

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2023

BEFORE HER HONOR.....SIE-A-NYENE G. YUOH.....CHIEF JUSTICE
BEFORE HER HONOR.....JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HIS HONORJOSEPH N. NAGBE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR.....YUSSIF D. KABA.....ASSOCIATE JUSTICE
BEFORE HIS HONOR.....YAMIE QUIQUI GBEISAY, SR.....ASSOCIATE JUSTICE

Guaranty Trust Bank (Liberia) Limited, represented by its)	
Managing Director, Mr. Ikenna Anekwe and all of its)	
Corporate Officers13 th Street Sinkor, Monrovia, Liberia)	
.....Appellant)	
Versus)	APPEAL
Mr. Charles E. Sirleaf of Congo Town Back Road,)	
Montserrado County, Liberia.....1 st Appellee)	
And)	
Bojelene Guest House Inc., represented by its Chief)	
Executive Officer, Mr. Charles E. Sirleaf and all)	
Corporate Officers, of the City of Monrovia, Liberia)	
.....2 nd Appellee)	
<u>GROWING OUT OF THE CASE:</u>)	
Mr. Charles E. Sirleaf of Congo Town Back Road,)	
Montserrado County, Liberia.....1 st Plaintiff)	
And)	
Bojelene Guest House Inc., represented by its Chief)	
Executive Officer, Mr. Charles E. Sirleaf and all Corporate)	
Officers, of the City of Monrovia, Liberia.....2 nd Plaintiff)	ACTION OF DAMAGES
Versus)	FOR BREACH OF
Guaranty Trust Bank (Liberia) Limited, represented by)	DEPOSIT CONTRACT
its Managing Director, Mr. Ikenna Anekwe and all of its)	
Corporate Officers13 th Street Sinkor, Monrovia, Liberia)	
.....Defendant)	

Heard: June 6, 2023

Decided: August 11, 2023

MR. JUSTICE GBEISAY, SR. DELIVERED THE OPINION OF THE COURT

The appellant, Guaranty Trust Bank (Liberia) Limited, has challenged the final ruling of the Commercial Court in which the latter ruled and adjudged the former liable to the appellees, Charles E. Sirleaf and Bojelene Guest House Inc. for breach of deposit contract and awarded damages in the aggregate amounts of One Million, Six Hundred Seven Thousand United States (US\$1,607,000.00) Dollars and Fifteen Million, Six Hundred Ninety Thousand Liberian (L\$15,690,000.00) Dollars, and has called upon the Supreme Court of Liberia to reverse the final ruling of the Commercial Court.

The certified records show that on September 3, 2020, the appellees, plaintiffs in the Commercial Court of Liberia, instituted an action of damages for breach of deposit contract against the appellant, Guaranty Trust Bank (Liberia) Limited, as defendant below, having complained that the Bank failed to address concerns of fraudulent banking transactions carried on their accounts maintained with the appellant bank. The appellees alleged in substance that Eight Hundred Sixty-Six Thousand, Five Hundred Eighty United States (US\$US\$866,580.00) Dollars and Ten Million, Four Hundred Eighty Thousand Liberian (L\$10,480,000.00) Dollars, and Eighty-Eight Thousand United States (US\$88,000.00) Dollars were fraudulently withdrawn from co-appellee Charles E. Sirleaf's and co-appellee Bojelene Guest House's accounts, respectively.

The appellant filed its answer to the Plaintiffs' complaint, denied the moral and legal sufficiency of the appellees' claims and maintained that the funds, subject of the action, were legally withdrawn and received by the appellees. Pleadings rested, a pretrial conference was had and the parties failed to arrive at an amicable solution. Hence, the case was ruled to full scale trial.

The appellees produced three subpoenaed witnesses, namely: James E. Moore and Raffel Wilson of the Liberia National Police, and Genesis Davis, Head of Operations, GT Bank. The GT Bank's representative produced the account opening documents, mandate cards and statements of accounts as of the date of opening Charles E. Sirleaf's and Bojelene Guest House's accounts respectively, as well as twenty-two (22) pieces of withdrawal slips, thirteen (13) pieces of checks and one (1) counter check. The appellant produced five regular witnesses and two subpoenaed witnesses, namely: Atty. Rosetta Nagbe Jackollie of the Ministry of Foreign Affairs, Peter Paye, Genesis Davis, Prince Saye, Andrea Drouba, Charles E. Sirleaf, the plaintiff, and Cllr. James Innis of the Central Bank of Liberia. After the witnesses have testified for both sides, the appellees produced three rebuttal witnesses in persons of Dorbor Hagba, Fanta Donzo Sirleaf and Charles E. Sirleaf.

Following the resting of evidence by the parties and arguments entertained *pro et con*, the trial court entered final ruling on December 23, 2021, and adjudged the appellant liable to the appellees. The appellant noted exception to the final ruling, announced an appeal therefrom to the Honorable Supreme Court, and filed its approved bill of exceptions.

Having analyzed the facts contained in the records and heard arguments advanced by counsels representing the parties, there are two issues that present themselves for our consideration and determination of this case. They are:

1. Whether or not absent the appellees' own testimonies, the appellees' expert witness' testimony taken together with the second witness' testimony convincing to prove the case at bar?
2. Whether or not the appellees proved by the preponderance of evidence their claims of fraudulent transactions to warrant the damages awarded by the trial court?

We will begin the scrutiny of each issue as presented. Recourse to the records reveals that upon knowledge of the alleged fraudulent financial transactions on the accounts of the appellees, a formal complaint was lodged with the Liberia National Police (LNP) against the appellant bank and its staffs. Having been subjected to interrogation by the Liberia National Police, the police charged the appellant bank for misapplication of entrusted property. Consequently, the appellees filed before the Commercial Court an action of damages for breach of deposit contract and pleadings were exchanged.

When the case was called for trial, the appellees produced two subpoenaed witnesses, the police officers who conducted the criminal investigation relative to the alleged fraudulent transactions, as their prime witnesses. They presented themselves as expert forensic and questioned documents examiners. A review of the testimonies of the witnesses produced the following:

On the direct examination, witness James E. Moore informed the trial court that he holds a BBA degree in Management and a BSc degree in Economics, and was trained as a questioned document examiner by the UNMIL forensic questioned documents trainers from Turkey, Ghana and Nepal; that from his analysis after comparing the various signatures of the appellees from the bank, there were several dissimilarities found and that in his expert opinion, the signatures found on the withdrawal slips and the counter checks were not those of the appellees, Charles E. Sirleaf and Fanta Donzo Sirleaf. For the benefit of this opinion, we deem appropriate to quote verbatim Officer James Moore testimony:

"I am employed with the Liberian National Police and I work with forensic section as deputy chief of forensic. I serve the Liberian National Police in the forensic [Department]. I am a college graduate from University of Liberia, with BBA in Management, and BSc in Economics; and as I said, I work for the Liberian National Police for 16 years as a forensic officer in the capacity as qualified examiner and finger point express. I have been trained by the UN as question document examiner for three years with UNMIL forensic question document trainer from turkey, Ghana and Napal. I hold in my hand copy of the report submitted to the investigation form my findings. The report which I completed was given to me or requested by the investigation team of the SIU to conduct handwriting analysis on behalf of Mr. Charles E. Sirleaf which he complaint to the Liberian National Police through the special investigation Unit (SIU) for investigation. During my analysis in compering those signature specimens, I

used the forensic comparator machine to determine and analyzed those features in the analysis. During my analysis, there were several signatures specimens that were used to carry out the analysis. At the bank, the specimen signature of Mr. Charles E. Sirleaf and that of Fatu Donzo was collected from the bank and the withdrawal slips were also collected from the bank; additional signatures of Mr. Sirleaf and Donzo, Fatu Donzo, his wife was also given during the investigation with past signatures of Mr. Sirleaf before the incident, were used for analysis. From my analysis [and] after comparing the various signatures from the bank and that of Mr. Sirleaf and Fatu Donzo, there were lots of dissimilarities during the analysis process. My expert opinion on the signature on the withdrawal slip and that of the counter check do not belong to Mr. Charles Sirleaf and that of Fatu Donzo.”

Moreover, on the cross examination, witness James E. Moore responded to questions as follows:

Question: “Do you have expert knowledge of fraud examination to draw conclusions on issues of fraudulent transactions”?

Answer: “I may say yes, reason being I was trained by the United Nations (UNMIL) as questioned documents examiner, and my mentors were from Turkey, Ghana and Nepal”.

Question: “Comparing the first 3 samples as per the “Z”, don’t you see any clear difference between those “Zs” that are written and the one that is written in the fifth”?

Answer: “As I stated previously, there is no body signature that is 100%; even if you give that person the chance to write 50 times. What we look for in a questioned document examination is the character, habits, size of the writing, the length and the stroke. So these samples written by Fanta Donzo can [not] be 100%...”

The plaintiff’s second subpoenaed witness, Police Officer Raffell Wilson, informed the trial court that during the investigation, the bank statements of the appellees, Charles E. Sirleaf and Fanta Donzo-Sirleaf, as well as some withdrawal slips and a leaf of Counter Check showed there were withdrawals from the accounts during the periods 2017, 2018 and 2019; that during these periods, Mr. Charles E. Sirleaf was considered Political Exposed Person (PEP) which by the bank’s policy lifts him to a category known as High Networth Individual (HNI) and by that, an account officer, Andrea Drougbah, was assigned to his personal account and that of their joint account, the Bojelene Guest House; that the account officer was authorized to present checks or withdrawal slips bearing the signatures of the appellees to tellers for payment; that though the complainants, Charles E. Sirleaf and Fanta Donzo-Sirleaf alleged that Eight Hundred Sixty-Six Thousand, Five Hundred Eighty United States (US\$866,580.00) Dollars was illegally withdrawn from their accounts, but the investigation established Eight Hundred Fifty Thousand United States (US\$850,000.00) Dollars, the increase being the result of a single entry being passed two times.

The witness testified further that though the appellant could not produce receipt of cash allegedly given to the appellees' representative, a LNP [Liberia National Police] Forensic Examiner confirmed that signatures affixed on some of the receipts were those of the account holders, [Charles E. Sirleaf and Fanta Donzo-Sirleaf]; and that investigation also found that Mr. Charles E. Sirleaf issued a check in the amount of Eighty-Eight Thousand United States (US\$88,000.00) Dollars on October 31, 2019, to be withdrawn from the Bojelene's account, but said amount was withdrawn on October 29, 2019, two days prior on a Counter Check belonging to the appellant bank and that the signatures found on the Counter Check were not those of Mr. and Mrs. Sirleaf.

We note from the certified records in this case that the appellees first witness presented himself as an expert witness; that he holds a BBA degree in Management and a BSc. degree in Economics, and was trained as a "questioned document examiner" by the UNMIL forensic questioned documents trainers from Turkey, Ghana and Nepal. The question that lingers on the mind of this court is who is an expert witness, and whether or not James E. Moore qualifies as an expert witness?

An expert witness is a witness qualified by knowledge, skills, experience, training, or education to provide to a scientific, technical, or other specialized opinion about the evidence or a fact in issue. *Black's Law Dictionary, 11th edition, 1920*. In other words, to qualify as an expert witness, a person must have knowledge, skill, education, experience, or training in a specialized field, practice in a profession relevant to the issue of the case, be skilled in their particular profession, have specialized knowledge through training, education, or practical experience, have extensive experience or knowledge in a specific field or discipline beyond that which is expected from a layperson. From witness James E. Moore own answer to a question posed to him on the cross, that is, whether or not he has expert knowledge of fraudulent examination, we answered " I may say yes..." from the above answer, Mr. Moore himself was not convinced that he is indeed a qualified and competent expert or fraud examiner. Witness Moore consciously selected the word "MAY" because; in his own mind he has not sufficient knowledge, skills or expertise to qualify as an expert witness. Mr. Moore was therefore not definitive in his answer.

This Court had held that, an expert is a person who possesses the knowledge required to draw correct inferences from evidence that relates to a matter that is not within the realm of common knowledge. *Tubman v RL [1974] LRSC 56; 23 LLR 301 (1974) (13 December 1974)*

[Our Emphasis]. Guided by the law cited, and under the circumstance of this case, the question we ought to provide answer to is whether James E. Moore was instilled with the requisite knowledge, competence and experience to be considered as an expert witness to offer an opinion on the controlling issue in this case; that is, the accuracy of the appellees' signature? In other words, was James E. Moore on account of his credentials and experience, competent to testify as an expert witness and to offer his opinion in this case? Does he have the requisite education and specialized training to give an opinion that should be accepted and/or considered by the court? The review of James E. Moore academic credentials reveals that he holds BBA degree in Management and a BSc. degree in Economics; and was trained as a "questioned document examiner" by the UNMIL forensic questioned documents trainers from Turkey, Ghana and Nepal. The degrees obtained by James E. Moore are unrelated to examining writings or signatures and establishing whether or not it is fraudulent or authentic. The witness alleged that he was trained by UNMIL. For how long or to what extent to qualify him as an expert, is yet to be determined. Accordingly, whether or not he has been effectively working in this realm of profession since he obtained the alleged training to acquire the necessary experience, is another vital consideration that the records failed to established.

Moreover, we are poised to take note of historical facts relating to the mandate of UNMIL in Liberia. The witness claimed to have been trained by UNMIL, and that he possesses the essential qualification to perform the task he was called upon by the appellees to perform. Generally, the United Nations Mission in Liberia (UNMIL) was established by Security Council resolution 1509 (2003) of 19th September 2003 to support the implementation of the ceasefire agreement and the peace process; protect United Nations staff, facilities and civilians; support humanitarian and human rights activities; as well as assist in national security reform, including national police training and formation of a new, restructured military. We do not see anywhere in UNMIL's mandate, the power and authority to train Liberians as "Questioned documents examiners". Assuming this was an embodiment or segment of UNMIL training to the Liberia National Police, from which Mr. James E. Moore benefited, how intensive and more vigorous was it, and to what extent is the witness competent enough to perform this task from which the court would premise its decision? The Court finds it very difficult to accept the testimony of witness James E. Moore as an expert testimony upon which it would make a determination in the interest of justice and transparency. We note further that the United Nations Mission in Liberia (UNMIL) was on a peacekeeping duty whose major focus was combat readiness, nevertheless, in its quest to improve the ability of Liberians, engaged into temporary capacity building through some quick impact projects; the training the witness

mentioned being no exception, which in the mind of this Court could not be sufficient enough to qualify one as expert given the complexities of issues to arise, as in the instant case.

Further analyzing the merit of the witness' testimony, we find it difficult to accept his categorization as being an expert witness. In his testimony in chief, he tells the court that because of the dissimilarities in the signatures, they were not the signatures of the appellees, yet on the cross examination the witness informs the court that no one maintains 100% signature accuracy; this holds true also with the strokes, characters, size of writing, etc. upon which he based his conclusion, we must observe. The puzzle emanating therefrom, this Court finds difficult to unravel, the witness having not demonstrated with precision or exactitude in his discourse. The testimony has left this Court to wonder how the lower court arrived at the conclusion of liability against the appellant. We do not wish to restate the facts, but the circumstances evolving therefrom make it compelling to critically analyze the testimony. The complainants alleged Eight Hundred Sixty-Six Thousand, Five Hundred Eighty United States (US\$866,580.00) Dollars was siphoned from their accounts, but the investigation established Eight Hundred Fifty Thousand United States (US\$850,000.00) Dollars, the increase being the result of a single entry being passed two times; yet, the alleged single entry is unknown, presenting a situation of uncertainty and the witness' words against his principals'. In the mind of this Court, these statements needed further explanation and clarification by the witness.

Additionally, the witness testified that a "forensic examiner" of the LNP confirmed that signatures affixed to some of receipts were those of Charles E. Sirleaf and his Wife, Fanta Donzo Sirleaf, but the mechanism used to arrive at that conclusion was not disclosed during the trial to remove the cloud or doubt on the other receipts found to be otherwise. Besides, the witness failed to say which receipt and how much (money value) were genuine and how much was forged; how much was forged in Charles E. Sirleaf's name and how much was forged in Fanta Donzo-Sirleaf's name? Further, the witness, Raffell Wilson, testified that the complainants issued a check of Eighty-Eight Thousand United States (US\$88,000.00) Dollars on October 31, 2019, to be withdrawn from the Bojelene's account, but said amount was withdrawn on October 29, 2019, two days prior to the issuance date. Assuming that, that was the case, this Court wonders, how conceivable without any instruction to the accused or communication from the complainants, the appellant, through Andrea Drouba, the account officer, would have knowledge that the appellees were planning to withdraw such amount and from that particular account for which a counter check was allegedly issued by the appellant through its account officer, Andrea Drouba? These and many more leave unanswered queries

for which this Court is hesitant to rely on the testimonies of appellees' witnesses for want of corroboration.

As to the second and final issue: whether or not the appellees proved by the preponderance of evidence their claims of fraudulent transactions to warrant the damages awarded by the trial court, we are constrained to answer in the negative. In the case: *Forestry Development Authority (FDA) v. Stephen Nimley et al, and the Bureau of Labour Standard*, 35 LLR 658 (1988), the Supreme Court held that "the burden of proof rests on that party who alleges a fact; that the best evidence which a case admits of must always be produced; no evidence is sufficient which supposes the existence of a better evidence".

The appellees, Mr. Charles E. Sirleaf and Fanta Donzo Sirleaf, filed a complaint with the Commercial Court of Liberia alleging that money they deposited into their accounts at the appellant Bank were illegally withdrawn by agents of the appellant; that because they were injured financially and mentally as a result of the alleged act, they accused the Bank of breach in their deposit contract and demanded damages. Strangely, when the case was called for hearing, the appellees failed to take the witness stand to testify as to their certain knowledge concerning the veracity of their claim and produce documentary and oral evidence in an effort to substantiate their claims, but chose to rely on the testimonies of the police officers; though the records show that they were present in court during the course of the trial. We believe that the testimonies of the complainants, Charles E. Sirleaf and Mrs. Fanta Donzo Sirleaf, on the direct and under cross examination, and perhaps the test of their respective signatures under cross examination in open court would have clarified some of the doubts. The failure of the appellees to provide general testimonies on the direct, speaks volume. This Court sees the appellee as the best evidence, properly situated to speak to all the issues involved in this case. The appellees should have properly established their actual signatures from the alleged fake and fraudulent ones. They should know their respective signatures better than any other person(s). More besides, it is their respective testimonies that should have served as the bases for others, including the "expert witness" to confirm or corroborate. The law in this jurisdiction is that, the best evidence which the case admits of must always be produced; that is, no evidence is sufficient which supposes the existence of better evidence. Civil Procedure Law, Rev. Code 1:25.6. The appellees, having failed to take the witness stand and testify to the genuineness of their respective signatures, and to exclude the allegedly falsified signatures from the genuine ones, compromised the best evidence theory which this Court stands to uphold. In addition, the Civil Procedure Law, 1LCLR says, a signature, in the absence of an expert, may be proven by persons who are familiar with the signature in dispute. In other

words, those people who are closely associated and familiar with the person whose signature is in dispute may testify to the genuineness or authenticity of the signature. In the mind of this Court, the appellees were required under the principle of burden of proof and preponderance of evidence to invite living witnesses to testify to the truth or falsehood of their signature appearing on the bank slips. Their failure to do so undermines the principles of burden of proof.

To the contrary, the records also show that the appellant bank, through its witnesses, informed the trial court that the amount of Fifty Thousand United States (US\$50,000.00) Dollars drawn on two checks (US\$35,000.00 and US\$15,000.00) was delivered to Siafa Coleman, the driver of Mr. Charles Sirleaf, yet the appellees failed to produce the driver to testify as to the truthfulness or falsehood of the allegation made.

The question that comes to the mind of any rational person, in light of the appellees' failure to testify is, who could have been properly situated to provide the most convincing evidence (testimony) in this case, the police or the appellees? In the FDA case cited above, an action having been filed on Stephen Nimley and others behalf, Stephen Nimely failed to take the witness stand without justification and those who testified could not provide sufficient evidence as to their claims, yet the hearing officer awarded them salaries. On review, the Supreme Court refused to affirm the awards on ground that the best evidence which the case admits of must always be produced and that same was lacking in that case. We should also note that the Honorable Supreme Court has held in a litany of Opinions that "mere allegations are not proof; such allegations must be substantiated by evidentiary proof at the trial, for it is evidence alone that enables a court to decide with certainty the matter in dispute". *American Life Insurance v. Holder et al* 29 LLR 143 (1981); *Morgan v. Barclay*, 42 LLR 259 (2004); *Universal Printing Press v. Blue Cross Insurance Company*, Supreme Court Opinion, March Term 2015. We therefore hold that the appellees were under legal duty to take the witness stand to testify and produce the best evidence in this case and give opportunity to the opposing counsel to cross examine them for the sake of establishing the truth.

This Court further notes, with utmost concern, the deactivation of co-appellee Charles E. Sirleaf's account SMS alert on his request. It is common knowledge that the SMS alert placed on account by financial institutions is intended to monitor and to inform the account holder of the inflows and outflows of cash transactions performed on said account(s) at a given time; hence, we find it difficult to comprehend the motive for co-appellee, Charles E. Sirleaf, a high profile personality, maintaining such a huge accounts with the appellant bank to have

requested or consented to the deactivation of his SMS alert on both accounts. We also hold that, assuming, without giving approbation to the alleged forgery, if such did ever take place, the co-appellee, Charles E. Sirleaf was negligent or contributed to it because had the account SMS alert not been deactivated, he would have immediately noticed the alleged unauthorized withdrawals. This Court, speaking through Mr. Justice Henries, held that “recovery for damages will be denied where losses were passively suffered which could have been averted by reasonable effort or where damages were increased by activity when prudence required that such activity cease”. *F. H. Saleh v. James Montgomery*, 21 LLR 125 (1972). In harmony is *Air Maroc, Inc. v. Finley Y. Karngar*, Supreme Court Opinion, March Term, 2022.

Reference to the award of damages, this Court says that there are standards set in this jurisdiction relative to the establishment of damages. This Court has held that it is insufficient for the plaintiff to merely allege injury for which damages must attach, but that he who is demanding an award of damages must prove the injury suffered by the preponderance of the evidence in that the compensation being claimed should be equaled with the injury suffered, absent such evidence however the gravity of the act complained of, same will be denied. *Kwaplah International (Liberia) v. The Management of Ecobank (Liberia)*, Supreme Court Opinion, October Term 2022; *Lonestar Cell Corporation v. Jimmy Wright*, Supreme Court Opinion, March Term, 2014. Moreover, the law in vogue is that special damages must be specially pleaded and specifically proved at the trial by a preponderance of the evidence upon which the jury [court] may base its verdict. *Intrusco Corp. v. Osseily*, 32 LLR 558 (1985); *Firestone Liberia v. G. Galimah Kollie*, Supreme Court Opinion, March Term 2012.

Recourse to the certified records shows that the Commercial Court adjudged the appellant liable to the appellees and awarded the amounts of One Million, Sixty-Two Thousand United States (US\$1,062,000.00) Dollars and Thirteen Million, Seventy-Five Thousand Liberian (L\$13,075,000.00) Dollars, and One Hundred Ten Thousand United States (US\$110,000.00) Dollars, as aggregate in both special and general damages to co-appellee Charles E. Sirleaf and co-appellee Bojelene Guest House, respectively, and Fifty Thousand United States (US\$50,000.00) Dollars as punitive damages, as well. As stated earlier, from our analysis of the evidence, we find it difficult to understand the trial court’s rationale for awarding the above quoted amounts in damages, given that the appellees miserably failed to take the witness stand to prove their claims by the production of both oral and documentary evidence, having been present in court during the entire trial process. Additionally, the competence and testimonies of the police officers are not convincing for damages to attach. Hence, we hold

that the trial court was in error when it made these awards. Preponderance of the evidence is the greater weight of the evidence, not necessarily established by the number of witnesses one produces or testifying to a fact, but by the evidence that has the most convincing force. *Insurance Company of Africa et al v. Fantastic Store*, 32 LLR 366 (1984); *Black's Law Dictionary, Ninth Edition, page 1301*.

WHEREFORE AND IN VIEW OF THE FOREGOING facts and circumstances, the appeal is hereby granted. 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 judgment. Costs to abide final determination of this case. AND SO ORDERED.

RULING REVERSED, CASE REMANDED.

When this case was called for hearing Counsellor Jonathan Massaquoi appeared for the appellant. Counsellor J. Johnny Momoh appeared for the appellees.