

of deposit of deeds.

CORNELIUS HARDING and PERCY DAVIES, JJ.A. concurred.

*Appeal dismissed.*

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# WURIE v. SIERRA LEONE SELECTION TRUST LIMITED

Court of Appeal (Forster, J.S.C., Cornelius Harding and  
Percy Davies, JJ.A.): February 3rd, 1972  
(Civil App. No. 6/71)

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[1] Civil Procedure—pleading—matters which must be specifically pleaded—  
plaintiff alleging breach of statutory duty must plead statutory provision  
relied on and set out as separate cause of action: Where, in an action for  
negligence, the plaintiff also alleges a breach of statutory duty, the correct  
pleading is for each to be set out as a separate cause of action and the  
particular statutory provision relied on must be specifically referred to or  
identified (page 25, lines 27-34).

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[2] Evidence—presumptions—presumption of law—omnia praesumuntur rite  
esse acta—trailer used on public road presumed lawfully licensed—plaintiff  
alleging contrary must rebut presumption: A trailer used on a public road  
is presumed to be licensed as required by reg. 11(4)(i) of the Road Traffic  
Regulations, 1960, and it is for a plaintiff who alleges the contrary to  
rebut the presumption of regularity (page 27, lines 7-41).

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[3] Road Traffic—licensing of motor vehicles—trailer used on public road  
presumed lawfully licensed—plaintiff alleging contrary must rebut  
presumption: See [2] above.

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The plaintiff (now the appellant) brought an action against the  
defendants (now the respondents) to recover damages for negli-  
gence and breach of statutory duty arising out of a road accident.

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The appellant was driving his bus down a hill when he saw a low  
loader driven by the respondents' servant on a bridge at the bot-  
tom. He tried to stop but his brakes failed and he swerved into the  
bridge and collided with the low loader. He brought an action in  
the Supreme Court to recover damages from the respondents for  
the negligence of their servant and for breach of statutory duty.  
He claimed that he expected an escort to warn of the approach of  
a low loader of such size and that in any case the respondents'  
vehicle exceeded the size and weight stipulated by the Road Traffic  
Regulations, 1960 and should not have been allowed on the public  
highway. He contended that this breach of statutory duty gave  
him a right of action for damages against the respondents.

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5 The respondents denied negligence and breach of statutory duty. They maintained that the low loader had always operated without an escort, but in compliance with reg. 27(1)(c) of the Road Traffic Regulations, 1960 it carried a red warning light which was lit when the accident took place, and they relied on the proviso to reg. 28(e) by which the Director of Public Works can exempt a particular trailer from the Regulations.

10 The Supreme Court (During, J.) found (a) that the onus was on the appellant to prove non-compliance with the Regulations by the respondents and that he had failed to do so; and (b) that the duties imposed by reg. 27(1) were public duties only, so that the appellant could not found a cause of action against the respondents on breach of statutory duty. It therefore dismissed the appellant's action with costs to the respondents.

15 The appellant appealed on the grounds, *inter alia*, that (a) the learned trial judge had misconceived the appellant's claim in that he failed to appreciate that the appellant was not seeking a remedy solely for the breach of statutory duty, but for the damage suffered as a result of that breach; and (b) the evidence adduced being  
20 unequivocal that the respondents were in breach of reg. 27(1)(b) of the Road Traffic Regulations, 1960, the learned trial judge erred in law in holding that the onus was on the appellant to prove that "the Director of Public Works did not give consent in writing to the respondents to put on the roads a trailer exceeding eight  
25 feet in width." The court also considered the correct manner of pleading a breach of statutory duty.

The appeal was dismissed.

#### Cases referred to:

- 30 (1) *Duke's Court Estates, Ltd. v. Associated British Engr., Ltd.*, [1948] Ch. 458; [1948] 2 All E.R. 137, applied.
- (2) *Tingle Jacobs & Co. v. Kennedy*, [1964] 1 W.L.R. 638, n.; [1964] 1 All E.R. 888, n., applied.
- 35 (3) *Wurie v. S.L. Selection Trust Ltd.*, 1970-71 ALR S.L. 165.

#### Legislation construed:

- Road Traffic Regulations, 1960 (P.N. No. 77 of 1960), reg. 11(4)(i): The relevant terms of this regulation are set out at page 27, lines 12-29.
- 40 reg. 27(1)(b): The relevant terms of this regulation are set out at page 25, lines 2-8.

reg. 27(1)(c): The relevant terms of this regulation are set out at page 25, lines 2-17.

reg. 27(1)(e)(i): The relevant terms of this regulation are set out at page 26, lines 27-34.

reg. 27(2): The relevant terms of this regulation are set out at page 26, line 37 - page 27, line 6.

reg. 28(e): "...

Provided that the Director of Public Works may by consent in writing, and subject to any conditions which he may impose, exempt a particular trailer from these provisions."

*Michael* for the appellant;  
*Barlatt* for the respondents.

FORSTER, J.S.C., delivering the judgment of the court:

The appellant sued the respondents in the High Court by writ of summons claiming, in para. 3 of his statement of claim:

"3. On November 6th, 1968, owing to the negligence and breach of statutory duty of the defendants, their servants or agents in and about the driving, care, control, operation, management and maintenance of the said low-loader vehicle along the Sefadu/Segbwema motor road, the plaintiff's vehicle collided with the defendant's vehicle, as a result whereof the plaintiff incurred loss and damage."

Particulars of negligence and breach of statutory duty were given and succinctly summarised in heads (a) and (b) of the five heads enumerated:

"The defendants, their servants or agents were negligent and in breach of statutory duty in that they —

(a) Failed to give any or any adequate warning of the presence and approach of their low-loader vehicle having regard to its size and the nature of the road it was occupying and having regard to other traffic then or likely to be on the said road . . .

(b) Failed to provide what is commonly known as an 'escort' to warn approaching traffic of the presence of their low-loader trailer having regard to its size and the nature of the road it was travelling on."

As a postscript, there was the following paragraph:

"In addition, the defendants were in breach of statutory duty in driving their said vehicle on the public highway

having regard to its size and weight.”  
Special damage was claimed.

5 The respondents (who were the defendants in the action) denied the allegations in para. 3 of the statement of claim. Counsel for the appellant, who represented him in the action, filed and argued four grounds of appeal, namely:

10 (i) That the learned trial judge misconceived the plaintiff's claim in that he failed to appreciate that the plaintiff was not seeking for himself a remedy solely for the breach of statutory duty but that the breach having occurred, the defendants owed a greater, special or particular duty of care to other road users including the plaintiff especially, when in the occasioning of a breach of statutory duty, the defendants put on the road a trailer of large dimensions which ought to have been considered dangerous having  
15 regard to its size and the nature of the roads, more particularly in the provinces of Sierra Leone.

(ii) That the learned trial judge erred in holding that the defendants were not negligent at all.

20 (iii) That the evidence adduced being unequivocal that the defendants were in breach of reg. 27(1)(b) of the Road Traffic Regulations, 1960, which breach was apparently accepted as a fact by the court, the learned trial judge erred in law in holding the view (as he did) that the onus was on the plaintiff to prove that “the Director of Public Works did not give consent in writing to  
25 the defendants to put on the roads a trailer exceeding eight feet.”

(iv) That the judgment was unreasonable and could not be supported having regard to the evidence.

30 The appellant seeks an order from this court to set aside the judgment of the High Court herein dated January 8th, 1971 and for judgment to be entered for him, the then plaintiff.

In his judgment the trial judge, During, J., gave a detailed résumé of the facts adduced in evidence in the action, adverted to the two main aspects of the claim and, after considering and expounding the law applicable, came to a decision dismissing the  
35 claim with costs to the respondents. During, J., in the course of his judgment, had this to say (1970—71 ALR S.L. at 167):

40 “The plaintiff has based his claim for damages on common law and also on breach of statutory duty. In his argument before me the plaintiff's counsel stated that the breach of statutory duty complained of was that the defendants failed to comply with reg. 27(1)(b) and (c) of the Road Traffic

Regulations, 1960. Regulation 27(1) reads as follows:

'No person shall cause or permit a motor vehicle or trailer to be used on any road, or shall drive or have charge of a motor vehicle or trailer, when so used, unless the conditions hereinafter set forth are satisfied, namely:—

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...

(b) no motor vehicle or trailer shall exceed eight feet in overall width;

(c) (i) no load on any motor vehicle or trailer shall project beyond either side of such vehicle;

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(ii) shall project more than three feet beyond the front elevation of such vehicle and where the load projects more than six feet behind the rear elevation of such vehicle, a red flag shall be fixed by day to the extreme end of the load and a red lamp by night in a similar position, the flag or lamp being clearly visible from the rear.'

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Counsel for the defendants cited the proviso to reg. 28(e) in the course of his argument before me which makes provision for the Director of Public Works to exempt a particular trailer from the provisions of reg. 28(a) to (e), such consent to be in writing."

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The learned judge then went on to state the law in terms with which this court, in the circumstances of the case before him, is in agreement. Indeed, his lordship had this to say also in his judgment under review (*ibid.*, at 168):

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"In every claim based upon a breach of statutory duty, regulation or order all facts necessary to bring the case within the particular provision relied on must be alleged by reference to the particular provision in question, which must be specifically referred to or identified, and where in addition to a breach of statutory duty, common law negligence is also alleged, the correct pleading is to allege each as a separate cause of action. In this case the breach complained of in the plaintiff's statement of claim filed and delivered herein has not been alleged by reference to the particular provision in question but the defendants have not raised an objection, probably in view of Exhibits B and C which were admitted in evidence by consent of both parties."

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It would be convenient here to deal with Exhibits B and C referred to in the foregoing extract of the judgment of During, J.

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Exhibit B is a letter from the appellant's lawyer to the respondents, dated June 7th, 1969, on the appellant's instructions, relating to the traffic incident of November 6th, 1968 alleging negligence on the part of the respondents' driver and claiming damages of Le5617.

5 Exhibit C on the other hand is a letter from the appellant's lawyer to the insurance company with which the respondents' low loader was insured at the material time, on the instructions of a client who had been a passenger on board the appellant's bus (registration no. EM266) on that fateful day, notifying the insurance company

10 of the said traffic incident and claiming on his client's behalf the sum of Le2530.50 as damages for injury, medical and other expenses resulting therefrom, and general damages. In view of the court's decision on this appeal, the details of the contents of these letters don't call for more comments as this court is satisfied that

15 the learned trial judge did not err in law in his judgment, nor did he misconceive the appellant's claim.

The appellant's counsel argued before this court, as he no doubt did in the court below, that the burden of proving the compliance by the respondents with reg. 27(1)(b) and (c) was on the respondents and not on the appellant. He stated here and, in our opinion, correctly in law, that the proviso to reg. 28(e) referred to the specific provisions of that regulation and not to those of reg. 27 whose breach is the basis of the appellant's complaint of breach of statutory duty. There are, however, more comprehensive and wider

20 provisos relating to reg. 27. Immediately following reg. 27(1)(e)(i) there are these two provisos:

“Provided that the Director of Public Works by an authorisation in writing may permit the use upon a specified route or routes of an omnibus which exceeds eleven feet in height:

30 Provided further that the Director of Public Works may exempt particular vehicles or particular classes of vehicles from the limits of overall width herein provided, subject to such conditions as he may deem it necessary to impose in each case.”

35 and following still, in reg. 27(2), is the provision for special permits for exceptional cases, as follows:

“(a) Notwithstanding the provisions of sub-paragraphs (b) to (f) inclusive of paragraph (1) of this Regulation The Director of Public Works, a licensing authority or a

40 Police Officer of not lower rank than sub-inspector may grant in writing for a particular occasion or particular

occasions a permit for the use of a vehicle or trailer which in use does not conform to the aforesaid provisions;

- (b) such permit shall be carried by the driver of the motor vehicle on such occasion or occasions and shall be produced by him on demand being made by any licensing authority or Police Officer.” 5

The learned trial judge held that the burden was on the appellant to rebut the presumption of regularity in the fact that the low loader No. EM862 was at all material times duly licensed for use on the roads. Regulation 11(4)(i) of the Road Traffic Regulations, 1960 is pertinent here and reads: 10

“The licensing authority shall refuse to issue a licence for any motor vehicle —

- (a) which does not comply in all respects with every condition applicable to its particular type or class under these Regulations; 15
- (b) of which the use on any road without a permit or licence from the Director of Public Works or any other authority is prohibited unless such permit or licence is produced to him by the owner; 20
- (c) of which the condition, in his opinion, is such as to render its use on a road a contravention of the Ordinance or of these Regulations;
- (d) so constructed or in such condition, mechanically or otherwise, as, in his opinion, to be likely to be dangerous to persons or animals lawfully using the roads or injurious to roads or bridges; 25
- (e) in respect of which a valid certificate of roadworthiness as required by regulation 34 is not produced to him.” 30

There is evidence, given in the court below by the appellant, that a police officer drew a sketch plan of the scene, in his presence, and in the circumstances of all the evidence adduced before him, this court finds the statement of the learned trial judge on the onus of proving non-compliance correct in law: see *Tingle Jacobs & Co. v. Kennedy* (2) where it was held that in the absence of evidence to the contrary it was to be presumed that traffic lights were in working order. So in *Duke's Court Estates Ltd. v. Associated British Engr., Ltd.* (1) where a forfeiture was in respect of a covenant not to permit an auction on the premises without the lessor's written consent, the onus was held to be upon the plaintiff to prove the non-existence of such consent. 40

The appeal fails on all four grounds and is dismissed with costs.  
*Appeal dismissed.*

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## SESAY v. DAVIES

High Court (Agnes Macaulay, J.): February 11th, 1972  
(Civil Case No. 46/70)

- 10 [1] Evidence—burden of proof—negligence—defence of inevitable accident—  
burden on defendant to show accident inevitable: An inevitable accident  
occurs where a person, in doing an act which he lawfully may do, causes  
damage without either negligence or intention on his part; the burden of  
proving that something happened over which he had no control, lies on  
the defendant or on the person setting up the defence of inevitable acci-  
dent (page 31, line 28 — page 32, line 2).
- 15 [2] Road Traffic—speed—proper speed—duty of driver to travel at speed  
which is reasonable in circumstances: It is the duty of the driver of a  
vehicle to travel at a speed which is reasonable in the circumstances;  
the nature, condition and use of the road, and the amount of traffic  
should be considered (page 31, lines 2–14).
- 20 [3] Tort—negligence—inevitable accident—burden of proof—burden on  
defendant to show accident inevitable: See [1] above.
- [4] Tort—negligence—inevitable accident—causing damage without negligence  
or intention during lawful act: See [1] above.

25 The plaintiff brought an action against the defendant to recover  
special and general damages for negligence.

The plaintiff was travelling in a car driven by the defendant  
when it was involved in an accident injuring the plaintiff. The  
accident occurred as the defendant was negotiating a curve in the  
30 road. It was not a built-up area and the curve was not blind or  
sharp. An animal suddenly dashed on to the road and as the  
defendant tried to avoid it and a heap of stones which was in his  
lane, the car somersaulted.

35 The plaintiff contended that the defendant was negligent in that  
he was driving fast and should have slowed down at the curve, but  
in fact there was no evidence to show the defendant's speed or  
whether he did slow down.

40 The defendant contended that the accident was caused by the  
presence of two unexpected obstacles on the road, and was  
unavoidable.

The plaintiff's claim was dismissed.