

CAMER (LIBERIA) INC., by and thru its General Manager, Appellant, *v.* **TARPEH CAMBO** and THE BOARD OF GENERAL APPEALS, MINISTRY OF LABOUR,
Appellees.

APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT,
MONTSERRADO COUNTY

Heard: March 27, 1984. Decided: May 10, 1984.

1. The testimony of a witness based on written information of past incidents to which he was not a party is considered hearsay evidence and therefore inadmissible.
2. The false accusation by counsel of either party that a judge had reviewed the records in a case in the absence of a party is tantamount to contempt of court.
3. A release issued by an employee at the time of termination of his/her employment is significant. Therefore, the failure of a judge to consider the release in his determination of a wrongful dismissal complaint is reversible error.
4. When a party in a wrongful dismissal suit accepts an amount of settlement and issues a receipt, the matter is settled. To allow an additional amount will encourage endless litigation, and will be tantamount to a repudiation of the receipt executed by the party.

The appellee was employed with the appellant from 1971-1977, initially as a warehouse superintendent and later, as a beach master, the position he held at the time of his termination.

The appellant discovered that six drums of rice were missing from its warehouse and launched an investigation. The appellee maintained that he was not responsible for the missing rice as he was in the Ivory Coast on company's business when the rice was stolen, even though witnesses testified to the contrary. The appellant, however, contended that the appellee was dismissed for cause since responsibility for the stolen rice was assigned by virtue of the position appellee held in the appellant company. The appellee was paid \$188.27 (representing unpaid wages for September 1-16, 1977) for which the appellee issued a receipt and noted thereon a release of the appellant from "any and all claims." Five years later, the appellee filed a complaint with the Ministry of Labour for wrongful dismissal. The plaintiff/appellee prevailed, both at the Ministry of Labour and in the Debt Court. Consequently, the respondent/appellant corporation appealed to the Supreme Court which *reversed* the ruling of the debt court.

Peter Amos George appeared for appellant. *S. Edward Carlor* appeared for appellee.

MR. JUSTICE YANGBE delivered the opinion of the Court

Appellee, Tarpeh Cambo, was employed by appellant Camer Corporation, from 1971 to 1977 as a warehouse superintendent and beach master, respectively. The appellee alleged that while he was out of the country on company's business in the Republic of Ivory Coast, several bags of rice were stolen from the company's warehouse. Upon his return, he received a letter from Mr. Fermantee asking him about the rice and inquiring as to who issued the gate pass for the rice to be removed from the warehouse. After several inquiries, it was discovered that Mr. Francis Hill, one of the employees of appellant, was instructed by Mr. Sakpa, the shore headman of appellant, to issue the gate pass to one Mr. Nat Dixon for the rice to be removed. However, appellee and many others were arrested by the Criminal Investigation Division (C.I.D.) and detained for three weeks in connection with the theft.

Appellee further alleged that during the course of the C.I.D. investigation, the case was withdrawn or deferred by management pending the return of Mr. Daniel Tolbert. When Mr. Tolbert returned, the case was privately investigated by him and, consequently, he recommended that appellee be dismissed and paid \$188.27. Almost five years after the appellee's termination, he filed with the Minister of Labour a complaint against the appellant for illegal dismissal. The appellant contended that the reason for the dismissal was because six drums of rice were stolen from the warehouse and that he, the appellee, being the beach master and warehouse superintendent, was responsible for the removal of the rice. Appellant further contended that appellee took some of the rice home and that appellee was paid off up to date for the time he worked. Therefore, the main issues to be decided are, whether the appellee was paid wages due to him up to the time of his dismissal, and whether he was guilty of breach of duty. We will first decide these two points of contention before passing upon the procedural reasons raised in the bill of exceptions.

In count four of the bill of exceptions, appellant asserted thus:

"...Your Honour (debt court judge) failed to dispose of and rule on the petition filed before Your Honour by petitioner with all of his exhibits including a release issued in favor of petitioner or by co-respondent Tarpeh Cambo before rendition of final judgment in these proceedings."

Here is relevant portion of the release:

"...Received from Camer (Liberia) Corporation the sum of one hundred eighty-eight and 27/100 dollars (\$188.27) representing payment for salary from September 1 to 16, 1977, being full and final settlement of any and/or all claims against said Company.

19/2/78

S/ Tarpeh Cambo

T/ Tarpeh Cambo

Beach-Master."

As against this crucial factual contention, the appellee averred essentially in count seven of his brief as follows:

"...Under judicial review, the trial court, like in the instant case, has a mandate to confine itself to the record from the administrative forum and not to hear facts or hear evidence and pass on documentary evidence as suggested in count four of the bill of exceptions."

It is not disputed that the debt court as well as the Supreme Court must be confined to the records. The receipt quoted above is an integral part of the debt court's records forwarded to us, and its truthfulness has not been challenged in the brief of the appellee. Therefore, we are bound to accept the correctness of same.

The appellant has argued that appellee was dismissed for cause and, therefore, was paid only the wages owed him up to the date of his termination, relying upon the release quoted earlier.

The release is a prime evidence for the payment received. Hence, the debt court judge should have taken into consideration and decided the weight of the receipt, and his failure to do was a reversible error. As we have mentioned *supra* in this opinion, in passing we want to observe that five years after the dismissal of the appellee, this case was filed against the appellant with the Ministry of Labour. There is no explanation in the records as to what occasioned the undue delay of five years before bringing the suit for illegal dismissal. However, we are inclined to believe that after having received the amount of \$188.27, and the execution of a release for it as final payment "for any and all claims" against his employer, the appellee must have been quite satisfied with the amount.

In the last count of appellee's brief, he contended that the appellant has not challenged the weight of the evidence in the case; therefore, the ruling of the court below should be totally affirmed. This contention is supported by the bill of exceptions as far as it relates to the dismissal of appellee because appellee was paid off up to date. Therefore, in our opinion, the

alleged reason for the termination of the services of the appellee and the release are interwoven. Hence, we cannot decide the question of illegal termination in isolation of the evidence which supports the dismissal.

We will now review the evidence with respect to the alleged involvement of the appellee in the theft to resolve the issue of wrongful dismissal. The appellee testified in essence that he was employed by the appellant in 1976 as beach master. In September 1977, appellee was sent to the Republic of Ivory Coast on a mission for the company. The day after his return to Liberia, he reported to work, whereupon he received a letter from Mr. Fermantee, the boarding agent of the company, inquiring as to who issued the gate pass for the dirty or sweeping rice to be removed from the warehouse of the company. Upon receipt of the letter, the appellee, as beach master, called the workers together to investigate. During the probe, which was conducted in the presence of Mr. Fermantee, it was established that one of the workers, Nat Dixon, instructed Mr. Francis Hill to issue the gate pass for the rice. The next day a team of officers from the C.I.D. arrested some employees of the company, including Mr. Tarpeh Cambo. Mr. Cambo again maintained that he was out of the country in the Republic of Ivory Coast when the rice was reported missing, therefore he knew nothing about it. However, before the investigation by the C.I.D. was concluded, the company withdrew or abandoned the complaint. Notwithstanding, the matter was privately investigated by Mr. Daniel Tolbert, one of the officials of the company.

After the investigation by Mr. Tolbert, he recommended the dismissal of Mr. Ambo, the appellee. During the hearing at the Ministry of Labour, Mr. Cambo was asked when he returned from the Republic of Ivory Coast, and whether he had traveling documents such as a passport or visa. The answer was in the negative.

The next witness deposed was Kotte Browne who confirmed that Mr. Tarpeh Cambo was out of town when the rice was stolen from the warehouse of the company and, therefore, he was shocked when he heard that Mr. Cambo had allegedly taken the rice away.

Another witness was Milton K. Cooper, personnel manager of the company. Mr. Cooper told the hearing officer that he was employed in 1978 as personnel manager. Accordingly, he read past record of the office from which he gathered information that Mr. Cambo, as the beach master, in September 1977, told the employees of the company that the rice was for the shipping employees of the company and, because the warehouse employees were also part of the company, they were going to share the rice with them. The following day, Mr. Cambo told Mr. Nat Dixon to come to Mr. Francis Hill, the warehouse keeper, to issue a gate pass for the sweeping rice. Mr. Nat Dixon took the rice home, and Mr. Cambo told the workers to go to Dixon's house in the afternoon and receive their share of the rice. Those

among whom the rice was divided are: Mr. Francis Hill, A.B. Willgba, Peter Sackor, Moses Blogba and many others. As a result, the matter was reported to the CID, whereupon, Mr. Okays had all the men arrested. Throughout the preliminary investigation, the people who received the rice from Cameo were ordered to either return the rice or pay \$20.00 for each bag they received. Some received three bags and he, Francis Hill, received four. However, Mr. Cambo and Nat Dixon having distributed the rice were dismissed for breach of duty.

Mr. Francis Hill, one of the witnesses and an employee of the appellant, told the story thus: In September 1977, six drums of rice were carried from the warehouse and Mr. Joseph Amour called him to tell the boys to put the rice in the bags and the headman, Mr. A.B. Wleegba, put it in fifty-four bags. About two days after, Nat Dixon, brother of Joseph Kamour came and Francis Hill prepared a gate pass for the rice. Nat Dixon told Francis Hill that Joseph Kamour was not well that day, therefore, he (Nat Dixon) should take delivery of the rice. The next day Joseph Amours reported to work and told Francis Hill that after work he should pass to the house and get four bags of rice. Two days after that, the CID team arrested them and Mr. Hill admitted that Joseph Kamour ordered him to take the rice.

In answer to a question, Mr. Hill said that Mr. Joseph Kamour was the warehouse superintendent and beach master. It is therefore clear that Mr. Taper Cambo is referred to by Mr. Hill as Joseph Kamour in his testimony.

The last witness was Nat Dixon who said that in September 1977, he carried rice home, and a man called T. N. T. told him to tell Francis to fix a gate pass for the rice, but at that time Tarpeh Cambo was not in town.

Mr. Cooper, the personnel manager of the company, testified that he was employed in 1978, and the rice was reported missing in 1977 prior to his employment. Mr. Cooper also said that he read the files of previous years, which he found in the office, and the testimony he gave was predicated upon the information in the said files or records. Therefore, in our opinion, the testimony of Mr. Cooper is hearsay. Hence, it is inadmissible. Civil Procedure Law, Rev. Code 1: 25.7.

We will now proceed to discuss and pass upon the procedural issues raised in the bill of exceptions.

In counts one and two of the bill, appellant blamed the debt court judge for not affording appellant the opportunity to argue the case with the appellee on the record submitted in accordance with the Labor Practices Law, section 8. The appellant's counsel further contended that the debt court judge reviewed the record in the case in the absence of

appellant and not in open court. Interestingly, the record shows that appellant was cited to appear on the 19th of August 1983 for rendition of the ruling. More-over, sheets four and five of the minutes of the debt court, dated August 3, 1983, clearly show that on that date the case was duly called, representations were announced by the two lawyers, one representing each side, and they cited law in support of their respective contentions. Therefore, the argument of counsel for appellant in counts one and two of the bill of exceptions are false and tantamount to contempt. Counsel for appellant is therefore strongly warned against repetition of such unbecoming act.

In count three of the bill of exceptions, it is alleged that where an employer is adjudged liable for wrongful dismissal, the employer has an election to either pay the dismissed employee or reinstate him. But in this case, the debt court judge took away the choice of the employer when he ruled that the appellee only receives compensation. However, as the argument progressed, counsel for appellee called the attention of the court to the records and pointed out that this was incorrect and it was another deception on part of the counsel for appellant. This point was immediately conceded and therefore, count three of the bill of exceptions was waived by counsel for appellant.

We have already passed upon the effects of counts five and six of the bill of exceptions earlier in this opinion; hence, they need no further comments.

The appellee having received \$188.27 as salary from September 1 to 16, 1977, as full claim against the company, to award him an additional amount for wrongful dismissal will not only encourage endless litigation, but will be tantamount to a repudiation of the receipt executed by the appellee. In consequence thereof, the ruling of the court below is hereby reversed.

The Clerk of this Court is therefore instructed to mandate the trial judge to resume jurisdiction over the case and give effect to this opinion. Costs are disallowed. And it is so ordered.

Ruling reversed.