

In the Honorable Supreme Court of the Republic of Liberia
Sitting in its March Term, A.D. 2019

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.....CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA.....ASSOCIATE JUSTICE

Chae Dae Byoung, Choi Jung Woo, Chakwang Woon and Aleck)
Gold Represented by this Attorney-in Fact Jung Dal Park of the)
City of Monrovia, County of Montserrado, Republic of)
Liberia APPELLANTS)

VERSUS)

The Government of the Republic of Liberia by and thru the)
Attorney General, Benedict F. Sannoh, the Solicitor General,)
all Deputies and Assistant Ministers, Directors, Agents and)
Representatives, including the Director of the National Security)
Agency, Fumba Sirleaf all of the City of Monrovia,)
Republic of LiberiaAPPELLEE)

APPEAL

GROWING OUT OF THE CASE:)

The Government of the Republic of Liberia by and thru the)
Attorney General, Benedict F. Sannoh, the Solicitor General,)
all Deputies and Assistant Ministers, Directors, Agents and)
Representatives, including the Director of the National)
Security Agency, Fumba Sirleaf all of the City of Monrovia,)
Republic of LiberiaMOVANTS)

MOTION FOR
JUDGMENT
DURING TRIAL

VERSUS)

Chae Dae Byoung, Choi Jung Woo, Chakwang Woon and Aleck)
Gold Represented by their Attorney-in Fact Jung Dal Park of the)
City of Monrovia, County of Montserrado, Republic)
of Liberia RESPONDENTS)

GROWING OUT OF THE CASE:)

Chae Dae Byoung, Choi Jung Woo, Chakwang Woon and Aleck)
Gold represented by their Attorney-in Fact Jung Dal Park of the)
City of Monrovia, County of Montserrado, Republic)
of Liberia PLAINTIFFS)

ACTION OF
DAMAGES
FOR WRONG

VERSUS)

The Government of the Republic of Liberia by and thru the)
Attorney General, Benedict F. Sannoh, the Solicitor General, all)
Deputies and Assistant Ministers, Directors, Agents and)
Representatives, including the Director of the National)
Security Agency, Fumba Sirleaf all of the City of Monrovia,)
Republic of Liberia DEFENDANTS)

HEARD: July 2, 2019

DECIDED: August 9, 2019.

When this case was called for hearing, Counsellors Abraham Sillah, Sr., J. Awia Vankan and Mark M.M. Marvey of the Heritage Partners & Associates Inc., appeared for the appellants. Counsellors Gartor Tate, Director, Civil Litigation Division of the Ministry of Justice, and Wesseh A. Wesseh, Acting Solicitor General of the Ministry of Justice appeared for the appellees.

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT

This appeal came as a result of a ruling delivered by the trial court dismissing appellants, Chae Dae Byoung et al., Action of Damages for Wrong on a motion filed by the appellee, the Government of Liberia, for judgment during trial. The facts in this case are, the appellants filed an Action of Damages for Wrong against the Republic of Liberia alleging the followings substantially;

1. That appellants are Korean Businessmen who came to Liberia sometime in July of 2014 at the invitation of one Nasser Aly, a businessman believed to be a Lebanese and/or Sierra Leonean national residing in Liberia who represented to the appellants through communications that he (Nasser Aly) is engaged in the business of mining and sale of gold and that he has a significant quantity of gold to sell to the plaintiffs;
2. That in responses to the appellants' queries, Mr. Nasser Aly sent to the appellants via e-mail his business documents and also issued to the appellants an invoice on his company letterhead and address to one of the Co-plaintiffs, Mr. Kim Aleck of Korea invoice for the sale of 16 kilograms of gold at the full price of US\$568,000.00. The invoice contained a pen written notation requiring a down payment of 50% of the invoice amount which, when calculated, is US\$284,000.00;
3. That upon reviewing the documents of Nasser Aly, the appellants were convinced and accordingly mobilized the necessary funds amounting to the 50% upfront payment requested by Nasser Aly;
4. That on June 27, 2014, the appellants withdrew the equivalent of US\$40,000.00 from the Kookmin Bank, expended the equivalent of US\$12,584.00 to purchase air tickets and distributed the remainder amongst the four of them in the amount of US\$6,854.00 per person, which they traveled with to Liberia on their persons. The appellants submitted that the total cash they brought to Liberia on their persons was US\$27,416.00;
5. That on July 2, 2014 the appellants transferred the sum of US\$250,500 via Kookmin Bank in Korea to the bank account of their agent at the International Bank (Liberia) Limited which when added to the amounts they travel with, equal the 50% of the price of the 16 kilogram of gold as per the invoice of Nasser Aly;

6. That the appellants, on July 8, 2014, went with their agent to the International Bank (Liberia) where they withdrew US\$247,500 from the US\$250,000 transferred by them from Korea to pay for the gold.;
7. That immediately after that, the appellants proceeded to the City King Hotel at Old Road where they were to meet Mr. Nasser Aly to conclude the payment and the entire sale transaction;
8. That while at City King Hotel, group of men who later identified themselves as namely Alexander Graham, Terrance Doe, Railey Farley, Derrick Momo and Solomon agents of the National Security Agency (NSA) abruptly and violently stormed the hotel room, arrested the appellants and Mr. Aly without any writ or search warrant. That during the arrest the NSA agents seized and took away from the appellants the full amount of US\$247,500 withdrawn from International Bank along with the total of 27,416.00 cash that the appellants brought to Liberia on their persons to include other valuable items such as gas torch, melting dish, two packs of chemical to test gold, and an electronic gold scale;
9. The appellants further alleged that following their arrest, the agents took them to the National Security Agency's offices, where they were stripped naked, placed in solitary confinements in dark rooms and subjected to various forms of humiliation and degradation without any formal charge; that it was only by way of a press release published by the NSA authority;
10. That the appellants learned of the full charges levied against them which included the crimes of (i) illegal possession of combustible and hazardous materials including cyanide that posed national security risk to the lives of Liberians; (ii) money laundering; (iii) counterfeiting; and (iv) conspiracy to defraud the government; that since their arrest, their money and other materials in the total of US\$274,916.00 remained with the NSA operatives up to date despite several demands.
11. That following the appellants release based on the intervention of their lawyers and mounting concerns by the Liberian public and international community, the NSA held a broadcast press conference during which the appellants' character was defamed and maligned and the appellants branded as common criminals involved in money laundering and counterfeiting;

12. That the NSA failed to produce evidence of the crimes when the appellants' counsel took the matter to the Ministry of Justice; that the Ministry of Justice failed to conduct investigation surrounding the appellants' arrest, imprisonment, and the seizure of the US\$274,916.00;
13. That President Ellen Johnson Sirleaf commissioned a select investigative Committee headed by Cllr. David Jallah that conducted an investigation and concluded that the charges levied against the appellants were unfounded and that the conduct of NSA and/or its agents was illegal and recommend that the appellee refunds to the appellants the amount of US\$247,500.00) which they withdrew from the International Bank on July 8, 2014;
14. That President Ellen Johnson Sirleaf accepted the report of the committee and forwarded the same to the Ministry of Justice to implement the recommendations to include the refund/restitution of appellants' US\$247,500.00;
15. That due to the failure of the appellee to refund the money and items taken from appellants as recommended by the Jallah's committee and mandated by the president, the appellants sought the services of lawyers who charged them and they paid US\$19,500.00 for legal services;
16. That the appellants suffered pecuniary, physical and emotional injuries as well as emotional distress; shame and embarrassment; loss of business, business reputation and personal image; loss of income; expenses and costs as a result of appellee's wrongful act. That for all of the allegations outlined in the complaint of the appellants, the appellee should be made to pay the amount of US\$349,000 as special damages and US\$2.5 million as general damages.

The appellee, for its part, in answering the appellants' complaint, alleged the followings:

1. That the appellants did not exhibit evidence to show that the legal services of Heritage, Partners and Associates was retained to represent the appellants in this matter;
2. That there is no evidence to show that the appellants are legitimate businessmen and there is no record found either at the Liberia Business Registry or at the Ministry of Lands, Mines and Energy to show that the appellants have the authorization to do business in Liberia; that the appellee conceded that its

ministries and agencies act under its authority but that actions of officials, and/or employees can only be considered the actions of the ministries and agencies if the actions complained of were carry out by the appellee's agents in the course of their official duty and that liability will not be attached to the appellee for the criminal conduct of any official or employee if the case is proven to be such; that the appellants did not exercise due diligence to establish whether Aly Nasser was a legitimate businessman and whether what was sent to appellants as gold was actually tested to be gold;

3. That the appellants failed to attach the license or other documents which they claimed was issued to Nasser authorizing him to mine and sell gold in Liberia; that there is no record either at the Liberian Business Registry or at the Ministry of Lands, Mines and Energy of a company named and styled Global Steel Enterprises, Inc. operated by Aly Naser;
4. That appellants' averment that they lodged at the City King Hotel is also a lie and is inconsistent with the appellants' exhibit P/11 which is a receipt issued by the Interburgo Industrial Company for motel bills allegedly paid by the appellants;
5. That the sole purpose for the misleading information that the appellants were lodged at the City King Hotel is because appellants are aware of the suspicious nature of the activities that were being conducted in the hotel room on July 8, 2015, since, by the appellants' own admission, Aly Nasser was supposed to be a legitimate businessman with offices on Randall Street, opposite Sheriff Pharmacy and appellants were not lodged at the City King Hotel;
6. That there is no showing or evidence that any of the appellants withdrew any money from the Kookmin Bank or entered Liberia with any money; that there is no showing that appellants remitted the sum of US\$250,000 via Kookmmin bank to their agent in Liberia;
7. That the source of appellants' exhibit P/3 caption "Foreign Currency Selling" which purportedly indicates that US\$40,000 was sold and the document captioned 'Application for Remittance', were not accounted for, and therefore are not authentic;
8. That document caption "outgoing cable" attached to appellants' complaint did not carry the appellants' names; that there is no evidence that appellants withdrew US\$247,000.00 on July 4, 2014 on the International Bank and that what is reflected on Exhibit P/4 is not a withdrawal slip as alleged by the

appellants, but rather it is an International Bank cheque issued to Jung Dal Park and not to any of the appellants; that on July 8, 2014, agents of NSA acting upon intelligence that there were some Koreans at the City King Hotel with combustible gas, gas torch, oxygen tanks and other equipment and materials that were suspicious, and in fact discover that the plaintiffs were in possession of huge combustible tanks and other equipment in the process of illegal trading in minerals; that the appellants failed to show any evidence that agents of the NSA did take away US\$247,500; that the appellee denied that the NSA illegally seized money in the sum of US\$247, 500;

9. That upon a complaint filed through Cllr. Theophilus C. Gould, the NSA transfer the entire file of the matter involving the appellants to the Ministry of Justice with the list of inventory of the items seized and US\$49,200.00 counterfeit notes; that when the appellants were taking to the NSA offices, the agents took an inventory of the seized items in the presence of the appellants' lawyer, Cllr. James Kumeh who signed on the inventory listing without protest, or reservation, or a claim on behalf of the appellants that US\$247,500.00 was taken away from them and not place on the inventory list;
10. That when the appellants were arrested and taken to the NSA, the agents informed the appellants of their Miranda rights and that at no time were they stripped naked, placed in solitary confinement in dark rooms, and subjected to humiliation and degradation; that the NSA did not issue press release as a result of mounting pressure from any quarter of society; rather, its objective was to rebut erroneous publications of the National Chronicle Newspaper; that the content of the press release as it relates to the NSA receiving intelligence that individuals were in possession of combustible and hazardous materials in a hotel room and verifying their purpose was to smelt gold in a hotel room for shipment outside Liberia and appellants do not deny these facts, but the appellants rather denied being in possession of US\$49,200 counterfeit notes which is inconsistent with the acknowledgment made by their counsel, appellee therefore wonders how did it defame, damage, and injure the plaintiffs' business, when in fact there is no known legitimate business interest of the appellants in Liberia or anywhere else that the appellants have exhibited as based on their clandestine activities; that the Ministry of Justice commenced an investigation which was being conducted by the Office of the Solicitor General

prior to the President's decision to constitute the David Jallah led Committee; that the recommendations contained in the report did not instruct the Justice Ministry to implement the report but rather to review same and act consistently with law;

11. That appellee categorically denied that the appellants have suffered any injury as a direct or proximate result of a wrongful conduct on the part of the appellee. The appellee therefore prayed court to deny and dismiss the appellants' complaint.
12. The appellants' reply maintained its allegations contained in its complaint alleging among other things that the appellee's agents acted within the course of their official duties; that the property and monies seized from the appellants remain with the NSA; that the Ministry of Justice did not conduct any investigation that produced contradicting findings of the David Jallah's committee report;
13. That at no time did the appellants hired the legal services of Cllr. Kumeh and that the appellants their lawyer never signed instruments or inventory list to verify and or authenticate a list of the items seized from appellants. Therefore, the appellants denied the entire allegations contained in appellee's answer and prayed the court to sustain its complaint, and deny and dismiss the appellee's answer in its entirety.

The appellee filed a motion to dismiss appellants' complaint, which was resisted by the appellants. The lower court heard and dismissed the same. The appellee, after that, applied to the court for a change of venue which the appellants resisted, and the court heard and denied. The appellee than prayed for a Writ of Certiorari that was granted by the chamber justice. This action resulted in the transfer of the case to the Thirteen Judicial Circuit for onward proceeding under the gravel of His Honor Peter W. Gbenewelleh, assigned circuit judge. The appellants, as required by our trial procedure, took the witness stand and produced witnesses and documentary evidence that was testified to, marked, and admitted.

Following the production of both oral and documentary evidence by the plaintiffs, the appellee filed a fifteen (15) count motion for judgment during trial substantially averring follows:

1. "that chapter 26, section 26.2 of Title 1, Liberian Code of law revised (1LCLR) provides that: "after the close of the evidence, presented by opposing party with respect to a claim or issue, or at any time on the basis of admissions, any party may move for judgment with respect to such claim or issue upon the ground;
2. that the opposing party is entitled to judgment as a matter of law;
3. that the respondent/plaintiff failed to lead any evidence which imputes liability to movant/defendant, the Government of Liberia; that plaintiffs proved that they assumed the risk to do business with one that they knew nothing about and did little or no research about;
4. that Dean David Jallah's Committee was unable to establish any direct link between the funds seized by the operatives of the NSA who effected the arrest and conveyed the confiscated items to the NSA Office; the report clearly established that it has determined that the acts of the officers of the NSA were criminal in nature and that no official of the NSA had authorized their alleged criminal acts;
5. that the plaintiffs themselves entered into Liberia to do business without any authorization to do business in Liberia specifically the export gold in violation of sections 15.4 and 15.6 of the Mineral and Mining Law;
6. that the failure of the plaintiffs to proffer any evidence establishing that the Government of Liberia was the direct or proximate cause of any injury sustained by the plaintiffs.
7. In resisting the motion, the plaintiff/respondent substantially traversed the motion as follows, that the motion do not meet the minimum statutory requirement for granting such motion;
8. that the controlling phrase of section 26.2 of the Civil Procedure Law as revised is "at any time on the basis of admission" was not the case with the testimonies and documentary evidence adduced by respondent;
9. that movant/defendant failed to state with particularity the admission made by respondent during trial; that movant's claim in its motion that respondent failed to lead evidence which imputes liability to the movant does not meet the requirement of section 26.2 *ibid.*;
10. that respondent adduced sufficient evidence to establish the relationship between the NSA agents and the Government of Liberia (movant); that movant admits that NSA agents were employees of the Government of the Republic of Liberia;

11. that movant admits these agents of the Government effected a lawful arrest of respondent and seized personal effects including 928.8 grams of gold; that movant admits that at the time of the arrest, respondent had US\$49,300.00;
12. that movant admits that gold seized during the arrest of respondent was a genuine gold; that more importantly, movant admits that the actions of the NSA agents were criminal and wrongful;
13. that because movant contended that NSA agents acted "within their lawful course of duty in effecting the arrest of respondent and his principals, and any wrongful action of any or all of the officers in the discharge of this lawful duty is attributable to the principal as a matter of law";
14. that it would, therefore, be self-contradictory for the movant to disclaim any responsibility for wrongs committed by the officers in the process of the arrest of the respondent; that NSA agents acted in concert with Nasser Aly to defraud the respondent and his principals;
15. that movant failure to press charges against respondent and his principals suggest that respondent and his principals committed no crime. The entire resistance filed by the respondents relied on the Dean David A.B. Jallah Report in claiming that they have established a prima facie case. The respondents, therefore, contended that Section 26.2 of *ibid* was not applicable in this case and the movant was required by law to produce evidence in rebuttal to evidence adduced by Respondents.

The trial court heard the motion for judgment during trial and granted it. In the ruling, the trial judge opined as follows:

".... This court Notes firstly that it was not established before the Presidential Committee that payment of USD\$284,000.00 was made by the plaintiffs to Nasser Aly, the seller of the Sixteen (16) kilo grams of gold, on July 8, 2014 at the City King Hotel in Congo Town before the five agents of the N.S.A. effected the arrest of the respondents. This court also says that the evidence before this court shows that the plaintiffs testified that the transaction or payment of the money at the Hotel by them to the seller was done in a normal course of business. In short, the plaintiffs having paid the sum of USD\$284,000.00 to the seller, Nasser Aly, were no longer in possession of the said amount. The said amount was then in possession of Mr. Nasser Aly, the seller of the gold. Nasser Aly is not the plaintiff in this case for the refund of the said money, but the buyers who already paid the said amount to the seller instituted the action of damages against the government of Liberia for the recovery of said amount plus US\$2.5 million as General Damages. The plaintiffs have remedy against the Seller, Mr. Nasser Aly, for their gold which they already paid for before their arrest by agents of the N.S.A. The court disagrees with the contention of the plaintiffs that the Government of Liberia failed to prosecute the five (5) N.S.A officers who effected the arrest of the plaintiffs as recommended by the Dean Jallah Committee report. This court says that section 4.2(a), 4.3 and 4.4 of our Criminal Procedure provides the period within which prosecution shall be commenced for non-capital offenses such as fraud, breach of fiduciary obligation under 4.3 and misconduct by public official or employee under Section 4.4 respectively.

This court therefore holds that the motion for judgment during trial meets the statutory requirement of section 26.2 of our Civil Procedure Law under the facts and circumstances in this case.

The evidence before this Court also shows that the then Minister of Justice and Attorney General of the Republic of Liberia, declined the payment of USD\$247,500.00 as contained in the report of the committee forwarded to the Ministry by the President of Liberia. This court says that the Minister of Justice and the Attorney General of the Republic of Liberia is the only cabinet minister in this republic who can disagree with the president of Liberia on the issue of law. This court also holds that the Government of Liberia cannot be liable for the Criminal conduct of the five (5) N.S.A. Officers who effected the arrest for their criminal conduct for which the Presidential Committee recommended their prosecution, and that restitution is also provided by our law of the said amount if they are found guilty in the court of competent jurisdiction. Wherefore, and in view of the foregoing, it is the ruling of the court that the motion for judgment during trial is hereby granted and the resistance thereto denied....."

Appellants assigned a thirteen count Bill of Exceptions for our review. We deem it necessary to reproduce count by count the exceptions herein as follows:

1. That Your Honor committed reversible error when, on the 10th day of November, A.D. 2016, you granted the defendant's motion for judgment during trial and terminated the proceedings, when, in fact and law, the plaintiffs produced overwhelming pieces of evidence and established, by the preponderance of evidence, a prima facie case for the continuation of full trial in keeping with the laws, practices and procedures of the land.
2. That Your Honor specifically committed reversible error when you held and ruled as follows; "this court says that the granting of the motion for judgment during trial is not only based on admission but the motion can also be granted with respect to a claim or issue which is supported by law or the evidence produced during the trial." That your Honor's ruling is contrary to the evidence presented at the trial and the express provision of the statute in that, Chapter 26, Subsection 26.2, Liberian Code of Laws Revised, Title 1, Civil Procedure Law, page 209, states, "after the close of the evidence presented by an opposing party with respect to a claim or issue, or at any time on the basis of admissions, any party may move for judgment with respect to such claim or issue upon the ground that the moving party is entitle to judgment as a matter of law". The operative phrase of the above quoted provision of the statute primarily relied on by the defendant/movant is "AT ANY TIME ON THE BASIS OF ADMISSIONS" but the defendant/movant miserable failed to state with specificity and particularity the admissions made by the plaintiffs to warrant the granting of such motion. Further, the case law (Christiana Munah Sioh versus Frank Kronwre Soi, 35 LLRp.35) cited and relied on by your Honor is not analogous to the facts and circumstances in the instant case, and therefore does not control or support the defendant's motion and/or your ruling.
3. That Your honor also committed reversible error when, in granting defendant/movant's Motion for judgment during trial, you ruled that the Government of Liberia (defendant), is not responsible for the criminal action of its agents, despite the overwhelming evidence adduced by the plaintiffs, to include the express and acknowledged admissions of the agents of the NSA who appeared before the Cllr. David A.B. Jallah Committee, and indicated that they acted within the scope of their legitimate authority, as officers and agents of the NSA in effecting the purported lawful arrest and seizure of the plaintiff's private properties.
4. That your Honor also committed reversible error in granting the motion for judgment during trial when you held and ruled on sheet seven (7) of the court's ruling, that the defendant/movant is not liable for the criminal actions of its

agents, despite the glaring pieces of evidence adduced at the trial to include the fact that some of the NSA officers, who effected the arrest and seizures of the plaintiff's properties were senior ranking officers of the NSA, namely. (i) Mr. Alexander Graham, Chief of Investigation and (ii) Mr. Terrance Doe, Deputy Chief of Drug and Economic Crimes. The official designation of these officers clearly demonstrate that they are senior ranking officers of the NSA with full authority to act for and on behalf of the entity, and did not need any specific for additional authorization to act under the circumstances. They appeared before the David A.B. Jallah Committee and specifically pleaded that they acted within the scope of their official duty as senior officers of the NSA in effecting the arrest pursuant to intelligence received by the NSA.

5. Respondent says that your Honor committed reversal when you held that the respondent did not provide evidence that they or their business partner, Nasser Ally, was authorized to deal in gold, when in fact, the legitimacy of the business transaction between the plaintiffs and the Nasser Ally was not an issue at bar. Moreover, the plaintiffs produced two witnesses who testified that upon their request to see Ally's business documents, Mr. Ally, did produce and show them his business documents, which they took pictures of and the pictorials of which are in evidence.
6. Your Honor committed reversible error when you proceeded to and held that the plaintiff had not right of action against the defendant/movant Government of Liberia, but rather Nasser Ally, although the records and defendant/movant's own acknowledged admission clearly show that the pack bag containing the US\$284,000.00, was among the plaintiff's belongings seized at the time of the arrest at the City King Hotel, and the fact that the agents of the NSA, who appeared before the David A.B. Jallah Committee stated that immediately upon the arrest, they drove and carried the plaintiffs and their belongings to the NSA headquarters.
7. That your Honor further erred when you ruled that the defendant is not responsible for the arrest, detention, inventory of all the items confiscated to include the US\$284,000.00, and the subsequent allegations that the plaintiffs were engaged in crimes such as economic sabotage, counterfeiting, etc., etc., which allegations the David A.B. Jallah Committee investigated and exonerated the plaintiffs.
8. Respondent further admits that Your Honor committed reversible error when Your Honor held that movant's motion for judgment during trial had met the requirements of the Statute, when the motion did not meet the minimum statutory requirements in that it was premised or based on any 'admission' made by the plaintiffs and the plaintiffs had produced sufficient evidence and established a prima facie case to warrant the full continuation of the trial.
9. Your Honor also committed reversible error when you decided not to consider the preponderance of evidence that the plaintiff produced linking defendant's agents to the commission of the wrong meted out against the plaintiffs, and thereby leading and imputing liability to the Government of Liberia for wrongs committed by its agents acting with their apparent, implied, actual and expressed authority of the movant.
10. Your Honor erred when you held that no links were established during the course of these proceedings from the evidence adduced to show the relationship between the five agents, and the National Security Agency (NSA), which played a key role as a functionary of the Government of Liberia, at the time the

wrong complained of was committed, especially giving the under mentioned admissions of the defendants:

11. That the NSA officers, who effected the arrest, namely (i) Terrance Doe, (ii) Alexander Graham, (iii) Railey Farley, and (iv) two others were employees/agents of the Government of the Republic of Liberia;
12. That the NSA Officers effected a lawful arrest of the plaintiff and his principals to include the seizure of their personal effects and 928.8 gram of gold;
13. That the plaintiffs had with them a backpack bag and one of them insisted on holding the bag upon their arrest until they were carried to the headquarters of the NSA;
14. That as a consequence of intelligence information received by the NSA, five (5) of its agents launched a Sting Operation at the City King Hotel where it was alleged that five Koreans and three Sierra Leoneans were smelting gold using combustible materials;
15. That immediately upon the arrest, the NSA officers took the plaintiffs to the NSA Headquarters at Mamba Point, Sekou Toure Avenue, where preliminary investigation was conducted;
16. That the 928.8 gram of gold seized from the respondent and his principals was tested and found to be genuine; and
17. More importantly, the defendant admits that the actions on the NSA officers who effected the arrest against the plaintiffs were criminal and wrongful.
18. Your Honor erred when you granted the objection of the Government, and wrongly denied its question to the witness on the stand regarding the identification of the Press Release which the witness had previously testified to.
19. Your Honor erred again when you granted the defendant's objection and denied plaintiff's request for the witness on the stand to confirm the photo of Nasser Ally holding his business registration and other relevant documents in his hand previously testified to and identified by the witness.
20. Plaintiff except to all and singular Your Honor several rulings and decisions made during the hearing of this matter that are not specifically mentioned herein, but which resulted into the granting of the defendant's motion for judgment during trial and the denial of the plaintiff/respondent's resistance thereto; thereby terminating plaintiff/respondent's action for Damages for Wrong before and without the defendant, Government of Liberia, presenting any aorta of evidence to prove any of its numerous baseless allegations contained in its answer/pleadings before this Court."

The Civil Procedure Code: 1:26.2 triggered by the appellee to obtain judgment during trial after the appellants had rested with the production of evidence is the focus of this appeal before us. The question that is begging for an answer from this Court is whether, considering the factual circumstances of this case, a judgment during trial may be granted to the appellee? In addressing this issue, this Court must first determine whether the evidence adduced by the appellants establish a compelling case for a rebuttal by the appellee? In other words, the species of evidence produced by the

appellants need to be examined to determine whether that evidence did not create a rebuttable presumption to entitle the appellee to the drastic relief of a judgment not requiring the production of evidence?

In answering the previous query, we take recourse to the certified records before us. The records show that the appellants produced five witnesses including three subpoenaed witnesses to testify on their behalf. Appellants first witness, Mr. Jung Dal Park took the witness stand and recounted the allegations of appellants as contained in their complaint. The appellants' second witness, Mr. Henry N. Young, who is an employee of the International Bank Liberia Limited and appeared for the said bank in obedience to a writ of subpoenaed on the application of appellants testified to the transfer of an amount of US\$250,000.00 to the account of appellants' first witness, Mr. Jung Del Park, and the subsequent withdrawal of US\$247, 500.00 from Mr. Park's account. The appellants' third witness, Mr. Huxinburg Dargbeh, corroborated the testimony of appellants' first witness and further told the court that some officers of the NSA contacted and told him to advise his boss, Mr. Jung Del Park, that the appellants should leave the country because nothing will come out of their demands to have their properties returned to them because Fomba Sirleaf (Director of the NSA) was the son of the President.

The appellants' subpoenaed witnesses, Cllr. David A. B. Jallah and Emmanuel Harris, also testified as witnesses for the plaintiffs. Appellants then rested with the production of evidence and made the application for admission into evidence of both oral testimonies of the witnesses and documents marked and confirmed by the trial court.

The trial court granted this application and admitted the following documentary evidence:

- (1) Copies of invoices for sixteen (16) kilogram of gold that Nasser Aly offered to sell to appellants; the photo of gold covered by the invoices; photo of Nasser Aly; and photo of the hotel in where the NSA agents arrested the appellant during the alleged gold transaction;
- (2) A copy of the transfer advice/slip and exchange receipt for the US\$40,000.00 equivalent exchanged following withdrawal in Korean;
- (3) A copy of the withdrawal slip from the International Bank;
- (4) Copy of the alleged defamatory press statement issued by the NSA;
- (5) Copies of the complaint allegedly filed at Ministry of Justice by the legal counsel of appellants and the letter that the Ministry of Justice allegedly addressed to the Director of NSA in relation to the arrest of the appellants;

- (6) A press release dated November 7, 2014 allegedly circulated by the Executive Mansion on its website announcing the findings and recommendations of the David Jallah Special Investigative Committee;
- (7) Copy of an alleged press statement from the President of the Republic of Liberia instructing the Ministry of Justice to implement the findings and recommendations of the David Jallah Committee; and
- (8) Copy of the decision of the Chambers Justice on the Petition for a Writ of Certiorari.

The appellee contends that the evidence adduced by the appellants failed to establish a liability to the appellee. That the alleged acts of the NSA agents being criminal, and that criminal conduct not been transferable, the appellee cannot be held therefor. In support of this position, the appellee relied on the report of the David Jallah Committee. The appellee strenuously tried to impress upon us that the report in part found that the Committee was unable to establish a link between the funds seized by the arresting NSA agents and official of the agency.

This Court takes judicial cognizance of the records and says that appellee in its answer to appellants' complaint substantially alleged:

that "...agents of the NSA, acting upon intelligence received that there were some Koreans at the City King Hotel who had entered upon the premises with combustible gas, gas torch, oxygen tanks, and other equipment and materials, did immediately pursue the plaintiffs, and did indeed and in fact discover that the plaintiffs were in possession of huge combustible tanks, and other equipment and in the process of illegally trading in minerals. Because of the gravity of the report to the NSA, the NSA did enter the premises of the City King Hotel to ensure that the national security of the Republic of Liberia is not threatened, given the increase in bombings and other terrorist activities in the sub-region, and given the kind of equipment that the plaintiffs were said to be in possession of."; that "...the operatives of NSA acted within the pale of law to presume that the intelligence received was one with a semblance of a terroristic activities....";

"...that the appellants' claim of the seizure of US\$247,500.00 was not substantiated by proof, but rather what the operatives seized during the arrest of appellants, were inventoried and transferred to the Ministry of Justice were equipment and materials ibid and US\$49,200.00 counterfeit notes which appellants' lawyer acknowledged without any reservation among other claims".

We gather from the records before us that at the end of the production of evidence, the appellants' evidence tends to establish that they did transfer from Korea to Liberia an amount of US\$250,000.00 to buying gold after confirming through their agent that one Nasser Aly had 16 kilo grams of gold for sale; that upon arrival in Liberia, the

appellants withdrew from the account of one Jung Del Park with the International Bank Liberia Limited an amount of US\$247,500.00; that upon the withdrawal of said US\$247,500.00 on July 8, 2014, the appellants proceeded to the City King Hotel at Congo Town, Monrovia to trade in gold with the alleged seller, Nasser Aly; that while in the hotel room transacting business with Nasser Aly, agents of NSA stormed the room, arrested the appellants, seized the amount of US\$247,000.00 plus cash on the persons of the appellants, equipment and materials; that the agents took the appellants to the Headquarters of the NSA and, detained and humiliated them; that the NSA maligned the character of the appellants in press statements as being criminals arrested in the commission of terrorism, counterfeiting, money laundering and illegal trade in minerals; that through the intervention of their lawyer, the Ministry of Justice did a letter to the NSA requesting the agency to transfer the case of appellants to the Ministry for investigation and that NSA refused to transfer the case to the Ministry of Justice; that because of public concern, the President of Liberia, Mrs. Ellen Johnson Sirleaf, constituted the David Jallah Committee to probe the case of the appellants; that the report of the David Jallah Committee found the conduct of the NSA agents to be criminal and recommended a refund of the US\$247,500.00 to the appellants; and that the NSA agents acted within the scope of their duty; therefore, the appellee was liable for the losses and hardship occasioned by the wrongful conducts of the NSA agents. Indeed, the evidence adduced by appellants in the form of witnesses' testimonies and documents testified to and admitted created a rebuttable presumption. Generally, a presumption of facts is believed to be true until the contrary is proved. To prove the contrary require the opposing party to come forward with evidence to outweigh or overcome the evidence adduced by the other party. In the absence of evidence to the contrary, the presumption is taken to be true.

"Presumption: A legal inference or assumption that a fact exists, based on the known or proven existence of some other fact or group of facts. Most presumptions are rules of evidence calling for a positive result in a given case unless the adversely affected party overcomes it with other evidence. A presumption shifts the burden of production or persuasion to the opposing party, who can then attempt to overcome the presumption." page1332, Black's Law Dictionary.

"Rebuttable presumption (1852) An inference drawn from certain facts that establish a prima facie case, which may be overcome by the introduction of contrary evidence. - Also termed prima facie presumption; disputable presumption; conditional presumption; praesumptio juris. Cf. conclusive presumption." Page 1334, Black's Law Dictionary.

Under our practice and procedure, the party that alleges a fact has the burden to prove that the fact alleged is true. The burden on the plaintiff may shift and call for an inevitable result if and when the plaintiff tends to establish a prima facie case. In the absence of a rebuttal to the evidence adduced by the plaintiff, the court shall assume to be true the evidence produced by the plaintiff and enter judgment thereon. *Jackley v Siaffa*, 42 LLR 3 (2004); *Forestry Development Authority v Walters et al*, 34 LLR 777 (1988); *CBL v Doe*, Supreme Court Opinion, October Term 2015.

From the facts alleged in the pleadings and evidence culled from the records of the proceedings, the appellants certainly established a rebuttable presumption that the NSA agents acted under the pale of law and during their duty. This presumption finds support in the answer filed by appellee wherein appellee alleged that the NSA agents/operatives stormed the City King Hotel based on intelligence received that appellants were engaged in illegal trade in mineral, terrorism, money-laundering, and counterfeiting and that the appellants were carrying combustible equipment and materials that gave rise to suspicion of threat to national security. This presumption also finds support in the allegation that the NSA agents took the appellants to the Headquarters of the NSA and detained them for days or weeks; that the NSA authority released a press statement to explain to the public the reasons behind the arrest and detention of the appellants; and that the President of the Republic of Liberia, Mrs. Ellen Johnson Sirleaf, commissioned an investigation into the arrest and detention of appellants.

The appellee's contention that the appellants' evidence adduced during the trial cannot lead to a liability attributable to the appellee is not persuasive, in that appellants made a rebuttable presumption as we see it. Appellee concedes the fact that the NSA agents/operatives acted within the course of their duties, but that the David Jallah Committee did not find a link between the criminal conduct of the agents/operatives to the NSA. It is worth noting that the David Jallah Committee investigation being an administrative hearing is subject to judicial review. In the absence of rebuttal evidence, should the court consider the outcome of such administrative hearing conclusive and award judgment based thereupon? Should we also say that the appellants having made presumption that shifted the burden of going forward with evidence to rebut certain inferences as can be made from the evidence, appellants are entitled to judgment as a matter of law? We do not think so.

"Courts of justice should not render judgments upon presumptions, but in all cases must base their decisions upon facts gathered from the hearings of evidence. *Wolo v. Wolo*, 5 LLR, 42 (1937); *Pelham v. Pelham*, [1934] LRSC 6; 4 LLR 54 (1934)." *Sasay v Sasay*, 29 LLR 505 (1982);

Appellee in both its answer to the appellants' complaint and argument before this Court, vehemently contended that the appellants were engaged in illegal mineral trade, and denied any knowledge of the seizure of US\$247,500.00, but alleged that the NSA agents seized counterfeited money in the amount of US\$49,200.00 during the raid at the City King Hotel in Congo Town, Monrovia. In the absence of a judicial scrutiny by way of evidence, should this court consider these allegations as accurate without allowing the appellants to cross the evidence that the appellee may have? Certainly not.

"It is, however, required that the plaintiff establish the facts of the claim as well as the amount due. *Mid*, § 1:42.6. Thus, the mere allegations or averments set forth in the complaint do not constitute proof, but evidence is essential as to the truth of the facts constituting the claim in order to render a judgment with certainty concerning the matter in dispute. It also follows that such evidence enables the trial jury to decide upon the question presented to them. *Attia v. Sherman*, [1889] LRSC 1; 1 LLR 222, 223 (1889)." *Salala Rubber Corp. v Garlawolu*, 39 LLR 609 (1999) (emphasis ours).

On the other hand, the contention of the appellants that they established a prima facie case against the appellee and therefore the appellants are entitled to judgment cannot also be sustained. We, however, agree with the appellants' argument that having rested with the production of evidence, they established rebuttable presumption such that appellee now has the burden to go forward with the production of evidence to overcome the presumption. This burden not having been met by the appellee, this court does not conceive the reason why a new trial may not be granted in the interest of justice. It follows also that we are not persuaded by the argument of appellants that the operating phrase of Civil Procedure Law, Rev. Code 1:26:2 is "based on admission" only.

"After the close of the evidence presented by an opposing party with respect to a claim or issue, or at any time on the basis of admissions, any party may move for judgment with respect to such claim or issue upon the ground that the moving party is entitled to judgment as a matter of law. The motion does not waive the right to trial by jury or to present further evidence even where it is made by all parties. If the court grants such a motion in an action tried by jury, it shall direct the jury what verdict to render, and if the jury disregards the direction, the court may in its discretion grant a new trial. If the court grants such a motion in an action tried by the court without a jury, the court as trier of the facts may then determine them and render judgment or may decline to render any judgment until the close of all the evidence. In such a case if the court renders judgment on the merits, the court shall make findings as provided in section 23.3(2)." (emphasis ours).

This statute provides that a court sitting without a jury, as in the present case before us on review, may in its discretion grant a motion for judgment during trial after determining the facts as to a particular claim or issue, or on the basis of admissions by the party resting with the production of evidence. In the case of a jury trial, the court shall direct the jury what verdict to render, and if the jury disregards the direction of the court, the court may, in its discretion, grant a new trial. In the mind of this court,

the proper course for the trial court would have been to allow the appellee to proceed with the production of evidence in its defense to overcome the presumption established by the appellants. Courts have discretion as to the outcome of the application for this motion. Howbeit, where the court renders judgment at the close of evidence, it must make its findings according to Civil Procedure Law, Rev Code: 1:23.3(3) as reproduced below.

" In actions tried upon facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct entry of the appropriate judgment. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. The findings of a referee, to the extent that the court adopts them, shall be considered as the findings of the court."

We do not see the need to delve into the reasoning that led the trial court in deciding to grant the appellee's application for a judgment in favor of the appellee based upon the evidence of the appellants. It suffices to say that the facts and evidence couched in the records of this case do not urge the conclusion that we grant the pleas of any of the parties. On the want of a clear and preponderance evidence as required in civil actions, it is in the interest of both parties to have this matter remanded for a new trial to correct the palpable error we see in the judgment entered by the trial court. In the case, *Fayad v Hykal et al*, Opinion of the Supreme Court March Term 2008, this court held that... in the face of compelling evidence... which, put together, stand unrefuted, it was glaringly a reversible error for the judge to have granted appellee's motion for judgment during trial. We reach the same conclusion in this case, for the several reasons above stated.

"In the face of such compelling evidence showing performance of services by the appellant as a matter of court's record, as well as the testimonies of witnesses testifying to appellant's services to include management, repairs, and maintenance of appellee's various buildings, for a period of approximately three years in favor of appellee, which, put together, stand un-refuted, this Court holds that it was glaringly a reversible error for the Judge to have granted appellee's Motion for judgment during trial. In *Andrea Merzario s.a.r.l. v. Kama!*[1987] LRSC 4; 34 LLR 316, 331-332 (1987), this Court held:"

WHEREFORE AND IN VIEW OF THE FOREGOING, the judgment of the trial court is reversed and the case is remanded for a new trial consistent with this opinion. The Clerk of this Court is ordered to send a mandate to the court below to resume jurisdiction of the case and give effect to this judgment. Costs shall abide at the final determination of the case. AND IT IS HEREBY SO ORDERED.