THE MANAGEMENT OF THE FORESTRY DEVELOPMENT AUTHORITY (FDA), Petitioner/Appellant, v. **MOSES B. WALTERS** and **THE BOARD of GENERAL APPEALS**, Ministry of Labour, Respondents/Appellees.

APPEAL FROM THE NATIONAL LABOUR COURT, MONTSERRADO COUNTY.

Heard: January 25, 1988. Decided: February 25, 1988.

1. A public corporation having power like any other corporation, such as the power to hire, set salary, suspend and/or dismiss personnel, etc., is subject to the rules and regulations governing labor practices within the Republic of Liberia. Accordingly, the Ministry of Labour has the power to investigate complaints against such corporation, and to render and enforce its decision against such corporation.

2. It is evidence alone which enables courts, tribunals, or administrative forums to pronounce with certainty on the matter in dispute; and no matter how logical a complaint is, it cannot be taken as proof in the absence of evidentiary presentation.

3. The burden of proof rests on the party who alleges a fact. Thus, every party alleging the existence of a fact is required to prove it by a preponderance of the evidence.

4. In every case, the best evidence which the case admits must be produced; and no evidence is sufficient which supposes the existence of better evidence.

5. The granting of a default judgment does not entitle the complainant to relief without proof of the allegations set forth in the pleadings, and a final judgment cannot be rendered on a default judgment without proof of the allegations laid in the pleadings.

6. It is sufficient if the party who has the burden of proof establishes his allegations by a preponderance of the evidence.

7. A party is relieved of the burden of proof when the subject matter of negative averments lie peculiarly within the knowledge of the other party. Under such circumstances, the averments are taken as true unless disproved by that party.

8. Preponderance of the evidence is not dependent upon the number of witnesses testifying on either side, but rather upon the credibility which, in light of all the evidence in the case, the triers of the facts attribute to their testimony, and the effect of that testimony in inducing beliefs in its truth.

9. On the application for judgment by default, the applicant must file proof of service of the writ of summons and the complaint, and give proof of the facts constituting the claim, the default, and the amount due.

The appellees/respondents filed a complaint with the Ministry of Labour against the petitioner/appellant, alleging that they had been wrongfully dismissed by the appellant. When the petitioner/appellant failed to appear, in disobedience to a number of assignments, the appellees/respondents' counsel applied to the court for a default judgment. The application was granted and judgment by default was entered against the appellant. The appellees/respondents were thereupon permitted to introduce evidence in support of their claims. Only one witness, in person of one of the appellees, testified at the hearing, and he did so for himself rather than for all of the appellees. Following the close of the evidence, the hearing officer ruled that the appellant was liable to the appellees, and that it should pay to each of the appellees

twenty-four month's salary, totaling $112,800.00.

On appeal to the Board of General Appeals, the ruling was affirmed, but with a modification of the award to $65,450.00. The matter was the appealed to the National Labour Court which, after a hearing, affirmed the decision of the Board of General Appeals. The judgment was excepted to and an appeal was announced to the Supreme Court.

The Supreme Court reversed the judgment of the National Labour Court, holding that the appellees had failed to meet the burden of proof required by law. The Court noted that the granting of a default judgment did not automatically entitle the complainants to relief without proof of the allegations set out in their complaint, by a preponderance of the evidence. The testimony of the lone witness produced by the complainants was insufficient to met that burden, the Court opined.

The Court however rejected the contentions of the appellant that it was a government agency, that its employees were subject to the Civil Service Law rather than the Labour Laws of Liberia, and that therefore the Ministry of Labour and the National Labour Court lacked jurisdiction over it or the subject matter. The Court noted that public corporations which had powers similar to those of other privately held corporations, such as the power to hire, suspend and dismiss personnel, were subject to the laws, rules and regulations governing labour practices, the same as other corporations.

The Court also rejected the contention of the appellant that the Ministry of Labour, as an administrative forum within the government, could not enter a default judgment against it. The Court ruled however that because the testimony of the lone witness for the complainants did not warrant the final judgment which was entered by the hearing officer and confirmed by the Board of General Appeals and the National Labour Court, it was *reversing* the judgment of the lower court and *remanding* the case to the Ministry of Labour for a new trial.

Alfred B. Flomo appeared for the appellant. *John T. Teewia* appeared for the appellees.

MR. JUSTICE JUNIUS delivered the opinion of the Court.

On December 2, 1985, Messrs, Moses B. Walters, Myer Jargbah, Edwin Doe, Thomas Watkins, Nuah Z, Guanu, Arthur Luogon, Henry Togba, Richard S. Baio, Augustus Wleh, Jerome Wesseh and Albert S. Darh filed a complaint for wrongful dismissal with the then Acting Minister of Labour, the late Honourable John C. L. Mayson, against their former employer, the Forestry Development Authority (FDA), through Counsellor M. Kron Yangbe.

On December 17, 1985, Honourable John T. Freeman, Sr., Assistant Minister of Labour for Labour Standards, wrote Honourable Shad G. Kaydea, managing director of the FDA, inviting him to a conference at the hour of ten o'clock a. m. on January 2, 1986 before labour director Francis F. Wisseh. A copy of the complaint was furnished the FDA. On the date and time designated, the complainants now appellees/respondents appeared for the conference but the FDA did not attend.

Prior to receiving their letters of dismissal and subsequent thereto, the appellees communicated with the managing director of FDA, requesting an investigation into the report of its management control unit against them because as they term it, they felt that the said report was inaccurate and bias. Having received no redress from the managing director of FDA, the complainants appealed to the Board of Directors of FDA, through its then Chairman, Honourable Ignatius N. Clay. Even though the chairman was kind enough to reply their letter of May 17, 1985, there was no further action taken on the matter by the Board.

On January 10, 1986, another citation was issued for the hearing of the case on January 13, 1986. Again, FDA did not appear. Subsequent assignments were made for the hearing of the case on February 4, 7 and 27, 1986; March 19, 1986; May 1 and 13, 1986; June 3, 1986; and August 15, 1986, respectively, but only the assignments of February 7 and 27, 1986 were responded to by FDA representative, in the person of Counsellor J. Emmanuel Wureh. In essence, out of the ten citations, only two were attended to by the appellant corporation. Therefore, on August 15, 1986, upon the issuance and service of four (4) subsequent citations, duly acknowledged by FDA deputy managing director, Honourable George Fully, and upon application by counsel for appellees for a default judgment, the hearing officer allowed the appellees to proceed with the hearing of the case.

The records also show that only Moses B. Walters, one of the complainants, testified and submitted twelve (12) documents allegedly in support of the complaint against the FDA.

The records of this case also reveal that it was not until seven (7) months after their dismissal that the appellees filed their written complaint with the Ministry of Labour, and that it took an additional nine (9) months before the case was finally decided by the hearing officer on August 22, 1986. The hearing officer awarded each of the complainants twenty-four months' salary, in the total sum of $112,800.00. From this ruling, the defendant corporation appealed to the Board of General Appeals, Ministry of Labour.

The Board heard arguments and thereafter, on December 12, 1986, decided the case in favour of the appellees, but modifying the award to $65,450.00, as calculated by the said Board. The FDA appealed from said decision to the National Labour Court, which latter court heard and decided the case in favour of the appellees, by confirming and affirming the decision of the Board on June 12, 1987. The FDA excepted to the final ruling of the court and announced an appeal to this Honourable Court.

In their four-count bill of exceptions, filed in the court below, the appellant/FDA, embedded therein several irregularities. In its brief before this Court, the FDA has presented for our review and determination the following issues:

"1. The Forestry Development Authority, appellant herein, being a public or government agency whose officials and employees are paid by the Ministry of Finance, as other civil servants, can the Ministry of Labour exercise any jurisdiction over said agency and in matters involving management-labor relationship?

2. In the conduct of the hearing had by the hearing officer, did the complainants, now appellees, prove their complaint by a preponderance of evidence as required by law?

3. In the face of DECREE No. 21 of the Interim National Assembly (INA), is regulation No. 4, published by the Minister of Labour providing for default judgment still effective?

4. Is the final judgment of the National Labour Court supported by the evidence adduced and the law controlling this case?"

Appellees, in their counter argument, have submitted the following for our consideration: "Whether an administrative forum has the power to grant default judgment in a case properly before that forum?"

For the purpose of these proceedings, we will consider whether or not the appellees, employees of the appellant, are covered by the Labour Laws of Liberia? The trial judge had ruled that appellees were covered by the Labour Laws, they being

employees of an autonomous agency of government. This is the contention that was strongly argued before this Court by the appellant. In the mind of this Court, the answer given to this issue will easily enable us to determine the others.

Appellant argued that by "an Act of the National Legislature, passed and approved on November 1, 1976, the Forestry Development Authority was created as an autonomous agency of the government, with the right to operate on corporate principles, in the regulation of logging activities and conservation of the Liberian forest. Its officials are appointed directly by the President of Liberia and the salaries of its employees are provided by the government, through the Ministry of Finance, it has no, income nor does it earn profit or pay dividends from its operation; all income generated through the efforts of its management are strictly government revenue and paid into the Bureau of Internal Revenues. Its employees, it argued, are therefore civil servants and subject too the Civil Service Law of Liberia. As such, it said, all matters arising out of disciplinary actions are cognizable before the Civil Service Agency which is vested with the authority to convene a board of inquiry. The Ministry of Labour and the National Labour Court, it contended, have no jurisdiction over matters involving civil servants, Accordingly, it maintained, all actions, proceedings and judgments rendered in this case against it are *ultra vires* and void *ab initio* for the want of jurisdiction, both over the subject matter and the person of the appellant.

The appellees, in resisting these contentions, argued before this Court and seriously maintained that the fact that the appellees are employees of an autonomous agency of the government of the Republic of Liberia did not *ipso facto* make them government employees and thereby deprive them of their rights under the Labour Laws. In support of this contention, they relied upon the fact that the FDA is a public corporation.

A recourse to the Act creating the FDA gave us a clear picture as to whether or not the employees of the FDA are like other employees of the Ministry of Labour, Justice, etc. For instance, section 4 (0) of said Act provides:

"The power to engage in commercial undertakings as a principal or in conjunction with others, to enter into contracts, to sue and be sued."

From this we gathered that although the FDA is an autonomous agency, it is unlike the Ministry of Labour or Justice. It has power like any other corporation. Hence, it is subject to rules and regulations covering labor practices within the Republic of Liberia, over which the Ministry of Labour has power to investigate, render decision and en force same.

Further, in the performance of its obligation under the Act, the FDA has the power to hire, set salary rates, and suspend or dismiss personal, except in the case of manager or managers, in which no dismissal can be made without the final approval of the President of Liberia. The management of the FDA has the power to fill such vacancies with respect to positions below the managerial level.

There is no dispute that the eleven (11) complainants, now appellees, were all employees of FDA and were dismissed together, based upon the report of a management team. There is also no dispute that the FDA received the notices of assignments for the hearing of the case before the Ministry of Labour. The appellant has asked this Court to answer the question whether in the conduct of the hearing had by the hearing officer, the complainants, and now appellees, proved their complaint by a preponderance of evidence, as required by our statute?"

In this jurisdiction, it is evidence alone which enables the court, tribunal, or administrative forum to pronounce with certainty the matter in dispute, and no matter how logical a complaint might be stated, it cannot be taken as proof without evidence. It is required that every party alleging the existence of a fact is bound to

prove it by a preponderance of the evidence. In every case, the best evidence which the case will admit of must be produced because no evidence is sufficient which supposes the existence of a better evidence. Neither does the granting of a default judgment entitled the complainant to relief without proof of the allegation. Our Civil Procedure Law, Rev. Code 1: 25 5 (1) and (2) state:

"Burden of proof.
1. Party having burden. The burden of proof rest on the party who alleges a fact except that when the subject matter of a negative averment lies peculiarly within the knowledge of the other party, the averment is taken as true unless disproved by that party.

2. Quantum of evidence. It is sufficient if the party who has the burden of proof establishes his allegations by a preponderance of the evidence;"

Also at section 25.6 (1) "Best evidence, it is stated:

1. In general. The best evidence which the case admit of must always be produced; that is, no evidence is sufficient which supposes the existence of batter evidence."

In the case *Twegbey and Teah v. Republic,* 11 LLR 295, 298 (1952), this Court said: "A party alleging the existence of a fact must prove it", and "The best evidence must always be produced." Also in the *case Cess-Pelham v. Pelham,* 4 LLR 54 (1934), the Court opined that "nor can a final judgment be, in any such case, rendered upon a judgment by default without having had proof of the allegation set out in the pleadings."

The minutes of the hearing show that only witness Moses B. Walters testified for himself and not for the other complainants. His testimony is hereunder quoted:

"On the 21st of March 1985, I was casually asked by the management of FDA to comment on the management control unit inspection report in a meeting. Because the report was not one or two pages but rather a pamphlet, I could not readily provide comment on same. Management granted me a day to go through. On the 22nd in a meeting, I made comments on the MCU inspection report in which I mentioned that because of the nature of the report, that involved statistics, I could not readily state that the MCU report was fault or not, but rather the management of FDA should investigate the report by asking each member involved. To date management has failed to do. The only thing management did was to dismiss 10 persons whose names were mentioned without any investigation. I was also included because I was considered the overall boss. After the management counsel meeting which was on the 2nd, I made some observation because I was on the spot during the inspection. I reduced that into writing, which was dated 26th of March, 1985 to Mr. Shad Kaydea, the managing director, pointing out some of the information that I found to be incorrect and then asked him to investigate. On the 29th of April, after one month of no feed back, I wrote Mr. Kaydea, the MD, that I was very serious about the matter and so he should send a team to investigate the MCU report. This letter was written on April 10th, 1985, on May 1, 1985. I received a letter from the MD of dismissal attributing it as a result of the management control report. I was dismissed. On May 8, 1985, I wrote the Board of Directors of FDA through its Chairman, Mr. Ignatius Clay, taking an appeal for an intervention to ask the management of FDA to investigate the MCU report. On May 17, 1985, Mr. Clay wrote me and informed me that until he gets Mr. Kaydea's observation, he would not be able to give me the board's position. Up till now, we are still looking up to Mr. Clay for the board's position. This is why we came to the Labour Ministry so that they will be able to intervene and investigate the management of FDA and bring the case to a close. And submit."

From his testimony it is crystal clear that same was insufficient to warrant the

judgment rendered by the hearing officer, which was affirmed and confirmed by both the Board of General Appeals and the National Labour Court in favour of the eleven (11) Complainants.

One having the burden of proof must establish the facts alleged by evidence at the trial, sufficient to destroy the equilibrium and over balance any weight of the evidence to be produced by the other party. On the other hand, preponderance of the evidence is not dependent upon the number of witnesses testifying on either side, but rather upon the credibility which, in the light of all the evidence in the case, the trier of facts attributes to their testimony and the effect of that testimony in inducing beliefs in its truth. AM. JUR 2nd., *Evidence,* ∫ 1164.

After reviewing the entire record of this case and duly considering the contentions of counsels of the litigants, we have been unable to find any legal reason for which the default judgment should not be reversed. The default judgment failed to respond to Decree No. 21 (8) ". . . proof of the facts constituting the claim . ." as well as the Civil Procedure Law, Rev. Code I:42.6 which states:

"Proof
On an application for judgment by default, the applicant shall file proof of service of the summons and complaint, and give proof of the facts constituting the clam, the default, and the amount due." Civil Procedure Law, Rev. Code 1:42.6.

We therefore reverse the judgment and remand the case to the Ministry of Labour for a new trial before the hearing officer so that the complainants can prove their allegation of wrongful dismissal. And it is so ordered.
Judgment reversed.