

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2026

BEFORE HIS HONOR : YAMIE QUIQUI GBEISAY, SR CHIEF JUSTICE
BEFORE HER HONOR : JAMESETTA H. WOLOKOLIE ASSOCIATE JUSTICE
BEFORE HIS HONOR : YUSSIF D. KABA ASSOCIATE JUSTICE
BEFORE HER HONOR : CEANEH D. CLINTON-JOHNSON ASSOCIATE JUSTICE
BEFORE HIS HONOR : BOAKAI N. KANNEH ASSOCIATE JUSTICE

National Contracting Company, Ltd (NCC) by and thru)
its CEO, President, Managing Director, Director Deputies)
& authorized persons of the City of Monrovia, Liberia)
.....Appellant)

Versus

) APPEAL
)

Global Group of Enterprises, Ltd., represented by its)
Chief Executive Officer, Augustine Quoiquoi, Sr. of the)
City of Monrovia, Liberia.....Appellee)

GROWING OUT OF THE CASE:

Global Group of Enterprises, Ltd., represented by its)
Chief Executive Officer, Augustine Quoiquoi, Sr. of the)
City of Monrovia, Liberia.....Plaintiff)

Versus

) ACTION OF DAMAGES FOR
) BREACH OF CONTRACT

National Contracting Company, Ltd (NCC) by and thru)
its CEO, President, Managing Director, Director Deputies)
& authorized persons of the City of Monrovia, Liberia)
.....Defendant)

Heard: January 7, 2026

Decided: May 21, 2026

MADAM JUSTICE CLINTON-JOHNSON DELIVERED THE OPINION OF THE COURT

This case grows out of an appeal announced from a ruling of the trial judge of the Sixth Judicial Circuit, Civil Law Court for Montserrado County which held the appellant, the National Contracting Company Ltd (NCC) liable in an action of damages for breach of contract filed by the appellee, the Global Group of Enterprises, Ltd. (Global) on August 31, 2020.

The certified records of this case show that the appellee filed an action of damages for breach of contract under a sub-contract agreement along with a motion for preliminary injunction on August 31, 2020, against the appellant, stating that it suffered injury due to the termination of its contract on June 23, 2020, following the arrest and incarceration of its CEO; that its duty under the scope of the subcontract agreement was to execute

transmission lines construction works from Buchanan to Monrovia to Mano which project was intended to construct ten (10) tower foundations in Suehn Mecca, Bomi County, Liberia: that the initial work under the sub-contract agreement was to construct binding/PCC, clear access road, clean in and around four (4) of the ten (10) towers foundation and mobilize the entire project for the total cost of Two Hundred Nine Thousand Seven Hundred Sixty Two United States Dollars (US\$209,762.00); that two of the ten towers were successfully constructed, access road cleared, cleaned and mobilized as well as the cleaning of four towers to include, numbers 38, 39 40 and 41 and mobilized several equipment and construction materials on site and began performance of the work under the contract on February 3, 2020; that the appellant agreed to guarantee loan amounting to US\$209,762.00 from Guaranty Trust Bank (GT Bank) but failed to perform this obligation until March 23, 2020 when it submitted the commitment letter for all payments and financial transactions intended for the appellee to be transacted into the appellee's account at GT Bank; that coupled with the COVID-19 Pandemic following the delay in submitting the commitment letter, the loan transaction was impossible; that it requested the appellant to get from the Management of Cemenco and Sethi Brothers, construction materials to complete the project, and also requested 10% advance payment of project fund to facilitate project works all of which was rejected by the appellant; that the appellant, on May 8, 2020, mailed to the appellee a notice that it will terminate the appellee's contract due to its failure to complete two of its ten towers foundation numbers 39 and 40 or risk outsourcing to another company; and further, that following the notice of termination of the appellee's contract within fourteen days period, the appellee contract was terminated on June 23, 2020 due to the appellee's failure to adhere to the appellant's termination notice; and that it is this termination that necessitated the filing of this suit that is now on appeal before us. The appellee prayed the trial court for damages for breached of contract valued Two Hundred Nine Thousand Seven Hundred Sixty-Two (US\$209,762.00) as special damages constituting the total contract prize under the subcontract agreement; Five Hundred Thousand United States Dollars (US\$500,000.00) as general damages for the mental anguish, psychological injuries, inconvenience and embarrassment suffered; and Sixty Thousand United States Dollars (US\$60,000.00) as special damages for payment of equipment rental, rental vehicles, sand, crush rocks, cement as well as construction materials and warehouse.

Following the service of the precepts on the appellant, National Contracting Company Ltd. (NCC), the appellant, filed its answer on September 11, 2022 along with a resistance to the appellee's motion for preliminary injunction in which it stated that a contract was signed

between the TRANSCO CLSG a corporation incorporated under the laws of Cote d'Ivoire and NCC, a corporation incorporated under the laws of the Kingdom of Saudi Arabia on one hand and Global Group of Enterprise Ltd (Global) on the other hand which TRANSCO CLSG engaged NCC to sub-contract the appellee on February 3, 2020 with a scope of work to be done under the contract. The appellant denied ever guaranteeing for the appellee to obtain a loan from GT Bank, instead, it was the appellee who on March 24, 2020, requested the appellant to add GT Bank as its bank, which the appellant consented to, so that every invoice payment would be issued by means of cheque in favor of the appellee for its work which the appellee will have absolute control; that the appellant denied failing to execute its side under the sub-contract agreement in its email dated May 8, 2020 about completing towers 39 and 40 rather, the appellant gave notice due to the delay, in completing the work, that if the April 30, 2020 completion-schedule is not met, the two towers will be allocated to another team and there would be no discussion of additional towers since the project was running out of time; and that the appellant was under no obligation to honor the appellee's request to advance its 10% of project fund to facilitate project works and establish credit facility with Cemenco and Sethi Brothers to provide construction materials; and that the termination was as a consequence of the appellee's failure to perform its obligation under the contract.

Thereafter, the appellee filed a one count reply on September 18, 2020, denying the averments as contained in the appellant's answer and amended its reply on September 28, 2020, stating that its sub-contract was summarily terminated by the appellant after it had completed two tower foundations blinding/PCC completed, access road clear, clean and mobilize as well as to clean four (4) towers to include numbers 38, 39 40 and 41 and maintained its averments as contained in its complaint.

In consonance with the appellee's motion for preliminary injunction filed along with its complaint on August 31, 2020 restraining the appellant and all persons under its control, and the resistance thereto, and coupled with the appellant's motion to vacate the appellee's injunction filed on September 23, 2020, and also with respect to the resistance thereto, filed on September 25, 2020, and the motion to justified and its resistance therefrom, the trial judge ruled granting the appellant's bond that it met the minimum legal requirements of law. Thereafter, the appellee, on October 6, 2020, filed its bill of information that the injunction placed by the court was not respected because the appellant had proceeded to resume construction work, which assertion the appellant denied in its resistance to the bill of information. The trial Judge heard the bill of information and ruled denying same on ground

that the temporary restraining order issued on August 31, 2020 which halted further construction work of the project had elapsed after ten days of its issuance and service. As a consequence thereof, the trial court on September 25, 2021, granted the appellant's motion to vacate the preliminary injunction because the court perceived no legal reason or basis granting the motion for injunction to restrain, enjoin and prohibit the appellant from further construction of the project since the appellee has another adequate remedy at law for alleged injury sustained as the result of an alleged breach of contract.

The trial court, following the filing, hearing and determination of pre-trial motions between the parties, and upon applications from the parties, ruled the case to trial on the merit because there existed both issues of law and facts; and trial commenced on October 14, 2022, with the empanelling of a nine (9) man jury to determine the factual issues in this case.

During trial, the appellee produced four (4) witnesses, whose testimonies indicate that the work given the appellee under the contract could not be completed due to the difficulty in acquiring loan from GT Bank which was largely due to the intentional delay on the part of the appellant in guaranteeing loan for the appellee that also coincided with the COVID-19 Pandemic that affected the globe. Another contention raised by the appellee's witnesses in their testimonies was that it purchased materials for the project valued Seventy Five United States Dollars (US\$75,000.00); that Sixty Thousand United States Dollars (US\$60,000.00) worth of materials were used on the project and Fifteen Thousand United States Dollars (US\$15,000.00) worth of materials was left on the project site. Further, the witnesses narrated that the appellant failed and refused to grant unto the appellee 10% of its 25% work completed on the project for possible completion; and indicated that the appellant's refusal to guarantee for the appellee construction materials from Cemenco and Sethi Brothers also constrained the appellee in completing the two tower foundations and rested.

The appellant in support of its side of the case produced three material witnesses whose testimonies basically confirmed and admitted subcontracting to the appellee, given notice to the appellee due to the delay in the work schedule, and further stated that the appellant had four load of crush rocks and two load of sand but could not meet up with the work schedule, the condition which led the appellant to terminate the appellee's contract. The appellant's witness further denied that the appellee completed two tower foundations; instead, it testified that the appellee partially completed the work by 5% of the total work required to be completed, this constrained the appellant to outsource the contract to another contractor.

At the close of trial, the trial jury held a unanimous liable verdict against the appellant and awarded to the appellee general damages of Five Hundred Thousand (US\$500,000.00) and special damages of Two Hundred Nine Thousand Seven Hundred Sixty-Two United States Dollars (US\$209,762.00). The appellant noted exception to the jury's verdict and on April 11, 2023, filed a motion for new trial on grounds that the verdict did not support the weight of the evidence; this motion was resisted, heard and denied, and a final ruling was entered by the trial court on April 24, 2023, confirming and affirming the trial jury's verdict; and that the said verdict is supported by the weight of the evidence adduced during trial.

Following the announcement of the appeal, on May 4, 2023 the appellant filed its bill of exceptions in statutory time and ten days after, filed its appeal bond on June 14, 2023, and filed its notice of completion of appeal on June 21, 2023.

The certified records before us show that the appellant main contentions in its bill of exceptions are that, the trial judge made a reversible error, when in his final judgment he adjudged the appellant liable to the appellee for damages for wrong which is not the action that was filed and tried before the court; that the trial judge erred when he adjudged the appellant liable to the appellee, even though the verdict of the trial jury was contrary to the weight of the evidence adduced at trial; that the trial judge made a reversible error when he confirm and affirm the trial Jury's liable verdict, specifically the jury's award of Two Hundred Nine Thousand United States Dollars (US\$209,000.00) plus special damages when the evidence the appellee struggled to adduced at trial was Sixty Thousand United States Dollars (US\$60,000.00); that the trial judge also committed a reversible error when he denied the appellant's motion for new trial; and that the trial judge also committed a reversible error when he awarded the unsubstantiated, unproven and excessive amount of Five Hundred Thousand United States Dollars (\$US500,000.00) as general damages which the appellee did not prove.

It is the law extant in this jurisdiction that this Court need not pass upon all the issues before it. The Supreme Court in the case, *Scanship (Lib) Inc. v Flomo* [2002] LRSC 21; 41 LLR 181 (2002), had opined that it need not pass on every issue raised by the parties but only those which are germane to the resolution and determination of the case. *Mathies and Fima Capital Corporation Ltd. v. Alpha International Investment, Ltd.*, 40 LLR 565 (2001); *Knuckles v. The Liberian Trading and Development Bank (TRADEVCO)*, [2000] LRSC 6; 40 LLR 49, 515 (2001); *Jawhary v. Hassoun*, 40 LLR 420 (2001).

This Court says that the issue which settles the controversy is whether or not the appellee proved its case by the preponderance of the evidence to warrant confirming the jury's award of general and special damages. This Court answers in the affirmative.

The Constitution of the Republic of Liberia gives immense significance to the obligation of contract to parties desirous of entering into it which has a binding effect thereof. *Article 25 of the 1986 Constitution of the Republic of Liberia* guarantees that contractual obligation which states that:

"Obligation of contract shall be guaranteed by the Republic and no laws shall be passed which might impair this right."

This Constitutional provision stated above protects parties to a contract to live by the expressed terms and conditions as enshrined in a binding contract agreement.

This case at bar is a classic example of a valid contract binding on the parties based on the expressed agreement where the Global Group of Enterprises, (Global) Ltd., appellee and the National Contracting Company (NCC) Ltd., appellant entered into a sub-contract agreement with reference #: SCA94035019 with TRANSCO CLSG being the initiator of said contract in Liberia on January 16, 2017, wherein the appellee contended that it was breached.

The Supreme Court in the case *City Builders v. Purported City Builders*, Supreme Court Opinion, March Term, A.D. 2013, defined damages as the sum of money which a person wronged is entitled to receive from wrongdoer as compensation for the wrong.

Further, the Supreme Court in the case *Lonestar Cell Corp. v Wright* [2014] LRSC 26 (13 August 2014) stated that "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."

Also, in the *Lonestar Cell Corporation* case, opined that where the party seeking the award of general damages fails to illustrate the consequential relationship as a reasonable basis to infer the quantum of the award, the Supreme Court will decline to affirm the judgment awarded; that though the insufficiency of the evidence cannot be a sufficient basis to quash an award made in favor of an injured party, this Court will however affirm the award in a manner commensurate and warranted by a preponderance of the evidence; and *that a complainant is mandatorily required to prove the injury he complains of and also*

demonstrate that he has been damaged to a sum commensurate with the amount claimed as damages. *Itoka v Noelke* 6 LLR 329, 332 (1933); *Firestone v Kollie* Supreme Court Opinion March Term 2012; *Harris v. Cavalla Rubber Corp.* Supreme Court Opinion October Term A.D 2012; *City Builders v City Builders* Supreme Court Opinion March Term 2013.

The interpretation of the law *supra* allows a party who suffers wrong/injury from the hand of a wrongdoer to recover a sum of money as compensation for the wrong suffered at the hand of the said doer. Also, a party who suffers the wrong/injury can recover in general damages provided that the party who suffers the alleged injury prove the injury i.e pains, suffering, humiliation, embarrassment, etc., failure on the part of the party praying for general damages to show a reasonable basis to infer the quantum of the award, the Court will decline affirming the award not on the basis of the insufficiency of the evidence while a party seeking special damages must particularly prove by the preponderance of the evidence by law.

From the facts culled, there is no dispute as to whether or not the sub-contract agreement was entered into. Further, under the said sub-contract agreement, the scope of work is outlined as follows:

Provision of Manpower, Supervision, tools, plants & Complete civil works for the allotted portion i.e. temporary Access Road. Excavation for all types for soils, pilling, stub setting assembly, Reinforcement Street (supply and fabrication). Concreting (RCC & PCC). Earthling of tower, apply bituminous paint for the complete concrete before backfilling, back filling laying by layer (Excavated Soil & Borrowed Soil) etc. towards construction of 225KV Overhead Transmission line lot2: Buchanan-Monrovia- Mano in Liberia, including but not limited:

4.1 The complete civil work will be on back to back basis in terms of contract specification for the work listed out in Annexure-II (Division of Scope) for 225KV transmission line lot2: Buchanan-Monrovia-Mano in Liberia and as per Global Group Final revised quotation.

4.2 The Scope of Work & all technical conditions/requirements to be on back to back Vis-à-vis NCC's main contract with Transco CLSG.

4.3 the subcontractor shall construct fenced site stores for their Material, Equipment storage with 24 hours watch & ward, electricity, water site security during the entire project execution period up to the reconciliation of civil materials.

4.4 NCC will transport the materials from Monrovia Port to NCC site stores. The subcontractor shall transport the above materials from NCC site stores to respective site locations in the line.

4.5 Supply of Construction materials such as Cement, Sand, Stones/gravel, steel (Rebar) water, form boxes including stub setting template jacks required for work completion etc.

4.6 The Subcontractor shall arrange skilled engineers, man powers, technicians, etc. to complete the project scope of work in agreed time schedule time to time.

4.7 Site miscellaneous works such as cutting, welding, grinding, patch-up works etc. to be carried out as per the project requirement/Transco CLSG requirements without any additional cost to fulfil contractual obligations.

4.8 All required machinery, tools and tackles required for project civil foundation/pre-commissioning works to be arranged by the subcontractor including template jack, street form box. Tools and plants well in time.

4.9 Prior to starting of any civil foundation works required approval format to be filed by GLOBAS GROUP in co-ordinate with NCC to get the approval from TRANSCO CLSG/TRACTEBEL.

4.10 As built arrangement to be marked on the drawings with changes made if any during construction and shall be handed over to contractor upon completion of the works.

4.11 As the project completion is to be expedited GLOBAL GROUP has to plan its manpower including late workings with proper lighting facilities, when necessary, on its own arrangements.

4.12 GLOBAL GROUP shall arrange alternative power supply for illuminative the site camp.

4.13 Sub-contractor is responsible for material re-conciliation and shall be submitted the reconciliation statement to NCC upon completion of the project for the materials supplied by NCC: the balance materials shall be returned to NCC site store in case of any free issue materials.

4.14 The subcontractor shall depute skilled technician/Engineers during the entire commissioning period for assisting the project final commissioning works to be carried out by other agencies.

4.15 Project sign board has to be provided by GLOBAL GROUP after taking clearance from TRANSCO CLSG on behalf of NCC.

4.16 Subsequently punch list work to be attended and shall be completed by the subcontractor and then assistance shall be provided up to successful commissioning and handing over of the project to satisfaction of TRANSCO CLSG/TRACTEBEL

4.17 Subcontractor should be responsible for redo works contingent on poor quality works without any additional cost. Failing which, the same will be completed by NCC at the cost & risk of GLOBAL GROUP.

4.18 NCC scope is limited to supply of all stub setting templates, stubs & fasteners required for execution. The necessary tools & plants including hand tools for installation will be in the scope of GLOBAL GROUP.

The certified records before us do not obligated the appellant as per the terms and conditions of the contract to guarantee for the appellee in obtaining loan from GT Bank on the appellee's behalf. We observes from the records a guarantee letter on behalf of the appellee to GT Bank for the purpose of obtaining loan for the completion of the two tower foundations which the appellee reiterated that it did not materialize as a consequence of the appellant's delay in timely submitting it to the bank and also coupled with COVID-19 Pandemic. However, the appellant denied the appellee's assertions that it was obligated under the contract to guarantee for the appellee loan from GT Bank to complete the work,

instead it was the making of the appellee to appear that it guarantees on the appellee's behalf to get for them loan. This Court observes that from a careful perusal of exchanges in communication between the parties reflect a uniform signature believed to be for the appellants which was never disputed according to the records. This Court says, that the appellant who was not obligated under the contract to guarantee for the appellee to obtain loan from the GT Bank, took upon himself to write on behalf of the appellee for the purpose of obtaining loan for the completion of the two tower foundations, upon its failure to timely perform such obligation or a delay therefrom, cannot be a fault of the appellee.

We will now delve into the appellee's request for the 10% advance payment to procure materials for the completion of work, the 25% of the alleged work done by the appellee and the request to take materials from Cemenco and Sethi Brothers. The records show that the appellant admitted a partial performance by the appellee on the two tower foundations and the usage of some materials belonging to the appellee on its project site allegedly two load of sand and four load of crush rocks which the appellee refuted that the materials purchased for the project is valued at Seventy Five Thousand United States Dollars (US\$75,000) as mentioned in the appellee's testimony in chief and Sixty Thousand United States Dollars (US\$60,000.00) as indicated in the appellee's complaint for materials used on the project and Fifteen Thousand (US\$15,000.00) is the value of materials left on the project site according to the appellee's legal brief. This Court says that it was legally important to have assessed the level of work done by the appellee jointly before its termination. In the absence of this, we do not legally see how the appellant's admission that the work done by the appellee constituted 5% and how the appellee's claim of 25% work done was also computed. This Court says, assuming *arguendo* that the appellee completed 5% of the two tower foundations, it finds it difficult to comprehend how it was computed and why the appellant could not remit to the appellee some money based on the amount of work proven to be done for the purpose of completing the remaining work in good faith which this Court says, that it was expedient in the interest of justice and fair dealings, having noticed that the appellee partially perform its obligation of the subcontract agreement in the construction of the two tower foundations would have evaluated the level of work done in making an advance payment to aid in the completion of the remaining work and would have also given attention to its 10% notice for the sole purpose of advancing the completion of the work since it was the desire of the appellant to see the work completed as scheduled.

The records before us show that the appellee brought this action of damages for breached of contract due to the injuries suffered as the consequence of the said termination of contract and pleaded for compensations for both general and special damages. Further, the

appellee alleged that the injury suffered was due to the termination of the contract which resulted to its CEO, Mr. Augustine Quoiquoi arrest and imprisonment for few hours due to complaint from Samuel Debkpah who guaranteed him to borrow Eight Thousand Five Hundred United States Dollars (US\$8,500.00). The CEO of the appellee also alleged that he was arrested due to the creditor's pressure posed on Mr. Samuel Debkpah. According to the Police Subpoena witness, Paul P. Kerkpeh, the CEO of the appellee was arrested and jailed for receiving Eight Thousand Five Hundred (US\$8,500.00) under false pretense and for money the appellee borrowed for the construction of two tower foundations which testimony of the Police corroborated with the CEO. Considering the facts and circumstances of this case, this Court sees from the records that the appellee suffered injury due to the breach of contract following the termination which led to the embarrassment faced by the appellee's CEO at the hand of its guarantor.

The Supreme Court held in the case, *the Management of the John F. Kennedy Medical Center v. Karen Gaydou Sehkehporh*, that it is not sufficient merely to allege an injury and claim damages therefor, but that the plaintiff seeking an award of damages must prove the injury complained of by the preponderance of the evidence, and that he/she has been damaged to a sum commensurate with the amount claimed as damages; that absent the best evidence being produced, even the best laid down action will be defeated. *Lone Star Cell Corporation v. Jimmy Wright*, Supreme Court of Liberia, March Term, 2014; *the Management of Commium/Nofavone v. Sumo Flomo*, Supreme Court Opinion, October Term, 2014; *Kwaplah International (Liberia) v. The Management of Ecobank (Liberia)*, Supreme Court Opinion, October Term, 2022.

This Court taking recourse to the interactions and exchanges between the parties leading to the termination of the sub-contract agreement says that the code nature for the agreement was the completion of the contract in which efforts applied by the appellee in the exchanges with the appellant was not address in good faith by the appellant for which this Court says it is essential in the spirit of completing the said contract, the appellant would have given due consideration to the appellee's request for 10% advance payment by assessing the level of work already complete that the appellant in its admission consented thereto. We are of the opinion, that the appellee suffered injury due to the failure of the appellant to take necessary steps, such as the 10% advance payment and helping the appellee acquired loan it has written to that effect to GT Bank on behalf of the appellee in good faith. This Court says, had the appellant acted in good faith the appellee would not have suffered embarrassment, trauma, and incarceration, etc. at the hand of the Police.

The Supreme Court has held in the case, *Firestone Liberia v. Kollie et. al.*, that it is not sufficient merely to allege an injury and claim damages therefor, but the plaintiff must prove the injury complained of, and that he/she must have been damaged to a sum commensurate with the amount claimed as damages, and that in proving general damages there should be a reasonable connection between general damages awarded and the injury sustained." *Itoka v Noelke*, [1939], 6 LLR 329, 332 (1933); *Harris v. Cavalla Rubber Corp.*, Supreme Court Opinion, October Term, 2012.

Further, the Supreme Court has emphasized in the case *Samukai Konneh v. The Intestate Estate of Morris Massaquoi*, that in special damages, *the specific monetary losses that the plaintiff claims to have incurred due to the defendant's actions, must be explicitly stated in the pleadings and substantiated with concrete evidence during the trial. Mere allegations without supporting evidence are insufficient because the verdict of the trial jury must be based thereon.* *Access Bank (Liberia) Ltd. v. Wael Gharzeddine*, Supreme Court Opinion, March Term, 2004; *Intrusco Corporation v. Mohamoud Osseily*, 32 LLR 558, 568 (1985); *Robertson and Reeves v. The Quiah Brothers*, 49 LLR 412, 431 (2012); *Freeman et al. v. Eid*, 49 LLR 19, 31 (2011).

According to the certified records before us, the appellee strongly claimed both general and special damages. The appellee specifically pleaded that it suffers general damages for mental anguish, inconveniences, trauma, embarrassment, and psychological injuries in an amount not less than Five Hundred Thousand United States Dollars (US\$500,000.00) which this Court will later make determination by weighing the injuries suffered to justify the appropriate award. Also, the appellee further pleaded that it suffers special damages in the amount of Sixty Thousand United States Dollars (US\$60,000.00) for payment of equipment rental, rental vehicles, sand, crush rocks, cement and other construction materials and warehouse, and Two Hundred Nine Thousand Seven Hundred Sixty Two United States Dollars (US\$209,762.00) of the total contract amount, which according to the appellant in count four of its bill of exceptions strongly assigned it as a reversible error that it is contrary to the weight of the evidence adduced at trial by when the trial jury awarded to the appellee the full contract amount of Two Hundred Nine Thousand Seven Hundred Sixty-Two United States Dollars (US\$209,762.00) as the records show that the appellee partially proved Sixty Thousand United States Dollars (US\$60,000.00) as special damages.

The Supreme Court has opined in the case *Mamawa & Sons Inc. vs. The United Bank of Africa (UBA)*, the Court in its opinions recorded in *Intrusco Corp v. Osseily*, 32 LLR 5, (1985); *Dopoe v. City Supermarket*, 34 LLR 343-353; *Townsend v. C.V. Dyer Memorial Hospital*,

LLR 288, (1952) "that special damages must be specially pleaded and specifically proved at the trial by a preponderance of the evidence upon which the trial jury must base its verdict."

Also, in the case, *Liberia Agricultural Co. v Mingle* [1989] LRSC 29; 36 LLR 413 (1989), held in the case *Wright v. Tay*, [1955] LRSC 6; 12 LLR 223 (1955) that: "A verdict awarding damages in an action for breach of contract will be held excessive where the damages awarded exceed the sums alleged in the complaint."

We will now delve to first determine the appellee's payment receipts/invoices as special damages pleaded and prayed for before making determination into the appellee's general damages also pleaded and prayed for.

The information culled from the records before us, receipts/invoices/expenditures which show that this Court now calculate the mathematical evidentiary monetary value certified by the records. The evidence shows the appellee's payment receipts/invoices/expenditures to the following:

- (1) Mita International Company Inc., the amount of Twelve Thousand Three Hundred Sixty-five United States Dollars (US\$12,365.00) renting of 320 excavator machine, renting of load bed truck to and fro, purchased 45 gallons of diesel/fuel for excavator and load bed;
- (2) James Perry Association Two Thousand Five Hundred Eighty United States Dollars (US\$2,580.00) for renting of concrete mixer including fuel supply for the period of twelve days in Wennie Town, Swean Mecca District, Bomi County;
- (3) Ma Bendu Cement Deport One Thousand Four Hundred Sixty-two United States Dollars (US\$1,462.00) for 172 bags of 42.5 cement at Eight Dollars Fifty Cent (US\$8.50) per bag;
- (4) KTCH Quality Block Factory Inc. Four Hundred Seventy United States Dollars (US\$470) for the purchase of 10 cubic of sand to include transportation;
- (5) Rock Crusher Association Six Thousand Nine Hundred Thirty United States Dollars (US\$6,930.00) for beach sand inclusive of transportation at Three Hundred Eight Five United States Dollars (US\$385.00) per eighteen (18) truckloads of ten tires truck;
- (6) Rock Crusher Association Eight Thousand Two Hundred Twenty United States Dollars (US\$8,220.00) for crush rocks inclusive of transportation for twelve (12) trucks at Six Hundred Eight-five United States Dollars (US\$685.00) per load;
- (7) Beca Electric & Construction Five Thousand Two Hundred Fifty United States Dollars (US\$5,250.00) for two pickup truck on rent as a service contract for 42 day station in Wennie Town, Swean Mecca District, Bomi County;
- (8) National Trust Corporation Inc. (NTC): Fifteen Thousand Three Hundred Sixty United States Dollars (15,360.00) for transmission lines tower foundation for two supervisors (site engineer and site manager) at Twenty United States Dollars (US\$20.00) per day for four (4) months equal Four Thousand Eight Hundred United States Dollars (US\$4,800.00); six skill workers at Ten United States Dollars (US\$10.00) for four (4) months total Seven Thousand Two Hundred United States Dollars (US\$7,200.00); and seven unskilled workers at the rate of Four United States Dollars (US\$4.00) daily for four (4) months total Three Thousand Three Hundred Sixty United States Dollars (US\$3,360.00) in Wennie Town, Swean Mecca District, Bomi County;
- (9) Confident Security Guard Agency (COSGA) for private security service four (4) months at Eighty Five United States Dollars (US\$85.00) per person for seven persons totalling Two Thousand Three Eight United States Dollars (US\$2,380.00);

- (10) Expenditure for Housing accommodation and including the purchasing of mattresses etc. for workers within four (4) months period- June 2020 valued at One Thousand Five Hundred United States Dollars (US\$1,500.00);
- (11) Expenditure for the provision of medical and including first aid kits, etc. for workers within Four (4) months period – February to June 2020 valued at One Thousand Sixty United States Dollars (US\$1,060.00.00);
- (12) Expenditure for purchasing of food, safe drinking water including cooking materials / items for workers within four (4) months period, from February to June 2020, valued at Three Thousand Two Hundred Seventy Five United States Dollars (US\$3,275.00);
- (13) Expenditure for payment for cooks within four (4) months period, February to June 2020, valued at Seven Hundred Eighty United States Dollars (US\$780.00); and
- (14) The construction of warehouse, purchasing construction materials, purchasing of construction working tools and including the supply of electricity at the job sites from February to June 2020 valued at Three Thousand Five Hundred Eighteen United States Dollars (US\$3,518.00) all of which sum up to Eighty Thousand Forty United States Dollars (US\$80,040.00) as special damages incurred by the appellee.

The records reveal that with respect to the above calculations from receipts and expenditure list exhibited by the appellee into evidence was not rebutted by the appellant, valued at Eighty Thousand Forty United States Dollars (US\$80,040.00) as special damages. This Court says that it remains unwavering in its litany of opinions in the award of damages, such that a party in an action of damages for breached of contract must plead specifically the injury suffered to be compensated for general and special damages and must prove by the preponderance of the evidence. We must emphasize here that the appellee suffered injury to claim general damages which is reasonable by law to be compensated for the pain, trauma, embarrassment, and suffering. In light of this, we do not see the level of injury suffered to commensurate with the appellee's award of Five Hundred Thousand United States Dollars (US\$500,000) as general damages. This Court takes due note of the injury suffered due to the loss of the contract in light of the breach of the contract, the 25% value of work done which was never rebuttal by the appellee and the material left on the project site. However, this Court says that following the cancellation of the sub-contract agreement, the appellee suffered psychological stress, trauma, pains, embarrassment, financial loses etc. at the hand of its guarantor which led the CEO of the appellee to jail and he was charged by the Police for receiving money under false pretense. In view of these circumstances, we find it expedient in the interest of justice to awards to the appellee general damages in the amount of One Hundred Thousand United States Dollars (US\$100,000.00) for the injury suffered.

We like to also address the special damages prayed for by the appellee. The records also reveal that the appellee prayed for the award of Two Hundred Nine Thousand Seven Hundred Sixty-two United States Dollars (US\$209,762.00) as special damages for the termination of the contract which amount constitute the full contract amount which this Court

is not incline to award as special damages which it cannot be proven by the prove of documentations covering the full amount. This Court says that it is incline to award such amount mentioned herein and proved Eighty Thousand, Forty United States Dollars (US\$80,040.00) for the costs of constructing the two tower foundations which included materials, equipment, labor and food kinds, expenditure, etc. but not the full contract amount because the jury's award was excessive and contrary to law.

We further observe that clause 32 of the contract binding the parties thereto, with the specific provision on the termination clause of the contract. We deem it expedient to herein quote verbatim the said termination clause:

"The contractor shall have the right to partially or totally suspend the work during the said contract execution, due to the unsatisfactory work progress such as delays in the work progress, poor quality of work, non-standard methodology followed during works, non-commitment of health & safety issues. The contractor will issue a letter to this effect to the subcontractor with notice period of 15 days to correct and on failure the Agreement will become Null & void thereafter. The payment entitled to be paid by Contractor as per this agreement will be released for the full complete portion of the assigned work, an invoice to this effect duly certified by Contractor's Project Manager needs to be submitted for payment realization.

In witness whereof the parties have executed this contract in duplicate intending each duplicate copy to serve as original as of the effective date set forth above."

We must state here for the record that the appellant's argument before us is that the matter be referred to arbitration since the sub-contract agreement contained an arbitration clause that the parties are to revert to in the event that a dispute arise. The records further show that the appellant terminated the agreement and at the same time requesting to go to arbitration with the appellee. It is our opinion that the appellant, having terminated the sub-contract agreement which contains the arbitration clause, the appellant is barred from invoking the arbitration clause pursuant to the *Civil Procedure Law Rev. Code* 1.64.2.2(f).

This Court says that, the sum total of the merits and contentions of this case is premised on the fact that the appellant, having two different solutions to the delay in the completion of the works under the sub-contractual agreement between the two parties, viz the arbitration clause and the termination clause, and choosing to utilize the termination clause instead of the arbitration clause wherein the exact amount of work would have been ascertained, the materials on the ground would have been determined, chose to terminate the entire agreement and have shown no standard of the evaluation of the 5% work completed, this Court says that it is left with no evidence to determine the computation of the amount of work. This Court must, however, look towards the testimony of the appellee in the absence of the appellant's failure to determine the monetary value of work done.

Secondly, the appellant who owes no contractual obligation under the terms and conditions of the sub-contract agreement but however took upon itself and submitted a guarantee letter to the Guaranty Trust Bank (GT Bank) on the appellee's behalf in obtaining loan to complete the two tower foundations, this Court says that the appellant is liable to the appellee for the delay in obtaining the loan; the delay, according to the appellee occasioned injury for which we hold the appellant liable for having caused the appellee to suffer injury following the termination of the sub-contract agreement when its CEO was arrested, humiliated and embarrassed by its guarantor for money borrowed to complete the contract work, financial supports the weight of the evidence adduced at trial and the appellee is therefore, entitled to compensation for both general and special damages. We so hold.

We hold that the appellee having shown that it suffered special damages by proffering receipts of material purchased, labor cost, etc. and also general damages for the humiliation, embarrassment, stress and mental anguish, suffered as a consequence of the appellant's action, damages will lie.

WHEREFORE AND IN VIEW OF THE FOREGOING, the trial judge's ruling confirming the trial jury's verdict of liable is hereby affirmed with modification that the appellee is hereby awarded special damages in the amount of Eighty Thousand Forty United States Dollars (US\$80,040.00) and general damages in the amount of One Hundred Thousand United States Dollars (US\$100,000.00). The Clerk of this Court is ordered to send a Mandate to the trial court, commanding the judge presiding therein to resume jurisdiction over this case and to give effect to the Judgment of this Opinion. Costs are ruled against the appellant.

Affirmed with modification.

When the case was called for hearing, Counsellors G. Moses Peagar and Albert S. Sims of the Justice Advocates & Partners, Inc. appeared for the Appellant. Counsellors Sunifu S. Sheriff, Peter Kerkula and Edwin G. Barquoi appeared for the Appellee.