

MICHAEL K. KUNAKEY, Petitioner/Appellant, *v.* **CFAO (LIBERIA) LTD. and
THE BOARD OF GENERAL APPEALS, MINISTRY OF LABOUR,**
Respondents/Appellees.

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

Heard: April 24, 1984. Decided: May 11, 1984.

1. A party aggrieved by a decision made by the Board of General Appeals may appeal from such decision, or any part thereof, to the circuit court or debt court in the county in which the Board held its proceedings, by filing a petition to the circuit court or debt court within 10 days after receipt by the aggrieved party of a copy of the administrative decision. Copies of the petition shall be served promptly upon the Board of General Appeals which rendered the decision, and upon all parties of record. Within 10 days after service of the petition, or within further time allowed by the court, the Ministry of Labour and Youth shall file with the clerk of the circuit or debt court a certified copy of the entire record of the proceedings under review, together with a copy of the administrative decision. It shall not be necessary to file exceptions to the ruling of the Board of General Appeals.
2. The debt or circuit court has the legal authority to order the Board of General Appeals to send up any and all records in any case before it for judicial review.

This case first went before the Supreme Court on a writ-of-error which was granted in favor of the petitioner. The lower court was asked to resume jurisdiction and dispose of the petition for illegal dismissal anew. When the case was called, the petitioner noted that the minutes of the hearing officer were not on the court's file and, thereupon requested that the court sends an order to the Ministry of Labour to have the records forwarded. The respondent filed a resistance and prayed for summary dismissal of the petition, contending that the petitioner had failed to superintend his appeal in keeping with law by not appearing before the Board of General Appeals and taxing the records to ensure that they would be submitted to the court. Respondents further maintained that there was no record to show that copy of the petition was ever served on the Board of Appeals. In view of the foregoing, the lower court judge dismissed the petition. Petitioner, consequently, appealed to the Supreme Court for judicial review. Upon examining the records, the Supreme Court found that the petitioner did file a writ of summons, written directions, and a judge's order commanding the clerk of the lower court to direct the Board of General Appeals to send the records to the circuit court. By this action, it became obligatory on the judge to send for the records from Board of General Appeals. Instead, he dismissed the petition. The Court

also noted that the Labor Law has placed responsibility not only on the appellant, but also on the respondent for transmission of the appeal records to the circuit or debt court. The Supreme Court therefore *reversed* the judge's ruling, declaring it erroneous and remanded the case to have the petition heard and disposed of anew.

Nelson Broderick appeared for petitioner/appellant. *H. Varney G. Sherman* appeared for respondents/appellees

MR. JUSTICE MORRIS delivered the opinion of the Court.

This is the second time this case has come before us. The first was on appeal from the Chambers Justice on a denial of a petition for a writ of error. We granted the writ of error and ordered the lower court to resume jurisdiction and disposed of the petition for illegal dismissal anew, after due notice to all the parties. In obedience to our mandate, the judge, after the issuance and service of a notice of assignment on the parties, called the petition for disposition on the 17th of November 1983. The petitioner made the following record, which was also resisted, as follows:

"Petitioner respectfully brings to the attention of the court that during the inspection of the court's file in the case, it was observed that the minutes of the hearing officer of the Ministry of Labour did not appear in the said file. The only records in the file are those from the Board of General Appeals. Counsel for petitioner says that it is necessary that the records of the hearing before the hearing officer of the Ministry of Labour be made available to this court to enable Your Honour to review the entire case to be able to render the proper ruling in such cases.

Wherefore petitioner requests Your Honour to direct the clerk of this court to send an order to the Ministry of Labour, or rather the Board, and request the transcripts of the hearing both before the hearing officer and the Board of General Appeals, and respectfully submits."

Counsel for the respondent respectfully resists the submission of the petitioner and, instead, prays Your Honor to dismiss the appeal for want of proper submission before this court."

Respondents' counsel submits that under the "Act to Amend the Labor Practices Law with Respect to Administration and Enforcement" which form part of chapter one of the compilation made by the University of Liberia, it is provided that upon announcement of an appeal from the Board of General Appeals to this court, all records and other documentary evidence submitted at the hearing, and all rulings thereon, should be forthwith submitted to this court. The petitioner has failed and neglected to superintend his appeal in keeping with

law, by not appearing before the Board of General Appeals and taxing the records, and ensuring that they are submitted to this court, which is a fundamental principle of our procedure of law in this country. Respondents' counsel also says that having neglected and failed to perfect his appeal, petitioner now is asking the court to do for him what he should have done for himself. There is a long line of opinions of the People's Supreme Court's holding that the Court will not do for party litigants that which said litigants should do for themselves.

Respondents' counsel also says that this matter was brought to this court in its September A.D. 1979 Term. It was first argued in its December A.D. 1979 Term and ruling made thereon on Monday, January 21, 1980, the 28th day's session, sheet three (3), said term presided over by then Circuit Court Judge Frank W. Smith, and ruling made on the legal issues alone. Same matter also traveled to the People's Supreme Court on a writ of error and the mandate from the ruling of said Supreme Court was read at this court during the term, on Friday, November 11, 1983, the 43rd day's jury session, sheet three (3). If during these four years records are not in this court, or no steps were taken to ensure that they are brought to this court, then the only reasonable conclusion to be drawn from these circumstances is that the petitioner only seeks to delay and baffle the expeditious disposition of this case, much to the injury of the respondent. And so respondent prays that for these major defects, the application submitted by the petitioner be denied and the petition summarily dismissed. And submits."

The judge then deferred ruling until the 25th day of November, 1983, which was on a Wednesday. The judge delivered a three-page ruling denying the submission, and dismissing the petition because, according to the judge's ruling, the appellant did not superintend his appeal from the Ministry of Labour to the circuit court. Secondly, there were no records to indicate that copy of the petition was served on the Board of General Appeals, and the petitioner did not allege that he appeared and offered to pay for the recording or taxing of the records and have them sent to the circuit court. The petitioner/appellant being dissatisfied with the ruling of the judge has appealed to this Court for appellate review.

In arguing before us the counsel for respondent maintained that there was no writ of summons issued after the petition was filed and the petitioner, having appealed from the ruling of the Board of General Appeals, should have superintended his appeal. Therefore, since he failed to superintend his appeal, such as insuring that all the relevant documents were sent from the Ministry of Labour to the circuit court, the judge was right in dismissing the appeal. He cited many cases regarding this Court's decision to the effect that appellant should superintend his appeal to this Court. He also argued that the National Labour Court was an administrative court of record and therefore the provisions of our statute relating to

courts of record on appeal are to be strictly observed in the said court. We however found in the records before us the writ of summons, the written directions, and the judge's order, filed by the Bull Law Firm, commanding the clerk of the lower court to direct the Board of General Appeals to send the records to the circuit court.

This is the relevant labor statute controlling the transmission of records from the Board of General Appeals to the circuit or debt court after an appeal has been taken from the ruling of the Board of General Appeals:

"Judicial review of decision of the Board of General Appeals: A party aggrieved by a decision made by the Board of General Appeals may appeal from such decision or any part thereof to the circuit court or debt court in the county in which the Board held its proceedings by filing a petition to the circuit court or debt court within 10 days after receipt by the aggrieved party of a copy of the administrative decision. Copies of the petition shall be served promptly upon the Board of General Appeals which rendered the decision, and upon all parties of record. Within 10 days after service of the petition, or within further time allowed by the court, the Ministry of Labour and Youth shall file with the clerk of the circuit court or debt court a certified copy of the entire record of the proceedings under review, together with a copy of the administrative decision. It shall not be necessary to file exceptions to the rulings of the Board of General Appeals." Labor Laws of Liberia, 2nd Edition, compiled by the Louis Grimes School of Law, University of Liberia, Ch. 1, § 7, at 25.

Counsel for appellees strongly argued that this Court should state clearly what obligation is imposed upon the appellant who appeals to the debt or the circuit court from a ruling of the Board of General Appeals since our law is silent on the issues. He also claimed that there is no provision in the Civil Procedure Law requesting the counsels on both sides to tax the appeal records before they are transmitted to the Supreme Court, but this Court made the provision through its opinion. We feel that the Labor Law cited has fully imposed sufficient obligation not only upon the appellant, but also upon the Board of General Appeals for the transmission of appeal records to the debt or circuit court. The debt or circuit court has the legal authority to order the Board of General Appeals to send up any and all records in any case before it for judicial review. With reference to the argument that there is no law requiring counsel to tax appeal records, we cite Rule 31 of the Circuit Court Rules:

"Before the clerk sends up the records in a case on appeal to the Supreme Court, he shall serve a written notice on the counsels on both sides for them to call at the clerk's office and tax the records before they are sent up. This written notice shall be signed for by the lawyer, or his clerk or some representative of the law office in which he works. Failure to call at the

clerk's office three days after receiving the notice shall be an indication that the counsel failing to call does not intend to tax the records; in that case the clerk shall proceed to forward them to the Supreme Court in keeping with law. All disputes shall be settled by the presiding judge. Proof of the counsel's failure to tax the records will serve as a bar to any applications for diminution of records in the Supreme Court."

Since the Rules of Court, which are not repugnant to the statute and the constitution, have the same force and effect of law, we hold that the argument of counsel for appellees in this regard is baseless in view of the above citation.

The petitioner/appellant having filed his petition with written directions, a judge's order, and a writ of summons issued on appellee and the Board of General Appeals, appellant rightly petitioned the circuit court to order the Board of General Appeals to transmit the missing record, and it was obligatory upon the judge to so direct his clerk.

It should be noted that Judge Frank W. Smith dismissed this same petition during the absence of the petitioner, and the case traveled to this Court upon an appeal from the Justice in Chambers denying the issuance of the writ of error. We reversed the Chambers Justice's ruling and granted the writ of error. A mandate was accordingly sent to the lower court ordering the judge presiding therein to resume jurisdiction and dispose of the petition for illegal dismissal after due notice to the parties. In dismissing the petition, Judge Smith listed some of the documents from the investigation by the Ministry of Labour. This to us is indicative that the records were sent to the circuit court and, if by inadvertence some of the documents were left out, the court had every right to send for such records, especially so when requested by a party. This, the judge refused to do but, instead, erroneously dismissed the petition. We wish to sound a stern warning to the judges of the subordinate courts to desist from the erroneous dismissal of cases.

The ruling of the judge is erroneous and has no support in law. Therefore, counts 2, 3, 4, 5, 6 and 7 of the bill of exceptions are sustained. The ruling of the judge is hereby reversed and the case remanded for disposition of the petition anew, after citing all parties. The judge shall send for the records requested for by the petitioner/appellant from the Board of General Appeals prior to the disposition. And it is hereby so ordered.

Ruling reversed.