

COMPUTER SERVICES BUREAU, by and thru its
General Manager, FRED UHLENDROFF, Appellant,
v. GUNNAR EHN, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT,
MONTSERRADO COUNTY.

Heard: June 2, 1981. Decided: July 30, 1981.

1. The court shall decide only issues not required to be tried by a jury; and where it has the authority to pass upon factual issues, it should do so only after the disposition of law issues.
2. Issues, which are not required to be tried by a jury or to be referred to a referee for determination, pursuant to Civil Procedure Law, should first be heard and decided by the court before the hearing of factual issues.
3. All issues of law raised in the pleadings must first be disposed of by the trial court before it considers the issues of fact.

Appellant, the Computer Services Bureau, and appellee entered into an employment agreement for a period of twenty-four (24) months, with provision for an automatic annual renewal thereafter. Clause 9 of the employment contract provides that the appellee shall not for a period of five years after the expiration of this contract engage in any business competitive with that of the appellant, whether as an employee or proprietor, or shareholder.

While on vacation without the Republic appellee, through a written communication, tendered his resignation from appellant. This resignation was accepted, thereby terminating all business relations between appellant and appellee with respect to the said employment agreement. Subsequently, appellee made an application by his counsels to change his employment from Computer Services Bureau to the Liberia Data Processing Corporation. Not satisfied with appellee's new status and activities, appellant filed a motion for arbitration proceedings and for preliminary injunction, restraining and prohibiting the appellee from working in competition with the appellant in Liberia pending the award of the arbitrators including damages, and the rendition of final judgment thereon.

In resisting the motion, appellee contended that if the averments contained in the motion of the appellant were true, the proper relief would be an action of damages. The appellee also denied *in toto*, the allegations laid in the motion for arbitration proceedings. The Civil Law Court denied the motion for arbitration proceedings, from which appellant announced an appeal to the Supreme Court.

The appellant in his brief and argument, contended that: (1) the trial judge erred when in disposing of the law issues, as he passed upon the legality of the employment agreement and the two letters of resignation and acceptance, exchanged between the appellant and appellee, without permitting the said documents to be testified to, identified, confirmed, and admitted into evidence; (2) the ruling of the trial judge was inconsistent and contradictory in that, while on the one hand he recognized the existence and binding effect of a contract when signed by the parties in his ruling, yet, on the other, he ruled that with the termination of the agreement, all the terms and conditions therein ceased to exist; (3) the trial judge failed, refused, and neglected to pass upon the three principal issues raised in both the motion and the resistance, which were: whether there existed a written agreement to arbitrate; whether there was any controversy referable to arbitration; and whether damages are maintainable in arbitration proceedings.

The Supreme Court, upon review of the records, found that the trial judge did not pass upon all of the legal issues raised in the pleadings. More than this, the trial judge passed upon factual issues without hearing evidence, when factual issues should be passed upon only after the disposition of law issues. The Court also held that the trial judge committed a reversible error when he recognized in his ruling on the law issues, the existence of an employment contract and yet failed to hear evidence on the factual issues that were pleaded in the motion and the resistance thereto. The Court also held that the letters of resignation and acceptance thereto should have been testified to, identified, confirmed, and admitted into evidence as a condition precedent in order for the court to pass upon them.

Accordingly, the Supreme Court *reversed* the judgment and *remanded* the case for trial on the merits after hearing and

passing upon all of the law issues anew.

S. Edward Carlor and John T. Teewia of the Carlor Gordon Hne and Teewia Law Offices appeared for appellant. *Stephen B. Dunbar, Sr.* appeared for appellee.

MR. JUSTICE BORTUE delivered the opinion of the Court.

The records in this case reveal that on the 26th day of September, A. D. 1977, appellant and appellee entered into an employment agreement and that an amendment was made thereto on the same date for a period of twenty-four (24) months, beginning January 1978, with an automatic annual renewal thereafter.

That while on vacation in Rio de Janeiro, appellee tendered his resignation from his position as marketing manager for reasons stated in his said letter of resignation. The appellant in response to appellee's said letter, wrote a letter on June 20, 1979, indicating his acceptance of appellee's resignation, which terminated all business relations between appellant and appellee with respect to the said employment agreement, on the 26th day of September, A. D. 1977,

On the 9th day of July, A. D. 1979, appellee made an application, by and through his then legal counsel, the Simpson, Bright and Cooper Law Firm, to the then Ministry of Labour, Youth and Sports to change his employment from Computer Services Bureau to the Liberia Data Processing Corporation. To this application, there was no objection from the said Ministry of Labour, Youth and Sports.

It is also observed from the records certified to us, that upon the establishment of the Liberia Data Processing Corporation, appellant became concerned and sought relief under the terms and conditions of the September 26, A. D. 1977 Employment Agreement, availing himself of the provisions in Clause Nine (9) of the employment contract, which provided, *inter alia*, that:

“Other employment and activities: The employee agrees that during the term of this agreement he will not, without the prior written consent of the employer:

1. Accept any employment from or undertake any duties of

any nature whatsoever from any other person, firm, corporation or other entity.

2. Have any interest, directly or indirectly, in any person, firm, corporation or other entity, that at any time has had any business or dealings with the employer (including, without limitation, the employer's contractors, suppliers or customers) or that is engaged in any business competitive with that of the employer, or accept any gifts, commissions or other benefits from any such person, firm, corporation or other entity. *The employee further agrees that he shall not for a period of five years after the expiration of this agreement engage in any business competitive with that of the employer whether as an employee or proprietor or shareholder.*"(Emphasis ours).

During the December Term, A. D. 1979, of the Civil Law Court, Sixth Judicial Circuit, Montserrado County, appellant filed an eight-count motion for arbitration proceedings in which he requested the court to grant the prayer for arbitration, and to decree preliminarily, restraining and prohibiting the appellee from working in competition with the appellant in Liberia, pending the award of the arbitrators and the rendition of a final judgment thereon. Appellant also prayed the court for an award of general damages commensurate with the injury, inconveniences and other embarrassments suffered by him.

On the 26th day of December, A. D. 1979, appellee filed an eight count resistance, in which he contended that if the averments contained in the motion of the appellant were true, the proper relief would be a suit for damages. The appellee also denied *in toto*, the allegations laid in the motion for arbitration proceedings.

On the 3rd day of October, A. D. 1980, His Honour E. S. Koroma, Assigned Circuit Judge, presiding over the People's Civil Law Court for the Sixth Judicial Circuit, Montserrado County, sitting in its September Term, A. D. 1980, heard arguments on the law issues and denied the motion for arbitration proceedings with costs against the appellant, to which appellant excepted, and prayed for an appeal to this Court. The appeal was granted. Hence, this case is before us for review and determination.

The appellant, in his argument, contended that the trial judge erred when, in disposing of the law issues, he passed upon the legality of the employment agreement of September 26, 1977, executed between appellant and appellee, including the two letters of resignation and acceptance exchanged between the contracting parties in these proceedings, without permitting the said documents to be testified to, identified and confirmed before their admissibility into evidence.

In count three of the bill of exceptions, counsel for appellant contended that the ruling of the trial judge was inconsistent and contradictory in that while, on the one hand, he recognized the existence and binding effect of a contract when signed by the parties, yet the trial judge, on the other hand, ruled that the agreement, which is the basis of this action, carried with it in the eternal grave all the terms and conditions thereof. Appellant contended that the judge, having acknowledged the existence of the contract, could not have legally ruled, as he did, without being inconsistent and contradictory, when he dismissed the appellant's motion for arbitration proceedings. Hence, appellant contended that the ruling of the trial judge was a miscarriage of justice, and therefore reversible.

In counts five and six of his bill of exceptions, and in count seven of his brief, appellant has contended that there were three principal issues raised in the motion and the resistance filed by the parties: (1) whether there existed a written agreement to arbitrate? (2) whether there was any controversy referable to arbitration? and (3) whether damages are recoverable in arbitration proceedings? Appellant contended further that the aforesaid issues were argued by both parties, yet the trial judge failed, refused and neglected to pass upon them in his ruling of October 3, 1980, and from which ruling he appealed to this Court. Appellant argued further that it was legally obligatory upon the trial judge to have passed upon all of the legal issues raised in the pleadings, and his failure to have done so was a reversible error.

From a careful perusal and scrutiny of the ruling on the law issues of the trial judge, it is observed that the contentions of the appellant are supported by the records, in that, the trial judge did not pass upon all of the legal issues raised in the pleadings.

More than this, the trial judge passed upon factual issues without hearing evidence, when factual issues should be passed upon only after the disposition of law issues. Civil Procedure Law, Rev. Code 1: 23.1.

The Civil Procedure Law provides that:

“The court shall decide any issues not required to be tried by a jury unless it is referred to a referee to determine pursuant to Chapter 24.” *Ibid.*, 1: 24.

It is our understanding and interpretation of the above quoted citation of law, that law issues, which are not required to be tried by a jury or to be referred to a referee for determination pursuant to Chapter 24 of the Civil Procedure Law, Rev. Code 1: 24 must be heard and decided by the judge alone and a ruling made thereon before the hearing of factual issues.

This Court has held, in a long line of decisions, that all issues of law raised in the pleadings must first be disposed of by the trial court before it considers the issues of fact. *Garteh v. Paimore*, 22 LLR 51 (1973). Further, the trial judge committed a reversible error when he recognized in his ruling on the law issues, the existence of an employment contract, and yet failed to hear evidence on the factual issues that were respectively pleaded in the motion and the resistance thereto, coupled with the letters of May 29 and June 20, 1979, which should have been testified to, identified and confirmed before being admitted into evidence. But instead, he denied appellant's motion for arbitration proceedings simply because, as he put it, the employment contract was terminated by the resignation of the appellee, and accepted by the appellant.

In as much as we would like to pass upon all of the issues in this case, including the ruling of the trial judge on the law issues, we are legally powerless to do so because of the failure of the trial judge to have passed upon all of the issues of law raised in the pleadings and his failure to thereafter hear evidence in support of the allegations raised in the motion and the resistance concerning the letters of May 29 and June 20, 1979, and the employment contract itself.

Therefore, in view of the fact that the trial judge illegally denied the motion of the appellant on the 3rd day of October, A. D. 1980, which said motion contained both legal and factual

issues, as well as the resistance filed by the appellees, and in order to do substantial justice to both parties, the ruling of the trial court, denying the motion for arbitration proceedings is hereby reversed, and the case is therefore remanded for trial on the merits after hearing and passing upon all of the law issues anew. Costs of these proceedings are to abide final determination of the case.

The Clerk of this Court is therefore ordered to send a mandate to the court below ordering it to resume jurisdiction over the case and proceed to hear and determine same in keeping with law. And it is hereby so ordered.

Reversed and remanded.