

THE MANAGEMENT OF CATHOLIC RELIEF SERVICES, by and thru its Country Representative, **TIMOTHY BISHOP**, Appellant, v. **ETHEL JUNIUS** and **HER HONOUR COMFORT S. NATT**, Judge, Labour Court, Appellee.

APPEAL FROM THE NATIONAL LABOUR COURT, MONTSERRADO COUNTY.

Heard: October 28, 1998. Decided: January 22, 1999.

1. Fraud is an action of a more affirmative nature, perceived as proceeding or acting dishonestly, intentionally and deliberately with a wicked motive to cheat or deceive one party in a transaction with respect to the situation or operations, or such as an action which results to his damage or loss and to the disadvantage or gain of the other party.
2. The Supreme Court frowns on the strict application of the procedural law wherein fraud is perpetrated by the appellee to the detriment of the appellant.
3. Where fraud is alleged, the Court will not permit a breach of procedural law to defeat the ends of substantial justice, defined as justice administered according to the rules of substantive law, notwithstanding errors of procedure.
4. The Court will not permit a procedural technicality which has been invoked because of the deliberate neglect of counsel for one of the parties to prevent the court from making a fair determination of the case on its merits.
5. Notwithstanding the failure of the petitioner to file its petition for judicial review within ten days of the receipt of the ruling of the hearing officer, as prescribe by statute, the National Labour Court should have entertained hearing on the petition because of the allegations of fraud and deceit argued by the petitioner.
6. The strict compliance of the procedural law should not be allowed to defeat the ends of substantial justice, especially where fraud is perpetrated by a party litigant to the disadvantage of the other party in a litigation.

Appellee, who had been declared redundant by the appellant and paid her redundancy and accrued leave pay, for which she had issued a release, subsequently instituted an action for wrongful dismissal against the appellant, claiming that she had been wrongfully dismissed and that therefore she was entitled to payment for two years or reinstatement. The hearing officer agreed with the appellee and awarded her \$3468.75. This ruling was appealed by the appellant to the National Labour Court. At

that court, however, the appellee filed a motion to dismiss, contending that the appeal had been filed beyond the ten day period prescribed by statute. The National labour Court sustained the appellee's contention and dismissed the appeal. From this judgment of the National Labour Court the appellant appealed to the Supreme Court.

The Supreme Court reversed the judgment of the National Labour Court, holding that the lower court had erred in following the strict technicality of the procedural law at the expense of substantial justice. The Court noted that it was particularly important that the procedural statute not be allowed to defeat substantial justice where there were allegations of fraud and deceit perpetrated by one party against another party to the benefit of the former and the disadvantage of the latter. The Court therefore remanded the case to the Labour Court, instructing it to consider the merits of the petition and the allegations contained therein, taking into full consideration the amounts already paid to the appellee by the appellant at the time the appellee was declared redundant and for which she had issued a release.

Farmere G. Stubblefield of the Stubblefield & Associates, Inc. appeared for the appellant. *Salia A. Sirleaf* of the Henries Law Firm appeared for appellee.

MR. JUSTICE SACKOR delivered the opinion of the Court.

This case is before us on appeal from the ruling of the National Labour Court for Montserrado County dismissing appellant's petition for judicial review in an action of wrongful dismissal instituted by the appellee herein.

The appellee, Mrs. Ethel Junius, filed a complaint with the Ministry of Labour on May 27, 1998, alleging wrongful dismissal by the Catholic Relief Services (CRS) in that her position as a statistician, which she had occupied prior to her alleged wrongful dismissal, had remained opened but that the appellant management refused and neglected to reinstate her and had given said position to another employee. The appellee prayed the Ministry of Labour for reinstatement or for the payment of her two years salary in the amount of US\$9,000.00, plus US\$375.00 in lieu of notice.

The records in this case revealed that the appellant declared the appellee redundant on June 25, 1996 and settled her redundancy pay and other benefits with the assurance that it would re-employ her if there was a need to expand its relief activities in Liberia. On the 19th day of August A. D. 1996, the appellee received from the appellant the sum of US\$1,808.24, representing her redundancy pay and her accrued

or unspent leave pay, for which she signed a release waiving any and all future claims against the appellant in connection with her employment.

On the 2nd day of March A. D. 1998, the hearing officer, in person of Phillip G. Williams, ruled in favour of the appellee awarding her the sum of US\$3,468.75 representing eight (8) months salary at US\$375.00 per month, one week's annual leave unspent, and one month accrued salary for the month of April, 1996. The appellant excepted to this ruling of the hearing officer and filed a three-count petition for judicial review with the trial court on the 14th of March, 1998. Appellee was, duly summoned on the 14th day of March, A. D. 1998, and ordered to appear on the 24th day of March, A. D. 1998, to answer the complaint of the appellant. The writ was served on the 17th day of March, A. D. 1998, and returned served.

On the 23rd day of March, A. D. 1998, the appellee filed an eight-count returns along with a two-count motion to dismiss petitioner's petition Appellee . substantially contended in her returns and motion to dismiss that the appellant had filed its petition for judicial review on the 14th day of March, A. D. 1998, beyond the statutory period of ten days provided by statute, in that the appellant had received the ruling of the hearing officer on the 3rd day of March, A. D. 1998, but failed and neglected to file its petition for judicial review on or before the 13th day of March, A. D. 1998. The appellant, on April 2, 1998, filed a six-count reply to appellee's returns along with the two-count resistance to the motion, alleging, among other things, that its petition for judicial review was filed within the statutory period of ten days and that the appellee had received from appellant the amount of US\$1,808.24, constituting the full settlement of all her benefits, for which she had legally executed and signed a release. As such, it said, the ruling of the hearing officer awarding the appellee the amount of US\$3,468.75, in the face of the release signed by her was illegal. Appellant prayed the trial court to deny appellee's motion and her returns.

The judge of the National Labour Court, Her Honour Comfort S. Natt, ruled on the 22nd day of April, A. D. 1998, dismissing petitioner's petition on the ground that it was filed beyond the statutory period of ten days after the receipt of the hearing officer's ruling, given on the 3rd day of March, A. D. 1998. The judge also confirmed and affirmed the ruling of the hearing officer awarding the appellee the sum of US\$3,468.75.

The petitioner excepted to the ruling and appealed to this Court upon a two-count bill of exceptions for our review. Appellant alleged in its count one of the bill of exceptions that the trial judge had committed a reversible error when she granted

appellee's motion to dismiss its petition for judicial review on legal technicalities which had prejudiced or affected the substantive rights of the appellant. Appellant also contended that the one day excess beyond the statutory requirement was a harmless error which should not affect its substantive rights, in that, the narrow interpretation of the law by the National Labour Court judge permitted the perpetration of fraud and defeated the end of justice in the light of the circumstances in this case, for reason that the appellee had already received her just compensation for redundancy yet the hearing officer had awarded her US\$3,468.75 without any consideration of the amount of the release.

In count two of the bill of exceptions, appellant alleged that the National Labour Court judge had erred when she ruled that the writ of summons and appellant's petition for judicial review should have been served within ten days to bring the appellee under the jurisdiction of the trial court. Appellant argued that summons are directed to the ministerial officer of the court and it is the prerogative of the said ministerial officer to have serve the precept on the appellee. Appellant therefore prayed this Honourable Court reversed the ruling of the National Labour Court and to order the hearing of the merits of the petition.

Appellee, on the other hand, contended that the failure of the appellant to file its petition for judicial review within the statutory period of ten days constituted ground for the dismissal of the appeal. As such, she said, the National Labour Court judge did not commit any reversible error when she dismissed appellant's petition for judicial review, the petition having been filed beyond the statutory period of ten days. Appellee also argued before this Court that the intermediate holidays were included and computed within the ten days required for the filing of the petition for judicial review in labor matters.

The decisive issue for the determination of this case is whether or not the failure of appellant to file its petition for judicial review within the statutory period of ten days renders its petition dismissible.

A recourse to the records in this case revealed that the hearing officer at the Ministry of Labour, Philip G. Williams, ruled on the 2nd day of March, A. D. 1998, in favour of the appellee herein and a copy of s aid ruling was acknowledged by counsel for the appellant on March 3, 1998, which ruling he excepted to and appealed to the National Labour Court for Montserrat County. A petition for judicial review was filed on the 14th day of March, A. D. 1998, one day beyond the statutory period of ten days. Appellee filed a motion to dismiss appellant's petition on the ground that the petition

was filed one day beyond the required statutory period of ten days. The motion was resisted, argued and granted by the judge of the National Labour Court, Her Honour Comfort S. Natt, on the sole ground that appellant appealed to this Court substantially contending that the trial judge should have entertained hearing of the petition for judicial review to promote the ends of justice and protect the substantial rights of the parties. Appellant also argued before this Court that the narrow interpretation of the law by the trial judge defeated the ends of substantial justice and permitted the perpetration of fraud. Appellant therefore prayed this Honourable Court to reserve the judgment of the lower court and remand the case for hearing on its merits in the interest of substantial justice.

The National Labour Court judge correctly granted appellee's motion to dismiss appellant's petition for judicial review for being filed one day beyond the statutory period of ten days. An appeal from the ruling of a hearing officer to a labour court in our jurisdiction shall be perfected within ten days as of the date of the ruling of the hearing officer. We observe in this case that the appellant failed and neglected to file its petition for judicial review within ten days of the date or receipt of the ruling of the hearing officer. This indeed is a breach of our procedural law. This Court however observes that the Appellee herein received from the appellant the sum of US\$1,808.24 as her complete and final redundancy pay and executed a release waiving all such claims in connection with her employment with the Catholic Relief Services (CRS). The appellee subsequently instituted a labour action against the appellant praying for US\$9,375.00 for wrongful dismissal notwithstanding the payment of her redundancy pay and the execution of the release. The hearing officer, Philip G. Williams, awarded the appellee the sum of US\$3,468.75, without any reference, to appellee's previous redundancy payment and the accompanying release herein mentioned.

Law writers held that "fraud may be said to be an action of more affirmative evil nature, such as proceeding or acting dishonestly, intentionally and deliberately with a wicked motive to cheat or deceive one party in a transaction with respect to the situation or operations, or such as an action which results to his damage or loss and to the disadvantage or gain of the other party." 37 AM JUR. 2d, *Fraud and Deceit*, § 1.

This Court observes that the appellee herein acted dishonestly, intentionally and deliberately, with the sole motive to cheat or deceive the appellant in connection with the payment of her redundancy, in that, she instituted a labour action without any reference to her previous redundancy pay and the execution of a release. As a result, she was subsequently awarded the sum of US\$3,468.24 by the hearing officer without

any consideration of the sum of US\$1,808.75 received from the appellant as her redundancy pay and the release signed by the appellee. This Court therefore frowns on the strict application of our procedural law wherein fraud is perpetrated by the appellee to the detriment of the appellant. We shall decide this matter before us upon a fair determination of the substantive rights of the parties and will not permit a breach of a procedural law to defeat the ends of substantial justice in the instant case. A substantial justice is defined as "justice administered according to the rules of substantive laws, notwithstanding errors of procedure." BLACK'S LAW DICTIONARY 1428 (6thed. 1990). It is also held that "as a general rule, laws which fix duties, establish rights and responsibilities among and for persons, natural or otherwise, are substantive laws in character, while those which merely prescribe the manner in which such rights and responsibilities may be exercised and enforced in a court are procedural laws."

BLACK'S LAW DICTIONARY 1429 (1990).

This Court, speaking through Mr. Chief Justice Bull in the case *Donzo v. Ahmad*, 37 LLR 107 (1992), Supreme Court Opinion, October Term A. D. 1992, held that "we therefore cannot permit a procedural technicality which has been invoked because of the deliberate neglect of counsel for one of the parties, to prevent us from making a fair determination of this case on its merits. We are of the opinion that this case is of this nature which comes before us involving the breach of a procedural technicality concerning the period of time an act is to be performed, must be considered on a case by case basis."

The National Labour Court judge should have entertained hearing of appellant's petition for judicial review because of fraud and deceit raised and argued by the appellant, notwithstanding the appellant's petition should have been filed within ten days as required by law. But be as it may, this Court holds that a strict compliance with our procedural laws should not defeat the ends of substantial justice as in this case and that the interpretation of such procedural code should always promote the ends of substantial justice especially where fraud is perpetrated by a party litigant to the disadvantage of the other party in a litigation. The ruling of the lower court judge granting appellee's motion and dismissing appellant's petition for judicial review is therefore reversible.

Wherefore and in view of the foregoing, it is the considered opinion of this Court that the ruling of the National Labour Court judge dismissing appellant's petition for judicial review should be, and the same is hereby reversed and this case is hereby

remanded for hearing on its merits in the interest of substantial justice. The National Labour Court judge is further ordered to consider the previous amount of US\$1,808.75 paid to the appellee in determining whatever benefits are due the appellee. Costs are assessed against the appellee. And it is hereby so ordered.

Judgment reversed; case remanded