

PRESENTTE QUELO, Widow of the later WILSON
QUELO, for herself and her minor son, WILSON
QUELO, Jr. et. al., Appellants, v. PROVIDENCE
CONCRETE WORKS, by and thru its President,
CHRISTIAN MAXWELL, Appellee.

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

Heard: June 22, 1981. Decided: July 30, 1981.

1. No person shall be deprived of life, liberty, property or privilege, but by judgment of his peers, or the law of the land.
2. Remedy by due course of law, means the reparation for injury ordered by a tribunal having jurisdiction in due course of procedure, after a fair hearing.
3. Any violation of the civil right of a person is a tort, and any person injured, shall have a remedy thereof, commensurate with the injury sustained, by due course of law.
4. The right to sue for injuries is a general and a constitutional right, which can be fully and effectively exercised without legislative enactment.
5. Injury is any detriment, deprivation or grievance to which a person may be subjected without the law.
6. The only causes of action that were reserved by law and that were conferred on the legislature were suits against the Republic of Liberia, as evidenced by the constitutional provisions that "suits may be brought against the Republic of Liberia in such manner and in such cases as the legislature may by law direct.
7. It is the supreme duty and right of the judiciary alone, to determine, declare, interpret, and construe what the "law of the land" or any law is. Only when and where it fails its due responsibility bestowed upon it by law, both inherent and written, may such law be enacted by the Legislature.
8. It is not the province of the legislators to say what the law of the land is, and when rights under it should accrue at all times.
9. To declare what rights are, and to protect rights guaranteed by the organic law, is the business of the judiciary. The right to sue for injuries is a general and a constitutional right. It can be fully and effectively exercised with or without legislative enactment.
10. Suits may be brought against the Republic in such manner and in such cases as the Legislature may by law direct.
11. The right of action for wrongful death is conferred on a dependent, by both statutory and the general common law of the land. Under our law, every person is entitled to freedom from deprivation of life, liberty or property and when any of these rights is invaded, he is entitled to full legal redress for the injury suffered by him.
12. As a general rule, the theory upon which the law allows damages for the violation of a civil injury has been based upon the doctrine that where a civil injury has been sustained, the law provides a remedy that should be commensurate to the

injury sustained.

13. "Personal representative" means a curator or the person who has received letters to administer the estate of a decedent. "Dependent" of a decedent means (I) the decedent's spouse, and (II) any child (including an adopted or illegitimate child), a parent or ward, and (III) any other relative wholly or partly dependent on the decedent for support.
14. The personal representative of a decedent who is survived by any dependent shall have a right of action as trustee for the dependents against the person who by wrongful act, neglect or default has caused the death of the decedent.
15. Only property owned by a person at the time of his death can be part of the estate to be administered by his personal representatives. There can be no curator or administrator of a property of a living soul.
16. The survival of actions statute and the wrongful death law are separate and distinct in their purposes and applications. The survival of action statute protects rights already owned or claimed by a party before his death. Such right is his legal property and on his death it vests in his estate for proper supervision by a curator or his personal representative.
17. Claim for compensation for the wrongful death of a person is in the nature of a class action. It is the natural and lawful right of a dependent to sue for compensation for the wrong without reliance on the wrongful death statute.
18. The intent and theory of the wrongful death statute is to compensate primarily the dependents for the loss of the economic and social rights they had in the deceased prior to his death. Under the wrongful death statute either the dependents or the personal representative may sue for the compensation. If the dependents neglect to sue, the personal representative may, as trustee of the dependents, sue the tortfeasor.
19. Under the law, a party may join in numbered counts, as many claims or defenses as he may desire and the legal failure of one count in a pleading does not render all of the other separate and independent counts dismissible.
20. Allegations of factual matters in any pleading are issues for the jury. A judge is without authority to determine actual issue under the circumstances without reference to the jury who are triers of the fact. A trial court in ruling on the law issues may dismiss a case only where the legal issues sustained by him may render the complaint compulsorily dismissible.

An action of damages for wrong was instituted against appellee by the widow and the minor child of Wilson Quelo, a soldier of the Liberian National Guard, who was killed instantly, while a passenger in a vehicle owned by appellee. Appellee moved to dismiss the action on the grounds that appellant lacked the capacity to sue, and that the averments of special damages for the dependents is contrary to the private wrongs law. From a ruling granting the motion, and dismissing the action, appellant appealed to the Supreme Court.

The Supreme Court held that under the wrongful death statute, either the dependents or the personal representative may sue for compensation, and that it was error to deny their right to sue by dismissing the action. The Supreme Court also held that it is not

within the province of a trial judge in a jury trial to decide the factual issues and that the ruling denying and dismissing the complaint on factual issues was improper. Accordingly, the Supreme Court *reversed* the ruling of the trial court, and mandated it to hear the case anew commencing with the disposition of law issues.

J. D. Gordon appeared for appellant. *Christian D. Maxwell* appeared for appellee.

MR. JUSTICE MABANDE delivered the opinion of the Court.

Wilson Quelo, a soldier of the Liberian National Guard, was a passenger on a truck owned and operated by appellee. The vehicle was involved in an accident resulting in the instant death of Wilson Quelo. The deceased left a widow, a one year old son named Wilson Quelo Jr., a father, a mother and a brother, all of whom depended upon him for maintenance, support and other economic benefits. His dependents sued appellant, owner of the truck, for damages arising out of his wrongful death.

The main allegations in appellant's complaint are: the accidental death of Wilson Quelo, the survival of appellants/dependents, a claim of general damages for the widow, a claim of general damage for a child, *ventre sa mere*, a claim of special damages in the amount of \$30,084.12 supported by an affidavit. In its answer, the defendants, now appellee, raised the issues of lack of capacity of the dependents to sue in their own names, that only administrators can sue, that under the law special damages do not apply to such a suit, and that the exhibit is unsupported by invoices and receipts.

The trial court ruled that only the personal representatives with letters of administration may sue, and that the averment of special damages for the dependents is contrary to the Private Wrongs Law. The complaint was therefore dismissed, whereupon plaintiffs appealed to this Court.

The important issues presented are: (1) whether dependents of a deceased have legal capacity to sue for the wrongful death of their relative; (2) whether an averment in a complaint

demanding payment of a sum certain under the wrongful death law, renders the entire complaint dismissible; and (3) whether a financial statement of burial expenses of a person wrongfully killed is legally qualified as an exhibit to the complaint?

Counsel for appellants argued that under the law, both statutory and general, dependents of a person wrongfully killed may sue in their own right without prior qualification as administrators. Appellee contended that under the wrongful death law, the dependents have no legal capacity to sue but that only a curator or an administrator may sue. Appellee further contended that no such remedy existed in England before the Fatal Accident Law (Lord Campbell's Act of 1846) and in the U.S.A. its legislation of 1847 and, consequently, no such right could have accrued to any person in this country before the 1977 Private Wrongs Law.

Where early common law refused to recognize a right, it did not exist because the worth of civilization is respect for the supremacy of the court in judicial affairs. The finality of judicial determination must be maintained. Only the lawmakers could thereafter grant such rights. Many reasons may have influenced the early courts not to have recognized the right to sue for the wrongful death of a person. Death caused by another was viewed strictly as a criminal offense for which only the State was the offended party.

As Great Britain became antagonistic to the slave trade according to the principles of the King's Bench in 1772, the courts may have considered compensation for wrongful death as setting price for a human being. Law is a dynamic and progressive science. Commercial institutions like those of today did not exist during the 16th and 17th centuries; hence, the courts could not have conceived of the pertinency of the economic problems which the wrongful death of a relative presents today. In applying a foreign concept of law, we should weigh all of the benefits and choose the blessings.

The independence of our country insures freedom not to accept and incorporate into our laws and society things which we know are hindrances to our own people and country. To accept and enforce an already known pain and hardship on one's own people, mainly because others in other lands had suffered the

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same, even though a true and safe method is plainly available for the choice, is an utter disregard for one's own self, and a rejection of the benefits of freedom.

Our judiciary already knows that people of early Britain and America for many years suffered the want of remedy for grievances caused by the wrongful death of a relative because of the negative approach of their courts to the issue until the enactment of laws relieved them. Their bitter experiences were corrected long before 1847. To deny any measure of such a right to our people at this age is to admit that the formation of our ordered government was intended to bring no relief from injustice to our people but to maintain the dreadful pre 1846 conditions for us. Our chief concern should now be our own common law for the good of our country.

This cause of action arose before the constitution was suspended, therefore it applies to the rights protected by it. According to the Constitution of Liberia (1847), Art. 1, § 6, "every person injured shall have remedy therefor by due course of law." The Constitution further provides, at section 8, that "no person shall be deprived of life, liberty, property or privilege, but by judgment of his peers, or the law of the land". Our Constitution being similar in most of its provisions to the constitutions of the several states of America and that of the federal constitution, a reference to American common law is pertinent in seeking aid to interpret some of our constitutional provisions. The cognate constitutional provision guaranteeing every person a remedy by due course of law for injury done to his person or property (and usually also for injury done to his reputation) is found in the constitutions of many of the states. It means that for such *wrongs as are recognized by the law of the land, the courts shall be open to afford a remedy*, or that laws shall be enacted giving a certain remedy for all injuries or wrongs. "*Remedy by due course of law, so used, means the reparation for injury ordered by a tribunal having jurisdiction in due course of procedure, after a fair hearing.*" (emphasis supplied) 11 AM. JUR., *Constitutional Law*, §326. This American legal concept protects the judiciary in its exclusive jurisdictional endeavor over all controversies properly brought before it in order to determine remedies for all injuries in the true light of the law. It guarantees

the duty of the judiciary to grant remedy for such wrongs as are conscientiously recognized by the law of the land. Any violation of the civil right of a person is a tort. It is the supreme duty and right of the judiciary alone to determine, declare, interpret, and construe what the "law of the land" or any law is. Only when and where it fails its due responsibility bestowed upon it by law both inherent and written, may such law be enacted by the legislators. It is not, however, the province of the Legislature to say what the law of the land is and when rights under it should accrue at all times. Law may still be enacted giving or ensuring rights where remedies already exist.

It has never been and it is not the modern and progressive idea of the law in both England and America, for the judiciary to be derelict in its duties so that another department of government may have to command it to act. To declare what rights are and to protect rights guaranteed by the organic law is the business of the judiciary. The right to sue for injuries is a general and a constitutional right. It can be fully and effectively exercised with or without legislative enactment. The dissenting opinion maintains that the right to sue for the wrongful death of a person is a tort but it cannot be exercised without legislation; to so hold is to ignore all of the rights under the organic law.

Our people were legally insured against deprivation of any claim of right without judicial hearing long before 1977. Injury according to our organic law means any detriment, deprivation or grievance to which a person may be subjected without the law. Any vested right is property of a person. The right to sue for the breach or violation of any right or privilege is and has over a century been guaranteed by the laws of our land.

With the same mental faculties generated by the love of justice with which the early common law judges were endowed in establishing judicial precedents for the peace and tranquility of their countries and peoples, we are equally blessed by the same Divine Being. The only causes of action that were reserved by law to and conferred on the Legislature were suits against the Republic. "Suits may be brought against the Republic in such manner and in such cases as the Legislature may by law direct". Constitution of Liberia (1847), Art. 1, §17.

The right of action for wrongful death is conferred on a

dependent by both statutory and the general common law of the land. Under our law, every person is entitled to freedom from deprivation of life, liberty or property and when any of these rights is invaded, he is entitled to full legal redress for the injury suffered by him. "As a general rule, the theory upon which the law allows damages for the violation of a civil injury has been based upon the doctrine that where a civil injury has been sustained, the law provides a remedy that should be commensurate with the injury sustained". 13 CYC 13.

Any injury to or violation of a civil right is a tortuous act, the right to the remedy of which the law recognizes. The right to live, to enjoy the love, comfort and support of another is a civil right.

The statute in confirming the already existing right of the appellants to sue, also conferred the same right on the personal representative of the deceased. The statutory right to sue under the Private Wrongs Law, provides: "Personal representative" means a curator or the person who has received letters to administer the estate of a decedent. "Dependent" of a decedent means (i) the decedent's spouse, and (ii) any child (including an adopted or illegitimate child), a parent or ward, and (iii) any other relative wholly or partly dependent on the decedent for support. Private Wrongs Law, Rev. Code 28:3.1. The personal representative of a decedent who is survived by any dependent shall have a right of action as trustee for the dependents against the person who by wrongful act, neglect or default has caused the death of the decedent". Ibid., 28: 3.2

We hold that section 3.2 of the Private Wrongs Law does not deprive the dependents of their fundamental right to sue since to hold the contrary as the dissenting opinion maintains, would negate the organic law, civil rights and the Decedents Estate Law. This would be an imputing of absurdity to the legislature. Only property owned by a person at the time of his death can be part of the estate to be administered by his personal representatives. There can be no curator or administrator of a property of a living soul.

The wrongful death statute should not be misconstrued as an advanced survival of action code. Legislation sometimes, as in this case, gives right to sue for the wrongful death to both the

dependents and the curators and administrators of the deceased in order to protect rights that may accrue after the death of a person. To every killing, no matter how instantaneous, the body may have suffered some pains. The survival of action statute and the wrongful death law are separate and distinct in their purposes and applications. The survival of action statute protects rights already owned or claimed by a party before his death. Such right is his legal property and on his death it vests in his estate for proper supervision by a curator or his personal representative.

Claim for compensation for the wrongful death of a person is in the nature of a class action. It is the natural and lawful right of a dependent to sue for compensation for the wrong without reliance on the wrongful death statute.

The intent and theory of the wrongful death statute is to compensate primarily the dependents for the loss of the economic and social rights they had in the deceased prior to his death. Under the wrongful death statute either the dependents or the personal representative may sue for the compensation. If the dependents neglect to sue, the personal representative may as trustee of the dependents sue the tortfeasor. We therefore hold that the trial court erred in denying the dependents their right to sue.

Appellant's counsel argued that their complaint did plead general damages and not entirely special damages as ruled by the court. Appellee, however, only contended that the measure of damages under the wrongful death statute is general damages to be determined by the jury. Count 4 (c) of the complaint reads "The widow and relatives of the deceased be awarded a sum of money as general damages for the support, training, guidance, and *ventre sa mere*".

This allegation, as contained in the complaint is expressly a claim of general damages to be determined by the jury. The other averments claiming for specific sum of money lost by appellants for funeral expenses, did not render the whole factual claims of the complaint a plea of special damages. Under the law, a party may join in numbered counts as many claims or defenses as he may desire and the legal failure of one count in a pleading does not render all of the other separate and independent counts dismissible. The trial judge therefore improperly ruled on the

factual issues which were rightly for the jury. Civil Procedure Law, Rev. Code 1:9.6; and *Walker v. Morris*, 15 LLR 424 (1963)

Allegations of factual matters in any pleading are issues for the jury. A judge is without authority to determine actual issue under the circumstances without reference to the jury who are triers of the fact. A trial court in ruling on the law issues, may dismiss a case only where the legal issues sustained by him may render the complaint compulsorily dismissible. Civil Procedure Law, Rev. Code, 1:23.1.

An exhibit may be any writing, photograph or object to which a party may desire to call the attention of the court and his opponent at the trial. Proof of the truthfulness of such exhibit is the responsibility of the party who pleads it. Only the triers of facts under the supervision of the court may, when an exhibit is admitted into evidence, determine what weight should be given to it. It is not within the province of a trial judge in a jury trial to decide the factual issues. We are therefore of the opinion that the trial judge improperly ruled in denying and dismissing the complaint on these factual issues. *Beyslow v. Coleman*, 9 LLR 156 (1946); and Civil Procedure Law, Rev. Code, 1:9.3 (4).

In view of these erroneous rulings by the trial judge, his ruling and judgment are hereby reversed. The Clerk of this Court is instructed to send a mandate to the trial court to resume jurisdiction over this case and hear anew commencing with the disposition of the law issues consistent with this opinion. And it is hereby so ordered.

Judgment reversed; case remanded.

MR. CHIEF JUSTICE GBALAZEH *dissents.*

I have been unable to agree with my colleagues in their decision allowing a dependent of a decedent to sue a tortfeasor without being a personal representative. This is the same reason that led me to vote against the judgment in the *American Life Insurance v. Holder*, 29 LLR 143 (1981). In that case I dissented because my learned friends concluded that a widow is automatically a beneficiary and personal representative without "letters of administration" and may sue independent of the insured.

The issue involved in these two cases is whether or not a dependent of a decedent has legal standing to sue for insurance benefits or damages for wrongful death of a decedent without being designated beneficiary or personal representative?

Both the common law and the statute define a personal representative as a "person who has received letters of administration to administer the estate of a decedent." Decedents Estates And Trusts Law, Rev. Code 8:3(j) defines a dependent as "one who looks to another for support and maintenance. One who is sustained by, or who relies for support upon the aid of another." Before 1977, there was no such cause of action in the Liberian society known as "damages for wrongful death." It was in 1976 that the legislature passed an Act entitled "The Private Wrongs Law" which spells out what constitutes such cause of action; who has a right to sue, how and when. This means that everything that pertains to that cause of action was statutorily introduced and is governed by statutory laws as opposed to the common law.

The cause of action for wrongful death, being a statutory creature, it would be a practical joke were we to set aside the statutory laws laid down by the Legislature in maintaining such action. The supreme duty of the judiciary is to determine, declare, interpret and construe what the law of the land is. Right of action for wrongful death is conferred by statute on a legal personal representative but not by judicial precedent as my learned colleagues have propounded in the majority opinion.

One other important factor that must be declared here is that unless otherwise expressed the courts will adhere to the dictations of the statutes. In other words, in interpreting a statute, the courts will have to follow the law spelt out in the statute as guideline for the prosecution of the case unless, of course, the provisions of such statutes are repugnant to the existing laws or public policy. As a corollary to this general principle, it must also be mentioned here that unless the validity of a statute is under challenge before the court, the court shall not question, rationalize, or review its merits.

Now going specifically back to the merits of the cases at bar, namely: action for wrongful death, we have in this jurisdiction two statutes governing such action to wit: The "Decedents Estates And Trusts Law" passed in 1972 and "Private Wrongs

Law" passed in 1976. In Chapter III, sections III.1 to III.8 of the Decedents Estates And Trusts Law, it is duly provided, *inter alia*, that letters of administration must be granted to the persons who are distributees of an intestate and who are eligible and qualify. The section also provides that the probate court has discretionary power to appoint, as administrator, anybody within the prescribed degrees or a curator where no person is eligible. What we learn from this chapter is simply that no distributee of an intestate is entitled to letters of administration automatically. A formal application must be made to the probate court and a formal grant of the letters by the probate court must similarly be made to the applicant.

The Private Wrongs Law, Rev. Code 28: 3.1 to 3.7, provides that only the personal representative of a decedent who has qualified as such within the meaning of Section 3.1 to 3.8 of the Decedents Estates And Trusts Law shall have the right of action for wrongful death as trustee for the dependents of the decedent against the person who by wrongful act, neglect or default has caused the death of the decedent.

As it can be clearly seen, the relevant sections of both acts are too clear and specific for anybody to have a second thought over them. Similarly, the surviving spouse, in this case the wife, cannot automatically qualify for the right of action for wrongful death as trustee of decedent's dependents unless she has been so appointed by the probate court as laid down in the Private Wrongs Law, Rev. Code, 28:3.1 to 3.7.

Any deviation by the Court from the legislative intent is tantamount to annulling and making by this court of new laws, which act is in direct contravention of the statutory laws in force.

It is my considered opinion that any money collected from a tortfeasor as a result of wrongful death, is part of the decedent's estate under Liberian law, because the Private Wrongs Law of Liberia, which controls this type of action, clearly spells out who is to sue on behalf of the dependents. Hence, a personal representative of the decedent must subject the money collected from a tortfeasor to the estate of the decedent for distribution.

In addition to the above, I hold the view that it would be an invitation to multiplicity of suits, were we to permit any dependent of a decedent, without qualification, to institute an

action of damages for wrongful death. To do so would open a gate to endless litigation because, according to that system, every dependent, whether a spouse, a son, mother, cousin or adopted child, could sue without restriction.

In the circumstances, I therefore find myself unable to agree that to adhere to the strict rules of statutes governing such causes of action is applying a foreign concept of law as held by my colleagues.

What a dramatic irony! One does not need to read all our statutory laws to grasp the simple idea, that the law administered in our jurisdiction has its roots and foundation in the common law and statutes of England as imported into and introduced to this land by the immigrants, unless of course, such laws are repugnant to existing laws or public policy. A suggestion that we should throw overboard everything foreign is an indirect appeal to this Court to overturn the entire legal system of this Republic, the consequences of which are not hard to imagine. If the Supreme Court (Tribunal) is now being asked to repeal summarily the statutes and precedents of this jurisdiction, what role would be left for the law makers to play? Hence, I have withheld my signature from the judgment.