

THE MANAGEMENT OF CAMER SHIPPING LINES, by and thru its General Manager, Appellant, *v.* **FRANCIS HILL**, Appellee.

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

Heard November 25, 1985. Decided December 18, 1985.

1. Where there is a failure to serve copies of a petition for judicial review upon the Board of General Appeals and the other respondents, the petition is deemed not legally before the court. Accordingly, under such circumstances, a trial judge is not in error in ignoring a petition for judicial review and instead hearing and granting a petition for enforcement of the decision of the Board of General Appeals.
2. The provision of the Labor Laws governing judicial review of the decision of the Board of General Appeals should be strictly complied with, and as a petitioner has the responsibility to superintend his appeal, he should ensure that the requirements of the law are fully met.
3. A party aggrieved by a decision of the Board of General Appeals may appeal from such decision or any part thereof to the circuit court or debt court in the county in which the Board held its proceeding, by filing a petition to the circuit court or debt court within ten days after receipt by the aggrieved party of a copy of the administrative decision. Copies of such petition must be promptly served upon the Board and upon all other parties of record.
4. A petition for judicial review of an administrative decision, supported by an affidavit, is addressed to the court or judge, and therefore is a special proceeding which requires an order from the judge in the same manner as other special proceedings, rather than written directions addressed to the clerk of court as in ordinary civil actions, before a writ of summons or citation can be issued and served on the respondents, notifying them of the time and place for the hearing. A failure to adhere to this procedure renders the petition dismissible.
5. A petitioner seeking judicial review of an administrative decision must obtain a court's order directing the clerk to receive and file the petition.

Appellant appealed from a ruling of the Civil Law Court for the Sixth Judicial Circuit,

Montserrado County, granting appellee's petition for enforcement of the decision of the Board of General Appeals awarding appellee \$8,172.00 as compensation for his illegal dismissal by appellant. Appellant contended that it had filed within the statutory time a petition and written directions for judicial review of the Board's decision, that the trial judge had failed to pass upon the said petition, and that the judge had instead entertained and passed upon the appellee's petition for enforcement of the Board's decision. The appellant argued that this procedure followed by the judge was error and it therefore prayed that his decision be reversed.

Appellee, on the other hand, contended that the petition for judicial review was never served on him, and that therefore it was not legally before the court. Appellee argued further that the petition should have been directed to the court rather than the clerk, and that a judge's order rather than written directions was required before a writ of summons or a citation could be issued by the clerk of court and served by the sheriff, none of which had been done.

The Court, agreeing with the appellee, held that by definition, a petition for judicial review of an administrative decision, including a judicial review of the decision of the Board of General Appeals, was in the nature of a special proceeding, and that as such, it should be directed to the court itself (meaning the judge), rather than the clerk, since in such proceedings only the judge has the authority to order issuance of a writ of summons or a citation. No written directions, which is required in an ordinary action, could vests authority in the clerk to issue summons or citation on the respondents in special proceedings, without an order from the trial judge, it said. The Court noted that as there was no judge's order issued in the case, the petition was not legally before the trial court. Hence, it opined, the trial judge did not err in ignoring the petition for judicial review and in passing instead on the petition for enforcement of the decision of the Board. The Court therefore *affirmed* the judgment of the trial court and ordered the judgment enforced.

John Mathies and *Joseph Dennis* appeared for appellant. *George Tulay* appeared for the appellee.

MR. JUSTICE SMITH delivered the opinion of the Court.

This appeal was filed against a ruling made by the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, granting appellee's petition for enforcement of the decision of

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the Board of General appeals in an illegal dismissal proceeding.

The records on appeal reveal that on review, the Board of General Appeals affirmed the ruling of the hearing officer awarding appellee the following amounts:

1. Payment for time served(December 1982).....\$454.00
 2. Payment for the period of
suspension (\$454 x 6 months)..... 2,724.00
 3. Severance pay (one month pay for
each year of service -- \$454 x 11 years)..... 4,994.00
- \$8,172.00

There is no showing in the records that the appellant management had registered its exception to the decision of the Board and notified the Board of its intention to appeal its ruling or seek a judicial review of the decision. In fact, counsel for appellant argued that there is no statutory provision for a dissatisfied party to except to the decision of the Board and announce an appeal therefrom as a condition to filing a petition for judicial review. He contended that all that is required is that the appealing party petitions the court for a judicial review within ten days of the receipt of a copy of the Board's decision. Indeed, we found in the records a petition for judicial review accompanied by a written directions addressed to the clerk of the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, which was filed by the clerk on October 31, 1985, that is to say, seven days after the Board's decision. Unfortunately, there is no showing of a summons or the service thereof made on the Board and the appellee who is a party in interest. Counsel for the appellant management did not deny that service was not made by the proper ministerial officer. In fact, he argued that the failure of the officer of court to perform such statutory duties should not prejudice the interest of the appellant.

The court below heard the enforcement proceeding and grant-ed the petition, holding that there was no petition for a judicial review legally before the court. The appellant management was thereupon required to satisfy the decision of the Board of General Appeals by paying to appellee the amount of \$8,172.00 awarded by the Board. It is from this decision or judgment of the court below that appellant appealed to this Court for a review and final determination.

The records on appeal revealed that the petition for enforcement of the Board's decision, filed by appellee, is supported by a certificate from the clerk of the Board of General Appeals. The certificate reads thus:

"From a careful perusal and inspection of the records in the case *Francis Hill v. Camer*

Shipping Lines, there is no exception filed to the ruling of the Board of General Appeals, or any writ of summons with affidavit attached along with a petition served on said Board up to and including the issuance of this certificate. Hence, this clerk's certificate."

The certificate quoted *supra* was issued on the 26th day of November, 1984, that is to say thirty-three days after the Board's decision. Another certificate from the clerk of the Civil Law Court in support of the petition for enforcement, dated December 4, 1984, reads as follows:

"From a careful inspection of the records in them above entitled cause of action, there is no appeal filed in this court from the Labour Ministry up to and including the issuance of this certificate. Hence, this clerk's certificate."

The basic contention of the appellant, raised in the bill of exceptions, and which its counsel argued in his brief, is that a petition for judicial review of the decision of the Board of General Appeals, accompanied by a written directions addressed to the clerk of the court, having been filed in the clerk's office on October 31, 1984, the trial judge should have first heard and decided on the petition and not to give preference to and hear the petition of the appellee for enforcement. This being the basic ground constituting appellant's appeal, we wonder why the appellant did not take advantage of a remedial process, a right which was available when the trial judge attempted to hear the enforcement proceedings since, as contended by the appellant, there was a petition already pending before the court for a judicial review of the Board's decision sought to be enforced. Instead, the appellant joined issue with the appellee in the enforcement proceeding by the filing returns to the petition for enforcement and subsequently submitting to argument in the enforcement proceeding. In our opinion, the appellant's contention could have been better decided in a remedial proceeding, especially since the petition for judicial review, which was separate and distinct from the petition for enforcement, were not consolidated and heard by the court below. However, we shall say more on this later in this opinion.

Counsel for appellee, on the other hand, contended and argued in his brief that if a petition for judicial review was indeed filed by the appellant, the Board of General Appeals and all parties in interest should have been served and returned served within the time allowed by statute. Instead, they said, no such petition for judicial review was filed and served on the Board of General Appeals and the appellee, as evidenced by clerk's certificate made profert of by the appellees. As there was no petition for judicial review legally before the court for hearing and disposition, the trial judge acted properly when he heard and

granted the petition for enforcement.

As stated earlier, a perusal of the records revealed that a petition for a judicial review of the Board's decision, along with the written directions, addressed to the clerk of the Civil Law Court, dated October 31, 1984, directing said clerk to issue a writ of summons on all parties to appear for the judicial review on the 10th day of December, 1984, was filed by the appellant management, but that there was no indication of a summons being issued as directed by the written directions; nor do the records show that returns were thereto, to the effect that the appellee and the Board of General Appeals had been served and returned served. These omissions seem and in fact support the clerk's certificate aforesaid. It is our opinion that section 7, chapter 1 of the Labor Laws of Liberia should have been complied with, and we hold that it was the responsibility of the appellant management to superintend its appeal by seeing to it that the requirements of the mentioned provision of the Labor Practices Laws were fully met. In that section it is provided that:

"A party aggrieved by a decision made by the Board of General Appeals may appeal from such decision or any part thereof to the Circuit Court or Debt Court in the county in which the Board held its proceeding, by filing a petition to the Circuit Court or Debt Court within 10 days after receipt by the aggrieved party of a copy of the administrative decision. Copies of the petition shall be served promptly upon the Board of General Appeals which rendered the decision and upon all parties of record"

Appellee and the Board of General Appeals, not having been served and returned served, and appellant management not having shown to this Court that all of the parties of record were served and returned served within the time allowed by statute, the court below cannot be deemed to have erred when it heard and granted the petition for enforcement.

Another issue raised by counsel for appellee and strongly argued in his brief is that appellant should have filed its petition for judicial review upon orders of court and not by a written directions addressed to the clerk of court, since indeed and in truth a petition for judicial review is a special proceeding brought by a petition to court and not a regular suit originating in the circuit court. Therefore, he said that as a matter of law, the petition for judicial review purportedly filed by appellant upon a written directions was not before court.

It is not unusual for courts to be called upon at times to pass upon an issue which has never been adjudicated. The question as to whether a writ of summons based upon a petition to court for a judicial review of an administrative decision should be issued either upon court's orders or upon a written directions of the petitioner addressed to the clerk of court has never been raised in or adjudicated by any of our courts. As a matter of fact, and

as far as the Supreme Court is concerned, this is the first time this issue has been raised. Heretofore, the procedure adopted in labor cases by some of the lawyers in this jurisdiction, and which was never questioned, was to file a petition for judicial review with written directions attached thereto, addressed to the clerk of the appropriate court, to issue a writ of summons for service on the Board of General Appeals and all parties in interest, the same as was done in regular civil actions cognizable before our courts of record. Whether or not this procedure is supported by our Civil Procedure Law and our rules of court is a question which Counsellor George Tulay, counsel for appellee and one of our brilliant young counsellors of this Bar, has raised for the first time for our consideration.

Perhaps it would be of interest to the determination of this issue to see what is a petition, written directions and court's orders, in relation to issuance of summons.

A petition, according to Black's Law Dictionary, 4th edition, page-1302, is "a written address, embodying an application or prayer from the person or persons preferring it to the power, body, or person to whom it is presented, for the exercise of his or their authority in the redress of some wrong" In equity practice, a petition is "an application in writing for an order of the court, stating the circumstances upon which it is founded; a proceeding resorted to whenever the nature of the application to the court requires a fuller statement than can be conveniently made in a notice or motion" *Ibid*, pp. 1303-1304.

A written directions as defined by this Court in the case *Mitchell v. Fawaz*, reported in 15 LLR 541 (1964), is merely a set of instructions addressed by the plaintiff to the clerk of court to issued a summons providing sufficient notice as to the date, time, place and the term of the court to which the defendant is required to appear and defend, based upon a civil action filed before the court or judge against the defendant.

In our opinion, and from the above respective definitions, a petition for a judicial review of an administrative decision or any petition to the court for that matter, is an application addressed to the court itself, filed before a judge therein presiding, for an order or for the exercise of his authority in the redress of some wrong or to decide as to what law is applicable to a particular controversy; while a written directions is merely a set of instructions addressed to the clerk of court, based upon a complaint in a civil action, filed before the resident judge of a particular court of record in keeping with the Civil Procedure Law, Rev. Code 1: 3.31 3.34, at 48 and 49. When civil actions are filed, the clerk of the court, as directed in our Rules of Court, "shall enter upon the ordinary docket of the court all matters filed in his office; and whenever the pleadings are concluded, and issues joined in any given suit, he shall notify the judge thereof, who shall assign a day for passing upon the issues of law and hear all cases not dismissed on questions of law, whether or not the counsel previously notified are present. All cases which are proper to be tried by jury shall be transferred to the trial docket. The clerk of court shall within five days before the meeting of the trial session make out the trial calendar and furnish the judge a copy thereof."

But with respect to provisional remedies and special proceedings, including those for judicial review of administrative decisions, which are commenced by the filing of a petition with the court, supported by an affidavit of the petitioner, it is upon the written orders of the court or judge to whom the application is made that the clerk of court issues the necessary precept to bring the party-respondent under the jurisdiction of the court. It is the judge in the inferior court of record, or the Justice pre-siding in Chambers in the Supreme Court, upon whose orders the summons or an alternative writ or citation is issued, notifying the respondent of the place and time he desires to hear such proceeding. Hearing in such proceeding is required to be speedy and may be had and determined by the court either during the same term of court in which the petition was filed or after such term, as the business of the court will permit. But in other civil actions which are commenced by the filing of a complaint in the office of the clerk of court with a written directions attached thereto, no hearing may be had before the term of court other than that in which it was filed. In the case of a judicial review, our Labor Practices Laws require the court to hear and determine the proceeding within seven days of the filing of the petition; and if an appeal is taken to the Supreme Court, as expeditiously as possible. *See* Labor Practices Law, Rev. Code 18-A:8.

We are of the opinion, therefore, that a judicial review of a decision of any administrative agency of government, commenced by the making and filing of a petition, supported by affidavit, is a special proceeding which should be filed to the court or judge and the necessary precept issued by the clerk of court upon the written orders of court in the same manner as all other special proceedings and provisional remedies. The petitioner seeking judicial review must obtain a court's order which must direct the clerk to receive and file the petition upon payment of the necessary legal fees and to issue the necessary summons for

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service upon the agency or upon the Board of General Appeals in labor matters, and all of the parties of record, notifying them to appear and file returns on a day designated by the judge, in the same manner as in other special proceedings which are commenced by the filing of a petition. This procedure cannot be accomplished legally by the clerk's written directions, as is done in ordinary civil actions.

Having pointed out the negligence of the appellant management in availing itself of the law made and provided, it is our candid opinion that the ruling of the court below should be, and the same is hereby, confirmed and affirmed with costs against the appellant management. And it is hereby so ordered.

Judgment affirmed.