

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

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

The Management of Mamba Point Hotel, represented)
by its CEO, Mr. Chawki Bsaibes & all other Managers)
under his control, all of the City of Monrovia,)
Montserrado County, Republic of LiberiaAppellant) APPEAL
)
Versus)
)
Janneh Dee of the City of Monrovia, Liberia.....Appellee)
)
GROWING OUT OF THE CASE:)
)
The Management of Mamba Point Hotel, represented)
by its CEO, Mr. Chawki Bsaibes & all other Managers)
under his control, all of the City of Monrovia,)
Montserrado County, Republic of LiberiaMovant) MOTION FOR
) NEW TRIAL
Versus)
)
Janneh Dee of the City of Monrovia, Liberia...Respondent)
)
GROWING OUT OF THE CASE)
)
Janneh Dee of the City of Monrovia, Liberia.....Plaintiff)
)
Versus) ACTION OF
) DAMAGES FOR
) WRONG
The Management of Mamba Point Hotel, represented)
by its CEO, Mr. Chawki Bsaibes & all other Managers)
under his control, all of the City of Monrovia,)
Montserrado County, Republic of Liberia ...Defendant)

Heard: April 4, 2023

Decided: May 19, 2023

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

On May 20, 2016, the appellee, Janneh Dee, filed an action of damages for wrong against the Appellant Management of Mamba Point Hotel before the Civil Law Court, Sixth Judicial Circuit, Montserrado County, substantially alleging that she was injured as the result of the appellant’s negligence. In her complaint, the appellee stated that she was employed by the appellant as

a waitress and served the appellant with commitment, sincerity and dedication for several years until she sustained a severe spinal injury at the instance of the appellant. Appellee alleged that on December 4, 2014, while on duty as a waitress serving customers upstairs at the appellant's business premises in Monrovia, Montserrado County, she felt the urge to use the bathroom and proceeded downstairs to the staff bathroom; that after using the bathroom, she began to make her way back upstairs to her work station, and while on the stairways from the bathroom she slipped on the wet floor tiles, and fell down with her back to the floor; that pursuant to the fall, she began to feel severe pain in her waist and other parts of her body and she was rushed to the John F. Kennedy Medical Hospital by her workmates. The appellee alleged that the floor was wet due to continuous flow of water from under the tiles.

The appellee stated further in her complaint that at the John F. Kennedy Medical Center, she was examined and X-rayed and placed on medication, and that she has been on the prescribed pain medication from the time she was taken to the hospital up to and including the date of the filing of her complaint. According to the appellee, she sought further medical examinations at other medical institutions in Liberia due to the continuous pain she was experiencing and which made it almost impossible for her to move her body or walk; that she continuously informed the appellant about her depreciating health condition which was gradually becoming life threatening.

The appellee averred further that based on the information she provided the appellant about her health condition, the appellant approved that she remains at home until she fully recovers; that during this period, the appellant paid her monthly salary, but did not give her any assistance as she sought medical treatment at Hospitals in and around Monrovia; that she used her monthly salary to pay her medical bills; that in September 2015, nine (9) months after the appellee sustained the injury, the appellant decided to take the appellee to hospital in order to fully establish whether or not she sustained major injury when she fell in the appellant's premises on December 4, 2014. Consequently, the appellee stated, she was referred to the Medlink Clinic by the appellant to be examined by the orthopedic Doctor, Dr. Robert Kpoto; that after conducting an X-ray examination on the appellee, Dr. Robert Kpoto determined that the appellee had suffered Lumber and Spinal injury due to the fall, and recommended to the appellant that the appellee condition could not be handled by any hospital in Liberia and must therefore be sent to another Country for Neurosurgical Management. The appellee

alleged that the appellant ignored Dr. Kpoto's report and later terminated the appellee's services on January 14, 2016, thereby leaving her without a source of income and to suffer pain and agony relating to her spinal injury sustained as a result of the fall; that at her own expense, she attended the Medlink Clinic and the SOS Hospital several times in a bid to help herself because she lacks the finances to take care of her medical bill abroad as recommended by Dr. Robert Kpoto. The appellee complained that since the day of her fall on the stairway of the appellant premises, she continues to experience pain in her spine, lives on pain tablets and at the mercy of her husband and daughter. The appellee concluded that predicated upon the pain and agony she is enduring, coupled with the neglect, abandonment and her dismissal by the appellant, the said appellant is liable in damages for wrong, and prayed the court to award her specific damages in the sum of Two Thousand One Hundred Twenty Five United States Dollars (US\$2,125.00) and Twenty Two Thousand Five Hundred Seventy Five Liberian Dollars (L\$22,575.00) which represent the amount she spent at clinics and hospitals in Monrovia, and general damages in the sum of Eight Hundred Twenty Five Thousand United States Dollars (US\$825,000.00) or as may be determined by the trial Jury so that she can seek surgical intervention to be restored to her previous condition and for the suffering and pain she continues to suffer.

In response to the appellee's complaint, the appellant filed its answer contending therein that the averments in the appellee's complaint are totally untrue and a misrepresentation of the facts. The appellant asserted that while it is true that the appellee encountered the unfortunate situation at the appellant's premises during working hours, said situation cannot and should not be attributed to appellant management's negligence as alleged in the appellee's complaint; that instead, the appellee failure to exercise due care in the workplace, the place where she had worked for a little over three (3) years, and was aware and familiar with the physical condition of the facilities, led to her misfortune. The appellant asserted further that the appellee's injury was unforeseeable and that the appellant was not responsible, even though it would have remedied and found means to stabilize the appellee's condition if it had been aware of the medical report of Dr. Robert Kpoto prior to the appellee instituting the action of damages for wrong; that the circumstances that led to the appellee's injury had not been established since the incident occurred.

The appellant further contended that having been informed of the incident, it immediately issued its insurance hospitalization slip to enable the appellee attend any hospital of her choice for the purpose of conducting medical

examination on her person to ascertain her health condition; that due to the appellee's prolonged absence from work, the appellant authorized the appellee to seek further medical attention at two hospitals to include, Medlink Clinic and SOS Hospital, and the appellant's Chief Executive Officer, Mr. Chawki Bsaibes personally made available all necessary resources to facilitate the conduct of further medical examination on the appellee in order to accurately ascertain the appellee's medical condition; that in its continuous desire to ensure the availability of resources for appellee's speedy recovery, appellant communicated with two insurance companies with whom it has valid insurance agreements, namely, the National Social Security & Welfare Corporation (NASSCORP) and the African Insurance Corporation of Liberia (AICOL), notifying them to provide necessary assistance, benefits and entitlements to facilitate further medical treatment in favor of the appellee; that the appellant have continued to provide assistance to the appellee through its Insurance Policy and other corporate initiatives and that at no time did the appellant request appellee to remain off duty until she gets well; that the appellee, having complained continuously of the pain from the incident, the appellant was constrained to relieve the appellee of her job for medical reasons, with all benefits appertaining to said job offered to her in compliance with the Labor Practices Law of Liberia but she refused to accept the offer. The appellant asserted further that at no time did the appellee inform the appellant about any report regarding foreign medical treatment of the appellee as the only option to remedy her health condition; that had the appellee provided such information to the appellant prior to the filing of the action of damages for wrong, the relevant procedure required for by law would have been followed to remedy the situation; that the appellee refused to disclose any information regarding the purported medical report only because she premeditated filing the action of damages for wrong against the appellant, which by law lacks any merit to suffice; that at no time did the Doctor forward the appellee's medical report to the appellant as alleged by the appellee; that the appellee, having proved to be incapable to perform her regular duty, coupled with her refusal to accept her salary and benefits covering the period April, 2015 to December, 2015, after an exhaustive meeting and discussion with her, the appellant was constrained to stop all payments to the appellee, because, from the appellant's perspective, the appellee had demonstrated a non-compliant and non-negotiable posture as far as the discussion was concerned.

The appellant further stated that at no time did it frustrate, humiliate, embarrass, suffer and perpetrate hardship against the appellee as she

alleged; that it paid the appellee what she is entitled to as a matter of law, but the appellee rejected, refused and failed to accept the package, arguing that the amount was inadequate and that she was prepared to seek further legal clarification with her counsel regarding her entitlement as it relates to her present health condition. The appellant contended that the appellee, despite her alleged medical condition and inability to properly function, celebrated solemnization of the exchange of marital vows with her fiancé early 2016, thereby indicating that the appellee has got a motive for which she is using all of the available means against the appellant to acquire resources to satisfy her ego at the detriment of the appellant; that while the appellant was engaged in finding medical solution to remedy the appellee's condition, without any knowledge regarding the diagnosis report of Dr. Kpoto, which recommended that the appellee seek MRI and Neuro-Surgical examination abroad, on May 21, 2016, the appellant received a Writ of Summons along with a complaint for an Action of Damages for Wrong, claiming amongst other things, the amount of US\$825,000.00 (Eight Hundred Twenty-five Thousand United States Dollars) in general damages, US\$2,125.00 (Two Thousand One Hundred Twenty-five United States Dollars) and L\$22,575.00 (Twenty Two Thousand Five Hundred Seventy Five Liberian Dollars) in special damages without any justifiable reason. Appellant concluded that the allegation made by the appellee that her injury is the proximate cause of her fall on the stairs leading to the bathroom is totally untrue, false, baseless and unfounded. Appellant therefore requested the court to deny and dismiss the appellee's complaint, together with the entire action for being fatally defective and unwarranted.

The appellee filed its reply to the appellant's answer, maintaining and affirming all averments contained in her complaint, stating further that the appellant knew about the report of Dr. Robert Kpoto concerning the appellee's condition caused by the fall, but refused and neglected to take any action to send her abroad for treatment as recommended by Dr. Robert Kpoto.

When pleadings rested, the court empaneled the trial jury to hear the evidence of the parties in support of their respective pleadings, and on June 26, 2017, the trial commenced with the appellee producing two witnesses to include herself and Dr. Robert Kpoto, who was subpoenaed to testify on behalf of the appellee.

The appellee herself took the witness stand and testified that she was employed with the appellant management as a waitress and worked with the

institution for four (4) years; that on December 4, 2014, during the outbreak of the Ebola Virus Disease, she went to work at the appellant's hotel. Later she had the urge to use the bathroom so she walked down the stairs to the workers' bathroom. Thereafter, on her way from the bathroom to her assigned station, she stepped into water on the floor and slipped and fell on the stairs and was taken to the JFK Medical Center. The appellee explained that the physician at JFK Hospital gave her some pain medication and advised that she be taken home due to the influx of Ebola patients, and that she returns on another day to take an X-Ray examination to determine if she had sustained any damage due to the fall. The X-ray was done and she was told that there was a flow of blood in her back; that because the first X-ray test could not show anything more than the flow of blood on her back, she was advised to undergo further treatment and was given medications to rub on her back and tablets to take for the blood to clear to enable the doctor to clearly ascertain the condition of the bones and tissues in her back. The appellee explained that she took lots of medication for several months for the pain that she was experiencing in her back; that a second X-ray test was subsequently done and she was told by the doctor that she had developed problem with her spine that could not be handled in Liberia except abroad where she would be able to undergo surgery.

The appellee stated that she informed the appellant about the report of the doctor and the appellant did nothing about her condition. The appellee explained further that after many months of pain, agony, and discomfort, she was called by the appellant and sent to the Medlink Clinic for Dr. Robert Kpoto, who is the doctor for appellant's staff, to conduct another medical examination with the aim of establishing the level of injury she had suffered from the fall; that another X-Ray was done at Medlink Clinic and confirmed by SOS Hospital on order of Dr. Robert Kpoto, and it showed that she had suffered spinal injury as a result of the fall and could only be attended to out of the country; that when she took the report from Dr. Kpoto to the appellant, it did nothing about it; rather, she was called by the management after few days to sign a paper.

The appellee recounted that before her fall, Mr. Imad, the appellant's General Manager, had slipped and fallen on the same stairs and was taken to Lebanon for treatment, but as for her, the appellant has refused to ensure that she is treated and she continues to live in pain, cannot sit nor stand for long without taking pain tablets, cannot sleep without taking diazepam tablets and can hardly do something for herself without the help of her husband and daughter. As regards her treatment, the appellee

explained that besides the appellant paying for the X-Ray at the Medlink Clinic, she paid all other bills on all subsequent visitations to the Medlink Clinic for medical examinations.

On cross examination, the appellee, in response to a question about the condition of the stairs when she was on her way to the bathroom, stated that on her way to the bathroom, the stairs were dry even though water usually flow on the stairs; but that on her way from the bathroom, not knowing that water had seeped on the stairs, she stepped in it, slipped and fell.

Also, in response to a question as to her marriage, the appellee told the court that she was scheduled to get marry on December 24, 2014, but when she got injured on December 4, 2014, her condition could not permit her to get marry at that time, but her husband who and her lived together before the incident insisted that they get married despite her condition; that before the date of her marriage in 2015, she took diazepam at night and pain tablets in the morning in order to attend the wedding ceremony, and even though she is married, she does not have the capacity to perform her marital duties.

Further testifying, the witness refuted the appellant's claim that its insurer had called her, stating that she had not received any call from either the African Insurance Company of Liberia (AICOL) or the National Social Security and Welfare Corporation (NASSCORP) since her injury. The witness concluded that she is now a handicap living in pain, cannot do anything on her own but depends on her husband and daughter for everything she does and for survival.

Based on the application of the appellee, Dr. Robert Kpoto of Medlink Clinic was subpoenaed by the court to appear and provide information to the Court regarding the condition of the appellee when he examined and treated her at his medical facility. Dr. Kpoto appeared and testified as follows: that he is an orthopedic surgeon and has worked as such since 1988; a professor of medicine and Vice President for the College of Surgeon and Physician in Liberia and President emeritus of the Liberia Medical Council. Dr. Robert Kpoto testified substantially that when the appellee went to the Medlink Clinic, she was seen in distress, limping and complained of low back ache as a result of a fall in 2014; that she could not walk straight, or properly bend forward, backward or sideway, because of the pain on the right side of her lower back; that he conducted a complete

physical examination on the appellee, and his impression was that she had suffered a spinal injury. Dr. Kpoto stated further that X-Rays were conducted on the appellee and the results showed lesion (spondylolysis) at the level of the fifth lumbar vertebra and the first sacra vertebra; that because it was not clear on the plain X-ray, he recommended that the appellee goes abroad for a Magnetic Resonance Imaging (MRI) and a Neurosurgical intervention because there is no specialist in Liberia to help remedy her condition; that he gave her some pain medication to help relieve the pain she was feeling. The witness stated further that the appellee needed additional examination and management because there was no technology in Liberia to pinpoint the nerve that is bothering the appellee and to tell the extent of the injury to the nerve as well as the bones.

In his cross-examination of the witness, appellant's counsel posed the following question and to which the doctor responded as follows:

QUES.: "By your allegation, she needs neuro-surgical management; The fact that you are an expert surgeon, how can you convince this body that the pressing of the bone has damaged the nerve as alleged by you?"

ANS.: It is not an allegation. It is based on my clinical examination, management plus treatment. Patient [appellee] will have to go for further investigation. Pain is a nerve problem, and when it comes to the bone which is present at the site where the pain is involved, bone is involve and nerve manifest itself in bone. My recommendation was based on cogent clinical findings when I saw the patient and because those findings would not be complete without determining how much pressing on the nerve this patient had suffered, further investigation would help".

The witness ended his testimony by stating that the appellee's injury from the medical point of view is disabling, and if nothing is done, it would be a divine question requiring God's intervention; that from his medical experience, it could either remain like that, or it could get worse; that with the clinical result, and when he saw the appellee in 2016 with the information that the injury occurred in 2014, her condition was getting poorer; that the possibility of the situation getting worse is high; that the only intervention he could make, based on the facts and circumstances, was to give the appellee Diazepam, a medicine that releases pain and pumps more blood so that the pain can be relieved, and with the anti-inflammatory action, the pain goes away.

The appellee rested with the production of oral evidence and admitted the following documents into evidence: appellee's medical report from Medlink Clinic; receipts evidencing payments made by the appellee to Medlink Clinic for medical examinations and treatments; medical report from SOS Clinic; receipts of payments made by the appellee at SOS Clinic for X-ray and medications.

The records showed that upon the conclusion of the appellee's side of the case, the appellant's counsel filed an application with the court for judgment during trial, stating that the appellee had failed to establish a prima facie case; that the appellee had failed to establish that the appellant was the ultimate cause or related cause of the incident for which she sustained the injury; that the evidence produced in conjunction with the witnesses' testimonies failed to establish and justify the amount of damages requested for and prayed for; and that the weight of the evidence produced cannot sustain a verdict and judgment for an action of damages for wrong.

The appellant's application for judgment during trial was resisted by the appellee and denied by the trial court. The court held that the appellant failed to show that it is entitled to judgment during trial in the face of the testimonial evidence produced by the appellee and her witness.

The court having denied the judgment during trial, the appellant commenced presenting evidence in support of its case, proffering two witnesses to testify on its behalf, namely, Morris Saydee, Assistant Manager for Operation and Imad Aoun, General Manager of the appellant hotel.

Appellant's first witness, Morris Saydee, took the witness stand and testified substantially that he has worked with the appellant for over twenty-four years; that on December 4, 2014, upon his return from the bank, he was told that the appellee had fallen and had complained of pain in her back; that she was taken to the Medlink Clinic where she was treated and discharged. The witness further stated that the appellant informed the National Social Security and Welfare Corporation (NASSCORP) about appellee's condition, and one Olivia from the NASSCORP had called the appellee several times but the appellee could not be reached, and could not be located to be attended to. He stated that when the appellee was no longer active on the job for about a year or more due to her fall, Management made to her an offer of her one year salary and she refused to sign the offer document, but later took the money on order of the Labor Ministry. As regards the condition of the staffs' bathroom, witness Saydee described it as being clean because it is regularly attended to by the cleaners, and the area where the bathroom is, is

well lighted as well, so there was no reason why the appellee would not have seen water on the floor. The witness stated that he personally took the appellee to Medlink Clinic later and all her tests were done there and were paid for by the appellant; that the appellee was required to take the results thereafter to the appellant.

On cross-examination, the witness testified that he was not present when the appellee fell; that he used the bathroom on the morning of the incident before going to the bank, and the floor was very clean and dry; that he cannot say the precise hour the appellee fell, but what he heard and know is that the appellee fell on the stairs. When asked as to whether or not it was on the same stairs that the General Manager slipped and fell some time before and was taken out of the Country for treatment, witness Morris Saydee answered that he has no knowledge about that situation. Below is the last question asked by the appellee's counsel to the witness on the cross-examination and his answer thereto:

Q: "Mr. Witness, Jenneh Dee fell and the Manager took her to the hospital because the Management felt responsible; not so?"

A: "Yes"

Appellant's second witness, Imad Aoum, General Manager of appellant hotel, took the witness stand and testified that the allegations against the appellant is false and misleading, in that the appellant is not responsible for the injury of the appellee; that the stair to the staff bathroom is always dry and that there are people assigned there who are responsible to always clean the floor and take care of the place twenty four hours a day; that when the appellee fell while on her way from the bathroom, she was assisted and taken to the hospital by her colleagues; that all staff of the hotel have 100% health insurance coverage with African Insurance Company of Liberia (AICOL); that the appellee, being an employee of the appellant, was also covered; that beside AICOL, all the employees are covered under the National Social Security and Welfare Corporation (NASSCORP). Witness Imad Aoum testified that he was at the Hotel when the appellee fell and got injured; that he was not present at the place when the appellee fell, but upon his arrival on the scene, he sent the appellee to the hospital. He stated that both AICOL and NASSCORP were informed about the appellee's condition. Responding to the allegation that the appellant did nothing to cater for the welfare of the appellee after her injury, the witness stated that the allegation is not true; that for the past twenty five years he has been with the appellant, that no employee became ill and was neglected by the appellant;

that the appellant regularly pays insurance premium and Social Security fees for over one hundred forty (140) employees in its employ and that was why the appellee's case was referred to the referenced institutions; that besides referring the appellee's case to the institutions concerned, she also received personal assistance from the Management or the owner of the Hotel.

Speaking of the condition of the bathroom, the appellee's General Manager testified that the Mamba Point Hotel is one of the first class facilities in Liberia, with electricity and security 24 hours, and a high degree of cleanliness and decency. The witness further testified that even though the appellee was referred to Medlink Clinic for tests or medical examinations, and all tests were paid for by the appellant, the appellant did not receive any report from the Clinic.

At the close of the appellant witnesses' testimonies, the appellant admitted into evidence letters from appellant to the NASSCORP and the African Insurance Company of Liberia (AICOL) and the offer letter of salaries and benefits to the appellee.

The certified records reveal that on July 3, 2017, the trial Judge, entertained final arguments from the parties, and subsequently charged the trial jury on the points of law necessary for determination of the factual issues presented in the case. After deliberation, the Jury returned a unanimous verdict of liable against the appellant, awarding the appellee One Million United States Dollars (US\$1,000,000.00) as general damages.

Not satisfied with the Jury verdict, the appellant filed a motion for new trial essentially arguing that the verdict was grossly against the weight of the evidence. The motion for new trial was resisted by the appellee and after arguments, the trial court denied the motion and entered final judgment, affirming and confirming the unanimous verdict of the Jury in favor of the appellee. The trial court awarded the appellee the amount of One Million United States Dollars (US\$1,000,000.00) as general damages.

The appellant took exceptions to the final judgment of the court below and announced an appeal to this Court en banc, filing a twenty-five count bill of exceptions, detailing numerous errors allegedly committed by the trial court in the disposition of the case. Based on the assignment of errors contained in the bill of exceptions, the appellant urges this Court to reverse the final judgment of the court below.

From a review of the bill of exceptions filed by the appellant, the arguments of the parties, and the facts and circumstances of this case, we find the following issues relevant to the disposition of this appeal:

1. Whether or not the injury sustained by the appellee at the appellant premises can be attributed to the appellant's negligence for which damages will lie?
2. Whether or not the damage award given by the court below is consistent with the weight of the evidence produced during trial and the law controlling?

Before we go into the review of this case we would like to establish why this case brought at the Civil Law Court by an employee injured on the job is distinguishable from other cases where this Court has held that employees who have been injured on the job must seek remedy at the Ministry of Labor. This clarification is important because the appellee in this case was an employee of the appellant and was injured during the course of the employment relationship between the appellant and her.

Under the precedent established by this Court in the case, *His Honor Ousman F. Feika and Stephen S. Nahn v. ArcelorMittal Liberia Ltd.*, Supreme Court Opinion, October Term 2021, the Decent Work Act (2015), specifically Chapters 30, 31 and 33 thereof, was recognized as the controlling law in matters relating to injuries arising during the course of employment, and based on that recognition, the Court held that disputes arising out of labor matters are not cognizable before the Circuit Courts, but rather the Labor Courts or the Ministry of Labor. In essence, this Court's precedent proscribes the Circuit Courts, including the Civil Law Court, Sixth Judicial Circuit, from exercising jurisdiction over cases arising out of labor relations.

Under the facts and circumstances of this case, the question is not an issue of labor injury and has not been raised by the appellant itself since the issue relates to an employer negligence and carelessness resulting to the injury of an employee; that the appellant contributed to the fall of the appellee when it knew that the path leading to the employees' bathroom had water leaking under the tiles but did nothing to remedy the situation even when another employee had fallen on the identical path to the bathroom and had to be taken aboard for treatment.

In the Stephen Nahn case, Stephen Nahn, an employee of ArcelorMittal Liberia Ltd., was injured while performing the duty for which he was employed. Subsequently, Stephen Nahn filed an action damages for wrong

against his employer, ArcelorMittal Liberia Ltd., before the Second Judicial Circuit Court, alleging that his injury was caused by the employer's negligence and praying for the award of damages. The employer responded to the action by filing a motion to dismiss along with its answer, contending that the Second Judicial Circuit lacks subject matter jurisdiction over the case. The motion to dismiss was denied by the Second Judicial Circuit, and on a petition for the writ of certiorari filed before this Court, the ruling of the Second Judicial Circuit was reversed and the precedent recognizing the Decent Works Act (2015) as the controlling law in matters relating to injuries arising during the course of employment, and barring the Circuit Courts from exercising subject matter jurisdiction over labor matters established.

Also in the case *LEC v. Johnnie Lewis and Jestina Greenfield*, 35 LLR 366 (1988), the appellees sued the LEC for wrongful death of the LEC's employee whom the appellees said had died because he was performing his duty on a wooden pole which broke and it was due to the negligence of the appellant LEC in not maintain the wooden pole. The Supreme Court held that while the appellees had the right to bring the action of wrongful death against the appellant where the death of the decedent was due to the negligence of the appellant in not maintaining the wooden pole, the appellees did not show that the appellant had knowledge of the defect in the pole and failed to inform the deceased of such defects or to correct the said defects. The Supreme Court reversed the lower court's ruling of liable against the LEC; it held that the reversal was without prejudice to the appellee bringing an action under the Workmen's Compensation Act which allowed a recovery without regard to any default of the employer or employee.

In the case out of which this appeal emanates, the appellee Jenneh Dee was employed by the appellant Mamba Point Hotel as a waitress. She was injured when she left her function at the appellant's premises to use the bathroom in the appellant's premises. She alleges that she slipped and fell on the wet floor leading to the stairway from the bathroom which resulted to her injury. Unlike Stephen Nahn, the appellee was not performing the specific duty or task for which she was employed at the time she got injured; she alleges that though she was at work, she went to use the bathroom and she got injured due to the appellants' negligence in remedying the leakage under the tiles leading to the bathroom, a situation that the appellant's Management knew of as a similar incident had occurred to another employee who the appellant took out of the country for medical treatment because of his injury. This

implies that the appellant was aware of the leakage under the tiles or leakage which ran on the tiles.

In reaching the conclusion above, we take cognizance of Section 33.16 of the Decent Work Act (2015) which makes the liability of an employer for the compensation for occupational injuries to employees under Chapters 30, 31 and 33 of the statute exclusive and in lieu of any other liability whatsoever under the laws of Liberia or of any other country. Our decision today only clarifies the legislative purpose underpinning the exclusive remedy provision of the Decent Work Act (2015), and that legislative purpose, as we extrapolate from the totality of the statute, is that the injuries or death to which the statute refers are those which results directly and are traceable to the performance of the duty for which an employee is hired by an employer.

We having settled the issue of the proper jurisdiction of the Civil Law Court to entertained the appellee's case, we proceed to address the issues which are the substantive issues raised by the parties to this appeal, whether or not the injury sustained by the appellee at the appellant premises can be attributed to the appellant's negligence and for which damages will lie?

In its bill of exceptions, the appellant fervently argues that the testimonies and documents proffered by the appellee in support of her case failed to prove by the preponderance of evidence that the appellant is responsible for the appellee's injury; that the testimonies of the appellant's witnesses regarding the regular and timely cleanliness of the appellant's premises including the stairs on which the appellee allegedly fell were disregarded by the trial court in its final judgment; that the appellant witnesses' testimonies proved that the appellant's building is architecturally perfect, designed and structured to accommodate local and foreign guests, workers and other interested persons, and that at no time has there been any latent leakage, fluid or inadvertent water on the floor and other parts of the building as alleged by the appellee, hence, the appellant is not liable for actionable negligence; that the appellee's injury is not connected to any act or omission on the part of the appellant.

The appellant witnesses' testimonies adduced at trial on the question of the appellant's negligence leading to the appellee's injury are summarized as follows: (1) that appellant's entire hotel is always cleaned by its cleaners and that the hotel is always well lighted; (2) that there is no reason why the appellee would not see water on the floor given that the building is well lighted, and that the appellant is not responsible for the injury suffered by the appellee.

The appellee's testimony on the other hand is summarized as follows: (1) that she reported at work and while at work on the appellant's premises, she felt the urge to use the bathroom, and she walked downstairs to use the worker's bathroom; that on her way back to her assigned station of work, she stepped in water on the floor, slipped and fell on the stairs and fainted; (2) that when she opened her eyes she was at the JFK Hospital; (3) that she has not been able to get any relieve from the pain in her back so that she now lives on pain killers; (4) that the appellant's doctor to which she was referred, Doctor Kpoto, has requested that she seeks further treatment abroad as the facilities to help her with the proper diagnosis is not available in Liberia.

A review of the testimonies of the parties bordering on the question of negligence or lack thereof shows that there is no dispute that the appellee slipped and fell on the stairways leading from the staff bathroom in the appellant's hotel. There is also no dispute that as a consequence of the fall, the appellee sustained injuries leading to her admittance at the John F. Kennedy Memorial Hospital, and subsequent examination at Medlink Clinic and SOS Hospital.

The disagreement between the parties, and indeed the basis of the instant appeal, is whether the appellee's fall and injury was caused by the appellant's negligence.

We are convinced from the records that the appellee's fall and injury was as a result of the negligence of the appellant.

The elements of negligence are a duty the defendant owes to the plaintiff, a breach of that duty by the defendant, a causal connection between the breach and the plaintiff's injury and actual injury suffered by the plaintiff. To authorize a recovery on the ground of negligence, it must be made to appear that the obligation of taking active measures to discover the peril and prevent an injury therefrom was one due from the defendant to the person injured or to a class of persons to which the injured person was a member. Failure to perform a duty is not the foundation of an action for negligence unless it results in injury to one for whose protection the duty is imposed. 57 Am Jur 2d, *Elements of Actionable Negligence, Sections 71 and 93*.

Every element of negligence as quoted above is present in the instant case. The appellant owed a legal duty to the appellee, and that duty derives from the employment relationship which existed between the appellant and the appellee at the time she was injured. The existence of that relationship

placed an obligation on the appellant, as the appellee employer, to ensure that the appellee worked in an environment free of every potential hazard or condition which would cause injury to the appellee or others similarly situated as the appellee. It was in recognition of the duty owed the appellee that the appellant took the appellee to the hospital after the fall and also sent her for medical examinations thereafter.

Also, the facts and circumstances which resulted to the appellee injury clearly indicate a breach of duty by the appellant to the appellee. The appellee would not have slipped and fallen on the stairway to the staff bathroom in the appellant's hotel had the appellant taken active measures to discover the presence of water on the floor, had it wiped away, or remedy whatever it was that might have caused the leakage, especially given that there is a history of another employee falling on the same stairs and sustaining injury therefrom. The failure to exercise the degree of care required to rid its premises of a known condition that posed risk of injuries to the appellee and others similarly situated as the appellee amounts to a breach of the legal duty owed the appellee.

As the evidence shows, the appellant's witnesses testified that the hotel is always cleaned by cleaners and well lighted, and that the staff bathroom is always cleaned and taken care of twenty- four hours a day. The appellant's witnesses, however, failed to provide any proof that on the day the appellee slipped and fell on the stairways leading from the staff bathroom, the stairways were well cleaned and dry and it was impossible for the appellee to have fallen due to the presence of water on the floor. In fact, none of the two witnesses who testified for the appellant were present on the scene when the appellee slipped and fell. The appellant did not put on the witness stand any of its employees directly responsible to clean the stairway on which the appellee slipped to testify that the stairway from the staff bathroom was dry, had just been cleaned and that the appellee slipped because of her own negligence. Such a testimony would have provided the best insight into the condition of the stairway at the time of the appellee fall.

It is indisputable from the evidence that the tiles in the passageway to the staff bathroom were often wet. The appellant did not deny that a similar incident had occurred involving one of appellant's employee and whom the appellant took aboard for treatment. The jury found that the presence of water on the stairways leading to the staff bathroom in the appellant hotel resulted to the appellee slipping and falling, and sustaining injuries therefrom; that the appellant had failed to exercise due care to ensure that

the passage to and from the staff bathroom leading to the stairway was cleaned and dry at all times.

We find no reason to reverse the jury's verdict, finding from the facts that the appellant which had a legal duty to the appellee as its employee had failed to exercise the quantum of care required under the circumstance and that this failure was the direct and proximate cause of the appellee's fall and subsequent injury to her back.

We must now decide whether under the facts and circumstances, the unanimous jury verdict of liable against the appellant commensurate with the evidence adduced at trial.

The appellant strenuously argues, both in its bill of exceptions and brief, that the medical report and testimony given by Dr. Robert D. Kpoto were inconclusive, thereby casting doubt on the integrity, credibility and accuracy of the report and diagnosis conducted on the appellee.

We disagree. We note that Dr. Robert D. Kpoto's testimony and report about the appellee's condition was conclusive and based on series of examinations conducted by him. Dr. Kpoto's testimony, as reproduced earlier in this Opinion, was that when the appellee visited his clinic sometime in 2016, she could not walk straight, or properly bend forward, backward or sideway because of the pain on the right side of her lower back; that he conducted a complete physical examination on the appellee, and his impression was that she had suffered a Spinal Injury; that X-Rays were conducted on the appellee and the results showed lesion (spondylolysis) at the level of the fifth lumbar vertebra and the first sacra vertebra; that because it was not clear on the plain X-ray, he recommended that the appellee goes abroad for a Magnetic Resonance Imaging (MRI) and a Neurosurgical intervention because there is no specialty in Liberia to help remedy her condition; that the appellee needed additional examination and management because there was no technology in Liberia to pinpoint the nerve that is bothering the appellee and to tell the extent of the injury to the nerve as well as the bones. The appellant's counsel specifically asked Dr. Kpoto on the certainty of his findings and recommendations. We again quote below the exchange between the appellant's counsel and Dr. Kpoto during cross examination:

"Ques: By your allegation, she needs neuro-surgical management and the fact that you are an expert surgeon, how can you convince this body that the pressing of the bone has damaged the nerve as alleged by you?"

Ans: It is not an allegation. It is based on my clinical examination, management plus treatment. Patient [appellee] will have to go for further investigation. Pain is a nerve problem, and when it comes to the bone which is presented as the site where the pain is involved, bone is involve and nerve manifest itself in bone. My recommendation was based on cogent clinical findings when I saw the patient and because those findings would not be complete without determining how much press on the nerve this patient had suffered, further investigation would help.”

We note the appellant did not provide any evidence to counter the medical testimony and findings presented by Dr. Robert D. Kpoto on the injury suffered by the appellee and the need for the appellee to travel abroad for further medical treatment. It was incumbent on the appellant to prove its theory that the appellee’s injury was not a result of her fall in 2014 on the premises of the appellant hotel, and that the appellee’s condition did not warrant her going for further medical examination abroad. Not having done so, we are inclined to accept the medical testimony and report of Dr. Robert D. Kpoto regarding the appellee medical condition.

Regarding the facts of the appellee’s fall and injury, we have already held that the evidence indisputably shows that the appellee was injured on the premises of the appellant, and that the fall and injury was a consequence of the appellant’s negligence. Coupled with Dr. Kpoto’s medical report on the extent of the injury suffered by the appellee, and the need for further medical treatment abroad, the appellee’s evidence met the threshold proof required under the circumstances of the granting of an award for the damages suffered because of the fall on the premises.

We must now consider whether the award of damages commensurate with the evidence adduced at trial.

We note at the onset that the appellant’s first witness, Morris Saydee, stated in his testimony that the appellant made an offer to the appellee for her salary for the one-year period during which she was not active on the job, and that the appellee accepted the offer after the intervention of the Ministry of Labor. This testimony was not rebutted by the appellee. This payment made to the appellee, as the records show, was to cover salary payment for one year (2014-2015) and was not made for the purpose of compensating the appellee for the injuries sustained by her which occasioned the filing of this case. Since this case is for damages resulting from the appellee’s fall on December 4, 2014, due to the appellant’s negligence and not for compensation for unfair labor practice or wrongful dismissal, the amount paid

by the appellant to the appellee for one-year salary as mentioned herein is not deductible from the award to be given in this case.

With this clarification, we shall now proceed to consider the damages award made by the jury.

The overwhelming evidence produced by the appellee is that after her fall, she took several X-rays and was told by the doctor that she had developed problem with her spine that could not be handled in Liberia except abroad where she could undergo surgery; that after seeking treatment at JFK Hospital and SOS Clinic with no improvement, months later, the appellant had her taken to Doctor Kpoto for examination; that Doctor Kpoto, after several examination of her, diagnose that she might have suffer damages to her spine and needed to go abroad for further examination and treatment. The appellee states that the appellant has failed to adhere to Doctor Kpoto's recommendation and as a result she continues to live in pain, cannot sit nor stand for long without taking pain tablets and cannot sleep well without taking diazepam tablets. She alleges that she and cannot do anything for herself without the help of her husband and daughter.

The appellee says further that besides the appellant paying for the X-Ray at the Medlink Clinic, she paid all other bills on her subsequent visitations to the Medlink Clinic for medical examinations. The appellee alleged that she spent the amount of Two Thousand One Hundred Twenty-Five United States Dollars (US\$2,125.00) and Twenty-Two Thousand Five Hundred Twenty-Five Liberian Dollars (L\$22,575.00) for medical examinations, therapy and medications at Medlink and SOS Clinics in Monrovia. She testified to the expenses made and the receipts were admitted into evidence. The appellee also prayed for the amount of Eight Hundred Twenty-Five Thousand United States Dollars (US\$825,000.00) as general damages.

The certified records show that the jury awarded the appellee the amount of One Million United States Dollars (US\$1,000,000.00) as General Damages, with no amount for special damages. Since the appellee did not appeal the denial of the award of special damages in her favor, we do not consider that issue on this appeal as it has been legally waived and conceded to.

Generally, damages attach as pecuniary compensation or indemnity which may be recovered in the courts by persons who have suffered loss, detriment or injury, whether to his person, property or rights, through the unlawful act or omission or negligence of another. *Firestone Liberia, Inc. v. G. Garlimah Kollie*, Supreme Court Opinion, March Term 2012; *Lonestar Cell Corp v.*

Wright, Supreme Court Opinion, March Term 2014; *Air Maroc, Inc. v. Cllr. Finley Y. Karnga*, Supreme Court Opinion, March Term 2022. General Damages are those which are the natural and necessary result of the wrongful act or omission asserted as the foundation of liability.

This Court has held that in measuring the amount of damages for personal injury the most common factors to be considered are: loss of earnings or earning capacity, medical expenses, pain and suffering and any permanent effects of the injury sustained. Loss of enjoyment of life and shortening of the plaintiff's life expectancy are also important factors in any case where they apply. *Management of Firestone Liberia Inc., v. Emmanuel Kollie and George Gribisy*, Supreme Court Opinion, March Term, 2016.

In this case, the appellee sustained injury due to the negligence of the appellant and continues to endure pain and suffering in consequence of the injury suffered. According to the testimony of Doctor Kpoto when the appellee visited his clinic sometime in 2016, she had difficulty walking, could not walk straight, or properly bend forward, backward or sideways because of the pain on the right side of her lower back that his impression was that she had suffered a Spinal Injury and from the X-Rays conducted on the appellee, the result showed lesion (spondylolysis) at the level of the fifth lumbar vertebra and the first sacra vertebra; that because it was not clear on the plain X-ray, he recommended that the appellee goes abroad for a Magnetic Resonance Imaging (MRI) and a Neurosurgical intervention because there is no specialty or technology in Liberia to help remedy her condition.

This Court having agreed with the trial court that general damages attaches in this case as the natural and necessary outcome of the wrongful act of the appellant, and taking into account the factors enumerated above to be considered in determining the amount of damages for personal injury to the appellee, such as the loss of earnings or earning capacity, necessary medical expenses, pain and suffering, and permanent effects of the injuries sustained, modifies the award of general damages from the amount of One Million United States Dollars (US\$1,000,000.00) to Seventy Five Thousand United States Dollars (US\$75,000.00).

WHEREFORE AND IN VIEW OF THE FOREGOING, the final judgment of the lower court is affirmed, but with the modification that the award of general damages be modified from the amount of One Million United States Dollars to Seventy Five Thousand United States Dollars (US\$75,000.00).

The Clerk of this Court is hereby ordered to send a mandate to the Court below, ordering the judge presiding therein to enforce the Judgment emanating from this Opinion. Costs are ruled against the appellant.

WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLORS PETER Y. KERKULA AND MOLLEY N. GRAY, JR. OF THE JONES & JONES LAW FIRM APPEARED FOR THE APPELLANT. COUNSELLOR DAVID W. WOAH OF THE WOAH AND ASSOCIATES LAW FIRM APPEARED FOR THE APPELLEE.