MICHAEL K. KUNAKEY, Appellant, v. **CFAO (LIBERIA) LTD.**, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard July 3, 1986. Decided July 31, 1986.

1 An indispensable guarantee and right vouchsafe to every aggrieved citizen and inhabitant of society is relief and redress for every injury sustained without exception.

2 The Labour Law does not authorize the Civil Law Court to hear evidence; but to base its decision upon the records certified to it from Board of General Appeals.

3 All admission made by a party is evidence against said party.

4 Every misappropriation or shortage does not constitute embezzlement, which is criminal in nature.

Appellant through his union, the United Workers Congress, filed a complaint with the Ministry of Labour against the appellee, his former employer of more than fourteen years, alleging that he was wrongfully dismissed by the appellee to avoid the payment of pension. Although appellant conceded that there were shortages in the inventory, the reason for which he was dismissed, he attributed same to the theft of third parties. Before the hearing officer, two witnesses, one of which was the personnel manager of appellee, corroborated appellant's assertion that the shortage in the inventory was due to theft of third parties. The hearing officer therefore determined that appellant was wrongfully dismissed and awarded him two years salaries. The Board of General Appeals reversed the ruling of the hearing officer, and the trial court upheld the ruling of the Board.

On appeal, the Supreme Court, noting the correctness of the ruling of the hearing officer, reversed the ruling of the trial court and affirmed the ruling of the hearing

officer.

The Tubman Law Firm appeared for the appellant. *Maxwell and Maxwell Law Firm* appeared for the appellee.

MR. JUSTICE DENNIS delivered the opinion of the Court.

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The within named party-litigants, employer and employee, respectively, appellant, having been engaged and served in the employ of appellee for an extended period of time for fourteen and a half 141/2 years as a storekeeper his services were terminated on the 20 th of January, 1978.

During the latter two (2) years period of his services, shortages were discovered after the taking of stock.

On September 9, 1977, the afore named appellant wrote a letter to the within named appellee endeavoring to shift the responsibility of the control and management of the goods to other persons which was unacceptable to management appellee, who replied in these words: "You are the storekeeper and we hereby advise that any future shortages will be your responsibility and you will have to account for some solely and completely".

Irrespective of this definite information and positive action on September 5, 1977 and December 13, 1977, advising him that he would be responsible for any and all shortages followed by several letters, particularly the one of December 28, 1977, which contained insulting expressions and a behaviour unbecoming an employee.

A subsequent stock revealed other shortages. Additionally appellant was not regularly

on the job. These acts culminated in the dismissal of appellant who then complained to a Mr. Ishmael Sheriff of the then United Workers Congress, to the effect, that his dismissal was pregnant with "grudge and animosity". Mr. Sheriff then forwarded the complaint of appellant to the Ministry of Labour, that the dismissal of appellant was designed to avoid the payment of pension to appellant. See appellant's testimony in chief recorded on page 6 of the minutes, dated May 16, 1978.

The evidence in fine adduced by appellant is an attempt to justify the shortages alleged to have been committed by theft, third parties or other persons for which reason appellants requested additional aid to secure the store. Appellee did not agree with appellant in this respect since appellant had been in charge of the store for the entire period of fourteen and a half years without any such incident.

At the hearing officer's level at the Ministry of Labour appellant suggested that his account be debited and repayment made at ten dollars per month, which appellee rejected for the reason that to repay three thousand two hundred dollars and fifty five cents at the rate of ten dollars per month would take a very long time. Appellant also stressed in his appeal for such payment that this was the policy of appellee which appellee denied to either debit or waive such shortage.

Appellant in an effort to attribute the shortage to theft produced witnesses A. K. Sanwee and Mr, George T. Freeman. The hearing officer 'concluded his ruling on the below basis:

1 That the aforenamed appellant was wrongfully dismissed.

2 That as compensation for said wrongful dismissal management appellee should pay the appellant twenty four months or two years salary.

3 That the appellant was entitled to his annual leave pay. This said ruling was excepted to by management appellee and appealed to the Board of General Appeals.

On the 27th of August 1979, the Board rendered the following ruling, and reversed that of the hearing officer based on a serious breach of duty and relied on section 1508, subsections five and six (c) of the Labor Practice Law.

A further synopsis of the ruling of the Board of General Appeals being: 1) That appellant was legally dismissed. 2) That appellant is entitled to five hundred and forty-five dollars as payment for his annual leave which had accrued. 3) That the within named appellant is entitled to refund and all amounts if any deducted from his salary during the course of his employment.

From this judgment of the Board of General Appeals, appellant appealed to the Civil Law Court of the Sixth Judicial Circuit. Vide: The Labour Laws of Liberia (2nd ed. 1974), Louis Arthur Grimes School of Law, University of Liberia, p. 25.

The pertinent issues raised in the proceeding referring to the bill of exceptions to which this Appellate Court is confined in an impartial determination of this and all other courses appealed to it from the certified records are:

1 That the trial judge erred in restricting his ruling to that of the Board of General Appeals as to the shortages without taking into consideration any other reason therefore

2 Next the ruling of management; to pay petitioner's medical bill and Christmas bonus.

3 Further petitioner/appellant does not deny the shortages, but contends that the same is attributable to security reasons.

4 A reversible error is complained of the trial judge having committed by dismissing the petitioners petition as well as confirming the ruling of the Board of General Appeals, but rejected that of the hearing officer.

Traversing count one (1) of the bill of exceptions, the Labor Law does not authorize the Civil Law Court to hear evidence; but to base its decision upon the petition of the dissatisfied party from the Board of General Appeals. Consequently the trial judge did not err in this respect.

With reference to count two (2) of the bill of exceptions regarding the payment of Christmas bonus and medical bills the ruling in this respect does not support the same

Reverting to counts three (3) and four (4) of the bill of exceptions, suffice it to refer to the law on evidence, applicable to the admission of the appellant. "All admission made by a party is evidence against said party." Vide: Civil Procedure Law, Rev. Code 1: 25.8.

Petitioner/appellant's statement of the theft of the goods whilst on the stand having been corroborated by witness A. K. Sanwee, who was the personnel manager of co-respondent, CFAO. See sheets 18-20 and 27-30, of November 20, 1978.

Petitioner/appellant's statement was further corroborated by witness George T.L. Freeman. See sheets 30-32 of November 20, 1978.

In the determination of all causes of actions, the Court bases its decision and rationale comparably as to what the indispensable use of a compass is to a ship, a rudder to a boat and a paddle to a canoe.

Proof being the perfection of evidence, we firmly hold and this is our abiding conviction and conscientious opinion that the ruling of the trial court, together with the decision of the Board of General Appeals of the Ministry of Labour be and the same are hereby reversed and the ruling of the hearing officer upheld, confirming and affirming an award of twenty-four months or two (2) years' salary at $545.00 per month aggregate thirteen thousand eighty dollars; $13,080,00 for his wrongful dismissal in the absence of any conclusive evidence of misappropriation. As every

misappropriation or shortage is not embezzlement, being criminal in nature. Vide: *Bowior v. Republic,* 2 LLR 616 (1927).

Couple with the absence of sufficient evidence to prove appellant's dismissal so as to avoid the payment of pension.

Judgment reversed.