

THE MANAGEMENT OF FIRESTONE PLANTATIONS COMPANY, by
and thru its President and Managing Director, Don L. Weihe, Appellant/Defendant,
v. **REPUBLIC OF LIBERIA.**

APPEAL FROM THE CIRCUIT COURT FOR THE FIRST JUDICIAL
CIRCUIT, CRIMINAL ASSIZES "A", MONTSERRADO COUNTY.

Heard: November 25, 1987. Decided: February 25, 1988.

1. Criminal contempt proceedings are those brought to preserve the power and vindicate the dignity of the court and to punish for disobedience of its orders. They are criminal and punitive in their nature and their government.
2. A criminal contempt is committed by a party in a civil action where he falsely pretends that he is too ill to attend court; by failure to turn over properties as ordered; by the concealment of assets by bankrupt; by proceeding with a sale in defiance of an order of the court; by an attorney absenting himself from court; by persisting in a boycott on defiance of the court's orders; or by violating an injunction against interference with a complainant's employees.
3. To constitute contempt, there must *be* improper conduct in the presence of the court or so near thereto as to interrupt or interfere with its proceedings; or some act must be done, not necessarily in the presence of the court, which tends to adversely affect the administration of justice.
4. Judges should be careful and conservative in the use of the process of contempt, as the liberty of the citizen is greater than the dignity of the judge.
5. Unless good cause is shown, a court shall dismiss a complaint against a defendant who is not indicted by the end of the next succeeding term after his arrest for an indictable offense or his appearance in court in response to a summons or notice to appear charging him with such an offense; or who, having been indicted, is not tried the next succeeding term after the finding of the indictment.
6. No person shall be held to answer for a capital or infamous crime except in cases of impeachment, cases arising in the armed forces, and petty offenses, unless upon an indictment by a grand jury; and in all such cases, the accused shall have the right to a speedy, public and impartial trial by a jury of the vicinity, unless such person shall with appropriate understanding, expressly waive the right to a jury trial. Where these rights are not adhered to by the prosecution or are otherwise violated, as where a speedy trial of the accused is not had, the trial court will be deemed to have acted

properly in dismissing the indictment.

7. A judge presiding over a criminal court is not authorized under the law to entertain a petition or complaint growing out of a labor dispute and to render judgment thereon. A judge presiding over a criminal court therefore acts erroneously and contrary to law in ordering the reinstatement of a dismissed employee.

8. Where a court lacks jurisdiction over the subject matter of a cause, a judgment thereon is void regardless of whether the parties consented thereto.

9. A private prosecutor is one who sets in motion the machinery of criminal justice against a person whom he suspects or believes to be guilty of a crime, by laying an accusation before the proper authorities, and who himself is not an officer of justice.

10. The private prosecutor, upon whose testimony an accused is indicted, being a mere witness in the case, cannot appeal from a ruling of a judge dismissing an indictment against a defendant.

11. There are only two instances in which the Republic of Liberia may appeal from a ruling of the trial court in a criminal case: (a) from an order granting a motion by the defendant to dismiss an indictment; and (b) from an order granting a motion for judgment of acquittal.

12. The dismissal of an indictment on the ground of failure by the prosecution to proceed, not being one of the instances in which the Republic of Liberia may appeal, the Republic of Liberia is precluded from taking an appeal. This principle applies similarly to a private prosecutor. Accordingly, an appeal taken under these circumstances will be dismissed.

13. The Solicitor General, who is duty bound to prosecute a defendant, acts inconsistent with his oath of office and creates a conflict of interest, in appearing and defending a defendant in a case in which he prosecuted the said defendant.

Based upon the complaint of the Firestone Plantations Company, the appellant herein, to the government, one John T. Bryant, who at the time was an estate superintendent at the appellant's plantation, was arrested and indicted for the crime of grand larceny. Mr. Bryant was also suspended from his job by the appellant pending disposition of the case. After the expiration of a period of more than seven years, and upon the refusal of the Firestone Plantations Company to reinstate him to

his position, Mr. Bryant wrote a letter to the judge presiding by assignment over the May Term, A. D. 1984, of the Circuit Court for the First Judicial Circuit, criminal Assizes "A", Montserrado County, requesting the judge to summon the management of the Firestone Plantations Company to show cause why he should not be reinstated to his position. He attached to his letter a bill of ignoramus which he said had been issued in his favour. Whereupon, the presiding judge ordered Firestone Plantations Company summoned in criminal contempt of court.

Following the filing of returns by counsel for Firestone, and a hearing on the complaint and returns, the presiding judge ruled purging Firestone of the contempt, but ordered that the accused, John T. Bryant, be discharged from further answering the charge of grand larceny, and that Firestone Plantations Company reinstate Mr. Bryant to his previous position. The ground upon which the judge ordered Mr. Bryant discharged was the failure of the prosecution to proceed with the case. From this ruling, the Firestone Plantations Company, the private prosecutor in the case, announced an appeal to the Supreme Court. The appeal was originally denied, but upon orders of the Supreme Court, growing out of a petition for a writ of mandamus, the trial judge granted the same, *nunc pro tunc*. The appeal was however opposed by both the defendant, John T. Bryant, and the Solicitor-General of Liberia, the chief prosecutor for the Government of Liberia.

The Supreme Court dismissed the appeal, holding that the appellant, Firestone Plantations Company, as private prosecutor, is a mere witness in a criminal proceeding, and that as such it did not have the right to appeal from the decision of the judge discharging the defendant from further answering the charge of grand larceny. The Court noted that in criminal cases, the State had the right of appeal in only two instances: (a) where the trial judge grants a motion by the defendant to dismiss the indictment, and (b) where the judge grants a motion for judgment of acquittal. The Court opined that as neither of these grounds existed in the instant case, the government was precluded from appealing the ruling of the judge, and that the same prohibition applied to the private prosecutor.

Before dismissing the appeal, however, the Court entertained other issues raised by the appellant. The first issue dealt with by the Court was whether criminal contempt had been committed by the appellant. The Court held that no contempt had been committed. The Court opined that in order to constitute contempt, there must be improper conduct done in the presence of the court or so near thereto as to interrupt or interfere with the court's proceedings; or that there must have been some act done not in the presence of the court but which tended to affect the

administration of justice. The Supreme Court found that the appellant had shown no disrespect to the trial court or interfered with or embarrassed the proceedings of that court as warranted the institution of contempt proceedings against the appellant. The Court therefore held that the trial judge acted without the pale of the law in citing the appellant for contempt.

On the issue of the trial judge's order that Mr. John T. Bryant be reinstated to his previous position by the appellant, the Court held that the trial judge presiding over a criminal court had no authority under the law to entertain a petition or complaint growing out of a labor dispute. That authority, the Court noted, was by statute granted exclusively to the Ministry of Labour and Youth. The trial court's jurisdiction, it said, was limited to only criminal matters emanating from Montserrado County or brought before it on venue from other counties. Accordingly, the Court said that the trial judge acted erroneously and contrary to law in ordering that Mr. Bryant be reinstated, since the court lacked jurisdiction over the subject matter. The Court observed that as the trial court lacked jurisdiction over the subject matter, it was precluded from rendering judgment thereon, and that any judgment so rendered was null and void regardless of the consent of the parties. It therefore ordered the reinstatement decision vacated with immediate effect.

On the question of whether the trial judge acted properly in discharging Mr. Bryant from further answering the charge of grand larceny, the Court held that the trial judge acted in accordance with the law. The Court referred to the constitutional provision guaranteeing to a defendant a fair and speedy trial, and noted that the long delay by the prosecution in proceeding with the case grossly violated Mr. Bryant's constitutional rights. Under the circumstances, it said, the trial judge's dismissal of the indictment and his discharge of Mr. Bryant from further answering the charge of grand larceny were in order and supported by law. The Court therefore *dismissed* the appeal. In concluding its opinion, the Court frowned upon the Solicitor-General for joining in representing Mr. Bryant and in opposing the appeal from the judgment in which the State was prosecuting Mr. Bryant, noting that such act not only violated the Solicitor General's oath of office but that it created a conflict of interest.

Victor Hne of the Carlor, Gordon Hne & Teewia Law Offices, appeared for appellant. *Julius Adighibe* in association with the Solicitor General of Liberia, *McDonald J. Krakue*, appeared for appellee,

MR. JUSTICE BELLEH delivered the opinion of the Court.

The history of this case, as culled from the records certified to this Court, is characterized by unprecedented drama in the history of this Court. The trial judge had dismissed the indictment against John T. Bryant on the ground that the prosecution had failed to proceed with the prosecution of the case. The ground for dismissal, not being one of the instances in which the Republic of Liberia may appeal, the Republic could not appeal and therefore did not appeal from the judgment. Instead, the Firestone Plantations Company, the private prosecutor, who was a mere witness for the State, appealed from the judgment dismissing the indictment against John T. Bryant on the theory that the dismissal would adversely affect her interest collaterally.

On appeal to this Court, the Firestone Plantations Company, the private prosecutor, was represented by the Carlor, Gordon, Hne & Teewia Law Offices while the Solicitor General of the Republic of Liberia, in association with the Adighibe Law Firm, announced legal representation in favour of John T. Bryant. We gather from the argument of the prosecution, now counsel for John T. Bryant, that the private prosecutor had no legal standing to appeal from the judgment; therefore, the prosecution says, the judgment of the court below dismissing the indictment against John T. Bryant should not be disturbed.

The records reveal that predicated upon the complaint of the Firestone Plantations Company, as private prosecutor, John T. Bryant was indicted for the crime of grand larceny by the grand jury of the First Judicial Circuit, Criminal Assizes "A", Montserrado County, during the November, A. D. 1977 Term of the court. There was no trial had for a period of more than ten (10) years, even though John T. Bryant had been suspended from office as estate superintendent of the Firestone Plantations Company, pending the trial of the above mentioned case.

On June 29, 1984, John T. Bryant addressed a letter of complaint to His Honour H. Soe Bailey, who was then presiding by assignment over the First Judicial Circuit, Criminal Court "A", regarding the long pendency of his indictment on the docket of said court, as well as the refusal of the Firestone Plantations Company, as private prosecutor to appear in court to prosecute the case. We hereunder quote verbatim the complainant's letter:

"Salala Rubber Corporation
Gibi Territory Montserrado County
Republic of Liberia
June 29, 1984

His Honour H. Soe Bailey
Assigned Circuit Judge Presiding
People's First Judicial Circuit Court "A"
Temple of Justice Building
Monrovia, Liberia

May It Please Your Honour:

I have the honour to bring to your judicial attention the gross disadvantage which the management of the Firestone Plantations Company, Marshall Territory, Montserrado County, has taken over me, to wit:

1. That I was once falsely accused by the management of the Firestone Plantations Company with the crime of grand larceny; for which I was arrested and brought before this Honourable Court during its August Term, A.D. 1977. But the grand jury presented a "bill of ignoramus" in my favour, whereupon I was discharged of further answering to the charge of 'grand larceny' as from that day,
2. That to substantiate my written information, I attached hereto certified copy of the clerk's certificate which was issued in my favour as documentary evidence.
3. That notwithstanding, in the face of the 'bill of ignoramus' presented in open court by the grand jury in my favour, the management of the Firestone Plantations Company flatly refused and neglected to reinstate me, despite my several demands made to the aforesaid management.

Therefore, I am respectfully appealing to this Honourable Court, and Your Honour the presiding judge, to summon the management of Firestone Plantations Company to appear before Your Honour to show cause why I should not be reinstated to my former post of duty as estate superintendent.

With sentiments of my humble esteem, while resting assured that this letter of my written information may claim your kind judicial consideration in the premises.

Respectfully yours,

/s/ John T. Bryant

/ t/ John T. Bryant

"COMPLAINANT"

Upon the receipt of the complaint by Judge Bailey, he immediately ordered the management of Firestone Plantations Company summoned for criminal contempt. The management of Firestone Plantations Company, through its counsel, appeared and filed returns in which it contended that it had committed no act of contempt against the court, in that it had disobeyed no orders of the court. The respondent's returns reads as follows:

"DEFENDANT'S RETURNS"

The management of Firestone Plantations Company, the above named defendant, says that it is not placeable with contempt for the following reasons, to wit:

1. Because defendant says that no communication has been received from this Honourable Court by the defendant which has been ignored or un-responded to by the defendant to attach contempt to the defendant.
2. And also because according to the records available to the defendant from this Honourable Court, that is, a certificate issued by the People's First Judicial Circuit Court, Criminal Assizes, "A" on the 9th day of July, A. D. 1981, shows that the criminal case against the informant, John T. Bryant, is still pending and undetermined. A copy of the said clerk's certificate is hereto annexed marked exhibit "A".
3. And also because defendant says that the question of reinstatement of the informant is a labour matter which is not originally cognizable before this Honourable Court, the governing statute having conferred original jurisdiction in all labour matters upon the Ministry of Labour.
4. And also because defendant says that according to the defendant's records, the informant instituted a complaint against the defendant at the Ministry of Labour on July 8, 1978, and hearing thereof commenced on September 15, 1980 as per the said records, hereto annexed, marked exhibits "B" and "C" respectively, which is still pending.
5. And also because defendant says that according to the records available to the defendant, the informant was re-indicted and rearrested on November 22, 1977, based upon which the clerk's certificate, exhibit 'A' hereto, was issued. The contention by the informant that a bill of ignoramus was entered in his favour on September 2, 1977 as stated in the clerk's certificate dated June 29, 1984 exhibited by him cannot be availing. A copy of the indictment is annexed as exhibit "D".

Wherefore, and in view of the foregoing, defendant prays that it be purged of contempt and the present proceedings vacated because the defendant as aforesaid has not ignored or failed to respond to any communication from this Honourable Court concerning said informant.

Respectfully submitted:

Counsel for defendant

CARLOR, GORDON, HNE & TEEWIA LAW

OFFICERS

/ Victor Hne

S/ John Teewia

COUNSELLORS-AT-LAW

"Dated this 4th day of July, A. D. 1984"

The judge, after hearing the complaint and returns, purged Firestone Plantations Company of criminal contempt, but dismissed the indictment against complainant John T. Bryant, ordered him discharged from further answering the charge of grand larceny, and ordered the management of Firestone Plantations Company to reinstate complainant John T. Bryant. We hereunder quote the relevant portion of the judge's ruling:

"In view of the foregoing, this court is convinced that the private prosecutor has proven a *prima facie* case against the defendant company on ground that he the private prosecutor has relied upon the previous bill of ignoramus as well as the clerk's certificate that was issued in his favour during the August Term, A. D. 1977 for which he has made several demands of the defendant company for his reinstatement, but the defendant company which refused to consider the informant on the ground that there was an indictment charging the defendant with the crime of grand larceny pending before this court and hence defendant/informant case has not been judicially adjudged. It is hereby therefore adjudged that this court exercises that part of the Criminal Procedure Law, Rev. Code 2: 2.18 , in re: "time limitation on non capital offense" as well as page 372 of the said Criminal Procedure Law, chapter 18, in re: dismissal of prosecution, failure to proceed with prosecution. The defendant John Bryant, now informant in this criminal proceeding, from the evidence as gathered, said indictment is hereby dismissed as of today's date and the defendant/informant, John Bryant is hereby discharged from further answering to this invisible indictment for the crime of grand larceny, which is not presently on our criminal trial docket and

also for the time limitation of seven years period this case has been allegedly in existence. The clerk of this court is hereby ordered to issue a certificate of clearance in favour of the defendant/ informant, thereby restoring him to his civil liberty and privileges to enjoy his franchised rights which have been guaranteed to all citizens of this Republic. This court has decided to impose a fine on the defendant company for having indirectly restricted the defendant's civil liberty but since in her defense, she attributed the delaying of the purported prosecution of the crime of grand larceny to be the cause of the prosecuting attorney, we reserved what we intended. Given under my hand and seal of court this 10th day of July, A. D. 1984. H. Soe Bailey
ASSIGNED CIRCUIT JUDGE PRESIDING."

The management of the Firestone Plantations Company, the private prosecutor excepted to the ruling and announced an appeal in view of the implication of the ruling for the reinstatement of John T. Bryant, but the trial judge refused to grant the appeal in favour of the private prosecutor. Therefore the private prosecutor, now appellant, sought and was granted a writ of mandamus to compel Judge Bailey to approve appellant's appeal bond *nunc pro tunc*.

The appellant having satisfied all jurisdictional steps required for the perfection of an appeal, it has now brought the case to this Court of dernier resort for review.

The first issue to be considered is whether or not any act of criminal contempt was in fact committed by the management of the Firestone Plantations Company. According to 12 AM. JUR., § 6, text at pages 392 to 393:

"Criminal contempt proceedings are those brought to preserve the power and vindicate the dignity of the court and to punish for disobedience of its orders. . . . They are criminal and punitive in their natures and their government; the courts and the people are interested in their prosecution. . . . A criminal contempt is committed by a party in a civil action where he falsely pretends that he is too ill to attend court; by failure to turn over properties as ordered; by the concealment of assets by bankrupt; by proceeding with a sale in defiance of an order of the court; by an attorney absenting himself from court; by persisting in a boycott in defiance of court's orders; or by violating an injunction against interference with a complainant's employees."

According to the returns made by the management of the Firestone Plantations Company, coupled with the records on the proceedings, there was no showing that the judge in his ruling and in the citations and/or writ of summons sent to the

management of the Firestone Plantations Company ever pointed out any act of disobedience by the said management of any order of the court; nor was there any showing that the Firestone Plantations Company disrespected the court or embarrassed its proceedings. Under these circumstances, the Court is of the opinion that the act of Judge Bailey in citing the Firestone Plantations Company in criminal contempt, when in point of fact no such act had been committed, was irregular, arbitrary and illegal.

In the case *In re James E. Johnson, Attorney-At -Law, Appellant*, decided May 14, 1937, this Court, speaking through Mr. Justice Grigsby, held that:

"To constitute a contempt, there must be improper conduct in the presence of the court or so near thereto as to interrupt or interfere with its proceedings; or some act must be done, not necessarily in the presence of the court, which tends to adversely affect the administration of justice." 6 LLR 47 (1937).

Also, in the case *King v. Moore*, this Court said:

"Judges should be careful and conservative in the use of process for contempt, as the liberty of the citizen is greater than the dignity of the judge. 2 LLR 35, 36 (1911).

In this case, there was no disrespect shown to the court by the management of the Firestone Plantations Company nor did the company ever interfere with or embarrass any proceedings of the court. Therefore, it is our considered opinion that the criminal contempt proceedings instituted by Judge Bailey against the management of the Firestone Plantations Company was unwarranted and without the pale of law.

The second issue presented for our consideration is whether or not the dismissal of the indictment was in keeping with law. The Criminal Procedure Law, Rev. Code 2: 18.2, under the caption Dismissal for Failure to Proceed with Prosecution, provides:

"Unless good cause is shown, a court shall dismiss a complaint against a defendant who is not indicted by the end of the next succeeding term after his arrest for an indictable offense or his appearance in court in response to a summons or notice to appear charging him with such an offense, Unless good cause is shown, a court shall dismiss an indictment if the defendant is not tried the next succeeding term after the funding of the indictment. 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 fifteen days after the arrest of the defendant or his appearance in

court in response to a summons or notice to appear."

The above quoted statute is clear and unequivocal. According to the records certified to this Court, the complainant in the court below now appellee was indicted by the grand jury of the Circuit Court for the First Judicial Circuit, Criminal Assizes "A", Montserrado County, for the crime of grand larceny during the November 1977 Term of court. Mathematically, the period from November 1977, up to June 29, 1984, the date of John T. Bryant's letter of complaint filed with the court below, is approximately twenty-six terms of court, during which the prosecution failed to prosecute the appellee after his indictment.

Consequently, the appellee remained suspended during this period. The management of the Firestone Plantations Company, the private prosecutor, based upon whose testimonies the indictment was found, refused to have appellee reinstated, using as pretext therefor that the appellee's reinstatement, if any, would be considered after the appellee's trial by the court for the crime of grand larceny for which he had been indicted. The appellee, feeling that his rights had been violated unjustifiably, and believing that this violation had imposed undue hardship upon him, therefore thought it necessary to seek the aid and intervention of Judge Bailey, who was presiding by assignment over the First Judicial Circuit Court, Criminal Assizes, "A", Montserrado County, during the May Term, A. D. 1984, so that if the case was tried and he was acquitted, the suspicion and doubt created against him by virtue of his indictment would have been cleared from the management's point of view. The appellee had hoped thereby to regain his position as estate superintendent of the Firestone Plantations Company, the appellant herein.

What is amazing to this Court is that there is no indication in the records that the prosecution was ever cited. Besides, the citation in the contempt proceedings directed to the management of the Firestone Plantations Company commanding it to appear made no reference to the appellee's letter of complaint, and the appellant was never served with a copy of John T. Bryant's letter of complaint relative to his indictment and the management's refusal, as private prosecutor, to appear and prosecute the appellee.

Yet, during the contempt proceedings in the court below, the appellee was placed on the witness stand to testify. While on the witness stand, the appellee testified as follows:

"In the year 1977, I, John T. Bryant was falsely accused of grand larceny case and was

brought before the First Judicial Circuit, Criminal Assizes "A", where the Firestone management together with a group of witnesses met the grand jury in session at that time. After which a bill of ignoramus was tendered in my favour and that bill of ignoramus was read in open court presided by Her Honour Mrs. Emma Shannon-Walser freed me from answering any of the charges. And a certificate was issued in my favour by the clerk of this Honourable court. That certificate was taken to the Firestone Plantations Company in October 1977, but the company refused to honour the Certificate; as a result, they took my job from me as senior staff, more credible estate superintendent. From that time (1977) to this time, Firestone has refused to give me my job. Therefore, I asked and appealed to this Honourable court to bring the Firestone Company before you, Your Honour, to show cause why they denied to have me reinstated."

According to the above quoted testimony of Mr. Bryant, after being accused in the year 1977, the grand jury returned a bill of ignoramus in his favour. But the records before as show that after the bill of ignoramus was tendered in favour of appellee, he was subsequently indicted for the crime of grand larceny.

What is further amazing to this Court is that notwithstanding the omission made by the court below regarding the court's failure to furnish the management of the Firestone Plantations Company with a copy of Mr. Bryant's letter of complaint, when the appellant appeared along with its counsel, the Carlor, Gordon, Hne & Teewia Law Offices, which duly announced legal representation in favour of the Firestone Plantations Company, participated in the contempt proceedings, and cross-examined the co-appellee on his above quoted statement of complaint, they did not raise any issue relative to the failure of the court or the complainant in the court below, now appellee, to furnish them with a copy of the letter of complaint.

This, in our opinion, compounded the errors in the proceedings. Be it as it may, the trial court had the right, under the statutes quoted *supra*, to dismiss an indictment against the defendant for failure by the prosecution to proceed, especially so, as in the instant case, where the defendant had been indicted for a period of more than twenty-six terms of court without being tried while he remained suspended from his job. Article 21 (h) of the Constitution provides:

"No person shall be held to answer for a capital or infamous crime except in cases of impeachment, cases arising in the Armed Forces and petty offenses, unless upon indictment by a grand jury; and in such cases, the accused shall have the right to a speedy, public and impartial trial by a jury of the vicinity, unless such person shall

with appropriate understanding, expressly waive the right to a jury trial. In all criminal cases, the accused shall have the right to be represented by counsel of his choice, to confront witnesses against him and to have compulsory process for obtaining witnesses in his favour. He shall not be compelled to furnish evidence against himself and shall be presumed innocent until the contrary is proved beyond a reasonable doubt. No person shall be subject to double jeopardy." LIB. CONST., Art. 21 (h)(1986).

In light of the above quoted constitutional provisions, this Court is of the considered opinion that the constitutional rights of the complainant, now appellee, were grossly violated, and that the dismissal of the indictment by the court below was in order.

We also gather from the ruling of Judge Bailey that he ordered the reinstatement of John T. Bryant by the Firestone Plantations Company, the private prosecutor.

This brings us to the fourth issue in this case, that is, whether or not a judge presiding over a criminal court can legally order the reinstatement of a suspended employee.

By Act of the Legislature, approved December 31, 1971, the Ministry of Labour & Youth was created replacing the National Labour Affairs Agency which had the responsibility of administering Labour Laws under the Act of December 20, 1966. Under the latter Act, the Ministry of Labour was especially charged with the promotion, development, direction and supervision of all government programs and activities relating to labour and youth. (*See An Act to Amend the Executive Law to Create a Ministry of Labour & Youth and to Repeal Other Laws in Relation Thereto*, ch. 55, § 1501.)

Criminal Court "A", First Judicial Circuit, Montserrado County, on the other hand, exercises exclusive jurisdiction over criminal matters emanating from Montserrado County or brought before it on venue from other counties. Under these circumstances, a judge presiding over the said Criminal Court "A" is in no way authorized under our law to entertain any petition and/or complaint growing out of a labor dispute and to render judgment thereon. Therefore, it is our considered opinion that Judge Bailey acted erroneously and contrary to law when he ordered the appellant to reinstate the appellee, for he lacked jurisdiction over the subject matter. In the case *Tompo et. al. v. Republic*, 13 LLR 207 (1958), this Court held that "Where a court lacks jurisdiction of the subject matter, a judgment thereon is void regardless of the consent of the parties."

In this light, the court below, being without jurisdiction to hear and determine labour cases, the judgment rendered by it, wherein it ordered the reinstatement of the appellee, is hereby declared NULL and VOID and ordered vacated with immediate effect.

The Court now has the duty to determine the issue of whether or not the appellant, as private prosecutor, in the court below had any legal standing to appeal from the ruling of the court below dismissing an indictment against the defendant/ appellee.

Black's Law Dictionary defines Private Prosecutor as:

"One who sets in motion the machinery of criminal justice against a person whom he suspects or believes to be guilty of a crime by laying an accusation before the proper authorities, and who is not himself an officer of justice." BLACK'S LAW DICTIONARY 1386.

According to the records in this case, the appellant was only a mere witness, based upon whose testimony the appellee was indicted; it therefore could not appeal from a ruling of a judge dismissing an indictment against the defendant. Besides, there are only two instances provided by statute in which the Republic of Liberia may appeal. The Criminal Procedure Law, Rev. Code 2:24.3, under the caption RIGHT OF APPEAL BY THE REPUBLIC, states: "An appeal may be taken as of right by the Republic from:

- (a) An order granting a motion by the defendant to dismiss the indictment; or
- (b) An order granting a motion for judgment of acquittal."

The dismissal of an indictment on the ground of failure to proceed, not being one of the instances in which the Republic of Liberia may appeal, even the Republic of Liberia could not have appealed the trial judge's ruling, and therefore, needless to say the private prosecutor. Hence, the appeal now before this Court ought to be dismissed and the same is hereby dismissed.

The Court is of the further opinion that there were other remedies available to the appellant that could have been sought and utilized at an appropriate time. Instead, because of some motive, deliberate or otherwise, counsel for appellant, in an attempt to project a strange methodology into the practice and procedure in this jurisdiction, seemingly to test and challenge the ability of this Bench to properly discern and pass

upon the legal issues presented before it for adjudication, elected to appeal, as private prosecutor, from the judgment of the court below dismissing the indictment because of the prosecution's failure to proceed with the case.

Practicing lawyers should not allow their clients to lead and direct them in the conduct of their causes since such clients are invariably not specialists in the science of law and do not know how causes should be properly conducted. Lawyers are to properly advise their clients as to the true course to adopt and there should be no hesitation at all in doing this. A lawyer should be unwilling to further prosecute or defend a client's case or interest where such client is unwilling to abide by his suggestion and advice, rather than adopt a contrary procedure which would lower the prestige and dignity of the profession. It is hoped that this warning will be seriously taken.

Lastly, the Court in passing would like to comment on the position of the prosecuting attorney. A prosecuting attorney is "one who prosecutes another for a crime in the name of the government: one who instigates a prosecution by making affidavit charging a named person with the commission of a penal offense on which a warrant is issued or an indictment or accusation is based." BLACK' S LAW DICTIONARY 1385. We observed during the arguments before this Bench that the Solicitor General, who has the duty under our practice and procedure to prosecute an accused person and from whose Ministry the indictment in the court below was drawn, is now representing the defendant and that his representation, as announced, was duly noted on the minutes of court as being in favour of the appellee. Moreover, in their argument before this Court, the prosecution tried most vigorously to suppress the prosecution of appellant's appeal on the theory that the appellant, being the private prosecutor in the court below, should not have appealed from the judgment of the trial court. They therefore prayed that the judgment of the court below dismissing the indictment against the defendant should be affirmed by this Court, and that the appeal be dismissed. In the opinion of this Court, the procedure adopted by the Solicitor General is in direct contravention of, and inconsistent with his oath of office, in that he whose duty it is to prosecute the defendant has now appeared before this Court to defend the same defendant in a criminal case. This, in our opinion is tantamount to a conflict of interest, for which the Solicitor General ought to be penalized. Acts of this nature in future will not go unpunished..

In view of what we have narrated and the laws cited, it is our considered opinion that the appeal be, and the same is hereby dismissed.

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

Appeal dismissed.