

UNITED STATES TRADING COMPANY, by and thru its General Manager, Movant,
v. UNITED STATES TRADING COMPANY REDUNDANT WORKERS,
Respondents.

MOTION TO DISMISS INFORMATION PROCEEDINGS.

Heard: July 30, 1997. Decided: August 15, 1997

1. The failure of a movant to file a responsive pleading to information which the motion seeks to dismiss vitiates the motion and is tantamount to admission of the averments of the information.
2. The last pleader in our jurisdiction is entitled to attack the pleading of the adversary; however, it is not a precondition for attacking an amended pleading on the ground that the amended pleading did not comply with the statutory requirement that the attacker must file a responsive pleading to the amended pleading.
3. It is the practice in this jurisdiction that the party who is entitled to plead is the one who has the right to move against any defect in the pleading to which he is entitled to respond.
4. A bill of information, being an application for remedial process before the full bench of the Supreme Court, is a pleading and therefore must be governed by the pertinent statutes.
5. At any time before trial any party may, in so far as it does not unreasonably delay trial, once amend any pleading made by him by (a) withdrawing it and any subsequent pleading made by him, (b) paying all costs incurred by the opposing party in filing and serving pleadings subsequent to the withdrawn pleading, and (c) substituting an amended pleading.
6. A party who withdraws a motion must, as a prerequisite for filing a second motion in its place, pay the entire costs incurred by the opposing party up to the filing of the second motion, and his failure to do so is cause for denial of the second motion.
7. Averments in a pleading to which a responsive pleading is required are deemed admitted when not denied in the responsive pleading.

The movant in these proceedings filed a motion to dismiss the amended information filed by the informants who had complained of the failure of the movant to honour the ruling of the Chambers Justice ordering that the hearing officers at the Ministry to take evidence from both the informants and the movant in determining the amount due under the judgment of the Court. The movants stated as ground for the motion that the time lapse between the filing of the original bill of information on May 24, 1994 and the withdrawal and filing of the amended bill of information on June 4, 1997 was too long and unreasonable, and that the informants had failed to pay the accrued costs as required by statute.

In their resistance, the informants asserted that the information was in regard to the failure of the movant to comply with the mandate of the Supreme Court which was contemptuous and, hence, a motion to dismiss the complaint against such contemptuous conduct should not be entertained; that the time span between the original information and the amended information was irrelevant and immaterial, since there was no unreasonable delay; and that the failure of the movant to respond to the amended information vitiated the motion to dismiss as such failure was tantamount to an admission of the allegations in the amended information, and that only the last pleader was entitled to attack the pleading of the adversary.

The Supreme Court, while taking cognizance of the legal points raised in the resistance, opined, firstly, that the bill of information was a pleading and therefore should be governed by the rules of pleading, and secondly, that it was not a precondition to attacking an amended pleading on the ground of a failure to comply with the statutory requirements that the attacker must file a responsive pleading to the amended pleading. The Court noted that it was the practice in this jurisdiction that a party who is entitled to plead has the right to move the court against any defect in the pleading to which he is entitled to respond.

With regards to the failure of the informants to pay accrued costs, the Court opined that the failure to pay the accrued costs was a legitimate basis for the denial of the amended bill of information. Hence, it *denied* the information. However, notwithstanding the denial of the information, the Court *ordered* that the case be remanded to the hearing officer at the Ministry of Labour to obtain evidence from both the informants and the movant in determining the amount due, as per the ruling of the Chambers Justice, the failure to honour which constituted the basis for the filing of the information.

H. Varney G. Sherman of Sherman and Sherman appeared for movant. *Frederick A. B. Jayweb* of the Civil Rights Association of Liberian Lawyers, Inc. appeared for respondent.

MR. JUSTICE WUREH delivered the opinion of the Court.

This matter arises out of a redundancy action taken by the movant against the respondents some time in 1980, and respondent's complaint to the Ministry of Labour, then the Ministry of Labour, Youth & Sports (the Ministry). In February, 1981, a hearing of the complaint was commenced and at the end of that hearing, a ruling was rendered against the movant. Movant then appealed to the Board of General Appeals which, at the time, had appellate jurisdiction over decisions of hearing officers. Again a ruling was entered against movant. Thereafter, movant petitioned the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, for judicial review of the ruling of the Board of General Appeals, as was provided by the law then extant. It appears that on May 24, 1983, a judgment was entered by the assigned judge of the Civil Law Court in favour of respondents. Later on, in the same year, a motion for enforcement of court's final ruling was heard.

Growing out of the motion for enforcement of the circuit court's final ruling, movant instituted a writ of error proceeding with the Chambers Justice. A hearing was had on February 7, 1984, and Mr. Justice Koroma ordered the issuance of the peremptory writ of error, mandating the Civil Law Court to set aside its May 24, 1983 ruling, hear the petition for judicial review anew, and give a new ruling.

In May, 1984, the Civil Law Court entertained arguments *pro et con* on the petition for judicial review. Thereafter, the assigned judge rendered a ruling reversing the ruling of the Board. In reaction thereto, respondents announced an appeal to this Court sitting in its October, A. D. 1984 Term. However, argument of the case before this Court did not take place until its March, A. D. 1985 Term. The opinion and judgment of this Court were issued and rendered, respectively, on June 21, 1985.

In this Court's June 21, 1985 judgment, the case was remanded to the hearing officers at the Ministry of Labour, with the following instructions:

"1. To state in terms of dollars and cents the total amount which each of the fourteen workers and four workers, respectively, listed in the decision, are entitled to for the three years and five years' salaries, respectively, and deduct the redundancy pay allegedly received from the five years and three years salaries and show by calculation the balance due the workers.

2. To receive evidence of payment by the management of the notice pay and redundancy pay respectively, claimed by management and denied by the workers. AND IT IS HEREBY SO ORDERED."

The records show that the hearing officers at the Ministry did resume jurisdiction and between the period August 1, 1985 and October 3, 1985, the mandate of this Court was pursued. The findings and award of the hearing officers were made in two (2) separate documents dated September 18, 1985 and November 6, 1985. On November 20, 1985, movant informed the Minister of Labour by a letter that it was ready to comply with the calculations of the hearing officers. But before such compliance could be done by movant, on December 16, 1985, respondents appealed to the Board, excepting to the findings and calculations of the hearing officers and requesting the Board to reverse the said findings and calculations. They stated as the grounds therefor that the hearing officers did not allow respondents to challenge any of the information or evidence submitted by movant and utilized by the hearing officers to arrive at their findings and calculations, and further that the hearing officers did not allow respondents to adduce their own information or evidence, pursuant to this Court's judgment and mandate, for a proper determination of respondents' notice pay and redundancy pay.

The Board subsequently sent out a notice of assignment for review of the matter. In reaction to this notice of assignment, movant fled to the Chambers Justice by way of bill of information dated January 24, 1986. On February 7, 1986, the Ministry of Justice, on behalf of the Board, filed returns to the bill of information; and on April 1, 1986, the respondents filed their own returns.

After arguments, for and against, on May 8, 1986, Mr. Justice Jangaba, sitting in Chambers, ruled on the bill of information, conceding that instead of an appeal to the Board by respondents, the remedy was information proceeding, as was done by movant. Mr. Justice Jangaba then granted the prayer of the movant and ordered the parties to return to the hearing officers at the Ministry for enforcement of this Court's mandate, out of which the information grew. From this ruling of Mr. Justice Jangaba, respondents appealed to the full bench of this Court.

On July 10, 1986, this Court entertained arguments *pro et con* on the appeal from the ruling of the Chambers Justice in the bill of information proceedings and reserved ruling. On August 1, 1986, this Court, speaking through Mr. Chief Justice Nagbe, affirmed the ruling of the Chambers Justice and made certain clarifications, as follows:

"Appealing from the hearing officers to the Board of General Appeals in that connection amounted to an appeal from the mandate of the Supreme Court. We also believe, however, that in carrying out the mandate, evidence should have been received from both sides since the nature of the case makes that necessary."

This Court then ruled that notwithstanding the confirmation of the legal procedure to the effect that information, instead of appeal, was the remedy available to respondents, the nature of this case was such that the parties should go back to the hearing officers and respondents "be allowed to give evidence together with the appellee as required by the mandate (of June 21, 1985)."

From the Court's opinion and judgment of August 1, 1986, movant applied for and was granted the privilege of a re-argument. For reasons not revealed by the records, it was not until November 25, 1985, that the re-argument was heard, and on February 28, 1988, the opinion and judgment were issued and entered with Mr. Justice Azango speaking for this Court. The mandate dated February 29, 1988, was issued by the Clerk of this Court and directed to the National Labor Court, which had by then been established as the forum of first instance for appeal from a ruling of a hearing officer at the Ministry.

A little over six (6) years from the date of the February 28, 1988 opinion and judgment, specifically May 24, 1994, respondents, as informants, filed a bill of information with this Court alleging in count four (4) thereof that movant herein, as respondent therein, had not "fully obeyed and honored" this Court's mandate of February 29, 1988. This bill of

information was served on counsel for movant herein on November 10, 1994, and on November 18, 1994, returns were filed and served.

The records reveal notices of assignment for the hearing of the bill of information but there is no record that this Court ever made any ruling thereon. What is important is that on June 4, 1997, respondents herein withdrew their bill of information and on the same day and date filed and served an amended bill of information.

In response to the amended bill of information, movant filed a motion to dismiss for two (2) reasons, as follows:

"1. That the time lapse between the filing of the bill of information on May 24, 1994 and the withdrawal and filing of the amended bill of information on June 4, 1997 was too long and that such length of time for amendment of pleading was unreasonable and not in the contemplation of the statute on amendment of pleadings.

2. That after withdrawal, and before refileing, respondents failed to pay accrued costs as required by statute and so the amended bill of information and the entire information proceeding should be dismissed."

In their six (6) count resistance to the motion to dismiss, respondent submitted the following three (3) major points:

"1. That the refusal of the movant to comply with the mandate of this Court is contemptuous and as such a motion to dismiss the information regarding such contemptuous conduct should not be entertained.

2. That the time span between the filing of the original bill of information and the amended bill of information is irrelevant and immaterial as the only condition for amendment is that it should not unreasonably delay trial. And in furtherance of that submission, the respondents also submitted that any hearing by this Court, without a ruling, leaves the matter in *status quo*, as though no hearing had been held and as such its withdrawal of June 4, 1997 has not delayed the hearing of the bill of information at all.

3. That the failure of movant to file a responsive pleading to the amended bill of information clearly vitiates the motion to dismiss as (a) that failure is tantamount to admission of the averments of the amended bill of information and (b) only the last pleader in our jurisdiction is entitled to attack the pleading of the adversary.

At this juncture, we would like to observe that due cognizance has been taken of respondents' argument that the failure of movant to file a responsive pleading to the amended bill of information clearly vitiates the motion to dismiss as (a) such failure is tantamount to admission of the averments of the amended bill of information; and (b) only the last pleader in our jurisdiction is entitled to attack the pleading of the adversary. In this

connection, we hold that it is not a precondition for attacking an amended pleading on the ground of failure to comply with statutory requirement that the attacker must file a responsive pleading to the amended pleading. The situation in our instant case is that the merits of the amended bill of information are not before this Court at the moment. Right now, for consideration before us is the motion to dismiss the amended bill of information. Notwithstanding, we are in full agreement with respondents' submission that it is the practice in our juris-diction that the party who is entitled to plead is the one who has the right to move against any defect in the pleading to which he is entitled to respond. From the motion to dismiss and the resistance, we have identified two main issues, namely:

1. Whether or not the withdrawal by respondents of their bill of information and the subsequent filing of the amended bill of information about two and one-half (21/2) years after argument of the bill of information is unreasonable and was never contemplated under Liberian law and practice?

2. Whether or not the filing of the amended bill of information without firstly paying movant's accrued costs after the withdrawal of the bill of information renders the said amended bill of information and the entire information proceedings dismissible?

Prior to addressing any of the two issues, it is firstly necessary to ascertain whether or not a bill of information is a pleading and if so, must it therefore be governed and/or controlled by the statutes on pleadings? In this connection, recourse was had to the opinion of this Court in *Nasser v. Smith et al.*, 26 LLR 128 (1977), where the Court said:

"It is our understanding that applications and petitions for remedial process before a Justice in Chambers or the full bench are pleadings."

It is clear from the portion of the opinion quoted hereinabove that the bill of information and amended bill of information in question being applications for remedial process before the full bench are pleadings and must therefore be governed by the pertinent statutes in this jurisdiction.

We now come to consider, in the reverse order, the second main issue which is whether or not the filing of the amended bill of information, without firstly paying movant's accrued costs, renders the amended bill of information and the entire information proceedings dismissible?

Our statute on amended pleadings prescribes, as follows: "Section 9.10 Amended pleadings

1. *Amendment to pleading permitted.* At any time before trial any party may, insofar as it does not unreasonably delay trial, once amend any pleading made by him by:

(a) Withdrawing it and any subsequent pleading made by him;

(b) Paying all costs incurred by the opposing party in filing and serving pleadings subsequent to the withdrawn pleading; and

(c) Substituting an amended pleading. Civil Procedure Law, Rev. Code 1:9.10.

A visit to this Court's opinion in *Lamco J. V. Operating Company v. Verdier*, 25 LLR 330 (1976), text at page 339, shows that this Court has opined, as follows:

"A party who withdraws a motion must, as a prerequisite for filing a second motion in its place, pay the entire cost incurred by the opposing party up to the filing of the second motion; and his failure to do so is cause for denial of the second motion."

It must be observed that the Marshal of this Court did, on the 4th day of August, 1997, execute MARSHAL'S CERTIFICATES which essentially partly reads, as follows:

MARSHAL'S CERTIFICATE

THIS IS TO CERTIFY THAT FROM A CAREFUL PERUSAL OF MY RECORDS, AND TO THE BEST OF MY KNOWLEDGE AND RECOLLECTION, NEITHER THE UNITED STATES TRADING COMPANY REDUNDANT WORKERS IN THE ABOVEENTITLED PROCEEDING NOR THEIR COUNSEL PAID ACCRUED COST TO ME FOR DELIVERY TO RESPONDENT UNITED STATES TRADING COMPANY AND OR ITS COUNSEL PRIOR TO FILING THE AMENDED BILL OF INFORMATION IN THE SAID PROCEEDING ON JUNE 5, 1997; AND THEY HAVE NEVER PAID ACCRUED COST TO ME SINCE THEN."

Inasmuch as we would like to pass upon the first issue raised herein above with reference to the unreasonableness of the time span between the argument of the bill of information before this Court, and the withdrawal thereafter of the said bill of information and simultaneous filing of the amended bill of information, we find it unnecessary to do so as this matter has become moot.

Finally, it should be pointed out that the resistance to the motion to dismiss is devoid of any averment that respondents paid movant its accrued costs.

Our statute and several decisions of this Court have always maintained that averments in a pleading to which responsive pleading is required are deemed admitted when not denied in the responsive pleading. Civil Procedure Law, Rev. Code 1: 9.8 (2) and (3). *The Cavalla. River Company Ltd., v. Pepple*, 3 LLR 437 (1933); *Tucker v. Bronnell*, 24 LLR 338, 339 (1975).

Wherefore and in view of the foregoing, the motion to dismiss the amended bill of information is and the same is hereby granted and respondents' entire information proceedings are hereby dismissed. Notwithstanding the granting of the motion to dismiss the amended bill of information and the entire information proceedings, the Clerk of this Court is hereby ordered and instructed to send a mandate to Ministry of Labour to promptly make

its returns to this Court's mandate of February 29, 1988, only subsequent to obtaining evidence from both management and respondents, pursuant to Mr. Justice Jangaba's ruling referred to *supra*. Costs are disallowed. And it is hereby so ordered.

Motion granted; information dismissed.