

FIRESTONE PLANTATIONS COMPANY, by and thru its General Manager, and PHILIP G. WILLIAMS, Hearing Officer, Ministry of Labour, Appellants, v. OBETO BEHYE, Appellee.

APPEAL FROM THE JUDGMENT OF THE NATIONAL LABOUR COURT FOR MONTSERRADO COUNTY.

Firestone Plantations Co. v Behye [2000] LRSC 26; 40 LLR 243 (2000)

Heard: November 15, 2000. Decided: December 21, 2000.

1. After the close of evidence presented by the opposing party with respect to a claim or issue, or at any time on the basis of admissions, any party may move for judgment with respect to such claim or issue on the ground that the moving party is entitled to judgment as a matter of law.
2. Where there is evidence that the employer was informed of the incarceration of an employee, which prevented the employee from reporting to duty for more than ten consecutive days, his dismissal on the ground of continuous absence from duty beyond the statutory period allowed by law is illegal and wrongful.
3. A labour court commits reversible error where it sanctions the dismissal of an employee on the ground of abandonment when the absence characterized as abandonment was due to vis majeure.
4. Under the Liberian criminal law, alleged criminals are prosecuted only by the State and not the private prosecutor or private prosecutrix, whether individuals or companies; it is the State that seeks the probable cause and prosecutes criminals.
5. A crime is a wrong which the government deems injurious to the public at large and punished through judicial proceedings in its name; it is an offense against the public, pursued by the sovereign.
6. The insertion of the name of a private prosecutor or prosecutrix in the caption of a case does not alter or make a difference to the principle that crimes are prosecuted only by the State.
7. A private prosecutor, being one who only sets in motion the machinery of the criminal justice system operated by the State, is in no way concerned with the matter should the State's case fail, except in cases of breach of the peace.
8. It is the State's responsibility to prosecute criminals as well as to punish for offenses committed.
9. The acquittal of a person charged with the commission of a crime or the issuance of a clearance cannot be a ground for asserting a claim to payment of alleged time lost or for the time in which the accused was held in the custody of the court.

10. The law permits a defendant in a criminal case to institute a civil action for damages against a private prosecutor or private prosecutrix.

11. Where wrongful dismissal is alleged, the Board of General Appeals 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 to elect reinstatement or compensation.

12. In assessing the amount to be paid an aggrieved employee for illegal dismissal, the Board of General Appeals 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 six months immediately preceding the dismissal.

13. Where wrongful dismissal is proved, the judge is authorized to rule or order either reinstatement of the aggrieved employee or payment of a reasonable sum of money not to exceed twenty-four months salary, but that the employer against whom the judgment is entered shall have the right of election of reinstating the employee or paying him in lieu of restatement.

14. The labor court judge commits an error in failing to couch in the court's ruling the employer's right of election to reinstate a dismissed employee or pay him in lieu of such reinstatement.

The appellee, Obeto Behye, filed a complaint against the appellant when the appellant refused to reinstate him after the criminal court had dismissed the criminal charges against him and given him a clearance for presentation to the appellant. The appellee, on the complaint of the appellant, had been charged with theft of property, but was cleared of the charges after the State and the appellant had failed to appear in court for trial of the case.

The hearing officer at the Ministry of Labour granted a motion filed by the appellant for judgment during trial, agreeing with the appellant that the appellee had not been wrongfully dismissed but that he had voluntarily terminated his employment by his absence from work of more than ten consecutive days. On appeal to the National Labour Court, the ruling of the hearing officer was reversed, the Labour Court holding that the appellee had not terminated or abandoned his employment with the appellant and that therefore the dismissal was illegal and wrongful, and that as a consequence the appellant should reinstate the appellee, pay him twenty-four months salary, and make payment of the appellee's annual leave which was due to accrue as of the date of his reinstatement.

On a further appeal to the Supreme Court, the judgment of the National Labour Court was affirmed, but with the modification that the appellant be required to either reinstate the appellee or pay him in lieu of reinstatement, rather than have the appellant do both as ruled by the trial judge. The Court observed that while the appellant could not claim that the appellee had abandoned his employment because he was absent from work for more than ten consecutive days, given that the appellant was fully aware that the reason for the appellee's

absence was that he had been arrested and remained in custody on the orders of the magisterial court, it was error for the labour court judge to require that the appellant both reinstate the appellee and pay him twenty-four months salary. The Court ruled that the lower court judgment not only violated the labor law, but that it also deprived the appellant of the right of election mandated by the said law.

On the further question as to whether the appellee was entitled to payment of compensation for the time he was in custody, the Court held that he was not, noting that the appellee's prosecution was done by the State, not the private prosecutor. The Court opined that while the appellee could bring a civil suit while the criminal matter was still pending, such a situation was absent from the present case.

The Supreme Court therefore modified the labor court judgment and ordered that the appellant be allowed to exercise the right of election accorded it by the statute.

G. Moses Paegar of the Sherman & Sherman Law Firm appeared for the appellants. Cooper Kruah of the Henries Law Firm appeared for the petitioner/appellee.

MR JUSTICE MORRIS delivered the opinion of the Court.

On September 14, 1998, Appellee Obeto Behye filed in the Ministry of Labour a complaint against the appellant herein, Firestone Plantations Company, for wrongful dismissal, alleging, among other things, that he was employed with the appellant in 1979, as a security officer/patrolman, with a monthly salary of L\$250.00 (Two Hundred Fifty Liberian Dollars); that in September 1989, he was accused of theft of property by appellant and was forwarded to the Bondiway Magisterial Court for prosecution; that between September 1989 and 1992, neither appellant nor the State went to court to prosecute or prove the appellant's allegations against the appellee; that with the failure by the State or the appellant to prove the allegation of theft of property brought against him, the court dismissed the case against him and issued a clearance in his favour; and that he presented to the appellant the clearance which was issued to him by the court for possible reinstatement, but that the appellant had refused to have him reinstated.

Based upon these facts, as contained in the letter of complaint addressed to the Minister of Labour on September 14, 1998, appellee prayed that he be reinstated and paid salary arrears in the amount of L\$25,250.00 (Twenty-Five Thousand. Two Hundred Fifty Liberian Dollars) for 101 months.

On October 5, 1998, the hearing officer, Mr. Philip G. Williams, of the Ministry of Labour, cited the parties to a conference to ascertain whether or not there might be a meeting of the minds in order to avoid a full-scale investigation or trial. At the conclusion of the conference, the parties failed to agree and therefore the case was assigned for trial.

On the 14th day of October, A. D. 1998, the trial commenced with the production of evidence by the appellee, which lasted for three (3) months, up to and including the 10th day of December A. D. 1998. After the appellee had rested with the production of evidence in toto, Appellant Firestone Plantations Company, on the 24th day of November A. D. 1998, filed a thirteen-count motion for judgment during trial, praying the investigation to enter a judgment or ruling in its favour because it was entitled to such ruling in keeping with the Civil Procedure Law, Rev. Code 1:26.2, which provides that "After the close of evidence

presented by the opposing party with respect to a claim or issue, or at any time on the basis of admissions, any party may move for judgment with respect to such claim or issue upon ground that the moving party is entitled to judgment as a matter of law... "

In the motion for judgment during trial, the appellant contended, amongst other things:

a) That appellant had not wrongfully or illegally dismissed the appellee, but rather, that it was the appellee who had voluntarily terminated his employment relationship with the appellant by abandoning his job;

b) That in his testimony in chief and cross-examination, the appellee had averred that after he was accused of the commission of the crime of theft of property by appellant and turned over to the State for prosecution, that he was taken to the Bondiway Magisterial Court and subsequently detained upon orders of the said magisterial court, and that he remained in detention for a period of four (4) months up to December 18, 1989, when he was released from detention;

c) That upon a specific question propounded to the appellee on the cross-examination as to what action was taken by him in connection with the matter after his release from detention on December 18, 1989, the appellee had responded that he did nothing because his legal counsel had advised him to go to the court everyday, which he did from December 18, 1989 until the civil war reached appellant's plantation area in June, 1990, and everyone fled for safety;

d) That predicated upon the appellee's own testimony, the appellant had argued that the appellee had terminated his employment relationship with the appellant, in that the appellee had abandoned his job as that act is described by chapter 16, section 150f(2)(c) of the Labour Practices Laws of Liberia;

e) That on the basis of the contention set forth in appellant's motion for judgment during trial, and also provided for by the Criminal Procedure Law, Rev. Code 2:18.2, at chapter 18, a court shall dismiss a complaint charging a defendant with an offense triable by a magistrate or justice of the peace if trial is not commenced within 3 days after the arrest of the defendant or his appearance in court in response to a summons or notice to appear; and

f) That when the State failed in 1989 to proceed to trial, appellee should have availed himself of and exercised his rights to have the complaint against him dismissed and a clearance issued in his favour, which would have enabled him to request and/or seek his reinstatement. But the petitioner failed and neglected to do so, even though he was represented by counsel.

In response to the appellant's motion for judgment during trial, the appellee, on the 25th day of November, 1998, dictated an eight-count resistance on the minutes of the investigation, in which he denied that he had violated section 1508(2)(d) of the Labour Practices Law of Liberia, stating instead that he had been detained, at the instance of the appellant, for more than 120 days upon the orders of the Bondiway Magisterial Court.

On November 27, 1998, arguments pro et con were heard on the motion for judgment during trial, and the resistance thereto. On the 10th day of December, A. D. 1998, the hearing officer ruled granting the appellant's motion and dismissing appellee's complaint as a matter of law.

The appellee, being dissatisfied with the ruling of the hearing officer, excepted thereto and announced an appeal therefrom to the National Labour Court.

On the 18th day of December, A. D. 1998, the appellee filed an eight-count petition for judicial review, contending that the hearing officer, Philip G. Williams, had committed a reversible error in granting the appellant's motion for judgment during trial and dismissing appellee's case, and that the provisions of the Civil Procedure Law and the Labour Practices Laws relied upon by the appellant and the hearing officer of the Ministry of Labour were not applicable to the instant case.

The appellant, in response to the petition for judicial review, filed a fourteen-count resistance, stating substantially that the hearing officer had not committed any reversible error because his ruling was consistent with the law extant in this jurisdiction and that the appellee had in fact and in deed terminated his employment relationship with the appellant, as the absence of the appellee is regarded by section 1508(2)(d) of the Labour Practices Law of Liberia, referred to supra.

On the 14th day of January A. D. 1999, arguments on the petition for judicial review were heard by the National Labour Court, and on the 14th day of April A. D. 1999, Her Honour Judge Comfort S. Natt entered final judgment in the case, reversing the ruling of the hearing officer and ruling instead as follows, to wit:

1. That the appellant should reinstate the appellee to his former job;
2. That the appellant should make payment of the amount of L\$6,000.00 (six thousand Liberian dollars) to the appellee, the said amount representing 24 (twenty-four) months salary at \$250.00 per month; and
3. That the appellee should be paid his annual leave which was due to accrue as of the date his reinstatement was to become effective, since the appellee had not abandoned his job.

The appellee also obtained a court clearance which he presented to the management of the appellant company to facilitate his reinstatement, but the appellant refused to reinstate the appellee. Instead, the appellant excepted to the final judgment of the National Labour Court and announced an appeal therefrom to the Honourable Supreme Court of Liberia, sitting in its October Term, A. D. 1999. All jurisdictional steps or requirements having been complied with by the appellant and the appeal perfected, the case is now before this Honourable Court for final determination.

A careful review of the briefs filed by the parties and of the arguments made and advanced by counsels for the parties show the appellant's contentions to be as follows, to wit:

1. That the appellant did not wrongfully or illegally dismiss the appellee, but rather that it was the appellee himself who had voluntarily terminated his relationship with the appellant by abandoning his job;
2. That in 1989 the appellee was accused of and charged with the commission of an alleged crime of theft of pro-property, turned over to the state for prosecution, taken to the Bondiway Magisterial Court, and subsequently detained upon orders of the said court; and

3. That the National Labour Court Judge committed reversible error when she ordered both compensation to and reinstatement of the appellee without giving the appellant the right of an election to decide whether to reinstate the appellee or provide compensation to the appellee in lieu of reinstatement.

On the other hand, the appellee's counsel strenuously con-tended in his brief and argued orally before this Honourable Court as follows, to wit:

1. That in 1979 appellee was employed with the appellant as a security officer with salary of L\$250.00;

2. That in 1989 the appellee was accused of and charged with the commission of an alleged crime of theft of property and forwarded to court for prosecution;

3. That between 1989 and 1992, neither the State nor the appellant went to court to prove the allegations made against the appellee; and,

4. That the court dismissed the alleged charge of theft of property against the appellee, issued a clearance in his favor, which he presented to the appellant in 1992 but that he was refused reinstatement by the appellant. Hence, his claim for wrongful dismissal.

After a careful perusal of the certified records transmitted to us, we have identified the below listed germane points as constituting the issues for the determination of the case by the Court:

1. Whether or not the appellee abandoned his job in the strict interpretation and construction of section 1508(2)(d) of the Labor Practices Law of Liberia?

2. Whether or not the appellee, who was held for the com-mission of an alleged crime was entitled to compensation for the time he was detained and in the custody of the court?

3. Whether or not the National Labour Court Judge committed a reversible error when in her ruling she ordered both the payment of compensation and reinstatement of the appellee without giving the appellant the option or election of deciding whether to reinstate the appellee or make payment of such compensation in lieu of reinstatement, as provided in section 9 of the Labour Practices Law of Liberia.

In traversing issue one (1), which is, whether or not the appellee abandoned his job, we observed from a careful perusal of the certified records transmitted to this Court that the appellee was employed by the appellant in 1979 as a security officer/patrolman with a monthly salary of L\$250.00. The records also indicate that in September 1989, the appellee was arrested by the C. I. D. upon the directive of the management of the appellant when he arrived for work, and that he was taken to the Bondiway Magisterial Court where he was detained. According to the records, the appellee was mandated by the court to appear at said court on a day-to-day basis. Further, the records show that the appellant had prior know-ledge of the appellee's incarceration, the place where he was incarcerated, and the reason for his incarceration. Therefore, appellee could not under these circumstances have abandoned and/or absented himself from the job without cause. This Court holds that where there is evidence that an employer is informed about the incarceration of an employee, as in the instant case, which situation prevents the employee from reporting to duty for more than ten (10) consecutive days, his dismissal on the ground of continuous absence from duty beyond

the statutory period allowed by law cannot be deemed an abandonment, and therefore any dismissal of the employee based thereon constitutes an illegal and wrongful dismissal. Accordingly, we herewith rule that the National Labour Court did not commit reversible error when it reversed the ruling of the hearing officer since the circumstances of the absence were the result of vis majeure.

The second issue for our determination is whether or not an employee who is held for the commission of an alleged crime is entitled to compensation for the time he is detained and in the custody of the court. From the certified records transmitted to this Honourable Court, we have clearly observed that in 1989 the appellee was accused, arrested, and charged with the commission of an alleged crime of theft of property based upon the complaint of the appellant, and that he was forwarded to the court for prosecution; that between 1989 and 1992, neither the state nor the appellant appeared before the court to prove the allegations made against the appellee; and that in 1992 the court issued in favor of the appellee a clearance which he presented to the appellant for reinstatement but the same was refused by the appellant. Therefore, on September 14, 1998, the appellee filed a complaint against the appellant for wrongful dismissal.

We reiterate that the records show that the appellee was accused by the appellant, charged with the commission of an alleged crime of theft of property, and forwarded to court for prosecution. His prosecution would have been based upon probable cause asserted by the State, the Republic of Liberia.

Under the criminal laws of Liberia, alleged criminals are prosecuted by the State and not the private prosecutor or private prosecutrix. It is the state that sees the probable cause and prosecutes criminals. American Jurisprudence defines a crime as follows: "A crime is a wrong which the government deems injurious to the public at large and punished through judicial proceedings in its own name. It is an offense against the public pursued by the sovereign." 21 AM JUR. 2d, Criminal Law, § 2.

The Firestone Plantations Company, appellant herein, was a private prosecutor during the trial, and thus only a witness. The contention that the Firestone Plantations Company's name was inserted in the caption of the case makes no difference. It is hoary with age that criminals are prosecuted only by the State and not by private individuals or companies, etc. In the case *Coleman v. Stubblefield*, [1968] LRSC 39; 19 LLR 29, Syl. 1 (1968), Mr. Justice Wardsworth, speaking for the Court, said: "A private prosecutor, being one who only sets in motion the machinery of criminal justice system operated by the state, is in no way concerned with the matter should the State's case fail, except in cases of "breach of peace." [1968] LRSC 39; 19 LLR 29, Syl. 1 (1968).

It is therefore the State's responsibility to prosecute criminals as well as to punish. The acquittal of the appellee or even the issuance of a clearance, as in the instant case, should not and cannot be a ground for asserting a claim to payment for alleged time lost, or for the time the appellee was held in the custody of the magisterial court, for to do so would be giving benefits to malicious prosecution. However, the law does permit a defendant in a criminal case to institute a civil action for damages against a private prosecutor or private prosecutrix. But this is not the situation in the instant case.

The third and final issue is whether or not the judge of the National Labour Court committed a reversible error when she ruled ordering that the appellant should compensate the appellee

and reinstate him to his job, without according the appellant the right of election to reinstate the appellee or to make payment of compensation in lieu of reinstatement, as provided for by section 9 of the Labour Practices Law of Liberia. We are in agreement with the contention of the appellant and hold that the National Labour Judge committed error when in her ruling of 14th April, A. D. 1999, reversing the December 10, 1998 ruling of the hearing officer of the Ministry of Labour, she ordered both reinstatement and compensation of the appellee by the appellant without according the appellant the right of election to reinstate or pay compensation to the appellee in lieu of reinstatement. Such ruling is legally untenable.

Section 9 of the Labour Practices Laws of Liberia provides that “where wrongful dismissal is alleged, the Board of General Appeals 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 Board shall have regard to:

- (a) (i) reasonable expectations of 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 six months immediately preceding the dismissal ... ; and
- (b) The Board of General Appeals may assess and order payment of all arrears or remuneration payable in any case referred to it.”

In our opinion, the legislative intent of section 9 of the Labour Practices Law of Liberia is clear and unambiguous. It states that where a court of competent jurisdiction has adjudged that an employee has been wrongfully dismissed by his employer, that court is then vested with the legal authority or 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 the employee or pay such compensation in an amount awarded not to 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 six months immediately preceding the dismissal of the employee.

It is therefore our considered opinion that the legislative intent of section 9 of the Labour Practices Law of Liberia is that where wrongful dismissal is proved, the judge is authorized to rule or order either reinstatement of the aggrieved employee or payment of a reasonable sum of money to a maximum amount not exceeding twenty-four (24) months salaries or wages, and that the employer against whom the judgment is entered or ordered shall have the right of election to reinstate the said aggrieved employee or provide compensation in lieu thereof. The rationale or obvious reason is to prevent and prohibit the undesirable result of forcing and thrusting an employee upon an employer.

We now quote the relevant portion of the ruling of the judge of the National Labour Court, entered on the 14th day of April, A. D. 1999, reversing the ruling of the hearing officer of the Ministry of Labour as follows, to wit:

"Wherefore, and in view of the foregoing, we have no alternative except to reverse the decision of the hearing officer by ruling that the petitioner should be reinstated by the

respondent as he was never found guilty of the alleged crime by the respondent, and to compensate him 24 (twenty-four) months salary in compliance with section 9 of the Labour Practices Laws of Liberia, i.e. 24 by L\$250.00, which is equal to L\$6,000.00, and that he is entitled to receive all annual leave payments, which had accrued in keeping with section 905, subsection 3 of the Labour Practices Laws of Liberia."

A careful scrutiny of the ruling of the judge of the National Labour Court, quoted supra indicates that she committed error when she failed to have couched in said ruling, which reversed the hearing officer's ruling, that the appellant is ordered to be reinstate the appellee and that the employer has the option of electing to pay the appellee in lieu of reinstatement, as the statutory laws of this land direct. It is therefore the holding of this Court that the Labour Court judge committed error in not reserving to the appellant the right of option to reinstate the appellee or make compensation in lieu of reinstatement.

Wherefore, and in view of the foregoing, the circumstances of this case, and the laws controlling, it is the considered opinion of this Honourable Court that the ruling of the National Labour Court should be and the same is hereby confirmed with the modification that the appellee be reinstated by the appellant or that he be paid compensation in lieu of reinstatement, commencing from October 1992 when he presented his clearance from the magisterial court to the management of Firestone Plantations Company, up to and including September 14, 1998, when the appellee instituted his action at the Ministry of Labour, as the statutory laws of this land direct. The Clerk of this Court is ordered to send a mandate to the court below commanding the judge presiding therein to resume jurisdiction over the case and give effect to this opinion. Costs are ruled against the appellant. And it is hereby so ordered.

Judgment affirmed with modification.