MARY MORRIS, Appellant, *v.* REBECCA JOHNSON, Appellee.

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

Argued March 16, 17, 1977. Decided April 29, 1977.

1. In ruling on issues of law, a trial judge cannot limit his decision to some, but must pass on all that are raised in the pleadings.
2. The general meaning attributed to the words "without prejudice" when used in a judgment of a court of law is that such judgment does not operate as res judicata on the merits but reserves to the parties the privilege of adjudging the value of their dealings by subsequent action.
3. The principle of res judicata will apply in a case involving the same parties and the same subject matter where the case has once before been judicially determined; that is to say, where the merits of the issues involved have previously been tried and judgment rendered thereon.
4. The rule that judgment without prejudice does not operate as a bar is uniformly applied where a former action has been dismissed for a formal or technical defect; in this situation the clause "without prejudice" is only declaratory of the true nature of the judgment as one rendered not upon the merits.

This was a bill in equity to remove a cloud on title. The case was before the Supreme Court on appeal from a decision of the lower court to dismiss it on the principle of res judicata on the basis of a previous suit instituted some years previously by the appellee herein against the appellant Mary Morris and two other parties to cancel a warranty deed on the property involved in the present suit. The earlier suit terminated in the granting "without prejudice to either side" of a motion to dismiss an appeal from the lower court which granted the cancellation and, on a petition for rehearing which was withdrawn, a granting of the petition with costs against the petitioner and a mandate "to execute the foregoing judgment immediately."

On the appeal presently before the Court, it considered the meaning of the dismissal of the appeal in the former

suit "without prejudice" and held that as used by the Court in that case, the words did not operate as a bar to a subsequent suit. The *judgment* of the lower court was therefore *reversed* and the *case remanded* for a new trial.

Moses K. Yangbe and *S. Edward Carlor* of the *Henries Law Firm* for appellant. *Nete Sie Brownell* for appellee.

MR. JUSTICE HENRIES delivered the opinion of the Court.

Sometime in 1971, appellee Rebecca Johnson instituted an action in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, against Guah Morris, Weah Morris, and Mary Morris to cancel a warranty deed which the appellee had issued in their favor for a parcel of land situated in Congotown, a suburb of Monrovia. The lower court decreed that the deed be cancelled, and the appellant Mary Morris, together with Guah and Weah Morris, excepted to the decree and appealed to this Court. When the case was called for hearing, the appellee moved for the dismissal of the appeal because only appellant Mary Morris had signed the appeal bond. The motion to dismiss the appeal was granted "without prejudice" to either side. *Morris* v. *Johnson,* 21 LLR 195 (1972).

The appellant filed a petition for reargument, but later withdrew the petition. In a judgment without opinion, the request to withdraw the petition was granted "with costs against the petitioner." *Morris* v. *Johnson* 21 LLR 526 (1972). A mandate was accordingly sent down to the lower court "to execute the foregoing judgment immediately."

The appellant, who was petitioner in the motion for reargument, paid the costs and filed a bill in equity to remove a cloud and quiet title. After pleadings had

rested, the appellee petitioned for a writ of prohibition to prevent the lower court from entertaining the action on the ground of res judicata. The writ of prohibition was denied by the full bench on the ground that the appellee's petition had not met the statutory requirement for issuance of the writ. *Johnson* v. *Morris,* 23 LLR 154 (1974). The lower court then resumed jurisdiction over the matter and dismissed it on the principle of res judicata. The appellant excepted and again appealed to this Court for a review. Hence this matter is now before this Court for the third time.

Before traversing the main issues on appeal, it is necessary to point out that the mandate emanating from this Court, after the withdrawal of the motion for reargument, did not order the cancellation of the deeds or affirm the decree of the trial court. In view of its decision, out of which grew the petition for reargument, the Court could not have ordered the cancellation. However, even though there were two deeds involved, one from Rebecca Johnson to Guah Morris, and the other from Guah Morris to appellant Mary Morris, it was alleged that the lower court cancelled only the first deed. Since the mandate from this Court did not order the cancellation of the instrument, it was error for the trial court to have done so.

It is regrettable that the appellant did not press on with her petition for reargument, because this would undoubtedly have settled some of the questions that have been raised in this appeal.

Two main issues have been raised: (1) What is the effect of this Court's decision of May 18, 1972, when it granted the motion to dismiss the appeal "without prejudice"? *Morris* v. *Johnson* 21 LLR 195. Or, in other words, did the trial court err in dismissing the case on the ground of res judicata? and (2) Did the lower court err in not passing on all of the law issues raised in the pleadings?

Taking the last issue first, we find that even though law issues were raised in the answer and the reply, the trial judge erred when he passed on the law issues raised only in the answer. In *Claratown Engineers, Inc.* v. *Tucker,* 23 LLR 211 (1974), it was held that in considering the issues of law, the trial judge must rule on all of them. See also *Gallina Blanca* v. *Nestle Products, Ltd.,* 25 LLR 116 (1976).

Now with respect to the issue of the effect of the Court's decision of May 18, 1972, recourse must be had to our opinion in order to determine what was intended when the appeal was dismissed without prejudice. Reference is made to the opinion because "the meaning and effect of the words 'without prejudice,' as used in the judgment, may be limited by additional language of the judgment itself or by the particular circumstances of the case. Its meaning and effect should be determined in accordance with the intention of the court rendering the judgment, to be gathered from the court's rulings and opinions as viewed in the light of the particular proceeding in which the judgment was rendered." 149 A.L.R. 553, 588 (1944).

Here was a situation in which there were three principles named in the general bond: Guah Morris, who died during the pendency of the appeal; Weah Morris, a minor at the institution of the case in the lower court; and Mary Morris. Only Mary Morris signed the appeal bond and completed the jurisdictional steps necessary for the court to hear the appeal. Because the other principles had not signed the bond, the appellee moved for the dismissal of the appeal. In reviewing the circumstances surrounding the case, this Court, speaking through our late distinguished colleague, Mr. Justice Wardsworth, said with regard to Guah Morris: "In view of the fact that deceased in his warranty deed guaranteed to hold Mary Morris harmless against claimants, the

failure to complete appellate proceedings stands out even more." 21 LLR 195, 197.

Further, in referring to Weah Morris, we said that Weah Morris should have been defended "through one of his parents, a representative, or by a next best friend or by a guardian *ad litem*. Hence, his failure to sign the appeal bond as the law directs, being a co-appellant, makes the bond defective." 21 LLR 195, 198.

In dealing with Mary Morris, we also said: "We are reluctant to have the rights of one of the appellants suffer because of the neglect of the other. It would be grossly unfair to penalize Mary Morris who has completed her appeal by filing a signed appeal bond, because of her co-appellant's failure to file one. In fact, this is a neglect of counsel, for which we do not think the parties should suffer." 21 LLR 195, 197.

It is clear that the whole tenor of the opinion, especially that portion which refers to Mary Morris, leads to the conclusion that the use of the words "without prejudice" was not intended as a final determination of the matter. Indeed, its sole effect was to cause judgment not to operate upon the theory of res judicata, as a bar to a subsequent suit. There is ample legal authority for this conclusion. The general meaning attributed to the words "without prejudice" when used in a judgment of a court of law is that such judgment does "not operate as res judicata on the merits . . . but reserved to the parties the privilege of adjudging the value of their dealings by subsequent action." *Edwards* v. *James Stewart & Co.*, 160 F.2d 935, 936 (1947). See also *Morse* v. *Bragg*, 107 F.2d 648 (1939). As a general rule, "the phrase 'without prejudice' ordinarily imports the contemplation of further proceedings, and when it appears in an order or decree it shows that the judicial act is not intended to be res judicata on the merits of the controversy." A dismissal of an action "without prejudice" "ordinarily indi-

cates that such judgment affects no right or remedy of the parties." 149 A.L.R. 553, 559 (1944). Thus it can be seen that by using the words "without prejudice" the Court was careful not to compromise its position into a final decision on the merits of the case. However, we would like to reiterate here that the meaning and effect of the words "without prejudice" as used in a judgment would depend upon the language of the judgment and the particular circumstances of the case.

As far as the issue of res judicata is concerned, in *Phelps* v. *Williams,* 3 LLR 54, 57 (1928), this Court held that a matter becomes res judicata "if there is a concurrence of the following conditions, viz: identity in the thing sued for; identity of the cause of action; and identity of persons and of parties to the action. Such judgments are conclusive upon the parties, and no party can recover in a subsequent suit."

In *Liberia Trading Corporation* v. *Abi-Jaoudi,* 14 LLR 43, 51 (1960), it was stated that a judgment on the pleadings which determines the merits of the controversy is bar to another action for the same cause. In such a case, res judicata will apply.

In *Wahab* v. *Sonni,* 16 LLR 73 (1964), this Court again stated that the principle of res judicata will apply in a case involving the same parties and the same subject matter where the case has once before been judicially determined; that is to say, where the merits of the issues involved have previously been tried and judgment rendered thereon.

Having stated the guidelines to be followed in invoking the principle of res judicata, we will now seek to discover whether the circumstances in the case conform to the guidelines. A review of the records certified to this Court shows that the decree cancelling the deeds was made before the appellant rested evidence on the ground that her counsel had abandoned the case. It was from this decree that an appeal was made to this Court, and

the appeal was dismissed without prejudice. A motion for rehearing was filed and withdrawn, and this Court granted the withdrawal and ordered the payment of costs by the appellant. While carrying out this mandate, the trial court cancelled the deed, even though this Court did not affirm the trial court's decree but dismissed the appeal without prejudice. Thus it is clear that even though the case involves the same parties and the subject matter, yet it was never adjudicated on the merits. Therefore the principle of res judicata is inapplicable in the case at bar. Moreover, where an action or proceeding is dismissed without prejudice, rulings preceding the final judgment or decree of dismissal are, as a general rule, not capable of becoming res judicata. See 149 A.L.R. 561.

In *Liberia Trading Corporation* v. *Abi-Jaoudi, supra,* it was held that a judgment dismissing a suit on account of a technical defect or irregularity is not on the merits and is therefore no bar to a subsequent action. "The rule that a judgment without prejudice does not operate as a bar has also been uniformly applied where a former action has been dismissed for a formal or technical defect, in this situation the clause 'without prejudice' being only declaratory of the true nature of the judgment as one rendered not upon the merits." 149 A.L.R., *supra,* 578. It was therefore error for the lower court to dismiss the case on the ground of res judicata.

In view of the foregoing, the decree of the lower court is reversed, and the case is remanded for a new trial. And the Clerk of this Court is ordered to send a mandate down to the court below directing it to resume jurisdiction over the case and proceed to determine same on its merits. Costs against the appellee. And it is hereby so ordered.

Reversed and remanded.