

ELIAS BROTHERS COMPANY LIMITED, by and thru its Managing Director,
RICHARD J. TILLIN, Petitioner/Appellant, v. **OLIVER D. WRIGHT**,
Respondent/Appellee.

APPEAL FROM THE NATIONAL LABOUR COURT, MONTSERRADO
COUNTY.

Heard: May 3, 1994. Decided: September 23, 1994.

1. The yardstick for calculating an award for wrongful dismissal is on the basis of the average salary received by the employee during the last six (6) months preceding his dismissal. Labour Practices Law, Rev. Code 18A: 9(a)(ii).
2. In all averments of fraud or mistake, the circumstances constituting the fraud or mistake shall be stated with particularity. Civil Procedure Law, Rev. Code 1: 9.5(2).
3. Where fraud is alleged to have been perpetrated every species of evidence necessary to establish the fact should be adduced at the trial, for in no case can allegations amount to proof.
4. A Liberian dollar is legal tender and in the absence of an agreement to the contrary, the discharge of an obligation in Liberian dollar is legal and justified.
5. The ruling of a hearing officer is final ,unless a party files a petition for judicial review within ten (10) days after the ruling. Labour Practices Law, Rev. Code 18A:5.
6. Where one having the right to accept or reject a transaction, takes and retains benefits thereunder, he/she is bound by it, and cannot avoid its obligation or effect by taking a position inconsistent therewith.

Appellee instituted an action of unfair labor practice against appellant in the Ministry of Labour after he was declared redundant, notwithstanding the receipt of gratuity and redundancy benefits and the issuance of a release in favor of appellant management. Appellee in his letter of complaint contends that his redundancy benefits should have been paid in US dollars. The hearing officer ruled that appellee should be paid additional benefits totaling US \$ 4657.25. From this ruling, appellant petitioned the National Labour Court for judicial review. The Judge of the National Labour Court ruled that the appellee having executed a release was barred from raising any further claims. On the US dollars award, the judge disallowed it on the

grounds that the appellee did not raise any claim for US dollars when he received his entitlement and signed the release, and that the Liberian dollars paid was the legal tender and therefore justified under Section 71.5 of the Revenue and Finance Laws. However, the judge held that the petition for judicial review was filed beyond the statutory period, and accordingly dismissed the petition and ordered the enforcement of the judgment. From this ruling appellant noted its exceptions and announced an appeal to the Supreme Court. Appellant contends on appeal that it was an error on the part of the judge to pass upon the various issues raised in the petition for judicial review favorably to her and thereafter proceed to dismiss the petition for late filing.

The Supreme Court upon review of the records, found that the petition for judicial review was timely filed. The Court also held that the judge having passed upon the issues raised in the petition, and in effect reversed the ruling of the hearing officer, it was an error for the trial judge to dismiss the petition for late filing. On the question whether the payment in Liberian dollars extinguishes appellant's obligation to appellee, the Supreme Court upheld appellant's contention that the payment received in Liberian dollars constituted a legal payment of appellee's redundancy compensation. On the question of the release, the Court also sustained appellant's contention that appellee cannot, after signing a release upon receipt of his redundancy payments, claim additional payments. The Court held that where one having the right to accept or reject a transaction takes and retains benefits thereunder, he in effect ratifies the transaction, and is bound by it, and cannot avoid its obligations or effect, by taking an inconsistent position. In view of the aforesaid, the Supreme Court *reversed* the judgment of both the hearing officer and the National Labour Court.

Elijah Garnett and *Cyril Jones* appeared for petitioner/appellant. *Theophilus C. Gould* appeared for respondent/ appellee.

MR. JUSTICE HNE delivered the opinion of the Court.

The appellee, Oliver Wright, filed a complaint against Elias Brothers Company, the appellant, at the Ministry of Labour for Unfair Labour Practice. He alleged that he worked for the appellant Management from October, 1979, to June 30, 1990 as a Clerk/Typist with an initial salary of \$150.00; that his last salary was \$633.00 including transportation; and that his net salary was \$480.00.

He stated further in his complaint that when he returned from rebel lines (Owensgrove, Grand Bassa County) in January, 1992, he was served a letter from the appellant Management declaring him redundant.

The records show that on May 6, 1991, the appellant Management wrote the appellee a letter declaring his services redundant effective June 30, 1990 due to the civil war. He was offered a gratuity pay of three months salary for the period July to September, 1990, in addition to his redundancy pay in common with the other employees.

The appellee was paid an amount of \$7,151.16 which covered his gratuity and redundancy pay package. He received this amount and signed a release in favour of the appellant management on January 6, 1992. The appellee did not mention this in his complaint to the Ministry of Labour.

The matter was investigated at the Ministry of Labour. In his statement in chief, the appellee said that he was paid in U. S. currency from 1979 to 1985. The letter of employment introduced by him at the investigation, however, is dated July 9, 1982. He expressed the view that he should be paid his redundancy entitlement in United States and Liberia Dollars, that is, United States Dollars up to 1985 and Liberia Dollars thereafter.

At the conclusion of the investigation during which management also took the stand and testified, the hearing officer gave a ruling on 29th September, 1992 awarding the appellee 24 months pay for wrongful dismissal.

He said that since the appellee had already been paid 10.67 months he should be paid 13.3 months as follows:

13.33 months *US \$325.00-----\$4,332.25

Four (4) Weeks as accrued annual leave----- 325.00

\$4,657.25

It should be borne in mind that the appellee was on record as having said that he was paid in US currency up to 1985 and that his salary was paid in Liberia dollars thereafter. Further, the letter of employment that he offered into evidence was dated July 9, 1982, fixing his salary at the time at US\$325.00 per month. This letter of employment apparently is what the hearing officer took as the written evidence for the calculation of his award. The appellee's own letter of complaint to the Ministry of

Labour states that his last salary was L\$633.00 including transportation, with net salary of \$480.00 per month.

Granting that the hearing officer awards 24 months salary for wrongful dismissal, the law on wrongful dismissal gives as the yardstick for an award for wrongful dismissal a calculation on the basis of the average salary received by the employee during the last six (6) months preceding his dismissal. Labour Practices Law, Lib. Code 18 A: 9(a)(ii). The appellant's salary during the last six months of his employment was \$633.00 gross and L\$480.00 net monthly. It is not clear therefore how the hearing officer arrived at his calculation on the basis of US\$325.00 per month.

The appellant announced an appeal from the hearing officer's ruling and filed a petition for judicial review on October 9, 1993, according to the records. The petition raised the issue of the release given by the appellee for the redundancy pay which he received from the appellant management at a salary of L\$633.00 per month less taxes and advances. It further contended that the award by the hearing officer of 13.33 months at US\$325.00 per month plus leave pay of US\$325.00 is both against the law and the evidence adduced at the investigation at the Ministry of Labour.

The appellee in his returns contended that the petition for judicial review was filed out of the statutory period allowed therefor; that the hearing officer was correct in his calculation; and that the release was fraudulent.

No issue of fraud was raised or proved at the investigation by the hearing officer. In all averments of fraud or mistake, the circumstances constituting the fraud or mistake shall be stated with particularity. Civil Procedure Law, Rev. Code 1: 9.5(2).

Where fraud is alleged to have been perpetrated every species of evidence necessary to establish the fact should be adduced at the trial, for in no case can allegations amount to proof. *Henrichson v. Moore*, 5 LLR 62 (1936).

The judge of the National Labour Court heard the petition. In his ruling after the hearing of the petition was concluded, the judge held that the appellee having executed a release, was barred from raising any further claim. On the question of the US dollar award, the judge disallowed it on the grounds that the appellee did not raise any claim for US dollars when he received his entitlement and signed the release; further that no fraud was established, that the Liberian dollars paid is legal tender and that the payment in Liberian dollars made to the appellee was legal and just under the Revenue and Finance Law, Rev. Code 36:71.5.

The judge was correct in his treatment of the issues raised before him. The judge, however, held that the petition was filed eleven (11) days from the date of the rendition and receipt of the hearing officer's ruling. He dismissed the petition for this reason and ruled for the enforcement of the hearing officer's ruling. What an anomaly! As just stated above, the ruling of the hearing officer was given on the 29th day of September, 1992.

The petition for judicial review was filed on October 9, 1992, which is ten (10) days from September 29, 1992 and not eleven (11) days as erroneously calculated by the trial judge. The ruling of the Board of General Appeals (now hearing officer) shall be final unless a party shall file a petition for judicial review within ten (10) days after the ruling. Labour Practices Law, Rev. Code 18-A:5. The trial judge erred when he dismissed the petition for being filed out of statutory time. It was filed on the tenth (10th) day which fell on October 9, 1994.

The appellant prosecutes the present appeal on a five (5) count bill of exceptions, the theme throughout which is the assignment of error on the part of the trial judge for passing upon the various issues raised in the petition for judicial review favourably to the appellant and then dismissing the petition for late filing. The appellant contended that the petition was filed within statutory time.

As we have said before, the petition for judicial review was filed on the 10th day after the ruling of the hearing officer, as shown by the records. Having passed upon the issues raised and in effect reversing the ruling of the hearing officer, it was error for the trial judge to dismiss the petition for late filing, especially when the petition was filed within statutory time. The salient issues for determination in this case are: (1) whether the payment to the appellee in Liberian dollars extinguished the appellant's obligation to him; and (2) whether the appellant can raise any further claim after signing the release.

As mentioned above, the appellee was paid L\$7,151.16 as redundancy compensation and other benefits. The payment was based on his salary of L\$633.00 per month less taxes and advances. The Liberian dollar has been the currency in which his salary has been paid since 1985. This shows that the Liberian dollar was agreed as the currency in which he would be paid after his letter of employment of July 9, 1992 which fixed his salary at US\$325.00 monthly. His redundancy pay was correctly based upon his last salary of L\$633.00 per month. It cannot be calculated on US dollars from 1982 to 1985 and on Liberia dollars thereafter. Section 71.5 of the Revenue and Finance Law

provides the Liberian dollar as a legal tender for the discharge of obligations, salaries not excepted. The amount of L\$7,151.15 therefore constituted a legal payment to him of his redundancy compensation.

When the appellee was paid L\$7,151.16 as redundancy compensation, he signed a release which states that he does "hereby release and forever discharge" the appellant "from any and all manner of actions, suits, debts, accounts, contracts agreements, claims, and demands whatsoever in law or equity for or on account of any injury or damage" which he may have sustained by virtue or arising out of the termination of his employment with the appellant. In spite of this, he has proceeded to sue the appellant for unfair labour practice growing out of the termination of his employment. This is an inconsistent position which he is estopped from assuming. "Where one having the right to accept or reject a transaction, takes and retains benefits thereunder, he ratifies the transaction and is bound by it, and cannot avoid its obligation or effect by taking a position inconsistent therewith...." 31 C.J.S., *Estoppel*, § 109.

The appellee alleged fraud with respect to the release. We do not think the counsel himself was convinced about this line of defence since he only said the release was fraudulent without anything more. As we have stated earlier herein above, the mere allegation, absent any proof (which was not even attempted) cannot avail to the appellee to avoid the release.

Considering the facts of the case and the law controlling, it is our opinion that the ruling of the trial judge be and the same is hereby reversed together with the ruling of the hearing officer. Costs are disallowed.

The Clerk of this Court is hereby ordered to send a mandate to the lower court to the effect of this opinion. And it is hereby so ordered.

Judgment reversed.