate these difficulties and minimize expenditures to both parties, the doctrine of harmless error was invoked and incorporated in our new Civil Procedure Law. Under this doctrine, an error or defect in any ruling is harmless only if it does not affect the substantive rights of the parties. Civil Procedure Law, Rev. Code 1: 1.5.

Our procedure laws should be construed where it is required, as in the issues at bar, to promote the just, speedy, and inexpensive determination of every cause. *Ibid.*, 1:1.4.

We are therefore of the opinion that a trial court is not required to specifically rule on all issues raised in a pleading, if the failure to rule on those issues does not materially affect the substantive rights of the parties, especially where the issues cannot be determined without reference to a factual matter.

Appellants further argued that the trial judge erred in confirming the verdict of the jury, in that the verdict is not supported by the evidence. Appellants further contended that it is a reversible error for the judge to have submitted the release to the jury. All documents attached to a pleading when identified by witnesses and marked by court, should be submitted into evidence for the jury's consideration. It is within the province of the jury to give credibility to or disbelief of any evidence submitted for its determination.

In the case *Smart v. Proh*, 11 LLR 49 (1951) this Court held that the reason for requiring sufficient identification of documentary evidence in any legal proceedings, is to avoid the admission of false and deceptive writing that may tend to distort the truth. Once a document is identified and admitted into evidence by the court, it becomes part of the entire record and must be submitted to the jury for its deliberation. *Walker v. Morris*, 15 LLR 424 (1963); and *Haider v. Kassas*, 20 LLR 329 (1971).

Regarding what shall constitute the verdict of a jury, it is within its sole province, after listening to the testimonies, to deliberate on the evidence and determine its verdict. Regarding what matters are material or irrelevant, when objected to,

it is within the scope or right of the trial judge to grant or deny such objections; but a court cannot interfere with the verdict where it has reasonable support according to all of the evidence.

Appellants further contended that the verdict is excessive and that it was erroneous for the jury to have assessed and included special damages in the amount of \$656.00. (Six Hundred and Fifty-Six) Dollars. The \$656.00 (Six Hundred Fifty-Six) Dollars check that was issued is still on the file of this court. It has not been presented or paid; appellants still retained the right before encashment to stop payment. The records support the factors for consideration by the jury in determining the special and general damages in such a case.

We are therefore of the opinion that the trial was regularly conducted and the verdict was arrived at by virtue of the facts that were proven at the trial. The judgment is therefore affirmed with costs against appellants. The Clerk of this Court is thereby ordered to send a mandate to the trial court to resume jurisdiction over the case and enforce its judgment. And it is hereby so ordered.

*Judgment affirmed.*