IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS OCTOBER TERM, A.D. 2020

BEFORE HIS HONOR: FRANCIS S. KORKPOR, S.R.....CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE… .....ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH….....ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE….....ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA….....ASSOCIATE JUSTICE

The Management of Firestone Liberia, Inc., Harbel, Margibi County, Republic of Liberia…. Appellant	)	
VERSUS	)	APPEAL
Her Honor Comfort S. Natt, Judge National Labour Court and Henry M.S. Kollie of the City of Monrovia, Liberia …….……. Appellee	)	
GROWING OUT OF THE CASE:	)	
The Management of Firestone Liberia, Inc., Harbel, Margibi County, Republic of Liberia…. Petitioner	)	
VERSUS	)	PETITION FOR JUDICIAL REVIEW
His Honor Nathaniel S. Dickerson, Director, Hearing Officer, Ministry of Labour, Henry M.S. Kolleh of City of Monrovia, Liberia …… Respondent	)	
GROWING OUT OF THE CASE:	)	
Henry M.S. Kolleh of Monrovia ……. Complainant	)	
VERSUS	)	UNFAIR LABOR PRACTICE WRONGFUL DISMISSAL
The Management of Firestone Liberia, Inc., Harbel, Margibi County, Republic of Liberia…. Defendant	)	

Heard: July 9, 2020 Decided: March 3, 2021

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT

On September 11, 2013, Henry M. S. Kolleh, the appellee herein, lodged a complaint before the Ministry of Labour against the Management of Firestone Liberia, Inc., the appellant herein, alleging that the appellant wrongfully dismissed him. The letter of complaint filed by the appellee's counsel, Gongloe & Associates, Inc., laid out the factual allegations as follows:

> "September 11, 2013
> Hon. Juah Lawson

Minister
Ministry of Labour, R. L.
U.N. Drive, Monrovia.

Dear Madam:

Our services have been retained by Mr. Henry Kolleh, who was wrongfully dismissed by the Management of Firestone Liberia, Inc. Facts of the case are as follows:

1. That he was employed by Firestone Management in 1986. By 2011 Management had recognized that Mr. Kolleh had been employed with the management of Firestone for at least twenty (20) years, with no warning or any kind of administrative action against him. As a result, Firestone Liberia showed appreciation for his professional and productive services by honoring him in various ways.

2. That on July 17, 2013, he was picked up from his Rubber Purchases Department Office by a Plant Protection Department (PPD) Officer around 1:00 P.M. taken to the Central Office Conference Room where he underwent intensive, but degrading and intimidating period of interrogation by a team of investigators comprising the PPD's South African Manager, Audit Manager, and foreign guests, amongst others. The princi[pal] subject of the investigation was why he had to sign in places where his line manager should have signed on documents authorizing dealing with rubber farmers/customers. He answered that he signed upon the instruction of his Line Manager, Mr. Moorthi Muthusamy. Even the letter of proof presented to him to prove that he signed for his boss indicated that he signed 'pp' for the said boss. After over six hours of a hostile, intimidating, and coercive period of investigation, our client was released to walk home at night.

3. Only July 24, 2013, I was served a letter of dismissal 'for Gross Breach of Duty and Gross Negligence for constant disregard of company's policies and procedures, including the unauthorized signing of contract documents and other official instruments. Kindly find attached a copy of the said letter of dismissal.

4. That our client's dismissal was purposely done by the Management of Firestone in order to avoid the responsibility of providing to our [client] all benefits that he is entitled to at retirement, since his retirement about due.

Madam Minister, we most respectfully seek your intervention and order an investigation into the matter in order for Mr. Kolleh to receive his legal and just entitlement after over twenty-one (21) years of professional and distinguished services to Firestone.

Kind regards,

Very truly yours
Tiawan S. Gongloe
COUNSELLOR-AT-LAW AND MANAGING PARTNER"

Accordingly, the Minister of Labour forthwith transmitted the complaint to the Division of Labour Standards of the Ministry to resolve it. After the third conference sitting to decide the matter void of protracted and expensive investigation, the appellant applied for the Hearing Officer, Peter G. Bordolo, to recuse himself for an alleged prejudicial statement made by him. The appellee resisted the motion to recuse arguing that the appellant misquoted the Hearing Officer's inquiry as to "whether the defendant/management was ready to pay the complainant or contest the claim". The Hearing Officer, reasoning that the Ministry is staffed by several other competent colleagues and to preserve the credibility of the Ministry, granted the motion.

On December 11, 2013, the investigation proceeded under the gavel of Mr. Nathaniel S. Dickerson. The appellee was qualified as his first witness. He took the witness stand and confirmed the allegations contained in his complaint against the appellant. The appellee prayed for the issuance of a subpoena duces tecum for production of several documents relevant to the testimony of the appellee. However, due to multiple excuses interposed by the appellant for the production of these documents, it took the appellee over two years to rest with the production of evidence. These documents show that the appellee signed as a personal proxy for the comptroller or the Rubber Purchase Department manager. The appellee testified that the practice of proxy for top management in signing memoranda of understanding between the appellant and farmers was in place long before the appellee's promotion, on April 1, 2012, to the position of senior administrative superintendent of the said department.

The appellee also testified that during his investigation by the appellant, which was coercive, the appellant posed a question relating to a scrapped pickup truck believed to be owned by the appellee in attempting to establish conflict of interest. In response to this question, the appellee testified that he told his interrogators that although he had earlier acquired the car from the appellant, he, however, had sold and turned over the vehicle to his brother-in-law, who is also a farmer doing business with the appellant. He further testified that he told the investigators that it was not his office to hire vehicles for and on behalf of the appellant.

The appellee's second witness, Joel Jomah, a former employee of the appellant, corroborated the appellee's testimony regarding the Rubber Purchase Department's practice to proxy for the manager in executing farmers' contract forms.

The both witnesses' testimonies tend to establish that the forms signed by the appellee as a personal proxy of the comptroller or his immediate principal were vetted and cleared by the audit department without query. The I. T. Department also made the vetted and audited documents a part of the appellant's database. More importantly, the appellee testified that the appellant continues to do business with the farmers whose documents were signed by him. The appellee also informed the Ministry of Labour Investigation that during the period between 2012 and 2013, when the relevant transactions occurred, he received a monthly bonus of US$350.00, indicative of the appellant's appreciation for his level of performance.

As indicated earlier, the appellee rested with the production of evidence on December 29, 2015, that is, more than two years after the investigation commenced. When the appellant was called to produce evidence in its defense or denial of the appellee's evidence, the records show that on nine occasions the appellant either did not appear when the case was called pursuant to assignment or interposed excuses. Notably, on January 29, 2016, the appellee's counsel submitted to the investigation an application for a default judgment because the appellant's witnesses have failed and neglected to appear for the day sitting. The appellant's counsel had earlier requested the Hearing Officer to delay the hearing to afford the witnesses to attend that day's sitting. After more than an hour waiting without the witnesses showing for the hearing, the appellee's counsel in a submission recalled a similar occurrence on January 11, 2016, which constrained the Hearing Officer to order a continuance of the proceedings on the request of the appellant's counsel. Predicated on the repeated failure of the appellant's witnesses to show up for the investigation, the Hearing Officer granted the appellee's request for a default judgment.

The records reveal that on March 2, 2016, the appellee submitted a request to the Hearing Officer to rescind his ruling of January 29, 2016 so as to accord the appellant the opportunity to put forth its defense. Strangely, however, the appellant prayed for dismissal and denial of the appellee's application to rescind although the appellant submitted that the purpose of their presence at the

investigation was to produce evidence. Notwithstanding the appellant's strange resistance, the Hearing Officer granted the appellee's application and ordered the January 29, 2016 default ruling rescinded. There and then, the appellant's two witnesses in the persons of Jimmy K. Hina and Eme W. Richards were duly qualified. In spite of the qualification of the appellant's two witnesses with the expectation that the appellant will take the witness stand and produce evidence in its defense as required by law, the appellant again embarked upon dilatory tactics. For example, after the qualification of the witnesses, the appellant challenged the competence of the legal consultant that was hired by the Gongloe & Associates, although this very legal consultant had been in the case from its inception to that point. When this application was denied, the appellant again requested the Hearing Officer to recuse himself on the ground that he was partial in favor of one of counsel for the appellee, Counsellor Tiawan S. Gongloe, a former Minister of Labour. The Hearing Officer also denied this application.

The records show that another five months elapsed without a hearing due to delay occasioned by either the absence of the appellant's witnesses and/or legal counsel. Again, on May 13, 2016, when the case was called for hearing, the appellant's witnesses were not present for the investigation in keeping with the notice of assignment. Based upon the application of the appellee, the investigation granted a default judgment in favor of the appellee. It must be noted that before the appellee's application of May 13, 2016 for a default judgment, the appellant had requested for a continuance on April 12, 2016 on the ground that its witnesses were not available. In passing upon this application, the Hearing Officer gave a clear warning that should the appellant failed to appear for the investigation along with its witnesses during subsequent sitting, without a justiciable excuse, the investigation shall proceed in keeping with law. It was subsequent to this warning by the Hearing Officer that the assignment for the hearing on May 13, 2016 was issued.

On May 19, 2016, the appellant filed a seven-count motion to rescind the Hearing Officer's ruling granting the May 13, 2016 application of the appellee for a default judgment substantially alleging that prior to the granting of the default judgment on May 13, 2016, the appellant was expected to commence the production of evidence in its defense after previously qualifying two witnesses; that on the morning of the hearing, one of appellant's witnesses in person of Jimmy Hina

appeared for the hearing awaiting the appellant's legal counsel, but when the case was called at about 11:00 a.m., appellant's legal counsel had not arrive; that the witness then contacted the appellant's legal counsel to inform him that the case was about to commence; that based on that information, the legal counsel told the witness to request for time from the Hearing Officer due to his engagement at the Debt Court, and that he was enroute to the hearing; that the request of appellant's legal counsel for a grace period was denied by the Hearing Officer; that the Hearing Officer instead granted the appellee's request for a default judgment; that the records show that both parties on different occasions had requested postponements in the matter and the requests were granted; and that the appellant believes that the same opportunity should have been given the appellant for a grace period to allow its legal counsel to appear since the witness had appeared. For reasons stated above, appellant prayed the Hearing Officer to rescind his ruling granting the appellee's request for a default judgment.

This motion was resisted and the Hearing Officer, on July 5, 2017, heard the motion and ruled denying the same. After the denial of the said motion, the Hearing Officer proceeded to enter final ruling granting the prayer contain in the appellee's complaint. We hereunder quote the concluding paragraph of Hearing Officer's final ruling as follows:

> "Wherefore and in view of the foregoing facts and circumstances, the dismissal of Mr. Henry Kolleh having been above 26 years of services as the Labour Practice Law of Liberia required in Section 9, which dismissal is to avoid the payment of pension, the Management is liable of wrongful dismissal and is to reinstate Mr. Henry Kolleh and pay him all his monthly salary of US$2,370.00 (gross salary) and other benefits he earned before his illegal dismissal on July 23, 2013, as though his services were never terminated or in lieu of reinstatement, he must be paid five (5) years (60 months) at US$2,370.00 in the amount of US$142,200.00 and US$2,370.00 for the month of July 23, 2013, he worked prior to the wrongful termination of his services which is equated to US$144,570.00. AND IT IS HEREBY SO ORDERED."

Aggrieved by the final ruling of the Hearing Officer, the appellant fled to the National Labour Court for Montserrado County by filing an eleven-count petition for judicial review. The petition summarized the facts that attended the Ministry of Labour proceedings and contended that the appellee did not establish the onus of proof required by operation of a default judgment. The appellant, therefore, prayed

that the final ruling of the Hearing Officer is set aside and that the appellee's complaint be dismissed.

In its resistance to the appellant's petition for a judicial review, the appellee also gave the history of the case and contended that the appellant's failure to show that there was a foreknown duty that was breached by the appellee or loss incurred by the appellant as the result of the appellee's alleged breach of duty, the petition of the appellant should be denied and dismissed.

Her Honor, Comfort S. Natt, presiding over the case, entertained arguments, pro et con. After that, the trial judge proceeded to enter the final judgment upholding the Hearing Officer's final ruling with a modification in the award in favor of the appellee. The trial judge modified the award from US$144,570.00 to US$152, 500.00 because the appellee's evidence exhibit C/2 shows his last earned salary as US$2,500.00 and not US$2,370.00. Being aggrieved also from the trial judge's final judgment, the appellant entered exceptions and announced an appeal to the Supreme Court of Liberia. The appellant has assigned the following errors for review by this Court of last resort of justice:

1. "That Your Honor Erred when you ruled and awarded Appellee the sum of US$152,500 quite contrary to the evidence adduced during the trial.

2. That the Supreme Court of Liberia in the case Salala Rubber Corporation v. Francis Y.S. Galawulo, 39 LLR 609, Syl. 5, "That a default judgment is an imperfect judgment which must be made perfect by the production of sufficient evidence by the plaintiff to substantiate his claims or to support the averments in his pleadings. Failing this, the plaintiff should not recover against the defendant, even though the defendant is not present to present evidence in contradiction of the evidence presented by the plaintiff." Notwithstanding this law, Your Honor confirmed the erroneous ruling of the Hearing Officer.

3. Appellant/Defendant says that the Hearing Officer was wrong for granting the default judgment because the defendant witnesses in persons of Eme Richards, Manager, Rubber Purchase Department, and Joseph Hinah, Manager, Department of Audit, were present at the hearing. However, the Hearing Officer gave a grace period to its lawyers, who were en route to the hearing. However, the Hearing Officer rejected the plea of the defendant's witnesses and entered a default judgment just before the arrival of the defendant's lawyers and all attempts made by the defendant's legal counsel in pleading with the Hearing Officer to rescind its ruling and allow the defendant to

produce evidence in support of this defense to the complaint filed for wrongful dismissal, the Hearing Officer flatly refused to reverse its decision.

4. Appellant/defendant says that the default judgment awarded by the Hearing Officer and confirmed by Your Honor, including the award of US$152,500.00, was not supported by the evidence adduced at trial. As stated herein, the complainant/appellee was required to prove its complaint by the best grade of evidence, which the complaint failed to do. For example, the appellee admitted that he was authorized to sign when he answers to a question on the cross as found on page 36 of the transcribed record, that as Assistant Manager of the Rubber Purchase Department, he was authorized by this manager, Mr. Moorthi Mathusamy, who was Manager of the Rubber Purchase Department to sign documents on his behalf and also sign for the Comptroller whenever the comptroller was not around. This answer is a clear [indication] that the appellee was in error and in breach of this duty when he signed on behalf of the Comptroller when the comptroller did not authorize him to do so.

5. Further to the above, the appellee did not proffer any documentary evidence from the Comptroller authorizing him to sign on his behalf whenever he was not around. Notwithstanding the admission made by the Appellee that he assumed unto himself authority not delegated to him by the Comptroller, the Hearing Officer erroneously ruled against the appellant, holding the appellant liable for Wrongful dismissal and awarding Appellee the amount of US$152,500, which was confirmed by Your Honor.

6. That further to the above, Appellant says that consistent with Chapter 25.8 of our Civil Procedure Law as well as several opinions of the Honorable Supreme Court, all admission made by a party or his agent acting on his behalf is the best grade of evidence. The appellee, having admitted to signing on behalf of the comptroller without being authorized by the comptroller, amounted to a gross breach of duty for which he was dismissed, notwithstanding, the hearing officer erroneously ruled that the appellant was liable for wrongful dismissal, which was confirmed by you.

7 Appellant submits and says that the Appellee's allegation that he worked with the appellant management for twenty-six (26) years is false and misleading. Because according to the Appellee, he was an employee in 1986 before the Liberia Civil War, and by the Company's policy, which is well known to all of its pre-war employees, seven (7) of those years were considered as idle years because it was during the war period and there was no active work or production carried out during this period. The twenty-six (26) years claimed by the Appellee is not substantiated by the evidence adduced during the hearing, especially so when seven (7) of those years were war years, so in the true sense, appellee worked for nineteen (19) years. Notwithstanding, the Hearing Officer erroneously ruled awarding to the Appellee Sixty (60) months for Wrongful Dismissal in the amount of US$152,500 was modified by you, which was erroneous and prejudicial to the appellant.

7. Appellant says that the award of Sixty months by the Hearing Officer, which was modified and confirmed by you from US$2,370 per month to US$2,500 per month, has no basis in law and fact. The Supreme Court of Liberia has held in the case LOIC v. Williams, 42 LLR 275, Syl. 9, that: In cases of wrongful dismissal, in no case shall the amount awarded be more than the aggregate of two years' salary or wages of the employee computed on the basis of the average rate of wages received six months immediately preceding the dismissal. To have modified and confirmed the sixty (60) months award made by the Hearing Officer was erroneous and prejudicial to the Appellant. The fact that the Hearing Officer granted the default judgment prayed for did not negate the fact that the appellee was under obligation to establish his case with the best grade of evidence. Clearly, the award made and confirmed by Your Honor contravened the law cited herein.

8. And also, because Appellant submits and says that the issue raised by Your Honor, quote "Whether or not Moorthi Mathusamy had the right to assign respondent/complainant Henry S. Kolleh the power to sign the contract for another manger, to which this court says no. However, Petitioner/Management counsel has not disproved that all the witnesses, including Petitioner/Management's chief accountant Peter Glay, testified that the "pp" practices for managers as permissible." Appellant wonders where this information came from, especially when the Appellee was granted a default judgment without the appellant putting a witness on the witness stand. The issue as raised by this court and not supported by the records of default judgment was erroneous.

9. Appellant further says that the granting of the default judgment by the Hearing Officer and confirmed by you was erroneous and prejudicial because the Appellant witnesses were present at the hearing and awaiting the arrival of their counsel when the case was called. They pleaded with the Hearing Officer to grant them a grace period for their lawyers to arrive at the hearing but said request was denied by the Hearing Officer. However, Your Honor included testimony in your ruling as if this person had taken the witness stand and testified when they did not testify at all. So, how then it is appearing in your ruling that the appellant witnesses testified and made comments to alleged documents signed by the Appellee when the “pp” on behalf of all managers as well as the Comptroller. Further, you stated in your ruling that the practice of “pp” on the documents occurred as far back as 2012 and that the Appellee was promoted thereafter. This allegation is false and misleading because the Appellant witnesses were not allowed to testify during this hearing.

10. Appellant submits and says that the Honorable Supreme Court has held in the case: The Management of Forestry Development Authority versus Moses B. Walters, 34 LLR 777, that the granting of a default judgment does not entitle the complainant to relief without proof set forth in the pleading, and a final judgment cannot be rendered or a default judgment without proof of the allegation laid out in the pleading. All the opinions cited herein uphold Chapter 42, Section

42.6 of the Civil Procedure Law, which provides that "Upon application for judgment by default, the applicant shall show proof of the facts consistent with the claim, the default and the amount due". In the instant case, the Co-respondent/complainant led no evidence to establish that the car placed in the petitioner's Rubber Purchase Department Hire Vehicle System as a hired vehicle, where he served as Assistant Manager, was indeed the property to his brother-in-law when in fact, his name was reflected on the original car document, and there is no transfer document of ownership from Co-respondent/complainant to this brother-in-law before this Court evidence the fact.

11. And also, because Appellant says Your Honor erred when you affirmed the Ruling of the Hearing Officer on the ground that the appellant counsels were served with nine notices of assignment and that the default judgment was in keeping [with] law. Appellant submits that recourse to the records herein, the Default judgment granted by the Hearing Officer was erroneous because appellant witnesses were present when the default judgment was prayed for and granted. Appellant further says that while it is true that a default judgment is permissible under our laws but that the party who requests for a default judgment has a burden to prove its case by the preponderance of the evidence. In the instant case, the Appellee did not prove his case as required by law. In fact, the record shows that the Appellee was dismissed on July 24, 2013, for Gross Breach of Duty and Gross Negligence. From the testimony of Appellee himself, he told the investigation that he "pp" documents for the Manager of the Rubber Purchasing and also "pp" for the Comptroller contending that he was authorized by the Rubber Purchase Department Manager, Mr. Moorthi Mathusamy, to sign for the Comptroller without referencing the Comptroller. This action on the part of the Appellee clearly shows that he breached his duty; therefore, by the admission that he performed a function not delegated to him by the appropriate authority is the best grade of evidence which should have worked against him, notwithstanding, Your Honor confirmed the default judgment awarded.

12. That the record will also show that in the Rubber Purchase Department, employees were permitted to bring in their vehicle for hire whenever the need arises; however, it must be disclosed to the management by the said employee that he has a vehicle and wants said vehicle deployed in the system for hire. The Appellee herein brought in a vehicle owned by him but concealed his identity that the vehicle in question was bought from the Appellant by him, but that said vehicle was ever sold by him or transferred to his brother-in-law. The record also shows that when the Ministry of Transport was subpoena to produce documents for the vehicle claimed by Appellee to be owned by his brother-in-law, Henry Rennie, it was discovered that the said vehicle was originally owned by the appellant but sold to the appellee. The subpoena document revealed that the pickup owned by the Appellee still carried his name and said the vehicle was placed in Appellant Hire Vehicle System under a different name. The testimony of the Appellee on the cross as found on sheet 29 of the

transcribed record shows that he denied the allegation, and upon application from the Appellant counsel to the Transport Ministry to produce the document, it was established that the Appellee was in breach of his duty and that his conduct sparks conflict of interest. Notwithstanding, Your Honor modified and confirmed the Ruling of the Hearing Officer.

13. Appellant says that the Honorable Supreme Court of Liberia held in the case: Theophilius Frankyee et al. versus Nathaniel S. Dickerson and Action Contre La Faim (AFM), 39 LLR 280, that "Mere allegation without the preponderance of evidence does not amount to proof, and that such averment or allegation must always be supported by evidence to enable a court of competent jurisdiction or administrative tribunal to render a judgment with certainty concerning the matter in dispute". In the instant case, the appellee's allegation that he was wrongfully dismissed and was not accorded due process is not supported by the evidence. The record shows that prior to the dismissal of the Appellee along with other employees of the Rubber Purchase Department, they were each accorded the opportunity to be heard. The allegation that he was not accorded due process is false and misleading. It is from the investigation it was determined that the Appellee breached his duty, as such, the dismissal was proper. Hence, Your Honor's modification and confirmation of the Ruling of the Hearing Officer was erroneous and prejudicial.

14. Appellant says that the Honorable Supreme Court has held in the case: United Liberia Rubber Corp. v McCauley 29 LLR 342, Syl. 3 that, "Before an employee can be dismissed by his employer under Section 1508, Subsection 5, for having allegedly committed a gross breach of duty, there must be an investigation properly conducted at the place of business of the employer, to establish the accused employee's innocence or guilt; or else, the dismissal of the employee involved is legally unjustified." In the instant, Appellant says that the Appellee was accorded due process as required by law and that an investigation was conducted at the conclusion of which it was established that he had breached his duty while serving at the Rubber Purchase Department of the Appellant. The appellee's allegation that he was subjected to a strenuous investigation is false and misleading and has no iota of truth whatsoever. The fact of the matter is that when the investigation was conducted as required by the Labor Statute and established that the Appellee was in breach of his duty, it is at that juncture he is alleging intimidation of strenuous investigation. The Appellee, having admitted that he was subjected to an investigation, which is a requirement under the law before dismissing an employee for Gross Breach of Duty, the Appellant did not err in dismissing the Appellee for Gross Breach of Duty. Notwithstanding, Your Honor modified and confirmed the prejudicial ruling of the hearing officer.

15. Appellant says that notwithstanding the Ruling of the Hearing Officer granting a Default Judgment even though Appellant's witnesses were present as indicated hereinabove, the onus was upon the Appellee to produce the best grade of evidence in support of Wrongful Dismissal, which he failed to do, and Your Honor, instead of granting Appellant's

Petition for Judicial Review, decided otherwise. That is, you modified and affirmed the erroneous Ruling because, according to you, several assignments were made but that the Appellant did not honor those assignments, which allegations are not true. The prolonged stay of the case at the Ministry of Labour was not at the instant of Appellant; rather, it was at the instant of the Appellee who traveled to the United States for several months, only to return and again left to pursue a Representative position. So, to suggest that the delay of this case was due to the continued absence of the Appellant was only intended to mislead this Honorable Court because, upon application to the Hearing Officer to Rescind the Default Judgment, he took about a year in determining the Motion to Rescind which he denied and thereafter ruled granting the default judgment that was earlier prayed for by the Appellee over a year ago. Notwithstanding these irregularities observed during the hearing of this matter at the Ministry of Labor, Your Honor modified and confirmed the Hearing Officer's said erroneous ruling quite contrary to the law extant.

16. That Appellant says that during the hearing of this case at the Ministry of Labor, the Appellee had rested with the production of evidence, and thereafter the Appellant was requested to take the witness stand to provide evidence in its defense. Subsequently, the Appellant qualified two witnesses. It is these two witnesses that were present when the Default Judgment was prayed for, and the same was granted after a period of one year. Appellant submits that under the circumstances, Your Honor should have ordered that the matter be returned to the Ministry of Labor to allow the Appellant to take the witness stand to provide evidence for and on his own behalf. Regrettably, however, Your Honor modified the erroneous Ruling of the Hearing Officer and confirmed the same without giving the Appellant the opportunity to provide evidence in its own defense. As indicated in several counts of this Bill of Exception, the Appellee did not prove its complaint by the preponderance of the evidence, and the same should have been dismissed by Your Honor."

Despite the strong objections interposed by the appellant in the foregoing bill of exceptions, the appellant in its brief filed before this Court concedes specific material facts worth noting as follows:

"1.1 Appellant concedes that Mr. Henry M. S. Kolleh…was employed by the appellant in 1986…;

1.2 Appellant also concedes that the reason for the termination of Co-appellee's employment is 'unauthorized signing of contract documents and other officials.' But this 'other official' was not specified and particularized in the letter of termination. Even though the allegation of conflict of interest is true, appellant concedes that it never raised it at the hearing before the Co-appellee Hearing Officer….;

1.3 The appellant concedes that Co-appellee Kolleh presented evidence that appeared to be convincing to the Co-appellee Hearing Officer to the effect that the Co-appellee Kolleh had the authority of

appellant's manager for Raw Materials and Rubber Purchasing Department, Mr. Krishna Moorti Muthusamy, to 'pp' for the latter whenever raw rubber was brought in for purchase, and that the manager was absent from the place of work at that time he pp for him.

1.4 Even though the appellant denies that Co-appellee Kolleh had such authority, especially the authority to sign for the appellant's comptroller, the default judgment entered against the appellant precluded the appellant from producing evidence to establish this contention."

Notwithstanding the concessions hereinabove, the appellant has contended under the same breath as follows:

" 1.6 Now, in the absence of any evidence from the Appellant to contradict and undermine Co-appellee Kolleh's evidence that he had authority to sign the contract documents, Co-appellee Hearing Officer had no alternative but to rule that after such long-term service, Appellant is liable to Appellee for wrongful dismissal pursuant to Section 9(ii) of the Act to Amend the Labour Practices Law with Respect to Administration and Enforcement (simply the Labour Practices Law). The provision of the law cited *supra* notwithstanding, the Co-Appellee Hearing Officer ruled that the Co-Appellee Kolleh was entitled to receive sixty (60) months' salary, since his termination was intended to avoid payment of pension. This was a reversible error, which reversible error was confirmed by the National Labour Court. The only legitimate issued raised by Appellant therefore is whether the termination of Co-Appellee Kolleh's employment can be interpreted as an intention or orchestration to deny him retirement and retirement pension, as was alleged by him, upheld by Co-Appellee Hearing Officer, and confirmed by the National Labour Court. The other issue is, in any event, what compensation, under the law, was Co-Appellee Kollleh entitled to for Appellant's termination of his employment, which he complained was wrongful.

3.8 As established above, the termination of Co-Appellee Kolleh's employment was not intended or orchestrated by Appellant to avoid payment of pension because pension payment obligation was and still is that of NASSCORP, not Appellant. **That is, even today, Co-Appellee Kolleh could apply to NASSCORP and receive his monthly retirement pensions, both accrued and current.** (EMPHASIS OURS) For Appellant's termination of Co-Appellee Kolleh's employment, which Co-Appellee Kolleh claims is wrongful, Appellant's maximum liability should have been and is a maximum of two (2) years salaries, calculated on the basis of the average of Co-Appellee Kolleh's last six-month earnings immediately prior to the termination of his employment. For reliance, **Appellant cites Section 9 (a)(ii) of the Labour Practices Law, which was in vogue at the time that Co-Appellee Kolleh's employment with Appellant was terminated, Co-Appellee Kolleh's employment with Appellant was terminated. Co-Appellee Kolleh's monthly salary being US$2,370.00 (United States Dollars Two Thousand Three**

> **Hundred Seventy) per month as average monthly salary,** when multiplied by two (2) years (24 months), would aggregate to US$56,880.00 (United States Dollars Fifty-Six Thousand Eight Hundred Eighty. Obviously, it was therefore in total disregard for the law that Co-Appellee Hearing Officer awarded Co-Appellee Kolleh 60 (sixty) months' salary after erroneously categorizing the termination of Co-Appellee Kolleh's employment as termination to avoid payment of pension; and the National Labor Court also erroneously confirmed this award for the same erroneous reason. There are many decisions of the Supreme Court on this issue but Appellant cites the following for reliance: **Lamin et al v. Saye the Children Fund (UK) Liberia, 41 LLR 3; Inter-Con Security Systems, Inc v. Philips and Tarn, 41 LL 42.**"

Refuting the appellant's contention, the appellee raised several issues in his brief. The crux of the issues raised by the appellee focuses on whether the appellant is permitted by law to raise an issue not raised during the investigation before the Hearing Officer. The appellee argues that the trial court is precluded by law from assuming original jurisdiction over labor cases. As a result of this preclusion or limitation of the trial court's jurisdiction, the National Labour Court cannot take judicial cognizance of facts, documentary or oral, not introduced before the Hearing Officer as the appellant attempted persuading the trial court. The appellee prays the Supreme Court to deny and set aside the appellant's bill of exceptions and confirm the trial court's final judgment.

Our examination of the evidence, and review of the applicable laws in the determination of this dispute present the following issue:

1. Whether the trial judge was justified when she upheld the final ruling of the Hearing Officer in awarding sixty months instead of twenty-four months on the ground that the dismissal of the appellee was to avoid the payment of pension?

This Court hastens to note that the appeal in this case grows out of a default judgment. That is to say that the appellant having failed to appear and produce evidence in its defense after several notices of assignments, the Hearing Officer proceeded to grant judgment in favor of the appellee based on the evidence adduced by the appellee. This Court has held that even after the defendant has taken stand to testify, if he fails to appear for resumption of trial upon notice of assignment, default judgment can lie against him". *Vijayaraman v. Xaonoi Liberia, 42 LLR 41 (2004)* This principle is applicable to the instant case even though the

appellant's witnesses were duly qualified to take the witness stand, but appellant failed to proceed with the production of evidence.

It follows that in the case of a default judgment, the onus of proof is still on the plaintiff who alleges a fact as is the case of the appellee herein. *USTC v. Richards et al, 41 LLR 205 (2002), V. H. Timber v. Nacca Logging Co. 42 LLR 527 (2005), Children Assistance Program v. Tamba et al, Supreme Court Opinion, October Term, A.D. 2006* A recourse to the certified records reveal the following evidence adduced by the appellee: (1) that he was employed by the appellant in 1986 and continued to provide dedicated services to the appellant until July 24, 2013 when the appellant wrongfully dismissed him; (2) that the practice of signing contracts by a proxy in the Rubber Purchasing Department of the appellant was recognized and condoned by the appellant prior to the appellee promotion as senior administrative superintendent in that department, therefore the appellee could not have breached his official duty when he signed on behalf of the comptroller and the manager of the department; (3) that he had sold the pickup truck to his brother-in-law under whose name the Transport Department of the appellant hired the truck; and (4) that he was not responsible for the hiring of vehicles in the appellant company, therefore he should not be held for conflict of interest.

Additionally, and based on the showing by the appellee that the documents signed by him were audited and vetted without query by the audit department of the appellant; processed and stored in the appellant's information database coupled with the unrefuted fact that the appellant is still doing business with the farmers who are parties to the contracts signed by the appellee, the Hearing Officer found for the appellee and ruled that the appellant wrongfully dismissed the appellee. We affirm.

However, the evidence adduced by the appellee also shows that he had worked for about twenty-seven years as employee of the appellant and that in 2011 the appellant recognized the appellee for long service in various ways. In the face of the evidence that the appellee has worked in the appellant company for about twenty-seven years, this Court is at a loss as to the rationale of the Hearing Officer's conclusion that the wrongful dismissal of the appellee by the appellant was intended to avoid payment of pension. The law in vogue at the time of the appellee's wrongful dismissal provided as follow:

> "An employee within the application of this Chapter is entitled to receive from his employer retirement pension on retirement from an undertaking at the age of 60 and if such employee has completed at least fifteen years of continuous service, or he may retire at any age after he has completed twenty-five years of continuous service in such undertaking. The amount of pension paid annually to an employee shall be at least forty per cent of the average monthly earnings for the last five years immediately preceding his retirement. One-twelfth of such amount shall be paid each month from the time of retirement until the death of the employee" *Labor Practices Law Revised Code:2501*

The language of the above quoted statute in vogue is clear and unambiguous. While the age of the appellee was not put into evidence, the records clearly reveal that the appellee had completed twenty-five years of continuous service to the appellant. Conclusively, it can be said that the appellee has qualified for retirement before the time of the termination of his services by the appellant. It follows the reasoning that the appellant could not have therefore dismissed the appellee in order to avoid the payment of pension. As a matter of law, the appellee was entitled to pension. In our mind, the Hearing Officer erred when he held that the appellant wrongfully dismissed the appellee to avoid payment of pension. And by extension, the trial judge erred when she upheld the final ruling of the Hearing Officer with modification.

This Court having determined that the appellee is entitled to the payment of pension as a matter of law, and the termination of the appellee having been determined to be wrongful, it follows that the appellee is also entitled to a just compensation. How this compensation is calculated meticulously begs for an answer that will best conduce to law and equity and avoid unjust enrichment. This Court has held that the doctrine of unjust enrichment will not permit a person to profit or enrich himself at the expense of another contrary to equity. *Bailey v. Sancea, 22 LLR 59 (1973), Horton v. Cooper et al and Reed Cooper 40 LLR 748 (2001)*

Considering that the appellee had exceeded his employment with the appellant by two more years which entitles him to pension benefits, we are of the considered opinion that the appellee's should be entitled to not more than twenty-four months

of the last earnings within six months prior to his termination by the appellant for wrongful dismissal. The statute in vogue provides as follows:

> "Where wrongful dismissal is alleged, the [Labour Court] shall have power to order reinstatement but may order payment of reasonable compensation to the aggrieved employee in lieu of reinstatement. The party against whom the order is made shall have the right of election to reinstate or pay such compensation. In assessing the amount of such compensation, the [Labour Court] shall have regard to:
>
> (a) (i) reasonable expectations in the case of dismissal in a contract of indefinite duration;
>
> (ii) length of service; but in no case shall the amount awarded be more than the aggregate of two years' salary or wages of the employee computed on the basis of the average rate of salary received 6 months immediately preceding the dismissal. However, if there are reasonable grounds to effect a determination that the dismissal is to avoid the payment; of pension, then the [Court] may award compensation of up to but not exceeding the aggregate of '5 years' salary or wages computed on the basis of the average rate or salary received 6 months immediately preceding the dismissal."

In support of this position, this Court has articulated and upheld that the doctrine of unjust enrichment will not permit the appellee to receive both compensation for avoiding payment of pension and at the same time receive retirement benefits within the meaning of Section 2501 of the statute, *ib.* contrary to equity. Suffice to say that we see it as unjustly enriching the appellee if the Court were to confirm the final judgment of the trial court under the facts and circumstances of this case. We hold therefore that, in addition to the just compensation for the wrongful dismissal of the appellee by the appellant, the appellee is entitled to retirement benefits as provided for by law. In this regard, the appellant shall have the election to reinstate the appellee or in lieu of reinstatement pay the appellee the maximum of twenty-four months for the wrongful dismissal of the appellee and make the necessary arrangement consistent with law for the retirement benefits of the appellee.

WHEREFORE AND IN VIEW OF THE FOREGOING, the final judgment of the trial court is affirmed with modification. The appellant is ordered to reinstate the appellee or in lieu of reinstatement, pay the appellee the amount of US$60,000.00 (Sixty Thousand United States Dollars) which is equivalent to twenty-four months salaries calculated at the rate of the average of the salaries earned by the appellee in the last six months of his employment prior to his dismissal, and should the

appellant elect not to reinstate the appellee, the appellee shall make appropriate arrangement with the appellee for his retirement benefits. The Clerk of this Court is ordered to send a mandate to the court below to resume jurisdiction over the case and give effect to the Judgment of this Opinion. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellors G. Moses Paegar and Golda A. Bonah Elliott of Sherman & Sherman Inc. appeared for the appellant. Counsellors Tiawan S. Gongloe, Philip Y. Gongloe and Momolu G. Kandakai of the Gongloe & Associate Law Offices appeared for the appellee.