

**JOSEPH HENNINGS, et al.** and **ANTHONY BLAMO**, Hearing Officer, Ministry of Labour, Appellants, v. **LAMCO J. V. OPERATING COMPANY**, by and thru its General Manager, **BRIAN MAHER**, Appellee.

APPEAL FROM THE NATIONAL LABOUR COURT.

Heard: June 8, 1989. Decided: July 14, 1989.

1. The National Labour Court or a debt court acquires jurisdiction over appeals from decisions of a hearing officer of the Ministry of Labour in labor matters by a timely filing and service within ten days of a petition for judicial review by the appealing party, the appellant, before the court and on the appellee.
2. The mere filing of returns to a petition for judicial review does not confer jurisdiction on the appellate over the person of the respondent, especially where the plea challenging the jurisdiction of the appellate court is contained in the returns.
3. Jurisdiction is conferred by law and not by the consent or will of the parties.
4. A petition for judicial review is an application to the appellate court, in a labor case, to call up for review the administrative procedure, interpretations, conducts and the ruling of a hearing officer of the Ministry of Labor in labor matters.
5. A petition for judicial review in labor matters serves both as a bill of exceptions and a notice of completion of appeal after regular trials in the courts of record.
6. The court, which is competent to decide on its own jurisdiction in a given case, may determine that issue at any time in the proceedings when it is raised before or after judgment.
7. The issue of jurisdiction of a particular court over the subject matter of an action may be raised at any time in the lower court before final judgment or retrospectively by way of a motion in arrest of judgment or initially on appeal.
8. Regardless of defendant's failure to file an answer, the defense of lack of jurisdiction may be asserted at any time before final judgment.

Appellants filed a complaint against the appellee at the Ministry of Labour for illegal dismissal. Appellants maintained that following the November 12, 1985 abortive invasion, they were suddenly arrested, humiliated and detained after assisting the national security forces of the Republic of Liberia to restore law and order. Thereafter, they were released from detention and declared redundant by appellee upon the orders of the plant protection force (PPF) commander. That the Lamco Mines Workers' Union was never consulted nor did management abide by the rules of "first in last out" before their redundancy. Further,

appellants claimed that for a very long period of time during their employment with appellee, they were deprived of their legal entitlements, including lunch breaks and salaries.

At the hearing of the complaint before the hearing officer at the Ministry of Labor, appellee appeared and put up a defense that it has settled the appellants' claims and had obtained releases from them and, therefore, appellee was no longer obligated to appellants.

As the hearing progressed, appellee is said to have refused to attend any other assignment for the hearing. Predicated upon the failure and refusal of appellee to answer several assignments and attend the hearing, the appellants applied for and were granted default judgment. A total award against appellee in entitlement payments for lunch breaks between November 1982 and April 1985 amounted to \$8,976.31, and salary arrears covering the period February 21, 1977 to November 25, 1985 for one employee were ruled against appellee in favor of appellants.

On September 15, 1987, thirteen (13) days after the service of the hearing officer's ruling on appellee, it filed a petition before the National Labour Court for judicial review of the case and the ruling of the hearing officer.

The appellants filed returns to the petition and simultaneously filed a motion for the National Labour Court to refuse jurisdiction and dismiss the petition for late filing of said petition.

The judge of the Labour Court denied the motion to dismiss, heard and dismissed the complaint on the ground that appellee had made settlement of appellants' claims and releases had been issued therefor. Consequently, appellee was no longer obligated to complainants. From this ruling of the National Labour Court, the appellants appealed to the Supreme Court for review and final determination.

In its review and final determination, the Supreme Court opined that the jurisdictional ground was properly raised by appellants because the petition for judicial review was filed three (3) days outside statutory time in filing such petition in the National Labour Court following the receipt of the ruling of the hearing officer of the Ministry of Labour. The Court therefore reversed the ruling of the judge of the National Labour Court and ordered the hearing officer to resume jurisdiction and enforce his ruling.

*David A. B. Jallah* appeared for the appellants. *Roger C.H. Steele* appeared for the appellee.

CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.

One of the complainants, Joseph Hennings, and others, all joined in filing a complaint for illegal dismissal with the Ministry of Labour on October 28, 1986, alleging that they had served the Appellee LAMCO for a protracted period and with good and unimpeachable records of services to the said company as members of the Plant Protection Force (PPF).

They maintained that after the abortive November 12, 1985 invasion, and after assisting the national security forces of the Republic of Liberia to restore law and order, they were suddenly arrested, humiliated and detained. Thereafter, they were released from detention and declared redundant by Lamco J. V. Operating Company, appellant, upon the orders of the PPF Commander. The complainants continued, that the Lamco Mine Workers' Union, of which they were members, was neither consulted before their redundancy nor did the management abide by the rules of "first in last out" customarily observed in cases of redundancy. More particularly, they charged that they were, for a long period of time, deprived of their legal entitlement of lunch breaks; and one of them, Henry Johnson, alleged that as a corporal in the PPF, he had been paid only as a private officer until his redundancy.

This complaint was referred to Anthony Blamo, a deputy director for labour standards at the Ministry of Labour, who served as hearing officer over the matter. Lamco J. V. Operating Company, the appellee, made an appearance and claimed that it had settled the complainants' claims, and had obtained a release from them, and therefore it was not obligated to them at all. After hearings had begun and halted for good causes, appellee allegedly refused to honour any further assignments to complete the hearings in order that a final judgment could be rendered. Hence, appellants made an application on June 9, 1987 for a decision by default, contending that the attitude of appellee, amounted to an abandonment under the law.

The hearing officer sustained the contentions and rendered judgment by default on August 31, 1987. The default judgment was served on appellee on September 2, 1987. In the default judgment, the hearing officer ruled that Appellants were entitled to payment for lunch break lost between November 29, 1982 and April 15, 1985, amounting to \$8,976.31; and that one of the appellants, in person of Henry Johnson, was to be given \$14,351.32 as salary arrears as a corporal at the rate of \$1.66 per hour, covering the period from February 21, 1977, when he was employed, to November 25, 1985, when he was declared redundant.

Thirteen days after appellee was served with the ruling of the hearing officer, that is on September 15, 1987, appellee, as petitioner, filed a petition for judicial review before the National Labour Court in Monrovia, Montserrado County. Upon being served a copy of said petition, appellants filed their returns and moved the National Labour Court to dismiss the petition and refuse jurisdiction over it for reason that the petition had been filed three days beyond the statutory time of ten days, and contrary to our holding in the case, *Liberian Bank for Development and Investment v. York and Brown*, 35 LLR 155 (1988).

Notwithstanding the contents of the returns, the National Labour Court assumed jurisdiction over the petition, had a hearing, at which both parties were represented; and at the conclusion of the hearing, the National Labour Court reversed the hearing officer's ruling. The judge of the National Labour Court also dismissed the action on the grounds

that there has been a settlement and a release issued, and therefore, there was no obligation to appellants. Regarding the issue of jurisdiction of the court over the petition, the judge ruled that the appellants voluntarily submitted themselves to the jurisdiction of the court when they filed their returns before it; and they were consequently barred thereafter from challenging or questioning same.

Appellants announced this appeal and they contended among other things that the trial judge had illegally acquired jurisdiction over the petition for judicial review; and he was in fact wrong in ruling that the mere filing of returns, in which they also challenged the jurisdiction of the court, amounted to submitting to the jurisdiction and therefore estopped from questioning same.

Arguments and the records on this appeal convince us that the following issues are relevant for our determination of this appeal:

1. How does the National Labour Court or a debt court acquire appellate jurisdiction over labor matters appealed to it from the ruling of a hearing officer of the Ministry of Labour?
2. When is a petition for judicial review filed in labour matters before the National Labour Court or a debt court, and what does it seek to achieve under the law?
3. Whether or not there is a legal time limit within which a petition for judicial review of a hearing officer should be filed?
4. Whether or not a party that filed a resistance or returns to a petition for judicial review is thereafter estopped from questioning the jurisdiction of the court over the said petition.
5. Whether or not the trial court in the instant matter had properly acquired appellate jurisdiction over this appeal, and consequently had legal right to review and reverse the hearing officer's ruling as he did.

Starting with our first issue, we will explain here how the National Labour Court or a debt court acquires appellate jurisdiction over appeals from a hearing officer of the Ministry of Labour in labour matters. The answer is that the National Labour Court or a debt court acquires jurisdiction over appeals from decisions of a hearing officer of the Ministry of Labour in labour matters by a timely filing and service within ten days of a petition for judicial review by the appealing party, the appellant, before the court and on the appellee. *INA Decree No. 21; Liberian Bank for Development and Investment v. York*, 35 LLR 155 (1988); *Kpukuyu et al. v. The Management of Mezbau, Inc.*, 35 LLR 406 (1988).

Jurisdiction is conferred by law and not by the consent or will of the parties as the trial judge, supported by the appellee herein, maintained by saying that the filing of returns by the appellants amounted to submitting to the jurisdiction of the court. *Hill v. Republic*, 2 LLR 517 (1925); *Grant v. The Foreign Mission Board of the National Baptist Convention, U.S.A.*, 10 LLR 209

(1949); *Campagine Des Cables Sud Americane v. Johnson*, 11 LLR 264 (1952); *Tompo et al. v. Republic*, 13 LLR 207 (1958).

We now proceed to our next issue to find out what is a petition for judicial review in labour matters, and what, if any, does it seek to achieve under the law.

We have no clear cut definition of a petition for judicial review either in statute or in case law so far. However, we hold that a petition for judicial review is an application or a request to the appellate court, the National Labour Court or a debt court in a labor case, to call up for review the administrative procedure, interpretations, conducts, and the ruling of a hearing officer of the administrative agency, the Ministry of Labour in this case, which has conducted an investigation and rendered a ruling.

We also hold here that the petition for judicial review in labor matters serve first like a bill of exceptions does in regular trials in judicial proceedings in courts of record, except that the hearing officer, against whom a petition for judicial review complains, does not sign or approve same, as a trial judge does in regular judicial proceedings.

The petition for judicial review is also like a notice of completion of appeal used in regular judicial proceedings in courts of record since it notifies the appellee of the removal of the matter from the jurisdiction of the hearing officer to that of the appellate court for a judicial review. Likewise, taken as notice of completion of appeal, the petition for judicial review gives the appellate court appellate jurisdiction over the appeal, if the petition is timely filed as required under the law.

Coming to the third issue, we must first determine whether or not there is a legal time limit within which a petition for judicial review of a hearing officer should be filed. The answer here is, yes. As we briefly commented on the first issue *supra*, our laws provide that a petition for judicial review of a hearing officer before the National Labour Court or a debt court should be filed in said court and served on the appellee within ten days after the rendition of the judgment of the hearing officer brought up for review. The *INA Decree No. 21*, which provides for the National Labour Court and for the labor jurisdiction of the debt courts has been augmented by the holdings of this Court in the cases:

*Liberian Bankfor Development & Investment v. York and Brown*, 35 LLR 155 (1988); *Kpukenyu et al. v. The Management of Mezban, Inc.*, 35 LLR 406 (1988).

The statute and the foregoing opinions lay it down as a rule that a petition for judicial review of a hearing officer before the National Labour Court or a debt court should be filed before the relevant court and a copy served on the appellee within ten days after rendition of the ruling appealed from, and no more.

The opinions in the cases cited *supra* clarify the rationale of this Court in holding as it did. They point out that at the time of the existence of the Board of General Appeals, Ministry of

Labour, sitting in Monrovia, appellants from all over the country came over to the Board. Therefore, they needed thirty days to achieve this. But since the passing of *INA Decree No. 21*, creating the National Labour Court and the appellate jurisdiction of the debt courts in the counties in labour matters, only ten days are now allowed for filing a petition for judicial review of a hearing officer's ruling before the National Labour Court or a debt court.

The fourth issue deals with the question of the jurisdiction of the appellate court over the petition for judicial review. Whether or not a party that files resistance or returns to a petition for judicial review thereby submits to the jurisdiction of the court and is therefore estopped from questioning or challenging that jurisdiction.

This Court has held that the jurisdiction of a court always involves a principle of primary importance. *Union National Bank v M.C.C.*, 22 LLR 32 (1973). Therefore, this Court has always considered it compulsory under our jurisdiction for the court to first question its own jurisdiction before even proceeding to hear the case. *King et al v. Morris*, 19 LLR 306 (1969). In that same light, we held that the court which is competent to decide on its own jurisdiction in a given case may determine that issue at any time in the proceeding when it is raised before or after judgment. *Koroma et al. v. Parker Paint Company Inc.*, 23 LLR 133 (1974). And we also held that the issue of jurisdiction of a particular court over the subject matter of an action may be raised at any time at the lower court before final judgment, or retrospectively by way of a motion in arrest of judgment, or initially on appeal. *Cooper v. Republic*, 19 LLR 269 (1969).

Further, the defense of lack of jurisdiction may be asserted at any time until final judgement and regardless of a defendant's failure to file an answer. *Barclay v. Thompson and Parker*, 17 LLR 351 (1966); *Lamco I V. Operating Co. v. Verdier* (1977), 26 LLR 180 (1977); *Lamco J. V. Operating Co. v. Verdier* (1977), 26 LLR 445 (1978) and *African Mercantile Agencies v. Bonnah*, 26 LLR 80 (1977).

Hence, we conclude from all the foregoing that the mere filing of returns to a petition for judicial review does not in any way estop the appellee from questioning the jurisdiction of the appellate court over the said appeal.

Finally, we will determine whether or not the trial court in the instant case had properly acquired appellate jurisdiction over this appeal and therefore had authority to review and reverse the ruling of the hearing officer herein, as had been done. The answer is a simple no. The trial court had acquired no legal appellate jurisdiction over the appeal reviewed in this case since the petition for judicial review, which alone should have conferred jurisdiction on it, was filed three days beyond the legal time limit often days. And for all we have said *supra*, the trial judge in this case had no jurisdiction to entertain the petition, review and reverse the hearing officer's ruling in this case.

The judgment of the National Labour Court is therefore reversed, and the matter is hereby returned to the hearing officer of the Ministry of Labour of the Republic of Liberia to enforce his judgment rendered on August 31, 1987. And it is hereby so ordered.

*Judgment reversed.*