

**FORMER WORKERS OF REGIONAL GUARD SERVICE AGENCY (REGSA), by
and thru N. JELLEY HOWE et al., Appellants, v. THE REGIONAL GUARD
SERVICE AGENCY (REGSA), Appellee.**

APPEAL FROM THE NATIONAL LABOUR COURT, MONTSERRADO COUNTY.

Heard: August 6, 1997. Decided: August 15, 1997.

1. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment for the following reasons: (a) mistake, inadvertence, surprise, or excusable neglect; (b) newly discovered evidence which, if introduced at the trial, would probably have produced a different result and which but with due diligence could not have been discovered in time to move for a new trial; (c) fraud, misrepresentation, or other misconduct of the adverse party; (d) satisfaction, release, or discharge of the judgment or reversal or vacating of a prior judgment or order on which it is based...
2. A motion for relief from judgment is addressed to the sound discretion of the trial court, and its action will not be disturbed on appeal unless there is a clear showing that the trial court has abused its discretion.
3. A judge may modify or rescind a ruling or judgment in the term in which he is sitting, but only upon notice to the parties.

The appellants, complainants in the Ministry of Labour, and petitioners in the National Labour Court in the enforcement proceedings, appealed from a ruling of the judge of the National Labour Court rescinding his earlier ruling granting appellants petition for enforcement of the decision of the hearing officer rendered in their favor. In the Labour Ministry, the appellants had prayed for a judgment by default after the appellee herein had failed to honour the several notices of assignment for hearing of the investigation into the complaint charging the appellee with unfair labour practices and demanding severance pay, annual leave, notice pay and other benefits. When the appellee failed to except to the ruling of the hearing officer and to appeal therefrom within the time allowed by law, the appellants herein filed a petition before the National Labour Court for enforcement of the decision of the hearing officer.

The National Labour Court, upon being notified that the appellee herein had refused to accept the precepts from the court, and being satisfied with the records from the Ministry of Labour showing that the appellee had been duly cited and that the appellants had shown merits to their petition, rendered judgment affirming the decision of the hearing officer and ordering the enforcement of said decision. Upon a writ of execution being issued and an officer of appellee being arrested, the appellee filed a motion before the court for relief from judgment, contending that it was unaware of the action and that it had never been cited or served with precepts of assignment by the Labour Ministry to appear in the case. The

National Labour Court judge ruled granting the motion, rescinding its judgment, and ordering the hearing officer to conduct a new investigation into the appellants' complaint. The court reasoned that the appellants had failed to attach documents such as the notices of assignment, the letter of complaint, the minutes of the investigation of the hearing officer, and like evidence to substantiate that the allegations contained in the petition. This failure, the court said, warranted the granting of the motion and the rescinding of the judgment. It is from this ruling that the appellants sought review before the Supreme Court.

The Supreme Court, while agreeing that a party had a right to move the trial court for relief from judgment on any of the grounds specified by the statute, and although acknowledging that the granting or denial of such motion was within the sound legal discretion of the trial court and that the appellate court would not ordinarily disturb such exercise of discretion in the absence of evidence of abuse, nevertheless held that the granting of the motion in the instant case was an abuse of discretion by the trial court. The Supreme Court cited the conflicting assertions of the trial court made in its two rulings, the first ruling acknowledging that the appellants had presented evidence to justify the granting of the petition and the second ruling stating that the evidence acknowledged in the first ruling was in fact not presented, and that therefore the appellants had failed to substantiate the allegations made in the petition.

The Court noted further that the records certified to it showed that the documents which the trial judge had said were not attached to the petition for enforcement were in fact in the file. Under the circumstances, the Court said, the appellants had met the requirements of the law for the granting of the petition, and that the trial judge had therefore erred in rescinding the ruling made earlier by him, which the Court said was sound in law. Accordingly, the judgment appealed from was *reversed*.

Frederick A. D. Jayneh of the Civil Rights Association of Liberian Lawyers Inc. (CALL) appeared for the appellants. *Money M Gray* of the Jones & Jones Law Firm appeared for the appellee.

MR. JUSTICE MORRIS delivered the opinion of the Court.

The appellants in this case are 23 (twenty three) former workers of Appellee REGSA who, on September 25, 1996, filed a complaint in the Ministry of Labour, alleging that the Appellee REGSA had perpetrated unfair labor practices against them. In their complaint to the Ministry of Labour, the appellants claimed severance pay, annual leave, notice pay, and other benefits.

On September 27, 1997 the Ministry of Labour issued a notice of assignment citing the parties to an investigation on October 1, 1997 at the hour of 10:00 a. m. The sheriff of the Ministry of Labour proceeded to serve the notice of assignment on the parties, but service

was unsuccessful due to the refusal of one of appellee's employees to receive said notice of assignment. The sheriff was therefore advised to proceed to Appellee REGSA's Gurley Street office, which he did, but found the office abandoned. He then proceeded to the offices of Kemp & Associates, the legal counsel of Appellee REGSA and served the notice of assignment on the said legal counsel. Subsequently, Kemp & Associates wrote the hearing officer at the Ministry of Labour acknowledging receipt of the assignment, but advising the hearing officer that Kemp & Associates had not been authorized by Appellee REGSA to handle the particular case. Secondly, the Law Firm told the hearing officer that the assignment being the first since the complaint was filed by the employees, it should be served on Appellee REGSA who would then have the election as to which lawyer it would prefer for the case.

A subsequent notice of assignment was issued, and again the sheriff of the Ministry of Labour proceeded to Movant REGSA's "River View Office" where one David Kerkula, an employee of appellee was present. He refused to receive the notice of assignment on the ground that he had been instructed not to receive any communication on behalf of Appellee REGSA. As a result of this, when the case was called for hearing on October 9, 1996, a motion for default judgment was requested by the appellants and was granted by the hearing officer. The appellants, through their representatives, testified and produced evidence in support of their claim. Thereafter, the hearing officer ruled in favor of appellants, holding that appellee was liable to compensate the employees in keeping with the principle of redundancy, as well as one month's salary in lieu of notice for each employees accrued annual leave pay and accrued salary for nine months. In all, a total amount of US\$9,427.42 was awarded in favor of the employees.

The records revealed that the ruling of the hearing officer was sent to Appellee REGSA, but again it refused to receive same. No attempt was made by Appellee REGSA to comply with the ruling. Thus, a petition to enforce the ruling was filed in the National Labour Court, Montserrado County.

At the call of the petition for enforcement of the hearing officer's ruling, it was revealed that Appellee REGSA had again refused to accept the precepts, this time from the National Labour Court. Further, the appellee had failed to appear. The judge presiding in the National Labour Court, His Honour Varnie D. Cooper, Sr., after carefully listening to the appellant's argument, granted the petition and confirmed the award of US\$9,427.42 against Appellee REGSA. We hereunder quote verbatim the National Labour Court's ruling on the petition for judicial enforcement, dated January 8, 1997, as follows, to wit:

"When this case was called for hearing, Counsellor Frederick A. B. Jayweh of the Civil Rights Association of Liberian Lawyers (CALL) Inc., appeared for the petitioners and no one appeared for the respondent.

A petition for judicial enforcement of final judgment was filed before this court by the Civil Rights Association of Liberian Lawyers (CALL), Inc. on behalf of twenty-three dismissed employees of the Regional Guard Security Agency (REGSA) on the 3rd day December, A. D. 1996. The case file reveals that upon the dismissal of the above mentioned employees by the aforesaid Regional Guard Security Agency (REGSA) after the April 6, 1996 civil conflict, they requested their former employer to reconsider them or compensate them in keeping with the Labour Laws of Liberia, but their plea fell on deaf ears. The matter was therefore referred to their counsel and their employer was cited to a conference by the dismissed employees' counsel, but this plea was also ignored. Having exhausted every effort short of judicial intervention to make their former employer come to terms with them, they had no alternative but to file a formal complaint on the 25th day of September 1996, to the Ministry of Labour.

The records further reveal that despite being cited by the Labour Ministry to appear before that Ministry to answer to the complaint of its dismissed employees, the employer totally neglected and disregarded the citations from the Labour Ministry. The Labour Ministry was therefore compelled to listen to the complainants' complaint and to render judgment against the respondent in keeping with law. The records of the hearing and other documents relevant to this matter were forwarded to this court for consideration. The court says that the procedure adopted by the Ministry of Labour in disposing of this complaint in the absence of REGSA is in keeping with chapter 42 of the Civil Procedure Law, Rev. Code 1: 42.1, which reads: 'If a defendant has failed to appear, plead, or proceed to trial, or if the court orders a default for any other failure to proceed, the plaintiff may seek a default judgment against him.'

The disobedience and defiance of constituted authority by the aforesaid Regional Guard Security Agency (REGSA) continued before this court when they refused to accept precepts from this court when they were cited to appear for the hearing of this petition. The court even observed from the sheriff's returns dated December 18, 1996, in which one David Carlor, chief of operations for the aforesaid Regional Guard Security Agency (REGSA), refused to accept their copy, stating that "he will not receive any document from the court because there is no government on the ground". This court takes serious exceptions to these remarks and must take measures to protect its dignity. We will have more to say on this matter before we conclude this judgment.

The Labour Law of this country, enacted by the National Legislature, is to protect the interest of both employers and workers in our society. The law lays down guidelines for the guidance of all. If, for example, a person is employed by a corporation or company and that worker is charged with any criminal offense, the law will be enforced against the employee, whether the corporation is owned by citizens or foreigners. Likewise, when a worker or

group of workers has labored and served their employer faithfully, they should be paid for their services.

The attached list of employees who are petitioners in this case shows that some had served Respondent REGSA since the year 1992. They are twenty-three in all. In keeping with their line of duty the dismissed employees risked their lives day and night serving their employer, and which they claim they were not paid. Section 1508, paragraph 3, of the Labour Law, provides that an employer may dismiss an employee without notice but the dismissed employee must be compensated for two weeks in lieu of notice. There is no evidence that this was done. Also, the Labour Law provides for severance and leave pay.

The dismissed employees are also claiming their severance and leave pay since these were denied them by their former employer.

Concerning the chief of operations of REGSA, James Kerkula, who remarked that "he will not receive any document from any court because there is no government on the ground," the court considers these remarks to be highly contemptuous, for which he should and must be punished by this court. The person who made these remarks must either be of the class that has no respect for law or is living in outer space. To prove to him that there is a government on the ground, the clerk of this court is hereby ordered to issue a writ of arrest to have him brought before this court to show cause, if any, why he should not be held in contempt of court for making such remarks.

WHEREFORE and in view of the foregoing, the petitioners' petition is hereby granted. The court hereby orders that the respondent, Regional Guard Security Agency (REGSA), pays to the 23 dismissed employees the total amount of US\$9,427.00 (UNITED STATES NINE THOUSAND FOUR HUNDRED TWENTY SEVEN DOLLARS), same being in keeping with the schedule of payment calculated by the hearing officer, attached to their petition, with costs against the respondent.

The clerk of this court is hereby ordered to prepare a bill of costs and place same in the hands of the sheriff for collection. AND IT IS HEREBY SO ORDERED.

Given under our hands and seal of this
courts this 8th day of January, A. D. 1997.

SGD. Varnie D. Cooper, Sr.

Varnie D. Cooper, Sr.

ASSIGNED JUDGE, NATIONAL

LABOUR COURT

On January 17, 1997, the Jones & Jones Law Firm, thru Counsellor Molley Gray, filed a 10 count motion for relief from judgment before His Honour Judge Varnie D. Cooper, Sr.,

who was still presiding in the National Labour Court. For the purpose of this opinion we have deemed it necessary to consider counts 2, 3, 4, 7, 8 and 9 of the motion, which are hereunder quoted as follows, to wit:

"2. That your humble movant further says that at no time management has received any precept from the Ministry of Labour and/or any communication for that matter relative to a labor dispute between management and any of its employees. And also movant says that management has never received service upon it of any assignment(s), directly or indirectly, from the National Labour Court to appear as a result of a dispute arising between it and its employees, and therefore management has no knowledge of the labor dispute action brought before this Honourable Court, and hence respectfully prays this Honourable Court for relief from judgment.

3. That your humble movant says this matter is ambiguous, unclear and not specific, in that it fails to disclose even the names and number of employees in questions but only refers to former workers, by and thru Jelley Howe et al., of Monrovia, Liberia, or to state any other complaint against movant and hence, movant respectfully prays this Honourable Court to relieve it from judgment in the interest of fair play and transparent labor justice.

4. Your humble movant submits that it appeared in court on the 10th day of January, A. D. 1997, predicated upon a writ of execution. This was the first time ever that the movant was officially informed, but was not brought under the jurisdiction of the court for reason that the very notice of assignment, issued on the 6th day of January, A. D. 1997, was never served on movant but only the writ of execution was forcibly served on one of the employees who was brought under the court's jurisdiction. He was not clothed with the authority to make decision on behalf of management because the president of REGSA, Mr. Jacob Mends-Cole was without the bailiwick of the Republic of Liberia. Therefore, to avoid embarrassing and misusing the constitutional rights of movant, the said movant requested the court for continuance of this matter, pending the return of Mr. Mends-Cole to Liberia. And because of these legal blunders perpetrated by the respondents and counsel, movant respectfully prays this Honourable Court for relief from judgment.

7. Your humble movant says that since the organization and registration of its business under the Liberian Business Corporation Act, the management of REGSA has never dismissed any of its employees and/or has never instructed, directly or indirectly, any person or persons not to receive precepts from courts, be it justice of the peace, magisterial, circuit and/or the Honourable the Supreme Court of Liberia, and therefore appellee was indeed surprised to hear that precepts were sent to it that it refused to receive and sign for. Movant says further that same is false, misleading, and unfounded, and therefore prays this Honourable court for relief from judgment as in keeping with 1 LCLR, section 41.7, pages 212 to 213. Movant further says that it personally put announcement on the local radio

station, to be specific, Radio Monrovia, to inform the public and its employees that management has resumed normal business and that the allegation that management has illegally dismissed and/or instituted unfair labor practice against its employees, for example, Justice Lende, John Nyuman, Alphenson Gray, Charles Freeman, Harris Forkpa, Abdullah Lasana, Christina Gbelay, and George Kule, just to name a few, is false, misleading and unfounded, and that management will invite these employees named above at the trial to attest and testify whether or not they have been dismissed by management. And for so doing, management says the ruling rendered against it should be reversed or vacated for same was done against the interest of the movant, for which movant prays this Honourable Court for relief from judgment in keeping with 1 LCLR, Section 41.7, pages 212 to 213.

8. Your movant says that in keeping with law practiced in this jurisdiction, the respondents have alleged that they served movant with precepts, beginning from the Ministry of Labour up to the National Labour Court, but these allegations are false, misleading and unfounded for reason that a precept must be personally delivered to the person to be served upon, be it within or without the Republic of Liberia, and if the person fails to appear upon allegation that he was served, the court must allow the person to defend the action at anytime before final judgment or within five (5) years after entry of the judgment or within thirty (30) days after written notice of the judgment is personally delivered to him, within or without the Republic of Liberia. In the instant case, the summons or notice of assignment has not been personally served on Mr. Jacob Mends-Cole, president of REGSA, nor even the judgment of the Ministry of Labour and/or the National Labour Court personally served on him; and because of all these legal blunders, Your Honour is respectfully requested to reconsider the court's action on REGSA by granting the movant relief from judgment in the interest of transparent labor justice.

9. That your movant says it has not personally been served with any precept from an administrative hearing and/or court of competent jurisdiction, for our law provides that precepts/summons or notices of assignment must personally be delivered to the person to be brought under the jurisdiction of the court. But in the instant case, the president of REGSA and/or any corporate member for that matter, has not been personally served with any precepts, summons or notice of assignment. Therefore, any judgment rendered against them must be reviewed, that is, to give management an opportunity to be personally brought under the jurisdiction of the court, in keeping with law practiced in this jurisdiction. Movant prays this Honourable Court to grant its motion for relief from judgment until the provision of the law governing such cases are met. For reliance, see Civil Procedure Law, Rev. Code 1, section 3.44, page 54."

The motion was resisted by the appellants, and after hearing of the said motion and its resistance, Judge Varnie D. Cooper, on the 29th day of January, A. D. 1997, granted the motion, thereby rescinding his ruling of January 8, 1997 in the petition for judicial

enforcement, and remanding the case to the Ministry of Labour for rehearing. Said ruling on the motion for relief from judgment states as follows, to wit:

"At the call of this case for hearing, Counsellor Molley N. Gray of the Jones & Jones Law Firm appeared for the Movant and Counsellor Frederick A. B. Jayweh of the Civil Rights Association of Liberian Lawyers, Inc. appeared for the respondents.

This motion for relief from judgment was filed by the Regional Guard Service Agency (REGSA), by and thru its president, Jacob Mends-Cole of Monrovia, against former workers of the aforesaid agency, by and thru Jelly Howe et al., of Monrovia, growing out of the case Former Workers of the aforesaid Regional Guard Security Agency (REGSA), by and thru Jelly Howe et al., of Monrovia, petitioners, and the Regional Guard Security Agency (REGSA), also of Monrovia, as respondent. In keeping with the case file, a petition for judicial enforcement of final judgment was filed before this court by the dismissed workers of the aforesaid Regional Guard Security Agency (REGSA) on the 3rd day of November 1996, as petitioners, and the Security Agency as respondent. The relevant portions of the nine-count petition state as follows:

Count one states that they are twenty three former workers of Respondent Security Guard Agency who were illegally dismissed without cause after the April 6, 1996 crisis.

Count two states that they pleaded with respondent to reinstate or compensate them in keeping with law but to no avail; that to prevent unnecessary litigation they sought out of court settlement and, though respondent was invited to a conference with their counsel, it (respondent) failed to attend; that having employed all means to collect what they were entitled to and having failed, they had no other alternative but to file a formal complaint against respondent to the Ministry of Labour on September 25, 1996; that despite several notices of assignments along with copy of the complaint served on the respondent, they did not appear and, as a result, a judgment by default was rendered against respondent in favor of petitioners and served on them for satisfaction.

That due to the respondent's failure to satisfy the judgment, petitioners filed this petition for judicial enforcement before this court. The petition for judicial enforcement concluded with the prayer that this court orders the respondent to pay to the petitioners the amount of US\$9,427.42 and rule respondent to costs. Annexed to the petition were several exhibits including: 1). a letter addressed to the assigned judge of the National Labour Court, the undersigned under the signature of Philip G. Williams, Acting Assisting Minister for Labour Standards; 2) photocopy of a default judgment in the case Jelley Howe et al of Monrovia, complainants, versus Regional Guard Security Agency (REGSA), also of Monrovia, defendant, action of unfair labour practices, with twenty three names headed by one of the dismissed employees, Jelley Howe, and listing the amount opposite each name to show their just entitlement individually.

This matter having been brought to the court's attention, the clerk of court was ordered to summon respondent to appear before this court on the 15th day of December 1996, to answer this complaint. The writ was accordingly issued and turned over to the sheriff of the National Labour Court for execution. The returns of the sheriff show that the respondent did not receive its copy but that one David Kerkula made some sarcastic remarks concerning the courts. It is regrettable that the writ of arrest ordered issued against this man for contempt was not served due to the fact that the sheriff could not locate him.

At the call of the petition for hearing before this court, the absence of the respondent was noted on the minutes of court and in keeping with section 42.1, page 44 of 1LCLR, the court granted respondent's counsel application to prove his case.

After counsel for petitioners concluded his argument, the court reserved ruling until January 8, 1997. Said ruling is on the case file of this court. Accordingly, this court rendered its judgment on January 8, 1996, and the clerk of court was ordered to prepare a bill of costs to be served on the respondent. This bill of costs also was not honoured. Hence, a writ of execution was prayed for by petitioners' counsel and granted by court.

It was during the service of this execution that one Gabriel Sall, the acting president of REGSA was arrested and brought to court. At this stage Counsellor Molley Gray of the Jones & Jones Law Firm appeared in the interest of the acting president of REGSA and informed court that the president of REGSA, Mr. Jacob Mends-Cole will be returning home by the 15th of January 1997, and as such, he prayed court to suspend the execution of the writ until the 20th of January 1997, when the judgment will be satisfied. The court granted the request as prayed for, there being no objection.

On the 17th day of January 1997, respondent, the Regional Guard Security Service Agency (REGSA), by and thru its president, Jacob Mends-Cole, thru their counsel, the Jones & Jones Law Firm, filed a motion for relief from judgment growing out of the main suit now under review. The motion consists of ten counts and may be summarized, as follows:

1. That movant is unaware of any action filed before the Ministry of Labour and/or before this court. Further that the action is unclear for the fact that same was brought by former workers which need clarification.
2. That at no time did movant receive any communication from the Ministry of Labour citing it to appear for the hearing of this matter.
3. That it appeared in court on the 10th day of January, 1997, predicated upon a writ of execution, and this was its first time appearing in court in connection with this case.
4. That the leader of the dismissed workers, Jelley Howe, knew the residence of respondent; hence, same could have been served on him at his residence.

5. That the allegation that movant was served with precept from the Ministry of Labour is false, misleading and unfounded, as no precept was ever served on it.

6. That this court should take judicial notice of its own records to ascertain whether or not movant was properly brought under the jurisdiction of this court and give it relief to the void judgment rendered against movant by this court.

To this motion, counsel for petitioners filed a thirteen count resistance traversing the issues raised in the motion. The court will now pass on the relevant issues to determine whether or not the motion should be granted.

First of all, the court goes on record to say that courts of justice do not raise issues but to pass upon issues raised by parties before them. Reliance: *Clark v. Barbour*, 2 LLR 15 (1909), text on page 16. Section 41.7, paragraph 2, of 1 LCLR, page 212, states grounds for granting a motion for relief from judgment, among which are mistake, inadvertence, surprise, and excusable neglect. Paragraph three states that a motion of this nature should be made within a reasonable time after judgment is entered. In keeping with the case file, this judgment was rendered on January 8, 1997; hence, it is filed within the period provided by law.

One of the cardinal principles of law that must claim this court's attention and to be guided by, is that the National Labour Court is an appellate court in all labour matters hailing from the Ministry of Labour. As such, this court is required by law to review the records of all hearings that are forwarded from that agency to this court. In the instant case, we are applying section 41.7 of 1 LCLR as our guide. We also wish to observe that this court is empowered by law to alter or rescind its own judgment but this must be done within term time. For reliance, see *Voss v. Hooke*, 2 LLR 184 (1915), Syl. 1, text at 185.

Having previously stated in this ruling that this court exercises appellate jurisdiction over labour cases originating from the Ministry of Labour, let us now take recourse to the records of the hearing conducted at the Labour Ministry as well as our own records, beginning with our records since, in keeping with law, we are prone to take judicial notice of our own records, especially when a party requests us to do so. For reliance, see *Gbassage v. Holt*, 24 LLR 293 (1975), text at 295.

In keeping with our records, when this case was filed before this court, our file reveals that a notice of assignment was issued by this court and the returns of the sheriff show that defendant/movant refused to accept its copy. Based upon the returns, the court had no other alternative but to hear petitioners/respondents' side of the case and rule accordingly. Now let us examine the records forwarded here from the Labour Ministry.

A careful perusal of the records from the Ministry of Labour revealed that a judgment in the main case was rendered by Philip G. Williams, Acting Assistant Minister for Labour Standards, on the 11 th day of November 1996. The default judgment was filed with the

petition for judicial enforcement before this court, with an attached list of names of persons (dismissed employees) who benefitted. Attached to this petition was a letter addressed to the assigned judge of the Labour Court, dated November 25, 1996. For the benefit of this ruling, we think it is very important to quote this letter in full:

"November 25, 1996

His Honour Judge Varney Cooper

National Labour Court

Temple of Justice Monrovia, Liberia

May It Please Your Honour:

We present you our compliments and have the pleasure to inform you that a labour dispute involving the Regional Guard Security Agency (REGSA) and some 23 former employees of the said management was pending before this Ministry for adjudication.

While said matter was before us, we invited the management through several notices of assignment which they refused to honour, resulting into the entry of "default judgment" and final ruling was rendered in favour of the complainants.

To date, said management has refused to sign for and receive a copy of the judgment through the same manner and form as were the notices of assignment despite our efforts to prevail on said management to do so.

Therefore we request that you kindly assist our Ministry by prevailing on the Regional Guard Security Agency (REGSA) to sign for, accept and honour our judgment without further delay.

Kind regards

Very truly yours,

SGD: Philip G. Williams

Actg. Asst. Minister/Labour Standards

cc: file

FGWJyn

This letter, as well as the petition, made mention of notices of assignment forwarded to respondent, now movant, to appear for the hearing. However, not a single copy of any notice of assignment was annexed to the petition on the case file as an exhibit for this court to take judicial notice of. Absent also was the letter of complaint from the dismissed employees to the Minister of Labour and the minutes of the hearing conducted at the Labour Ministry. He who alleges the existence of a fact is bound to prove same. Reliance, 1 LCLR, page 198, section 25.5, Burden of Proof. Since the respondent, now movant, in this

motion for relief from judgment denied that any notice was served on it, a copy of said notices should have been the best evidence under the best evidence rule. It is an elementary principle of law that the best evidence which a case admits of must always be produced. Reliance: *Shabeen v. CFAO*, 13 LLR 278, Syl. 3, text at 290. To further buttress our position, we will quote the opinion of the Supreme Court in the case *Blackledge v. Blackledge et al*, as recorded in 1 LLR 371, text at 372. 'It is the duty of litigants, for their interest, to so surround their cases with the safeguard of the law to secure them against any serious miscarriage of justice. . . . Litigants must not expect courts to do for them that which it is their duty to do for themselves.'

The failure of the petitioners in the main labour action to annex copies of the alleged notices of assignments, copy of the complaint from the dismissed employees to the Minister of Labour, as well as minutes of the hearing conducted at the Ministry of Labour for this court to review and pass upon, is a fatal blunder, since respondent, now movant, denied any knowledge of these alleged documents. Let us bear in mind that this court (the National Labour Court) only reviews records of cases from the Labour Ministry and makes its ruling. Also, this is a money judgment case and the court is of the opinion that in the interest of transparent justice, coupled with what has been said in this ruling and the law controlling, the motion for relief from judgment being legally sound, must claim the favourable consideration of this court.

Wherefore, and in view of the foregoing, the motion for relief from judgment, being sound in law, is hereby granted. This court hereby rescinds its judgment rendered on the 8th day of January 1997, in the petition for judicial enforcement against respondent in the main labour suit. The court hereby orders that this case be remanded to the Ministry of Labour for rehearing. Consequently, the clerk of this court is hereby ordered to forward this case to the hearing officer at the Labour Ministry to cite the parties to read to them this mandate and to conduct a rehearing in keeping with law. Costs disallowed. AND IT IS SO ORDERED.

Given under our hands and seal of court

this 20 day of January A. D. 1997.

SGD: Varnie D. Cooper, Sr.

Varnie D. Cooper, Sr.

ASSIGNED JUDGE, NATIONAL LABOUR COURT

The appellants vehemently contended that the judge of the National Labour Court committed a reversible error when he granted the motion for relief from the judgment on the 29th day of January A. D. 1997 and rescinded his previous ruling of the 8th day of January A. D. 1997, because the appellee had had its day in court and was afforded the due process of law, as the law of this land directs.

In the Court's opinion, the germane or salient issues for the determination of this case are:

1. Whether or not the judge of the National Labour Court committed a reversible error when he granted the motion for relief from judgment, in contemplation of the intent of our statutory law?
2. Whether or not the judge abused his legal discretion when the motion for relief from judgment was granted where a party or his attorney or representative, though served with notices of assignment, is inexcusably absent from the hearing of the case and rendition of judgment?

We shall now proceed to decide the first issue, i.e., whether or not the judge of the National Labour Court committed a reversible error when he granted the motion for relief from judgment, in contemplation of the intent of our statutory law. Our Civil Procedure Law provides that:

"On motion and upon such terms as are just the court may relieve a party or his legal representative from a final judgment for the following reasons:

- (a) Mistake, inadvertence, surprise, or excusable neglect;
- (b) Newly discovered evidence which, if introduced at the trial, would probably have produced a different result and which by due diligence could not have been discovered in time to move for a new trial under the provision of section 26.4 of this title;
- (c) Fraud (whether intrinsic or extrinsic), misrepresentation, or other misconduct of the adverse party....
- (e) Satisfaction, release, or discharge of the judgment or reversal or vacating of a prior judgment or order on which it is based, or inequity to allowing prospective application to the judgment." Civil Procedure Law, Rev. Code 1: 41.7

It is the opinion of this Court that the interpretation and construction of the relevant portions of the code, quoted above, permits such relief to be granted by a trial judge on a motion upon such terms considered just for the promotion of substantial justice. This Court has held that "a motion for relief from judgment is addressed to sound discretion of the court, and its action will not be disturbed on appeal unless there is a clear showing that the trial court has abused its discretion." For reliance, see *Boverie v. Lewis*, 26 LLR 170 (1970). Also, in the case *Raymond International (Liberia) Ltd v. Dennis*, 25 LLR 131 (1976), this Court held that "a judge may modify or rescind a ruling or judgment in the term in which he is sitting, but only upon notice to the parties." We perceive, from the certified records before us in this case, that the judge of the National Labour Court abused his judicial discretion which definitely warrants the disturbance of the judgment granting the motion for relief from judgment, entered on the 29th day of January, A. D. 1997.

The records before us revealed that a petition for judicial enforcement of judgment was filed before the National Labour Court. The judge, after carefully scrutinizing the documents forwarded to said court, ruled on the 8th day of January, A. D. 1997, granting the petition for the enforcement of the judgment of the Labour Ministry. He stated, amongst other things, that:

"The records further revealed that despite being cited by the Labour Ministry to appear before that Ministry to answer to the complaint of its dismissed employees, the employer totally neglected and disregarded the citations from the Labour Ministry. The Labour Ministry was therefore compelled to listen to the complainants, and render judgment against the respondent in keeping with law. The records of the hearing and other documents relevant to this matter were forwarded to this court for our consideration. The court says that the procedure adopted by the Ministry of Labour in disposing of this complaint in the absence of REGSA was in keeping with chapter 42, section 42.1 of the Civil Procedure Law, Rev. Code 1: 42.1. . . ."

In his first ruling, the judge stated:

"WHEREFORE and in view of the foregoing, the petitioners petition is hereby granted. This court hereby orders that the respondent, Regional Guard Security Agency (REGSA), pays to the 23 dismissed employees the total amount of US\$9,42700.00 (UNITED STATES NINE THOUSAND FOUR HUNDRED TWENTY SEVEN DOLLARS), same being in keeping with the schedule of payment calculated by the hearing officer, attached to their petition, with costs against the respondent.

The clerk of this court is hereby ordered to prepare a bill of costs and place same in the hands of the sheriff for collection. AND IT IS HEREBY SO ORDERED.

Given under our hands and seal of this court,

this 8th day of January, A. D. 1997.

SGD. Varnie D. Cooper, Sr.

Varnie D. Cooper, Sr.

ASSIGNED JUDGE, NATIONAL LABOUR COURT

We are satisfied that the judgment met all the necessary pre-requisite of law, and included such documents as the complaint, notices of assignment, returns of the sheriff, records of the minutes taken, and legal conclusion based upon the evidence adduced at the trial and the law controlling. At least this is our reasonable understanding that this is what the trial judge meant or had in mind, as expressed and indicated in his ruling of the 8th day of January A. D. 1997.

However, and contrary to his earlier pronouncement, when the movant/appellee filed a motion for relief from judgment and when granting said motion on the 29th day of January A. D. 1997, the judge of the National Labour Court stated, amongst other things, that:

This letter as well as the petition made mention of notices of assignment forwarded to respondent, now movant, to appear for hearing. However, not a single copy of any notice of assignment was annexed to the petition on the case file as an exhibit for this court to take judicial notice of. Absent also was the letter of complaint from the dismissed employees to the Minister of Labour and minutes of the hearing conducted at the Labour Ministry. The failure of the petitioners in the main labour action to annex copies of the alleged notices of assignment, copy of the complaint from the dismissed employees to the Minister of Labour, as well as minutes of the hearing conducted at the Ministry of Labour, for this court to review and pass upon, is a fatal blunder. . . . Therefore, and in view of the foregoing, the motion for relief from judgment is hereby granted. This court hereby rescinds its judgment rendered on the 8th day of January A. D. 1997, in the petition for judicial enforcement against the respondent in the main labour suit. The court hereby orders that this case be remanded to the Ministry of Labour for rehearing."

This Court notes with much concern that the judge in his ruling of January 8, 1997 admitted that the appellants did annex copies of notices of assignment, the complaint from the dismissed employees to the Minister of Labour, as well as the minutes of the hearing, returns of the sheriff and ruling of the hearing officer, and that it was after a careful review of these documents that he granted the petition for the judicial enforcement of the Ministry of Labour's ruling. Yet, the judge of the National Labour Court, in his ruling of the 29th day of January, A. D. 1997, denied that these documents were attached to the petition for the enforcement of the ruling of the hearing officer. Therefore, the basis for the subsequent ruling of the learned judge granting the motion for relief from judgment is conflicting and contradictory to the assertions made in the earlier ruling. Hence, we are of the opinion the trial judge misused and abused his judicial discretion in granting relief from judgment to the appellee in the case at bar.

A careful perusal of the records certified to this Court revealed the attachment of notices of assignments, copy of the complaint, returns of the sheriff, minutes of the hearing conducted by the hearing officer, his ruling, as well as the list of the 23 dismissed employees of the appellee. Therefore, we are in total disagreement with the trial judge that the above mentioned documents were not annexed to the records submitted to him for judicial review.

Wherefore, and in view of the foregoing laws and facts in this case, it is the candid and considered opinion of this court that the ruling of the judge of the National Labour Court granting the motion for relief from judgment and rescinding his ruling of January 8, 1997 is

hereby reversed, and the petition for the enforcement of the ruling of the hearing officer of the Ministry of Labour, being sound in law, is hereby affirmed and confirmed.

The Clerk of this Court is hereby ordered to send a mandate to the National Labour Court commanding the judge presiding therein to resume jurisdiction and enforce this judgment. Costs are assessed against the appellee. And it is hereby so ordered.

Ruling reversed.