

BONG MINING COMPANY, through its General Manager, Appellant/Petitioner,
v. **TOGBA WAYTANBOLO et al.** and **The BOARD OF GENERAL
APPEALS**, Ministry of Labour, Appellees/Respondents.

APPEAL FROM THE NATIONAL LABOUR COURT, MONTSERRADO
COUNTY.

Heard: November 27, 1989. Decided: January 9, 1990.

1. A crime is a wrong which the government deemed injurious to the public at large and punishes through a judicial proceeding in its name. It is an offense against the public pursued by the sovereign.
2. A private prosecutor, being one who only sets in motion the machinery of the criminal justice system operated by the state, is in no way concerned with the matter should the state's case fall, except in cases of breach of peace.
3. It is the responsibility of the state to prosecute criminals as well as to punish.
4. A release is a writing manifesting an intention to discharge another from an obligation and must be signed by the party executing the release.
5. Waiver is the intentional relinquishment of a known right by a party.
6. The plea of estoppel is a good plea and will prevent a party from denying his own acts, if well founded; neither law nor equity will permit a party to disclaim his own acts as unlawful.
7. Time lost while awaiting trial cannot be compensated.

The appellees, Togba Waytanbolo and others, were employees of the Bong Mining Company, appellant, when they were charged, indicted and tried for the commission of the crime of theft of property. At the end of the criminal trial, they were acquitted. They were thereafter reinstated to their respective jobs by the appellant but were later declared redundant, along with other employees and paid redundancy compensation. They signed releases, discharging the appellant from any and all claims arising from their employment with the appellant. However, at the time of reinstatement to their jobs, the appellees applied to the appellant for "time lost" pay for the period of the criminal trial, when they were not working and were not getting any compensation. The appellant rejected the appellees' claims, which led the appellees to file a complaint with the Ministry of Labour for "time lost pay". The hearing officer

conducted an investigation and thereafter awarded the appellees a total sum of \$15,123.36 for time lost. Appellant excepted and appealed to the Board of General Appeals; and after a hearing, the said Board of General Appeals affirmed the ruling of the hearing officer. Appellant again excepted to the Board's ruling and announced an appeal to the National Labour Court. The National Labour Court also affirmed the decision of the hearing officer and the Board, to which the appellant excepted and announced an appeal to the Supreme Court.

On appeal, the Supreme Court held that time lost while awaiting trial cannot be compensated. The Court also held that the release covering the redundancy payment of two years imposed no obligation on the appellant and that the appellant cannot be penalized for doing good. The judgment of the trial court was therefore reversed.

John Morris and *James D. Gordon* appeared for appellant/ petitioner. *B. Mulbah Togba* and *Francis Y. S. Garlawolu* appeared for appellees/respondents.

MR. JUSTICE JUNIUS delivered the opinion of the Court.

Appellees were employees of appellant, Bong Mining Company, when they were charged and indicted for commission of the crime of theft of property. Their employment with appellant was suspended; they were tried by the Ninth Judicial Circuit Court, Bong County, and were acquitted. Subsequently, the appellant reinstated them but they, along with other employees of appellant, were later affected by a redundancy exercise. They were all paid their redundancy compensation. However, when appellee were reinstated, they applied to appellant for "time lost" pay while awaiting trial of their case of which they were acquitted. Appellant rejected their claim. Therefore the appellees filed a complaint with the Ministry of Labour and a hearing was conducted by the hearing officer, who found for appellees and awarded them a total of \$15,123.36. Appellant excepted and appealed to the Board of General Appeals which affirmed the decision of the hearing officer. Appellant, not being satisfied with the decision, appealed to the National Labour Court which also affirmed the decision. Appellant excepted, announced an appeal to this Court and has filed a four-count bill of exceptions. The counts are:

1. As to the entire ruling of Your Honour, petitioner says that same is inconsistent, contradictory, indistinct and vague in many respects. For example, you recognized the existence of the release executed in favour of petitioner by the respondents, yet, you concluded by saying that they cannot be considered as final payments to the respondents for their claim. Your Honour therefore committed a reversible error.

2. And also because as to the entire ruling of Your Honour, petitioner says that Your Honour committed a reversible error when you awarded to the respondents the sum of \$15,123.36 for an alleged "time lost" without recognizing the following provision of the two releases executed by the respondents:

'In receipt and acknowledgment of the above mentioned amount; I hereby forever release and discharge the said Bong Mining Company (BMC) from any and all claims whatsoever that I may have had arising from my employment with the said Company.' Petitioner submits that the crux of this case, among other issues of law and facts, is that respondents are barred and estopped from making any further claim against the petitioner after the execution of the two releases. This Your Honour neglected, failed and refused to pass upon.

3. And also because petitioner says that when the claim for time lost by respondents was formally made by the Bong Workers Union for and on behalf of the respondents, said claim was rejected by petitioner as evidenced by BMC's Letter No. GM/LA: JNM aab, dated January 14, 1983. This outright rejection of the claim for time lost having been known to the respondents, and they having been reinstated and resumed duties with BMC without any further demand up to the time of their redundancy, and they having executed the two releases that they have no further "claim whatever" against BMC, Your Honour committed a reversible error by entertaining said claim and awarding the sum of \$15,123.36 to the respondents.

4. And also because petitioner says that Your Honour committed a reversible error by your failure, refusal and neglect to pass upon the salient issues of law and facts raised in counts 2, 3, 4, 5 and 6 of the petition.

Appellees have filed a brief in which they have asked us to answer these issues: release, estoppel, waiver and private prosecutor's responsibility to an accused upon acquittal.

Counts one and two of the bill of exceptions allege that the ruling of the National Labour Court Judge is contradictory, inconsistent, vague and indistinct, because even though it recognizes the existence of the releases issued by the appellees, it finds that the releases do not release the appellant from this particular claim. Here is one of the releases:

"RELEASE FOR REDUNDANCY PAY

"Know All Men by These Presents: That Whereas on the 15th Day of June 1983, while engaged in the services of Bong Mining Company, Liberia (BMC) and as a result of redundancy, the Bong Mining Company, Liberia (BMC) paid to me the sum of \$3,020.16 (three thousand and twenty & 16/100) constituting a redundancy pay for 12 years of service and receipt whereof is hereby acknowledged for and on account of the said faithful services rendered. Now therefore, I, John Gunyon, do hereby release and forever discharge the said Bong Mining Company, (BMC) and their management of and from all manner of actions, suits, claims and demands whatsoever, in law and equity, which I may have against said Bong Mining Company (BMC) and their management or which I ever had, shall or may have, or which shall hereafter accrue to me.

"I perfectly understand that the full settlement of \$3,504.16 (Three Thousand Five Hundred 16/100) represents the following:

- a) Payment for the number of days worked up to the date of this release : \$125.84;
- b) payment of leave entitlement up to the date of this release: \$232.32;
- c) payment in lieu of notice from the date of this release: \$125.84;
- d) Redundancy pay for the number of years from the date of my employment up to and including the date of this release: \$3,020.16; and
- e) Transportation allowance.

In receipt and acknowledgment of the above mentioned amount, I hereby forever release and discharge the said Bong Mining Company (BMC) of all and any claim whatsoever that I may have had arising from my employment with the said company."

In our opinion, there is no inconsistency, indistinctness nor contradiction. The release is clear. It is only discharging BMC of the redundancy claim and not "time lost", if at all appellees have any claim. Further, the release does not cover "time lost" prior to the issuance of the release. Appellees have applied or requested BMC to pay for "time lost". If BMC intended for the release to cover "time lost" it should have been incorporated that matter therein. The redundancy payment covers the two years appellees were off the job and awaiting trial, that is, instead of 10 years, BMC paid for 12 years, at one month for each year of service.

The appellees are not contending that they were not fully compensated under the redundancy scheme but they are contending that they should be compensated for the "time lost" while awaiting trial; the twenty-four months of the two years cover under

the redundancy scheme. The pertinent issue therefore is: should appellant, BMC, compensate appellees for the time they claimed to have lost?

Appellees were arrested, charged, tried and acquitted for committing a crime. Their prosecution was based on a probable cause asserted by the Republic of Liberia. Under the criminal laws of the Republic of Liberia, alleged criminals are prosecuted by the State (R. L.) and not a private prosecutor or prosecutrix. It is the State that determines the probable cause and prosecutes criminals. "A crime is a wrong which the government deems injurious to the public at large and punishes through a judicial proceeding in its own name. It is an offense against the public pursued by the sovereign." 21 AM. JUR. 2d, *Criminal Law*, §2. Appellant was a private prosecutor during the trial and thus only a witness. The contention that appellant's name was inserted in the caption of the case makes no difference. It is hoary with age that criminals are prosecuted only by the State and not private individuals or companies, etc. "A private prosecutor, being one who only sets in motion the machinery of criminal justice operated by the State, is in no way concerned with the matter should the State's case fail, except in cases of breach of peace." *Coleman v. Cranford et al.*, 19 LLR 29 (1968). It is the State's responsibility to prosecute and punish criminals. Acquittal of appellees should not and cannot be a ground to claim payment for alleged time lost. Doing so would be giving benefits to malicious prosecution. Convincingly, the law also permits a defendant in a criminal case to institute a civil action for damages against a private prosecutor or private prosecutrix. This is not the case.

Appellees' claim is based upon the release. The release covers only redundancy payment, the entire period the appellees were in the employment of BMC, the twelve years inclusive of the two years while their case was pending. Having paid them for the two years, it goes without saying that appellant did consider them as its employees while they were awaiting trial, otherwise the two years would not have been included in the redundancy payment. But appellant contends that the two years were mistakenly included in the calculation for redundancy compensation. From the analysis above, can we penalize appellant for doing good? The answer is NO.

We have said that "time lost" while awaiting trial cannot be compensated. Further, the release covering the redundancy payment for the two years imposes no obligation on BMC. "A release is a writing manifesting of an intention to discharged another from an obligation and must be signed by the party executing the release." *Monrovia Construction Corporation v. Wazami*, 23 LLR 58 (1974). Bong Mining Company was released of its obligations to appellee under the redundancy payment; hence, waiver

and estoppel will apply, as the law provides that "Waiver is the intentional relinquishment of a known right by a party." *Freeman v. Firestone Plantations Company*, 23 LLR 276 (1974). Appellant's contention that the execution of the release constitutes a waiver and as such appellees are estopped is well founded. "The plea of estoppel is a good plea and will prevent a party from denying his own acts, if well founded; neither law nor equity will permit a party to disclaim his own acts as unlawful. The same rule applies to privies." *East African Company v. Dunbar*, 1 LLR 279 (1895).

We have no alternative therefore but to reverse the judgment of the trial court and order the court below to resume jurisdiction and enforce this judgment. Costs disallow. And it is hereby so ordered.

Judgment reversed.