In the Honorable Supreme Court of the Republic of Liberia Sitting in its March Term, A.D. 2016.

Present: His Honor: Francis S. Korkpor, Sr. ....Chief Justice
Present: His Honor: Kabineh M. Ja'neh..................................Associate Justice
Present: Her Honor: Jamesetta H. Wolokolie..........................Associate Justice
Present: His Honor: Philip A. Z. Banks, III ....Associate Justice
Present: Her Honor: Sie-A-Nyene G. Yuoh..............................Associate Justice

The Management of National Port Authority by & thru its current and past Managing Directors, Comptrollers and the Chairman and Members of the Board of Directors of the City of Monrovia, Liberia....................APPELLANT	ACTION OF DAMAGES FOR WRONG
VERSUS	
Morris F. Dougbah, represented by & thru Reginald Sneh and Jacob Wahpoe of the City of Monrovia, Liberia.. APPELLEE	

APPEAL FROM THE SIXTH JUDICIAL CIRCUIT FOR MONTSERRADO COUNTY, REPUBLIC OF LIBERIA.

Judgment affirmed with modification.

Heard: May 26, A.D. 2015. *Decided: February 5, A.D. 2016.*

Counsellor Peter W. Howard of Legal Consultants, Inc., appeared for the appellee. Counsellors Idris S. Sheriff and Dexter Tiah, Sr. of Henries Law Firm, appeared for the appellant.

MR. JUSTICE JA'NEH delivered the opinion of the Court.

His Honour Yussif D. Kaba, Resident Judge, Sixth Judicial Circuit Court for Montserrado County, during the court's September 2012 Term, conducted a regular jury trial in an action of damages for wrong. Appellee, Morris F. Dougbah, through his attorneys-in-fact, Reginald Seh and Jacob Whapoe, instituted this action on February 8, A.D. 2010, against appellant, Management of the National Port

Authority. Said action was subsequently amended. At the conclusion of the trial on October 15, A.D. 2012, the empanelled jury reached a verdict which was confirmed by a judgment of the court awarding appellee the sum of USD$113,940.28 (One Hundred Thirteen Thousand Nine Hundred Forty United States Dollars and Twenty Eight Cents). The award represented both special and general damages. To this final judgment, appellant noted exceptions and announced an appeal to this Court for review.

To provide a full picture of this controversy, we herewith reproduce, for the benefit of this Opinion, the amended complaint, as follows:

*"**AND NOW COMES PLAINTIFF** in the above entitled cause of action praying court to award damages for the following legal and factual reasons to wit:*

1. *That the Plaintiff is residing in the United States of America and has designated and/or authorized Messrs. Reginald Seh and Jacob Wahpoe, thru a Power of Attorney, to handle his legal matters in Liberia. Hereto attached is a copy of said Power of Attorney marked exhibit P/1 in bulk.*

2. *That said Plaintiff shipped three cars with personal effects to Liberia which arrived at the Freeport of Monrovia on November 8, 2007 in a forty (40) foot container marked PONU 816892-7. Hereto attached is a copy of the customs entries of items on the container aforementioned, marked exhibit P/2.*

3. *That the custom duties for the item aforesaid were fully paid. Hereto attached is a copy of the Revenue flag receipt, marked exhibit P/3 in bulk.*

4. *That Plaintiff/Shipper had some financial difficulties in clearing the container which began incurring storage charges that led to one of the Attorneys-In-Fact of Plaintiff, along with two others, Mrs. Leticia Reeves and Sam Roberts, the Broker, arranging an appointment to meet the then Managing Director of NPA, Mr. George Tubman, in order to make an offer of USD3,500.00 (Three Thousand Five Hundred United States Dollars) against the storage and to surrender any one of the vehicles as collateral for the difference.*

5. *That a payment of USD500.00 (Five Hundred United States Dollars) was made against the aforementioned offer as to count four (4) above and the balance payment of USD3,000.00 (Three Thousand United States Dollars) was to be paid to the NPA. Upon payment of the USD500.00 (Five Hundred United States Dollars), the then claims manager, in person of Morris Wah, assured the broker, [that] the container with the cars and personal effects would be delivered to him from the Port the following Monday April 7, 2008. Hereto attached is copy of the USD500.00 payment receipt marked exhibit P/4.*

6. *That Plaintiff, being assured that he had reach a negotiated settlement and agreement with the NPA, was shocked to learn that on Saturday, April 5, 2008, plaintiff's container, along with its contents was being off loaded on Red Hill*

Field, in Virginia, without any notice to plaintiff or his agents, only to be subsequently told by NPA upon an inquiry that the items in the container were auctioned. This, plaintiff's agents refused to accept because up to date, there is no place, date and time that this container was moved for the said bogus auction. This plaintiff stands ready to prove during trial.

7. *That having established that plaintiff's container had been fraudulently removed from the port premises, the Broker aforementioned and one of the Attorneys-In-Fact, Reginald Seh, began a diligent search and was able to find one of the vehicles in possession of one of the NBI investigators who revealed that members of the NPA high echelon had forged documents, manipulated NPA procedures, and breached protocols deliberately for their own personal aggrandizement.*

8. *That interestingly, though NPA claimed to have auctioned plaintiff's entire container including the three (3) cars with all personal effects which were shipped form Philadelphia PA, USA, however NPA still went ahead and returned Dr. Raymond Kromah's Isuzu trooper which was returned by the National Bureau of Investigation (NBI) to the NPA, having been earlier retrieved from one Manyango. The NPA issued legitimate payment receipt of USD900.00 (Nine Hundred United States Dollars) in favor of Dr. Kromah before returning his car which clearly indicates that the container along with its contents were never auctioned as alleged by the NPA. Hereto attached is a copy of the official receipt of the NPA, along with its attachments marked Exhibit P/5 in bulk.*

9. *That on two occasions, the plaintiff thru his counsel wrote to the then Chairman of the Board, Dr. C. William Allen, making claims to the NPA for the stolen items from the container by some of its employees, but the NPA refused to honor said claim in the amount of USD113,940.28, thru a letter from the then Managing Director George Tubman; and that we are holding the NPA liable for the rest of the contents of the container, and just as they saw it fit and lawful to return the recovered vehicle to the rightful owner, NPA must be liable to pay damages for every item on the container. Hereto attached is a copy each of the letters marked exhibit P/6 in bulk.*

10. *That further to count nine (9) above, NPA must be held liable because all those who were linked to the bogus auction were dismissed and also because the then Managing Director of NPA, George Tubman, admits to NPA's liability in an interview with Front Page Africa, dated October 28, 2008, when he said: "However, something went amiss and I must honestly admit that there were people in our system who manipulated the process that caused the problem. I must admit [that] there were some irregularities committed. Usually, when these things happen, it is a matter of conniving and collusion with outsiders and those officers of ours that were involved, I dismissed. The announcement sent out to the media did not include all of the relevant information. The essential information that is required to make a public auction, [i. e.] the date,*

the time, and place, were not included in the announcement". Hereto attached is a copy of the Front Page Africa marked exhibit P/7.

11. *That because of the irregularities admitted by the then Managing Director of NPA, as mentioned in count ten (10) above, NPA has caused serious embarrassment and inconveniences to the plaintiff with his customers and has deprived plaintiff from furthering his business activity due to the huge loss; and that some of these customers have threatened to institute law suit against plaintiff for their goods in the United States of America.*

WHEREFORE AND IN VIEW OF THE FOREGOING, *plaintiff prays court to hold defendants liable to plaintiff for special damages in the amount of USD9482.14 (Nine Thousand Four Hundred Eight Two United States Dollars Fourteen Cents) for the items that were illegally disposed of in plaintiff's container, and general damages of USD104,458.18 (One HuGndred Four Thousand Four Hundred Fifty Eight United States Dollars and Eighteen Cents) for the inconveniences, losses and mental anguish plaintiff has suffered, at home and abroad, as a result of the items not being delivered to his customers thru the unwholesome act of the then NPA employees and their employer, and grant unto plaintiff all that may be deemed just and equitable in the premises.*

Respectfully submitted: Plaintiff by and thru his legal counsel:
LEGAL CONSULTANTS, INC. Carey Street, Monrovia, Liberia.
Peter W. Howard
Counselor-At-Law.
Dated this 23rd day of June A.D. 2010."

To this amended complaint, appellant/defendant filed an amended answer asking the trial court to dismiss the amended complaint in its entirety. It seems appropriate to also quote herewith the amended answer:

"1. *That as to count one (1), two (2) and three (3) of Plaintiff's amended complaint, Defendant says that it lacks sufficient information to form an opinion as to the truthfulness of the averment contained therein, and says further that the allegations made by plaintiff are false and misleading in that the alleged exhibits one (1), two (2) and three (3) pleaded in the amended complaint do not exist as evidenced by a copy of the clerk certificate attached hereto and marked as Defendant's Exhibit "D/1" to form a cogent part of this answer; hence, counts one (1), two (2) and three (3) of plaintiff's amended complaint should be overruled and dismissed.*

2. *That as to counts four (4) and five (5) of the Plaintiff's amended complaint, Defendant says that the financial difficulties allegedly faced by Plaintiff/Shipper that led to one of the Attorneys-in-fact of plaintiff along with two others through his broker to make an offer of US$3,500.00 (Three Thousand Five Hundred United States Dollars) to the then Managing Director, Mr. George Tubman, against the storage and to surrender any one of the vehicles as collateral is the personal prerogative of plaintiff and have no bearing in the*

operation of the Port Authority as the Port Authority is neither a credit union nor a pawn club. Defendant says further that the alleged exhibit "P/4" pleaded in the amended complaint, which was never annexed, is a fallacy in that all payments made to the National Port Authority by its customers are deposited to a local bank which deposit slip is presented to the cashier for the issuance of an official NPA cash receipt, because said receipt is a product of fraud plaintiff cleverly pleaded the receipt and refuse to annex it. Therefore counts four (4) and five (5) of Plaintiff's answer should be overruled and dismissed.

3. *That as to count six (6) of Plaintiff's amended complaint, Defendant says that said count is false and misleading in that there is no evidence showing that an agreement or negotiation between plaintiff and the Defendant Management was ever made and entered into for the payment of any amount representing port storage and handling charges, hence count six (6) of plaintiff's amended complaint should be overruled and dismissed.*

4. *That as to counts seven (7) and eight (8) of Plaintiff's amended complaint, Defendant says that under the policy of Defendant Management when goods or cargo are abandoned at the port and over stayed for the period of ninety (90) days, the original owner loses title, thereby transferring title to the National Port Authority who applies the machinery of disposing of said cargo as laid down [in the policy] of the National Port Authority.*

5. *That as to count nine (9) of the Plaintiff's amended complaint, Defendant says that said count contained no iota of truth as the plaintiff had never ever filed a claim with the National Port Authority for which plaintiff cannot show any evidence to substantiate said averments and it seems likely that plaintiff is trying to manufacture exhibits in support of his fraudulent claim which he intend to attach in his reply if not attacked in this answer. Hence, count nine (9) of plaintiff's amended complaint should be overruled and dismissed.*

6. *That as to counts ten (10) and eleven (11) of Plaintiff's amended complaint Defendant says it lacks sufficient information to form an opinion as to the truthfulness of the averments contained therein and says further that Plaintiff's own admission that he was faced with financial difficulties to enable him cleared his container, when he Plaintiff was given the opportunity to take advantage of the official time of ninety (90) days afforded him like any other consignee to clear his container, the said failure to have cleared the goods within the given period as prescribed by the Port Regulations is therefore tantamount to forfeiting title to the aforesaid consignment, and that as a result of Plaintiff's failure to have cleared the goods within the given time, Plaintiff suffers waiver and lashes and cannot and should not now come to claim title to the said container for which he has filed the herein action. Counts ten (10), eleven (11) and the entire action should be denied and dismissed.*

7. *Defendant denies all and singular the allegations of both law and facts as are contained in plaintiff's amended complaint that was not specifically traversed in this answer.*

WHEREFORE AND IN VIEW OF THE FOREGOING, Defendant prays Your Honor to deny and dismiss Plaintiff's amended complaint and action in its entirety and grant unto Defendant such other and further relief Your Honor may deem just, legal and equitable in the premises.

Respectfully submitted, DEFENDANT
BY AND THR ITS LEGAL COUNSEL, THE HENRIES LAW FIRM

DEXTER TIAH, SR
COUNSELLOR-AT-LAW

IDRIS S. SHERIFF
COUNSELLOR-AT-LAW

GEORGE E. HENRIES
COUNSELLOR-AT-LAW

COOPER W. KRUAH, SR.
COUNSELLOR-AT-LAW

Dated this 25th day of June A.D. 2010."

The reply thereafter filed by appellee, having basically reiterated the claims set out in the amended complaint, we have determined that it serves no useful purpose to reproduce same.

Appellant is now before this Court of final arbiter, a status conferred by Article 66 of the Liberian Constitution, with a nine-count bill of exceptions. The bill of exceptions encapsulates the various contentions upon which appellant's appeal is founded, seeking a review and adjudication of Judge Kaba's judgment it terms as "erroneous and illegal".

Notwithstanding the conclusion we have reached in this case, it is important to reiterate that "standing" is a settled question of law in this jurisdiction. This Court has consistently held that "standing" is that status in interest, both in fact and in law, which confers a legal right unto a party to institute a suit in assertion of a legally protectable right. In the case, ***Morgan v. Barclay***, this Court incorporated a common law definition as follows: *"The Standing to Sue Doctrine means that a party has sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy. Standing is a concept utilized to determine if a party is sufficiently affected so as to ensure that a justiciable controversy is presented to the court. The requirement of Standing is satisfied if it can be said that the plaintiff has a legally protectable and tangible interest at stake in the litigation." Id.* 42 LLR 259, 269-270 (2004).

At the same, it is the law in this jurisdiction, as construed by this Court, that a party seeking to challenge the standing of a party claiming a right to institute an action or to participate in a suit must do so in keeping with the statute controlling. Section 1.2(e)) of the Civil Procedure Law, Rev. Code, I LCLR, under motion to

dismiss, provides grounds and time for challenging a plaintiff on account of "right to sue" or standing. It says: "*Time & Grounds*: ***At the time of service of his responsive pleading,*** *a party may move for judgment dismissing one or more counter claims on any of the following grounds...that the party asserting the claim has not legal capacity to sue.*" It amounts to a fatal waiver of the right to pose a challenge to standing if same is not timely raised. [Citations].

In the current case, inspection of the records shows throughout the entire trial proceedings, no challenge was mounted to the standing of appellee, Morris F. Dougbah, represented by his agents, Messrs. Reginald She and Jacob Whapoe, to institute this action. Strangely, appellant has raised this important issue for the first time in its bill of exceptions, in clear and in utter violation of the law and procedure controlling. This belated challenge is accurately captured in count 5 of appellant's bill of exceptions, which we here quote in substance as follows:

> "5. *That, Your Honor erred and made a reversible error when Your Honor failed and neglected to take judicial notice on your own motion in charging the jury to the effect that* ***the name of the owner of the container subject of litigation is different from the name of the person who is claiming it and filed this action.....*** " [our emphasis]

This issue, for all intents and purposes, is not deemed to be before us, nor do we feel ourselves called upon to address it. If this Court were to address this question, not having been raised nor passed upon by the trial court, we will be violating established rules and procedure regulating appellate review in this jurisdiction. [Citations]. Be as it may, we shall say more about this later in this Opinion.

Suffice it to say that the records before us are replete with communications exchanged between the parties relating to the consignment brought into the Freeport of Monrovia by appellee. In one notable instance, Appellant's Managing Director, George E. Tubman, responded to a letter dated August 11, A.D. 2008, from Counsellor Peter E. Howard, appellee's retained counsel.

This is the relevant part of appellant's highest executive officer's communication, one of the series between the parties:

"Dear Counsellor Howard:

***The Management of NPA acknowledges receipt of your communication dated June 24, 2008, addressed to the NPA Board Chairman, Hon. C. William Allen, informing him that you had been retained by Mr. Morris Dougbah, consignor of the forty-foot (40) container labeled PONU816892-7 which arrived at the Port of Monrovia on September 9, 2007 and was allegedly auctioned by some NPA employees on April 5, 2008, after it had officially been declared abandoned by the NPA for which your client aforementioned is claiming the amount of US113,940.28 (One Hundred Thirteen Thousand Nine Hundred Forty United States Dollars Twenty-Eight Cents....*" [emphasis supplied].

After such express recognition, one must wonder at what stage it became necessary to question appellee's standing as the proper property owner or representative to assert claims for payment of the subject lost cargo.

Further hereto, we have found in the records a Power of Attorney executed by appellee, Morris F. Dougba, as the shipper of the subject container. We have found it appropriate to quote hereunder the full text of said Power of Attorney:

"POWER OF ATTORNEY

While I am away from Liberia, I have the honor to introduce Messrs. Reginald Seh and Jacob Wahpoe as been duly authorized to serve as my attorney-in-fact. Messrs. Seh and Wahpoe are herewith empowered, as per this document, to represent and act on my behalf in the ongoing case in which my forty-foot container disappeared from the premises of the National Port Authority under dubious circumstances.

Without any doubt, I am of the conviction that Messrs. Seh and Wahpoe will diligently discharge these responsibilities as dedicated to them, and every concern party's cooperation is highly solicited. This document supersedes all other powers of attorney that were issued by me and may seize to exist or nullify by me only.

Faithfully yours,
Morris F. Dougba
112 Lincoln Ave.
Darby, PA. 19023"

An examination of the power of attorney reveals that it was duly executed and notarized. In our opinion, the Power of Attorney, herein above, executed by appellee, Morris F. Dougba, appears to be sufficient both in law and in fact to vest

in Messrs. Reginald Seh and Jacob Wahpoe, the authority to represent appellee and to institute this action for and in his name of appellee. Under the circumstances, we cannot sustain the challenge on standing raised by appellant for the first time in the bill of exceptions, seemingly as an afterthought. We shall also return to this point later in this Opinion. We therefore hold, as we did in *Smart v. Proh,* 11 LLR 49, 51 (1951), that Messrs. Reginald Seh and Jacob Wahpoe were competent to institute these damages proceedings for and on behalf of appellee, Morris F. Dougba.

Counts 2, 3, 7 and 9 of the bill of exceptions, appellant has questioned the sufficiency of the evidence upon which the jury verdict was returned, the award therein made, as well as Judge Kaba's final judgment confirming same. The recital is as follows:

2. *That Your Honor erred and made a reversible error when Your Honor failed and neglected to grant the motion for new trial as the verdict of the empanelled jury handed down on the 15th day of October, A.D. 2012, runs contrary to the weight of the evidence adduced during the trial.*

3. *That Your Honor erred and made a reversible error when Your Honor failed to charge the jury on the variances between the oral testimony of the Appellee/Plaintiff witnesses and the documentary evidences adduced during trial to the effect that the name of the owner of the container subject of the action is different from the name of the person claiming it and instituted the action.*

7. *That Your Honor erred and made a reversible error when Your Honor failed and neglected to take judicial notice of one of the plaintiff's witness's testimony, in person of Dr. Kromah, who informed the court and jury that the container was auctioned and that The National Port Authority made him to pay one third of the auction price for his vehicle.*

9. *That Your Honor erred and made a reversible error when Your Honor failed and neglected to take judicial notice of the fundamental and vital principle of good pleading and practice that "allegata and probate" must correspond and that if they are not proven variance results as plaintiff in these proceedings did not produce any document of title for the items subject of litigation."*

Appellant's contentions, recounted herein above, can be reduced in one pivotal question: whether the jury verdict confirmed by Judge Kaba awarding appellee both special and general damages was unsupported by the quantum of the evidence adduced at trial. In addressing this main question, this Court must also consider the related question. That is, whether appellee's act of failure and neglect to clear its cargo thereby rendering said cargo abandoned and exposed to public auction by appellant management can form a legal basis to sustain an action of damages for wrong.

It is a settled law in this jurisdiction that a verdict holding a party liable in damages suit as well as the judgment thereon entered must be supported by preponderance of the evidence. At the same time, a verdict and the judgment confirming same where found to unsupported by the evidence before the court, same must be set aside as a matter of law. ***Firestone Liberia, Inc. v. G. Galimah Kollie,*** Supreme Court Opinion, March Term (2012); ***Liberia Logging and Wood Processing Corporation v. Allison,*** 40 LLR 199, 206 (2000); ***Monrovia Tobacco Corporation v. Flomo,*** 36 LLR 523, 527-8 (1989); ***Martin Dagoseh, et. al. v. The Management of the National Social Security and Welfare Corporation, and Monrovia Breweries, Inc.,*** Supreme Court Opinion, March Term, (2007).

This established legal principle typifies the point that mere allegation of injury without proof is simply insufficient to grant an award. The complainant is required by law to prove the affliction of the injury and to demonstrate also, in the words of Mr. Justice Russell that he has been damaged "to a sum commensurate with the amount claimed as damages."***Itoka v. Noelke,*** 6 LLR 329, 332 (1933).

In the face of appellant's challenge to the sufficiency of the evidence, we desire to examine the evidence introduced by appellee during trial. This exercise will enable the Supreme Court entertain the questions (1) whether appellant's conduct was wrongful and resulted to appellee's injury; and (2) whether infact appellee carried the burden of proof to demonstrate that the jury award is both warranted by the evidence and proportionate to the size of the injury said to have been inflicted.

The records reveal that the empanelled trial jury, after its consideration of the evidence presented during trial, awarded appellee the amount of Nine Thousand Four Hundred Eighty Two United States Dollars Fourteen Cents) (US$9,482.14) in special damages and One Hundred Four Thousand Four Hundred Fifty Eight United States Dollars and Eighteen Cents (US$104,458.18) in general damages. The said sum total of One Hundred Thirteen Thousand Nine Hundred Forty United States Dollars Thirty Two Cents (US$113,940.32) was confirmed by the trial judge.

We glean from the records certified to this Court that appellee, in an attempt to carry the *onus* of proof required by law in such suits of damages for wrong, deposed three (3) regular and one (1) rebuttal witnesses during the trial.

Attorney-in-fact, Reginald Seh, was appellee's first witness taking the stand. Witness Seh introduced himself as self-employed, operating a guard service and other businesses. In his testimony in chief, the witness told the court and jury that in the year, 2008, Messrs. Morris Dougbah and Hill sent a container from the United States to Liberia. He said that he received a Power of-Attorney from Mr. Dougbah requesting him to expedite the clearing of the container from the port. With the Power of Attorney in his hands, he and the other attorney-in-fact hired a broker to expedite the process. According to the witness, all of the customs duties assessed on the container and the items therein, including three cars, one Isuzu Trooper, an Isuzu Rodeo and a Nissan Altima, were paid. He conceded that the subject container *"stayed a while in the Freeport before we got to know that it infact was here."* He indicated that they realized after paying all the duties that the storage charges had gone high. The witness was quoted as saying:

> *"We had $3,000.00 but the duty was a little above that. We arranged with the Port to pay the $3,000.00 cash and to leave with the Port one of the cars as collateral until we can pay the storage. I remember it was on a Friday, 4th of April; we personally met the Managing Director, Honorable Tubman then, along with Leticia Reeves, the Broker and myself. After we discussed this proposal with the Managing Director, he sent us to the DMDA, then one Bruce. We had a lengthy discussion with Mr. Bruce who thereafter sent us to the account department, then headed by one Morris Wreh. In his office he accepted our proposal that Friday and asked us as to when we will make payments. He then asked for the entries. We informed him that we had paid all of our duties. He then asked for the entries, copies of which we presented to him.*

The witness, in his further narrative, informed the court and jury:

"Little did we know that these people asked for the entries with a different motive. Mr. Bruce told us to come Monday with the amount we have so we can take our container

out of the Port which should have been the 7th of April. At that point, his aid at the office requested that we give $500.00 there in his office and they gave us a temporary receipt in that office until we return on Monday. Unfortunately, Friday, at 11:12 somewhere in between there, I got a call from Yenkan from SSS. He also had goods in that container and had been boggling me about his goods. I was informed that the container was taken out of the Freeport on Saturday on a different entry quoting two, instead of three cars, by one Mayango, said to be operating an Eye Clinic. While they were discharging this container, somewhere around Red Hill Field, somebody called Yenkan and said "oh chief they are taking your things down". So Yenkan took his telephone and called me and said "but Reginald, you told me that you were going to the Port on Monday, but I hear that you are offloading the things; so why you didn't call me"? I said no; that can't be true. I can remember that the President visited the Lott Carey area on that Saturday. Mr. Yenkan was on the field trying to direct us but we couldn't find the direction. He went there and saw them offloading the things but he couldn't do anything about it, but only called our attention. "

The witness also recounted that the day being Saturday, they had no way to get to the Port as it was also after official work hour. They therefore went to the Freeport on Monday morning only to be told to wait as all of the documents will shortly be completed for them to take delivery of the container, whereas, they knew fully well ***"that the very container was taken out of the Port on Saturday."*** As the container was nowhere to be found in the Freeport, they rushed to the Managing Director. Witness Seh said that they proceeded also to the Deputy Managing Director/Administration. Astonished as to what had happened, the witness further testified that he went all out and found the Isuzu Rodeo with one Mr. Mayango, a fellow operating an eye clinic. The witness stated that he remained right there and called the office of the National Bureau of Investigation, NBI. The vehicle was taken to NBI Offices for investigation. According to the witness, ***"alarm blew"*** during the investigation at which time President Ellen Johnson-Sirleaf was out of the country. He said the President therefore directed Hon. Mary Broh, then Passport Director, to look into the matter. The witness further testified that during the investigation, "Mr. Mayango called names of some persons one of whom was a customs officer posted at the Free Port from Finance Ministry. The said Customs officer turned out to be a relation of Mr. Mayango. These are his exact words:

"The NBI turned the vehicle impounded over to the Port on ground that there was nothing like auction because there was no date and time for any auction; we as consignees were never written by the Port to be informed that the goods have overstayed, and because of that they were going to auction them. This should have been the case, but it was not done. It did not stop there. After the vehicle was turned over to the Port, Mary Broh was carried to the Port as acting DMDA. Based on the investigation, Mr. Morris, Claims Manager, was fired. Also fired were the Public

Affairs Officer of the Port, a fellow working with Morris Wreh's office who received the money and another port employee. Four employees were fired as a result of the container episode. The very car that was in the container the Port claimed to have been auctioned was turned over to our customer, Dr. Kromah, with the Freeport taking from him $900.00 under the guise that the said amount was two thirds of the auctioned money, which actually was $2,700.00. At this point, we had no other alternative but to contact the Howard Consultants to institute this action for damages for wrong. The Port has refused to pay damages justifying their position that the container was auctioned, which was not the case."

The witness further testifying indicated: *"The NPA Management has all along insisted that the Port indeed auctioned the container. Yet the Managing Director, Mr. Tubman, went to the Front Page Africa (Newspaper) and in answer to a question relating to this container, stated that the established procedure regulating auction by the Port was not followed as **"there were no time and date [stated] for the auction and [that] something went wrong."***

The witness also testified to the following instruments: Receipts of the Finance tending to show payment of duty, a power-of-attorney, a letter written by the witness to William Allen, Chairman, NPA Board of Directors, a letter from the Managing Director, George Tubman, to the witness, copy of Front Page Africa Magazine of October 28, 2008 where the Port Managing Director Tubman appeared to have admitted that something went wrong with the auction procedures, a receipt bearing the signature of a Bobby Thompson who worked in the Claims Department acknowledging receipt of US$500.00, a communication under the signature of C. William Allen, NPA Board Chairman, addressed to Peter W. Howard, a letter signed by Mary T. Broh, Acting DMD, returning Dr. Kromah's car after he (Dr. Kromah) had paid the Port the amount of US$900.00, as well as a copy of the Front Page Africa Newspaper story reporting on the container episode.

During cross examination, Witness Seh was asked whether he accepted that the container was deemed abandoned in line with the Port Regulation which states: **"a cargo is considered abandoned after ninety days after the departure of the vessels?"** And the witness answered in the affirmative. We shall return to this question of abandonment later in this Opinion.

We herewith refer to a few of the questions posed to the witness by the jury followed by his answers thereto:

Question: *"Mr. Witness, during your testimony, you mentioned that the amount of **US$500.00** was paid to one Bobby. What was Bobby's position then at the NPA when he received the money?*

Answer: *Bobby was working in the Claims Department.*

Ques. *Mr. Witness, in your testimony, you said that all duties were paid and negotiation was on the way to pay the storage fees and you wanted to use one of the cars as collateral. My question to you is whether this negotiation happened before they auctioned the container as you claimed?*

Answer: *Yes, this transaction went on before. We had the discussion on Friday the 4th of April, and it was concluded that we come back on Monday morning; and the container was taken out on the 5th on a Saturday.*

Mrs. Leticia A. Reeves, Acting City Mayor of the City of Paynesville, was appellee's second witness. She testified in chief as follows:

"When I was making transition from the United States to Liberia, I contacted my nephew Sam Hill, to do some shipment for me. I packaged the goods and delivered them for shipment. I came ahead and awaited the shipment. After few months, I did not get the items that I had shipped; so I contacted Sam in the United States to find out what the holdup was. There was a delay in the shipping papers; and as the result, it took some time before the papers arrived. And so the storage fees went up. After the papers arrived, the Broker, Reginald Seh, processed the documents, paid the taxes that the Government required, but at the time he did not have the $3000.00 needed to release the container. When he told me about it, I told him that maybe we could meet and go to the Port Authority and ask them if it will be possible to take one of the vehicles out of the container and hold it until we pay the $3,000.00 so that the other goods could be released. At that time the late George Tubman was the Managing Director; so he sent me to Mr. Bruce – I can't remember his first name but he was working at the port at the time. Mr. Bruce in time told us that we should come back on that Friday to see what could be done; so on Friday, we went to the office and it was decided that they would let us take one of the vehicles out and on Monday we should come to do the paper work. On Monday, I went to the Freeport of Monrovia, but the position where this container was placed, it was emptied. I was curious so I started asking around what happened to the container? Did they move it? And someone at the Port told me that the container had been auctioned. So I went back to Mr. Bruce to find out what had happened between Friday and Monday. I did not see him in his office. I called him on the telephone. He told me to go to another man who is responsible for auctioning containers when they stayed overtime. So I told him "but you told me to come on Monday with the Broker, and now you are telling them to go to the man who's responsible for auctioning container? So when we got that man's office, he told us that they had auctioned the container because the container had been in the Port too long and we had abandoned it. We said to him "but how can you abandoned something that you paid duty on, that you made arrangements for on Friday and this is Monday then you're telling me that the container has been abandoned? Some other sources at the Port informed me that the container was taken out illegally. So I tried to talk to them to find out who won the bid at the auction, how did it go about? Nobody could tell me anything. So since I couldn't get any head nor tail with anybody, I contacted someone to find out what was going on. I was sent to

the Finance Ministry, I think it is the CID, and they asked me questions about the container and I answered them and they said they were going to get back to me. But I never heard anything from them. I made another appointment with the Managing Director, George Tubman, and he said that he was going to investigate and let me know what happened. And we never got any headway from them. The only thing that I found out later on was that the Bruce and two other people who had done this illegal disposal of the container were dismissed; because later on, the Bruce man came and asked me if I could go and talk to the authority to let him get his job back. And I said, I can't do that because you are responsible for the container being missing from the Port; so how you expect me to go and ask for you to get your job back? And so we just decided that since we couldn't get any head nor tail from National Port Authority, that the best thing we do is to take them to court; and that's what we did; because I had things in that container that are irreplaceable. I had pictures of my children when they were small, family pictures, and I even asked them if they could tell me who bought the container, so I would go to them and ask them if they will be willing to give me these personal effects back. But they never told me who bought the container. I learned later on through the great vines that it was Brewerville at somebody's house. One of the employees at the Port promised to carry me to the place, but then later on, I guess he was afraid of [losing] his job. He called me and told me that he was sorry he couldn't help me because he would lose his job. And so that's how it ended."

The trial jury posed the following question to Witness Reeves:

"Mme. Witness, during your testimony in this Honorable Court, you made mention of a negotiation with the administration of the NPA. Did they tell you that said container had overstayed and was going to be auctioned before Monday by the Administration of NPA?

To this question the witness responded in the manner following:

"They never told us that; they never said anything about the container being auctioned; all we knew was that we were going to get the container out on Monday. [But] *when we got there, the container was nowhere around."*

Raymond Foley Kromah, appellee/plaintiff's third witness, testified introducing himself as coordinator of the Africa Humanitarian Action, a health Non-Governmental Organization. In his testimony in chief, Witness Kromah narrated thus:

"I remember sometime in May, 2008, I purchased a car in the United States which arrived in Liberia in a container transported by Mr. Morris Dougbah. I was informed later that the container was taken out of the Port and that my vehicle which was in the container was found in the hands of one Mary Youngar and that the NBI had taken possession of my vehicle. So I was called to confirm whether that vehicle was the one I purchased in the States. And then I visited the head office of the NBI at the time on

*Gurley Street, and I saw that the vehicle was indeed my Isuzu Trooper that I purchased in the States. I then wrote a letter to NBI claiming ownership of the vehicle and asking them to return my vehicle to me. The NBI informed me at the time that the vehicle was the subject of investigation and that they were conducting investigation as to how the vehicle left the Port and that at the end of the investigation they were going to inform me as to the next step. Few weeks later, I went back to the NBI, and they informed me that they have completed their investigation and have returned the vehicle to the National Port Authority. And that I was to make a follow-up at the National Port Authority because they also sent along my letter I wrote to them. So I made a follow-up at the National Port Authority and met the head of the management team. At the time, the head of the management was Ms. Mary Broh. I presented my case explaining that my vehicle was in the container which was allegedly taken out of the Port and that I wanted my vehicle. The management team went into consultation and decided that the vehicle was auctioned; that if I wanted my vehicle, I should present all documents to show ownership and pay the amount of **$900.00** and some cents payment of one third of the cost at which it was auctioned. At first, I had serious problem with that arrangement, because I felt that I had already paid enough money to buy the vehicle and to transport it into Liberia; so I didn't see the need or the reason to pay another **$900.00**. However, upon consultation with my family, it was reached that **$900.00** should not stand in the way of possession of the vehicle which we have nearly made up to **$4000.00** expenses on. So I went back to the Port and told them that I was prepared to make the payment. Ms. Broh at the time wrote a letter to the Comptroller asking him to give me the vehicle upon payment of the amount; and I demanded and did obtain a receipt from them to that effect."*

Before resting, Witness Kromah also testified to a number of instruments, including a communication from appellant's DMD/A to the Comptroller authorizing the release of his vehicle, an invoice as well as a receipt issued by the National Port Authority evidencing payment to facilitate the release of Witness Kromah's vehicle.

As it rested in toto with the production of evidence with the usual reservation, the trial court granted appellee's application thereby admitting into evidence evidentiary instruments which were identified by its witnesses, testified to, confirmed and reconfirmed during trial. These included customs payment receipts, power-of-attorney, a communication from George Tubman, Managing Director of the National Port Authority, a copy of Front Page Africa Magazine of October 28, 2008 Edition in which Appellant's Managing Director Tubman admitted in an interview that established procedures by the National Port Authority regulating the conduct of auction of abandoned cargos were not followed, a receipt of US$500.00

bearing the signature of one Bobby Thompson, an employee of the Claims Department, in support of appellee's claim that settlement arrangement were ongoing between the parties for the release of the container to appellee, the shipper. Thereafter, counsel for appellant filed a motion for judgment during trial. The motion was resisted, argued and denied and the trial ordered proceeded with by the trial judge.

Mr. V. Massacre Jafeiva, appellant's subpoenaed witness, took the stand. He introduced himself to be an employee of the National Legislature. Witness Jafeiva was asked to shed light on the law passed by the Legislature creating the National Port Authority. The witness informed the court and jury that the Act which created the National Port Authority, amongst others, grants the entity the sole authority to manage all seaports in the length and breadth of Liberia. He also said that said Act vests in the NPA Management the power to levy all charges for services rendered at the seaports. He sought to shed light on the procedures regulating cargo handling at the National Port Authority, testifying substantially as follows:

> *"When the cargo comes to the Port, the Cargo has 15 days free storage. After the 15-days, the consignee of that Cargo will then have to start paying storage fee up to 90 days. If the consignee fails to clear said cargo after the 90-day time period, the cargo is declared abandoned and then it becomes sole property of the National Port Authority. However, the Management will put out a public service announcement in the Newspaper for the period of one (1) week grace period. This serves as a reminder to the consignee that there is a cargo for him/her (the consignee) in the custody of the Port. Thereafter, failure by the consignee to come to the Port and to collect the cargo leave the NPA Management with no alternative but to go ahead to execute an auction sale of the cargo."*

As it can be seen, these core claims were accentuated by the witnesses during his sworn testimony and further highlighted in the bill of exceptions quoted below:

> ***"That in response to Appellee/Plaintiff's counsel, the NPA Management did inform him that the aforementioned container was declared abandoned after it had over stayed in the port's premises for more than ninety (90) days following its arrival on September 9, 2007, subsequent to which storage charges were applied for which the consignor cannot pay damages, for the Appellee had lost title to the said container at the time it was declared abandoned by the NPA Management and subsequently placed for public auction."***

The witness further testified to an Auction Procedure Manual on abandoned cargos, to copy of a publication of the Public Service Announcement on the auction sale of the abandoned cargos appellant claimed to have carried out.

The witness at the time of the auction served as appellant's Director of Public Affairs. Objection made by appellee's counsel to appellant's application to the trial court for placement of mark of identification on the instruments testified to by the witness, for reason that they were not pleaded by appellant, was overruled by the trial court. In overruling appellee's objection, this is what the trial court said:

> *"The Court says that the objection is belated in that the witness has been permitted to testify and has testified to the instruments in the absence of an objection. The Supreme Court has held that instruments once testified to must be admitted to form a part of the body of evidence to be considered by the triers of facts. The objection is therefore overruled and the instruments ordered marked D/1 in bulk, copy of newspaper publication is ordered D/2 and the instrument, being the auction procedure, is ordered D/3.* ***AND IT IS SO ORDERED."***

Appellee excepted to this ruling. This Court agrees with the ruling entered by the trial judge overruling appellee's objection in this regard. It is settled in this jurisdiction that in the course of a trial, instruments identified and testified to should be marked and placed before the trial court, and the trial jury, if one has been empanelled, for their consideration. In the case, African Mercantile Agencies v. Bonnah, 26 LLR (1977), where a similar circumstance obtained, the Supreme Court held that ***"all documentary evidence which is material to issues of fact raised in the pleadings, and which is received and marked by the court, should be presented to the jury."***

During cross examination, Witness Jafeiva was quizzed as follows:

Ques. *Mr. Witness, in your testimony in chief, you said that the Port is the custodian of all cargo and/or containers that entered the premises of the Port. As the port is the care-taker of containers left within its premises, to whom does a cargo owner go to answer, as a duty, in the instance where a container is removed from said Port?*

After overruling appellant's objection, the witness answered:

Ans. *I said in my earlier testimony that the Act creating the National Port Authority is to manage all seaports in the length and breadth of Liberia, and to levy charges for services rendered by it. I did not say Port is the custodian of the containers because even if we have not all documents and all fees being paid at the time of the arrival of that cargo, you clear it immediately.*

Ques. Mr. Witness, by permission of Court, I have to read one (1) sentence which alluded to the facts that you said the N.P.A. is the custodian and/or keeper of Cargo that enters the premises of the Port.

Here is the sentence found on sheet six, October 12, 2012, of this hearing: *"However, the Management will put a public service [announcement] in the newspaper for the period of one (1) week grace period reminding the consignee that there is a cargo that is in the custody of the Port". Now, Mr. Witness, from this reading, let me reframe my question to you in a very simple way. Mr. witness, when cargo enters the custody of the Port and the container is removed from the Port without the knowledge of the consignee, is there any other person and/or entity the consignee should go to asking for his or her container?*

Ans. *As the Management of the National Port Authority, the gateway of our economy does not have pleasure in keeping people's cargo in the Port. As I said, if a consignee has paid all relevant fees to the relevant Agencies of Government at the Port, that consignee has the right to clear his container the very same day. But when the consignee refuses to clear his and/or her cargo and said cargo remains in the Port, that cargo becomes abandoned cargo after 90-day. Then Management takes over the cargo. The Consignee very well knows that his cargo is in the Port hence, he and/or she will go nowhere to ask for his or her cargo but to the Port Management.*

Ques. *Mr. Witness, please say as a public relation man at the Port during those days, whether or not the Plaintiff made some payment against the alleged overstayed container?*

Regrettably, the court sustained appellant's objection to this very critically important question. We disagree with the trial court in sustaining appellant's objection to this question. As shown in the records, the parties do not disagree that the container in question remained on appellant's premises for a period far in excess of the time permitted under appellant's Regulation and Procedure Manual. But it is appellee's contention that it had reached an advanced state in negotiation with appellant to settle storage levies and had made good on the arrangement to settle all port charges by paying to appellant's Claims Department and receiving a temporary receipt therefor. By sustaining appellant's objection to appellee's critical attempt to elicit the witness' answer to this question, the trial court deprived us of the opportunity to explore the answer and be more adequately informed. Nevertheless, this Court takes due cognizance of the fact that our review of the records reveals that the damning allegation made by appellee that it paid the amount of USD500.00 (Five Hundred United States Dollars) in partial redemption of the settlement arrangement, was never refuted. Under the law, this Court must

therefore take it as admitted. In *Smith et al v. Barbou,* reported in 8 LLR 229 (1944), this Court held that *"an admission, whether of law or fact which has been acted upon by another is conclusive against the party making it in all cases between him and the person whose conduct was influenced. It is immaterial whether the thing admitted was true or false."* Id. 237.

When appellant rested, appellee subpoenaed Attorney-At-Law, Swahilo Sesay to testify for appellee as a rebuttal witness. The witness informed the court and jury that he is a former Public Defender for Montserrado County, Republic of Liberia, and worked from January, 2004 to September, 2009, as Budget Director of the National Port Authority. The following question was posed to the witness:

> *"Mr. Witness, you have been called upon by this Honourable Court to serve as a rebuttal Witness on the last sitting of this Honourable Court on this matter, defendant's witness, whilst on the stand and being examined, he was asked this question, "are you convinced and to the best of your knowledge that plaintiff's container was auctioned within the premises of the Freeport of Monrovia? The said Witness answered:* ***To the best of my knowledge Plaintiff's container was auctioned in the Freeport of Monrovia...... You may now proceed, Mr. witness, and rebut that answer."***

The witness provided the following answer:

> *"This is false because the container in question was not auctioned. The said container was smuggled out of the Port and the content sold to private individual leading to an investigation requested by the then DMD to NBI on the container. Through investigation, the NBI retrieved one of the vehicles stuffed in that very container owned by Mr. Kromah and it was turned over to the National Port Authority and the office of DMD turned the vehicle in question to Mr. Kromah who had the necessary documents to prove the same."*

The evidence produced during trial may be summarized as follows:

a. The evidence demonstrated that appellee, Morris F. Dougbah, shipped on board the vessel TROENSE MAERSK a forty footer container, labeled PONU 816 892-7. There is no dispute that M/V Troense OENSE Maersk arrived on September 4, A.D. 2007, at the Freeport of Monrovia, with said forty footer container and that same contained and was stuffed with three (3) vehicles: 1. 1993 Used ISUZU TROOPER; 2. 1994 Used ISUZU SW; 2000 Used NISSAN ALT, along with Personal Effects.

b. The commercial invoice of the vehicles, presented and admitted into evidence, set the CIF (cost, insurance and freight) at USD6,018.00 (Six Thousand Eighteen United Stated Dollars), excluding the value, for Customs Purpose, of the Personal Effects set at USD700.00 (Seven Hundred United States Dollars). Also admitted into evidence were copies of Customs Entries and Revenue Flag receipts. These instruments showed appellee's payment of assessed duties on the imported items.

c. The facts indicated that the container in controversy, on April 5, A.D. 2008, was removed from, and taken out of the Freeport of Monrovia, appellant's facility of exclusive control and custody. However, Appellant Management claimed that the container in question was auctioned on the same date, April 5, A.D. 2008, in compliance with appellant's auction policy and procedure on account of abandonment by appellee and its failure to pay storage fees and redeem the cargos contained in the container.

d. Also established was that appellee's cargo remained in the Freeport of Monrovia from September 4, A.D. 2007, the date the container arrived, up to April 5, A.D. 2008, the date it was removed from the Freeport of Monrovia. The evidence was therefore abundantly clear that appellee's cargo remained at the port for over nine (9) months, or almost two hundred ninety (290) days. Accordingly, appellee's cargo stuffed in the container, not having been cleared on account of appellee's act of neglect and failure up to April 5, A.D. 2008, was deemed abandoned and therefore subject to public auction. Appellee's cargos clearly became a proper subject for public auction in line with both Article 4.9 of the NPA Regulations and chapter five, section 5.1.2, of the NPA Tariffs. Article 4.9 of the Regulations, under reference, amongst others, state that cargos not cleared from the port's premises up to ninety (90) days *are "declared abandoned goods and* **[shall be deemed]** ***no longer the property of the consignee, but becomes the property of the National Port Authority which will be a subject of auction sale".***

e. The evidence further illustrated that though appellee's cargos stayed on appellant's premises for over nine (9) months, or for roughly two hundred ninety (290) days, unarguably in excess of ninety (90) days, thereby

qualifying appellee's cargos as abandoned and as goods subject to public auction, two intervening circumstances would seem to have properly removed appellee's cargos from the category of abandoned cargos to a normal status thereby qualifying appellee to undertake regular clearance of its cargos, subject to payment of all levies and charges thereto appertaining.

f. The two intervening circumstances were (a) recognizing its inability to settle accumulated storage fees, and with the right under the auction policy to redeem its cargos even under the state of abandonment and subsequent exposure to public auction, appellee exercising said right, sought and was granted appointment to meet with appellant's Managing Director. According to the witnesses' testimonies, which stood unrefuted, the parties resolved that appellee would pay USD3,500.00 (Three Thousand Five Hundred United States Dollars) and in addition surrender to appellant, one of its three containerized vehicles which would be kept by appellant as collateral pending payment of the balance storage fees to appellant. It is of critical importance to note that testimonies offered in evidence of appellee making a partial payment of USD500.00 (Five Hundred United States Dollars) to appellant's Claims Department and the issuance therefor of a temporary receipt acknowledging same, which payment was clearly pursuant to the concluded settlement arrangement, unfavorable as these testimonies were, were never refuted. Appellee having made this partial payment, and said payment received by appellant, coupled with the assurances given by appellant's Claims Manager, that appellee's container would be delivered to him on April 7, 2008, same being the Monday immediately following, would seem wrongful on the part of appellant to thereafter designate the same subject container as "abandoned cargo" and its contents to any justifiable form of public auction.

g. (b) Even assuming that no such settlement arrangement had been concluded between the parties, Public Auction conducted by appellant requires scrupulous compliance with published Regulations and Procedures set by appellant. The evidence in this case established that appellant was in material breach of these procedures. A Front Page Magazine/Newspaper, October 28, A.D. 2008 edition was admitted into evidence.

It published an interview with Mr. George Tubman, appellant's Managing Director. In the referenced interview, Mr. Tubman spoke on a number of issues faced by the National Port Authority and threw light on matters invariably relating to appellee's container. Mr. Tubman was asked whether the NPA will "ever be corruption free, a place where Liberians and others can take goods in and out without feeling nervous about getting the worst end of the stick." This was Mr. Tubman's response:

"Speaking philosophically, I would say yes. But speaking practically, it is a goal that we want to achieve. It will not come over night. It will not be the NPA alone, it will require the concerted effort on the part and everyone who has some interest, connection or dealing with the Port in whatever manner. Let me explain this further. Sometime ago, there was a scandal about an auction in the port which you already know somebody here in the United States. I had two internal investigations on the ticket. I wanted to get to the bottom because people in America and other parts of the world rely upon the services, the integrity of the institution that is what happened. I commissioned an investigation, and one broader investigation, and with the benefit of those things that happened, we took the appropriate action."

Further quizzed as to what specifically happened, Mr. Tubman said:

"This will interest you to know that those who ship with shippers must be very interested in trustworthiness and the integrity of people that they entrust their goods with, to ship to Liberia for them. The problem is [not] Monrovia. Many of the problems start from oversea. Let me give you an example. You and five other persons gather your goods and personal effects and I am a shipper and you entrust to me your stuff and custom duty to clear the goods at the Port. You surrender your things to me, and you pay for everything. I take the money and invest in something else or use it with the expectation that I will get it back. That does not happen and the container arrives. I don't have the money to finish paying the shipping line that total lines, when you pay 50% or 40% of the shipping cost, the process starts and of course they will not release. In most cases, that does not happen, but we must ask ourselves why would a container be in the Port for six months to clear it?"

It is noteworthy that appellant's boss, addressing the Morris Dugbah's [herein appellee's] complaint that his container was "sold" by the Port Management, or auctioned after the container spent more than 90 days in the Port, Mr. Tubman said:

"A public service announcement was issued [but] Morris did not come forward to claim his container. At that point, the container is auctioned. It must have been in the Port for more than 90 days, and in keeping with his ownership to the container. Even before we auction, we take publications in the newspapers to inform the clients that the container has stayed in the Port for more than 90 days. We give a grace period to allow the person to come and claim. We have a procedure. We try to be a responsible

institution.......However, something went amiss and I must honestly admit that there were people in our system who manipulated [the system]. It is not true that the container was smuggled out of the Port. Three persons bided on that container and one of them paid duty and was given the gate pass, and the container was taken out of the Port. ***I must admit that there were some irregularities committed. Usually when these things happen, it is a matter of those officers that were involved, I dismissed them....***

The announcement sent out to the media did not include all of the relevant information. The essence of a public auction, including the date, the time and place was not included in the announcement."

Doesn't this utterance made by appellant's Managing Director amount to an admission that appellant indeed breached basic guidelines and procedures regulating auction undertaken by appellant? Has this breach on appellant's account not resulted to loss and injury to appellee? Section 25.8 (1) of our Civil Procedure Law provides that "all admissions made by a party himself or by his agent acting within the scope of his authority are admissible". This legal principle is further accentuated in *Knowlden v. Johnson et al,* 39 LLR 345, 358 (1999).

Given the quantum of the evidence presented, and considering the special circumstances of this case, we cannot accept that the container and its contents were properly designated as abandoned and on this account exposed to public auction, as appellant would want us to believe. Appellee having made substantial strives to claim its overstayed cargos, a gesture both acknowledged and accepted by appellant, it was wrongful thereafter to expose appellee's cargos to public auction, especially under admitted questionable circumstances not in conformity with appellant's laid down policies and procedures. Further, by this action appellant indeed deprives appellee of a fair chance to participate in a constituted public auction in which appellee could as well retrieve its cargos. Not having done so, resulting in injuries to appellee, damages will lie as a matter of law. That is to say, the removal of appellee's container from the Freeport of Monrovia under clearly questionable circumstances, leading to substantial loss of the contents of said container, was a wrongful conduct injurious to appellee. Additionally, the purpose of newspaper public service announcement, as witnesses testified, was to inform the consignee that its container has over-stayed in the port and that it must be cleared from the Port within a few days.

This policy allows the consignee a period of one week after the announcement to claim and clear its cargos. This standing procedure was also breached by appellant as admitted by appellant's Managing Director, George Tubman. Didn't such breach result to affliction of injury on appellee? We hold it did.

We also desire to make one key observation which appears to accentuate appellant's despicable wrongful conduct. Throughout the trial, Appellant National Port Authority provided no reasonable explanation on the public auction it insisted was conducted. During the trial, for instance, a vital question was posed to one of appellant's witnesses as to when the contents of container in question were exposed to public auction, when and where said auction was held, who were the persons or institutions bidding, and who won and paid for the cargos. Appellant kept a stone silence to these important queries which conduct tended to give the impression, unintended as it were, that the Port Authority carried no duty of accountability to thousands of its customers and the general public. This sort of attitude seems to further fuel public suspicion that no public auction was infact conducted by appellant.

This Court held in *Mim Timber Corporation v. Johnson* as quoted: ***"A person whose property is taken, damaged or destroyed through the negligence or wrongful act or omission of another is entitled to compensation from such other person for the damages sustained. He is also generally entitled to recover compensation for discomfort, annoyance, and personal inconvenience and for any other consequential damages which may be the result of such wrongful act."*** This principle of law is also articulated in *Firestone Plantations Company v. Greaves,* 9 LLR 250, 266 (1947); *Nouredine and Intrusco Corporation v. Johnson,* 30 LLR 575 (1982).

Wherefore, it is our opinion that appellant's conduct in removing the subject container from the premises resulting to loss of its contents was wrongful; that said wrongful conduct injured the shippers of the container as they were dispossessed of their belongings; and for such wrong damages would lie as a matter of law. Appellant's unlawful behavior, as demonstrated by the evidence, caused the shippers to be deprived forever of personal effects of priceless memorability much to the shippers' inconveniences and discomfort, both materially and emotionally. The empanelled jury as triers of facts was within the law when it recognized the wrong committed and awarded general damages.

This having been said, it must be noted that the law in this jurisdiction imposes a duty on a party demanding special damages to demonstrate and prove the loss with particularity and specificity. *Karout v. Peal,* 28 LLR 254, 260 (1979); *Inter-Con Security System, Inc. v. Bartuah,* 40 LLR 361, 377 (2001). No such legal rigidity or stiff standard of proof is required of a party seeking award for general damages. Yet the law insists that the party asking for general damages introduces such evidence as tending to prove a rational relation between the depth of the injury inflicted by the wrongful conduct and the size or amount of the award for general damages. *The International Trust Company of Liberia (ITC) v. Cooper-Hayes,* 41 LLR 48, 61 (2002); *Firestone v. Galima,* Supreme Court Opinion, March Term, 2013. In other words, the amount of awards for general damages should be rationally derived and concluded.

In the instant case, appellee, in the amended complaint, entreated the trial court to award it the amount of USD9,482.14 (Nine Thousand Four Hundred Eight Two United States Dollars Fourteen Cents) for special damages. This amount for special damages, according to appellee, represents actual monetary loss for ***"items appellee was illegally disposed of from the container."***

The certified records before us support the conclusion that the subject container of these proceedings was a groupage one; that is to say that its contents belong to more than one person. The contents of the subject container included the following three vehicles: 1. 1993 Used ISUZU TROOPER; 2. 1994 Used ISUZU SW; and, 3. 2000 Used NISSAN ALTIMA. Also in the container were personal effects. The official commercial invoice of the three (3) vehicles declared ***"[f]or Customs Purposes only"*** and admitted into evidence, set the CIF (cost, insurance and freight) for the three vehicles at USD6,018.00 (Six Thousand Eighteen United States Dollars). At the same time, the value of the personal effects as declared "[f]or Customs Purposes only" was placed at USD700.00 (Seven Hundred United States Dollars). This brings us to a sum total of USD6,718.00 (Six Thousand Seven Hundred Eighteen United States Dollars) both for the three vehicles and the personal effects. Additionally, duty paid on the items, as evidenced in the records, stood at USD2,675.13 (Two Thousand Six Hundred Seventy Five United States Dollars Thirteen Cents).

These figures combine to the total amount of USD9,393.13 (Nine Thousand Three Hundred Ninety Three United States Dollars Thirteen Cents) for special damages illustrated by the evidence. It should be noted, however, that the vehicle belonging to Dr. F. Kromah, one of the shippers, was retrieved and returned to its owner. Therefore, the amount of USD822.14 (Eight Hundred Twenty Two United States Dollars Fourteen Cents) paid as duty on the said vehicle is properly deductible from the special damages figure as said amount constitutes legitimate duty payable to the Liberian Government. The amount would have been chargeable as special damages if the shipper had lost the vehicle. With this deduction, we are left with the amount of USD8,570.99 (Eight Thousand Five Hundred Seventy United States Dollars Ninety Nine Cents) as proven special damages, and not USD9,482.14 (Nine Thousand Four Hundred Eight Two United States Dollars Fourteen Cents), as demanded in the amended complaint. Our reduction of the award for special damages is in exercise of the powers of the Supreme Court. This is a settled issue in this jurisdiction as articulated in numerous Opinions of the Supreme Court of Liberia.

In *Joseph Hanson & Soehne (Liberia) Ltd. v. Tuning,* 17 LLR, 617, 619 (1966); *Liberia Mining Co. V. Zwannah,* 19 LLR, 73 (1968); *Kassabli v. Cole,* 19 LLR, 294, 297 (1969), the Supreme Court sustained awards for special damages only to the extent supported by the evidence. We re-affirm this principle. Accordingly, the award of special damages in the case at bar is hereby ordered reduced to USD8,570.99 (Eight Thousand Five Hundred Seventy Dollars Ninety Nine Cents), same being the amount supported by the evidence.

Also in the amended complaint, appellee also demanded in stated figure of USD104,450.18 (One Hundred Four Thousand Four Hundred Fifty United States Dollars Eighteen Cents), as award for general damages, for ***"inconveniences, losses and mental anguish plaintiff has suffered at home and abroad as a result of the items not being delivered to his customers thru the unwholesome act of the then NPA employees and their employer...***"[Emphasis Supplied].

It might be of interest if this Court makes a two point observation here. Firstly, where a party demands a sum certain for general damages, as done by appellee in the instant case, he thereby imposes on himself a greater burden of proof

to warrant an award of the amount stated. Secondly, as much as the legal requirement of a party to introduce evidence with particularity and specificity in poof of special damages does not apply to warrant awards for general damages, we reiterate here that the assumption that a party praying court for general damages award is basically exempt from the burden of proof, also has no support in law. Time and again this Court has articulated this principle of law in a litany of Opinions, "***Firestone v. Galima***" (Supreme Court Opinion, March Term, 2013), as a case in point. In that case, the Supreme held as follows:

> *"Ordinarily, general damages need not be particularly proven as the law requires in the instance of special damages. However, a party seeking award of general damages on account of being subjected to suffering, humiliation, embarrassment, stress and mental anguish, as the Appellee claimed, ought to show a connection between what is being prayed for and the anguish and humiliation purportedly suffered. In the case at bar, Appellee attempted to draw that relationship rather fleetingly and as such, the half million United States dollars general damages award has to be significantly modified under the facts and circumstances of this case."* [Emphasis Ours].

While keeping this principle of law in mind, let's examine the evidence appellee presented at trial. This would aid the Supreme Court determine whether the award for general damages in the amount of USD104,450.18 (One Hundred Four Thousand Four Hundred Fifty United States Dollars Eighteen Cents), which figure was stated and demanded by appellee, was justified.

At the trial, Witness Reeves gave the following testimony in evidence:

> *"...I had things in that container that are irreplaceable. I had pictures of my children when they were small, family pictures, and I even asked them if they could tell me who bought the container so I would go to them and ask if they will be willing to give me back these personal effects. But they never told me who bought the container. I learned later on through the great vines that the container was in Brewerville at somebody's house. One of the employees at the [Free] Port promised to carry me to the place, but then later on, I guess he was afraid of losing his job. He called and told me that he was sorry he couldn't help me because he would lose his job. And so that's how it ended."*

We are tempted to ask, for instance, as to what amount of money could be justifiably warded to compensate a party, as Witness Reeves, for the loss forever of family photos including those of her children taken decades ago.

Also, Witness Reginald Seh testified to the suffering and agonies the shippers underwent as well as the many travels they were compelled to make to appellee's premises in an attempt to retrieve their belongings. He said that this led them to holding a number of meetings with senior management personnel of the National

Port Authority, including the Managing Director regarding clearing the subject container. Despite all these efforts and the many days they spent running after their cargos, they came out empty handed. This segment of the witness' testimony seems to epitomize the shippers' frustration, anguish and inconveniences at the instance of Appellant National Port Authority.

> *"Little did we know that these people asked for the entries with a different motive. Mr. Bruce told us to come Monday with the amount we have so we can take our container off the Port which should have been the 7th of April. .....Unfortunately Friday, at 11:12 somewhere in between there, I got a call from Yenkan from SSS. He also had goods in that container and had been boggling me about his goods. I was informed that the container was taken out of the Freeport on Saturday on a different entry quoting two, instead of three cars, by one Mayango, said to operating an Eye Clinic."*

It must also be remembered that the other items lost and with no evidence of retrieval were two vehicles, one Izuzu Rodeo and an Izuzu Trooper. These losses subjected the shippers, appellee's clients, to immeasurable stress, discomfort and inconveniences which could hardly be compensated in monetary terms.

Clearly, the loss sustained by, as well as the injuries inflicted on the shippers on account of appellant's wrong would seem priceless. There being no universally accepted judicial yardstick to measure the depth of such injury, the determination of the award for such general damages therefore rests with the jury. Said differently, the jurors constitute that body authorized under the law to locate themselves in the physical and mental state of the injured party, so as to award such monetary compensation the jurors believe to be adequate in restoring the injured person to a position nearest to his/her previous state.

This being said, and as we indicated earlier in this Opinion, this Court must emphasize that the loss sustained and the injury inflicted on the shippers were also an act of woeful neglect and grave failure by appellee, Morris F. Dougba, to timely clear the subject container from the Freeport of Monrovia for almost nine (9) months. In apparent justification as to why appellee did not clear the container from the Freeport in 90 (ninety) days, as in keeping with the Port's regulation, appellee has claimed that the container arrived and stayed at the Freeport for a long time without appellee's knowledge. This claim not only is a flimsy one but also a difficult theory to fathom. As we have come to understand this mode of trade and commerce, no diligent shipper in the ordinary course of events is likely to import a

container and for months will have not receive or seek information about the arrival of his/her cargo arrival at the Free Port. This is most unlikely. At the minimum, appellee breached its duty to the many shippers by its gross neglect and callous failure to pay duties and clear the container within the time as regulated by the Freeport. By all accounts, the failure by appellee to remove the container from appellant's premises within the time allowed by appellant's policy seemed to have also subjected appellee's clients to immeasurable stress, mental anguish and humiliating experiences. Under the equity principle that no person should be allowed to reap benefits from his own act of wrong, this Court is justified not only to reduce the award for general damages to be in harmony with the evidence presented, but also to order that both awards for the special and general damages are the entitlement of the shippers. These are the persons actually affected and injured by the wrongful conduct of both the National Port Authority and Mr. Morris F. Dougbah. To the mind of this Court, it is these shippers who have been dispossessed of, and have suffered actual injuries, material, mentally and psychologically, and not appellee, Morris F. Dougbah.

Wherefore, after due consideration of the pleadings submitted, revision of the trial proceedings, dissection of the volume of evidence introduced by the parties, we hereby modify the judgment entered by the trial court, confirming the jury verdict and the awards therein made. Accordingly, the jury award for special damages in the amount of USD9,482.14 (Nine Thousand Four Hundred Eight Two United States Dollars Fourteen Cents) is hereby ordered reduced to USD8,570.99 (Eight Thousand Five Hundred Seventy Dollars Ninety Nine Cents). Further also, the general damages award has been ordered reduced from USD104,458.18 (One Hundred Four Thousand Four Hundred Fifty Eight United States Dollars and Eighteen Cents), to the amount of USD75,000.00 (Seventy Five Thousand United States Dollars). The awards for both special and general damages will now amount to USD83,570.99 (Eighty Three Thousand Five Hundred Seventy United States Dollars Ninety Nine Cents). Appellant National Port Authority shall herewith pay this final total, (USD83,570.99 (Eighty Three Thousand Five Hundred Seventy United States Dollars Ninety Nine Cents)), to the benefit of, and to compensate for the losses and injuries endured by the shippers. AND IT IS **SO ORDERED.**