IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA, SITTING IN ITS OCTOBER TERM, A. D. 2023.

BEFORE HER HONOR: SIE-A-NYENE G. YUOH..... CHIEF 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

Sky Insurance Company, by and thru its authorized representative of the City of Monrovia, Liberia ……..……Appellant	)	
Versus	)	APPEAL
His Honor Yamie Quiqui Gbeisay, Assigned Circuit Judge, Criminal Court "C", and the Republic of Liberia, by and thru Theophilus Kaidii of the City of Monrovia, Liberia…….……Appellees	)	
GROWING OUT OF THE CASE:	)	
Sky Insurance Company, by and thru its authorized representative of the City of Monrovia, Liberia …….....…Petitioner	)	
Versus	)	SUMMARY PROCEEDINGS
His Honor Ernest P. F. Bana, Stipendiary Magistrate, Brewerville Magisterial Court……..Respondent	)	
GROWING OUT OF THE CASE:	)	
Republic of Liberia by and through Theophilus Kaidii, of the City of Monrovia, Liberia ……..…..…Plaintiff	)	CRIME: BURGLARY AND THEFT OF PROPERTY
Versus	)	
Becca Mulbah of the City of Monrovia, Liberia Also of the City of Monrovia, Liberia …….Defendant	)	

Heard: November 7, 2023 Decided: February 7, 2024

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT.

This appeal emanates from a ruling entered by our esteemed colleague then assigned Circuit Judge of Criminal Court "C", His Honor Yamie Quiqui Gbeisay, Sr., on a petition for summary proceeding filed by appellant herein against Stipendiary Magistrate Ernest P.F. Bana of the Brewerville Magisterial Court.

The genesis of this case, as revealed by the certified records before this Court, shows that on July 22, 2019, Becca Mulbah was charged by the Brewerville Magisterial Court with the commission of the Crimes of Burglary and Theft of Property valued at Forty-Seven Thousand, Three Hundred Fifteen United States (US$47,315.00) Dollars base on a complaint filed by Theophilus Kiadii by and through Republic of Liberia. Upon her arrest and arraignment for the alleged commission of the crimes, as charged, the appellant, Sky Insurance Company, tendered a criminal appearance bond in favor of Becca Mulbah, which Magistrate John L. Griggs accordingly approved, and the said Becca Mulbah was released to her surety. On September 2, 2019, Attorney Allen F. Gweh, counsel for Becca Mulbah, addressed a communication to Magistrate Griggs requesting permission for his client to seek medication in Canada; this communication, as the records show, was never acted upon by the court, which suggests that the criminal defendant was still under the supervision and control of her surety, the appellant herein. Magistrate Griggs, having recused himself from presiding over the matter by mandate of Judge Roosevelt Z. Willie based on a petition filed before him by the appellant, the case was therefore presided over by Associate Magistrate Fallah Matthews.

When the court could not locate Becca Mulbah to have her served for the hearing of the criminal case against her, the court issued a notice of assignment for the appearance of the defendant and her surety and served the same on the surety. At the call of the case, the surety appeared, but Becca Mulbah did not appear. The court held Becca Mulbah in criminal contempt for bail jumping and held the surety for failure to produce Becca Mulbah. During the hearing, the appellant argued that it should not be made to produce the defendant because the defendant left the bailiwick of the Republic by permission of the court to seek medical attention; hence, the surety could not be held for the absence of the defendant. Since the records do not support the appellant's assertion, and since magistrate Matthews' predecessor who presided over the case and before whom the communication for medical leave was addressed was present in court, to therefore do justice to the parties, Magistrate Matthews sent for Magistrate

Griggs and upon inquiry from Magistrate Griggs in open court as to the allegation made by the appellant, Magistrate Griggs informed the court that he did not grant permission to the defendant to seek medical attention abroad as alleged by the appellant.

Based on the clarity provided by Magistrate Griggs, the appellant, after failing to produce evidence to support its allegation, made an application that Interpol-Canada be contacted through the Liberia National Police (LNP) to have the defendant arrested and returned to Liberia for prosecution. The court granted this application. The appellant, having not succeeded in securing the services of Interpol-Canada, and also following the issuance of several notices of assignment, on December 4, 2019, the magistrate entertained argument into the matter as to the liability of the surety for the unauthorized absence of the defendant. On December 14, 2019, the court entered final ruling in which the court held the appellant liable to the private prosecutor in the amount of Forty-Seven Thousand, Three Hundred Fifteen United States (US$47,315.00) Dollars, representing the total cost for the items for which the court charged Becca Mulbah. Appellant's counsel conceded to the court's ruling but however, requested the court that the appellant be given one week in order to consult with its shareholders to liquidate said amount. This request was granted by the court.

After the appellant's previous lawyer conceded to the judgment, the new lawyer filed a bill of information raising the same issue; that is, the defendant departed Liberia by permission of the court; hence, the court should not have held the appellant criminally liable. Again, the appellant failed to proffer to its bill of information any exhibits to support appellant's allegation in the bill of information. The bill of information was duly heard and denied. The appellant filed a petition for summary proceeding before the Circuit Court, which was duly heard and denied also. Subsequently, the appellant filed a motion for recusal of Magistrate Matthews; the motion was heard and denied. Appellant took exceptions and filed a petition for summary proceedings before the Circuit Court. The circuit court granted

the petition, ordered the magistrate to rescue himself and mandated magistrate Ernest Bana to assume jurisdiction and cause the surety to account for the defendant or to satisfy the court's ruling. When magistrate Bana attempted to executed the mandate, the appellant again filed a motion for change of venue. Magistrate Bana heard and denied this motion. The appellant again filed a petition for summary proceedings growing out of the ruling entered by the magistrate on the motion for a change of venue. The Circuit Court denied this petition and affirmed the ruling of the magistrate holding the appellant liable on the bail bond. Appellant entered exceptions to the court's ruling and appealed to this Court. The appellant filed a four count bill of exceptions contending as follows: 1) that the court erred when it denied the appellant's motion for a change of venue; 2) that the court erred when it fined the appellant the amount of US$75.00 as fine for the appellant's failure to appear in person in answer to the writ of summons for contempt issued by the court; 3) that the court erred when it ruled ordering the appellant to pay or cause to be paid the amount of US$47,000.00; 4) that the court erred when it ordered the appellant to pay when no enforceable judgment was entered against the appellant.

Giving due consideration to the records transmitted from the proceeding before magisterial court and the circuit court, couple with appellant's bill of exceptions, we identified as dispositive issue in this matter the following:

1. Whether or not it was error for the court to order the appellant to pay the value of the surety bond executed by it in the amount of US$47,000.00 in favor of Becca Mulbah because of the failure of Mr. Mulbah to appear for trial.

Before we embark upon discussing the issue, we will be amiss if we do not clarify certain points raised in the bill of exceptions. The appellant complaint in her bill of exceptions that the trial court erred when it denied her motion for change of venue.

The records show that the appellant filed its motion for change of venue on June 4, 2020, alleging local prejudice and biases and that the appellant believes that would not have an impartial trial in the Brewerville Magisterial Court. The appellee on the other hand resisted this motion on the ground

that the appellant filed the motion outside of the statutory period. The magistrate rule denying the motion on the ground that his responsibility was limited to the enforcement of the mandate of the circuit judge. The circuit judge affirmed the magistrate's ruling on the ground that the issue before the magistrate being to enforce a ruling in a matter in which hearing had been concluded, a motion for a change of venue cannot be entertained. Our further search of the records confirmed that magistrate Bana before whom the appellant filed its motion for change of venue was only executing a mandate from the Circuit Court to enforce a December 14, 2019, ruling of his predecessor, Magistrate Fallah Matthews. Our civil jurisprudence provides for the office of a motion for change of place of trial as follows:
Civil Procedure Law, Rev. Code 1:4.5.1.2. Change of place of trial.

1. When place of trial may be changed. The court may change the place of trial of an action in any of the following cases:
   (a) On motion, if the county, or in the case of an action in a court not of record, the magisterial area, town, or city designated is not proper;
   (b) If there is a reason to believe that an impartial cannot be had in the proper county, magisterial area, town, or city; or
   (c) On motion, if all the parties agree and if the convenience of material witnesses and the ends of justice will be promoted thereby.
2. Time of motion. A motion for change of place of trial on the ground that the place designated for that purposes is not the proper place must be made on or before the date on which the defendant is required to plead. A motion for change of place of trial on any other ground must be made at any time before commencement of trial.

In the case at bar, as the records show, the appellant motion for change of venue was filed seven (7) months after the final ruling dated December 14, 2019 had been entered and no exception taken therefrom. This Court says that in our jurisdiction when trial is had, ruling made, appeal announced and denied, and mandate is sent down for the enforcement of judgment, the office of the motion for change of venue is not available to any of the parties. A motion for change of venue has to be made when the case is

called for trial, and not after the trial has been properly conducted. *Toe v RL 24 LLR 462 (1976).* A motion for change of venue is a pretrial motion. Civil Procedure Law, Rev. Code 1:4.5.1.2. In the instant case, the appellant's motion for change of venue filed seven (7) months after final judgment has been rendered, is contrary to the plain language of the statute. Succinctly stated, appellant not having filed its motion for change of venue before trial had the appellant is deemed to have voluntarily relinquished its right and that the appellant is precluded by operation of law to have filed this motion after final judgment obtained. This Court has held that "the denial of a motion for change of venue will not authorize a reversal of a judgment against the defendant where it manifestly appears from the record that he had a fair and impartial trial, and that no trouble was experienced in obtaining an impartial jury". Gbenyena v RL 35 LLR 567 (1988). Count one of appellant bill of exceptions is not sustained.

Another matter complaint of by the appellant has to do with an alleged fine imposed by the trial court on the lawyer. We have diligently searched the records and have found no evidence of the fine of US$75.00 that was allegedly imposed on the appellant. As a matter of the records, the only document that makes reference to the fine is the appellant's bill of exceptions. We note that neither did the appellant discuss the matter in her brief nor raised it in the argument. We also noticed from the records that when the case commenced, the magistrate issued several notices of assignment which were duly served on the parties for the hearing. As the records revealed, the appellant deliberately refused to adhere to those notices of assignment without any justifiable reason to warrant the appellant's absence which may have been the reason that led to the magistrate holding appellant in contempt of court and imposed the fine for disobeying the precepts of the court. In the case *Meridien Biao Bank Ltd v Topor et al 38 LLR 174 (1996)* this Court held that "A party summoned for contempt does not necessarily have to be a party to the main suit before a trial judge to warrant his appearance. His failure to appear in obedience to the summons, by itself, constitutes contempt. His failure to appear in obedience to the summons, by itself, constitutes contempt. A party upon

whom a summons is served is duty bound to appear to defend his legal interest, and a disobedience to such summons amounts to a contempt". Count two of the appellant's bill of exception not being supported by the records, and the appellant's act of disobedience being apparent from the records by not adhering to several notices of assignment, count two of the appellant's bill of exceptions cannot be sustained.

We shall now embark upon discussing the main issue. The certified records before this Court reveal that when Becca Mulbah was arraigned before the magistrate for the alleged commission of the crimes as charged, she was bailed out by the appellant, consistent with the Civil Procedure Law, Rev. Code 1:63.1(d) and 63.2(1) of the Civil Procedure Law, respectively. When the case was called for hearing, the appellant failed to produce the defendant after the issuance of several notices of assignment; that as a consequence of said failure, the prosecution moved the trial court to hold the surety, appellant, liable to the appellee. Considered the application relevant, the court granted same and held the appellant liable to the appellee in the amount of Forty-Seven Thousand, Three Hundred Fifteen United States (US$47,315.00) Dollars. We quote excerpts from the court's ruling and the application thereto, for the benefit of this Opinion:

> "Meanwhile, in the face of our law and practices, the surety company, the Sky International Insurance Company, in this instant case, is held liable to the private prosecutor and should therefore indemnify the complainant in the amount of Forty-Seven Thousand, Three Hundred Fifteen United States (US$47,315.00) Dollars, representing the value of the burglarized and stolen property of the private prosecutor.
> This Court, for fair play, is constrained to order that half of the Forty-Seven Thousand, Three Hundred Fifteen United States (US$47,315.00) Dollars be paid now, while the surety company is given time to pay the balance in due course.
>
> On failure to produce the money as charged, the surety company will be ordered arrested. And it is hereby so ordered".
>
> Defense Counsel: "To which ruling of your Honor, surety legal counsel, Joseph D. N. Benette, prays Your Honor and this Honorable Court to give the surety company one week to go for consultation with its shareholders to find and pay the money being requested by Your Honor in this Honorable Court. And respectfully submits".

> Court: “The defense counsel’s request is noted. And it is hereby so ordered. Matter suspended”.

From a review of the magistrate’s ruling, it is evident that the lawyer representing the appellant sat and listened to the ruling of the magistrate and instead of excepting to the said ruling, the lawyer appealed to the court to grant it time to satisfy the judgment amount. With this ruling and the concession by the appellant’s counsel thereto, this Court is taken aback by the multiplicity of petitions for summary proceedings filed by succeeding counsels for the appellant against the magistrate. The Magistrate having entered the final ruling, whether erroneous or not, it was incumbent on the appellant’s initial counsel if he so disagreed with the ruling, to have enter its exception to same and announced an appeal, as required by law. Appellant failure to have entered exception to the ruling of the magistrate is deem that appellant consented to liability. It is the law in this jurisdiction that: “an appeal shall be taken at the time of rendition of judgment by oral announcement before the magistrate or justice of the peace”. Civil Procedure Law, Rev. Code 1:52.2. “*an appeal shall be taken at the time of the rendition of the judgment by oral announcement before the magistrate or justice of the peace”.* In the case Majority *UCL et al v Minority UCL et al; 39 LLR 692 (1999)* this Court held that “even though appeal is a matter of right, there are certain procedural requisites, which must of necessity be employed. They include the oral announcement of an appeal in open court at the time of rendition of such judgment, the filing of a bill of exceptions, the filing an appeal bond, and the service and filing of a notice of completion of appeal”. Civil Procedure Law, Rev. Code 1:52.3.4.5. Also in the case Intrusco Corp. v Firetex Inc. 32 LLR 11 (1984) this Court holds that “this court will not, and cannot, consider any issue of fact or law not raised in the pleadings, passed upon by the trial court, excepted to and contained in the bill of exceptions, neither will this court consider any issue raised in the bill of exceptions and not pleaded and supported by the record of appeal, nor take cognizance of any argument not supported by the bill of

exceptions or consider any issue in the bill of exceptions not argued in the brief". This Court says that the counsel for the appellant not having excepted to the ruling of the trial court and announced an appeal therefrom waives his right to benefit from an appeal under the circumstance; hence, the ruling of the circuit judge confirming the ruling entered by the magistrate ought not to be disturb; the denial of the Bill of information was within the pale of the law and the appeal therefrom ought to be dismissed.

We also note that upon withdrawal of appellant's initial lawyer after final ruling from which the appellant did not enter exception, Counsellors G. Wiefueh Alfred Sayeh, J. Augustine Toe and Thompson Jargbah took over the case as retained counsel for the appellant and proceeded to file unmeritorious petitions. This Court says that it sees this conduct of Counsellors G. Wiefueh Alfred Sayeh, J. Augustine Toe and Thompson Jargbah to be reprehensible and unprofessional. Rule 11 of the Code for the Moral and Ethical Conduct of Lawyers provides that "A lawyer should endeavor to obtain full knowledge of his client's cause before advising thereon, and he is bound to give a candid opinion on the merits and probable result of pending contemplated litigation. Whenever the controversy will not admit of fair judgment, the client should be advised to avoid or to end litigation, and it is unprofessional for a lawyer to advise the institution or continuation of an unmeritorious suit." We say that Counsellors G. Wiefueh Alfred Sayeh, J. Augustine Toe and Thompson Jargbah were under a duty to have first obtained full knowledge of this cause and to appropriately advise their client. It is "unprofessional for a lawyer to advice the institution or continuation of an unmeritorious suit". Counsellors G. Wiefueh Alfred Sayeh, J. Augustine Toe and Thompson Jargbah are in violation of this rule and we hereby impose a fine of United States Dollars Three Hundred (US$300.00) each on Counsellors G. Wiefueh Alfred Sayeh, J. Augustine Toe and Thompson Jargbah for continuing of an unmeritorious suit before this Court. We caution all lawyers that this Court will not hesitate to discipline lawyers whose conducts tend to frustrate the judicial process.

WHEREFORE, and in view of the foregoing, the ruling of the magistrate, confirmed by the Assigned Circuit Judge of Criminal Court "C", is affirmed and the appeal denied. For the unethical conduct, Counselors Counsellors G. Wiefueh Alfred Sayeh, J. Augustine Toe and Thompson Jargbah are hereby fined US$300 each to be paid in the National Coffer within 72 hours as of the rendition of the Judgment of this Opinion. The Clerk of this Court is ordered to send a mandate to the court below to resume jurisdiction over this case and instruct the magisterial court to enforce its judgment of December 14, 2019. Costs are ruled against the appellant. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellors G. Wiefueh Alfred Sayeh, J. Augustine Toe and Thompson Jargbah appeared for the appellant. Counsellor Wellington G. Bedell, Sr., appeared for the appellee.