LIBERIA LOGGING AND WOOD PROCESSING CORPORATION, Appellant, v. DAVID ALLISON, Appellee.

APPEAL FROM THE JUDGMENT OF THE NATIONAL LABOUR COURT, MONTSERRADO COUNTY.

**Lib Wood Processing Corp. v Allison [2000] LRSC 22; 40 LLR 199 (2000)**

Heard: October 19, 2000. Decided: December 21, 2000.

1. The admission by a party that it was served one of several notices of assignment alleged to have been served on the party negates the party's contention that it did not have its day in court.

2. Where a party against whom a default judgment has been entered files a motion for rehearing which fails to state that the party was not served with summons, the party will be deemed to have been served with summons and to have thereby been afforded the opportunity to be heard, and not to have been denied his day in court.

3. The failure of a party, upon service of process, to appear, plead, or proceed to trial, is ground for a default judgment against the defaulting party; therefore, a default judgment can be granted where a party litigant fails and neglects to appear for trial upon service of process.

4. An employee cannot be dismissed by his employer on the mere allegation of theft of property without first being accorded due process of law.

5. In the absence of an employee accused of theft of property being accorded due process of law, the employee is entitled to compensation for time lost, where he suffers no disability as would have precluded him from performing his official duties.

Appellee, who was dismissed from the employment of the appellant for an alleged theft of property but was never prosecuted for the said crime, filed an action for wrongful dismissal with the Ministry of Labour. Upon the failure of the appellant to appear after several notices of assignment had been served on it, the appellee made a motion before the hearing officer for judgment by default. The motion was granted, a default judgment was entered, and permission was granted the appellee to present evidence to substantiate the allegations in the complaint. Thereafter, the judgment was made perfect by the hearing officer.

The appellant, upon receipt of the judgment appealed the case to the Board of General Appeals of the Ministry of Labour. The Board reversed the ruling of the hearing officer and ordered the case remanded for a new trial. Being dissatisfied with the ruling of the Board, the appellee appealed to and filed a petition before the National Labour Court for Montserrado County. The National Labour Court, disagreeing with the ruling of the Board of General Appeals, reversed the same and reinstated the ruling of the hearing officer. From this latter ruling, the appellant appealed to the Supreme Court for a review of the case.

The Supreme Court agreed with the judgment entered by the National Labour Court, holding that the appellant had indeed been accorded its day in court since it had admitted to having received one of the several notices of assignment allegedly served on it. The Court reasoned that the admission by the appellant of service of one of the notices of assignment negated the

appellant's contention that it had been denied its day in court and the opportunity to be heard. Noting that the failure of a defending party to appear for hearing of a case was a sufficient ground for granting of a default judgment, the Supreme Court concluded that based on the admission of the appellant the National Labour Court properly reversed the decision of the Board of General Appeals.

Regarding the contention that the hearing officer had erred in awarding the appellee compensation for time lost, the Court opined that the mere allegation of the commission of a criminal offense by an employee without a prosecution of the accused to determine his guilt or innocence, is insufficient to terminate the employment of the employee, and that in such a case the employee is entitled to compensation for the time lost growing out of the wrongful dismissal. The Court therefore affirmed the lower court's judgment and mandated the said court to enforce the judgment.

Roland F. Dahn of the Law Chambers of Youna Obey and Associates appeared for the appellant. Marcus R. Jones of the Jones & Associates Legal Consultants appeared for the appellee.

**MR. JUSTICE SACKOR delivered the opinion of the Court.**

This is an appeal emanating from the judgment of the National Labour Court for Montserrado County, growing out of a petition for judicial review of the ruling of the Board of General Appeals reversing the decision of the hearing officer at the Ministry of Labour in entering a default judgment against the appellant.

The appellee herein, David Allison, was in 1978 employed by the Liberia Wood Management Corporation, appellant herein, as a maintenance foreman. In 1983 the appellee was dismissed by the appellant for an alleged theft of property. Whereupon, on the 12th day of March, A. D. 1985, appellee filed a complaint before the Ministry of Labour for wrongful dismissal. A writ of summons was duly issued, served, and returned served. The records in this case show that thereafter the appellant management received several notices but failed to appear before the Ministry of Labour for hearing of the case at the times designated in the notices of assignment. On the 25th day of June, A. D. 1985, the appellee herein made a motion to the hearing officer praying for a default judgment. The hearing officer granted the default judgment, which the appellee made perfect by the production of evidence. At the conclusion of the evidence, the hearing officer entered a ruling in which he awarded the appellee the amount of $16,000.00.

The appellant, upon receipt of the ruling, filed a motion on the 19th day of September, A. D. 1985, for a re-hearing of the case. The hearing officer heard and denied the motion. The appellant management then appealed to the Board of General Appeals for a review of the case. The Board heard and granted the appellant's appeal, reversed the ruling of the hearing officer, and ordered a re-hearing of the case.

On the 28th day of April, A. D. 1986, Appellee Allison filed a four-count petition for judicial review before His Honour Hall W. Badio, Sr., assigned circuit court judge, presiding over the June Term, A. D. 1986, of the Sixth Judicial Circuit Court for Montserrado County. A writ of summons was issued, served and returned served, but the appellant management failed to file returns and to appear for the hearing of the petition. The matter was thereafter transferred to the National Labour Court for Montserrado County upon its creation.

The records further show that while the petition for judicial review was still pending before the National Labour Court for Montserrado County, the appellee filed a six-count motion for enforcement of the judgment by that court. That motion was resisted, heard and denied. The National Labour Court, in denying the motion, held that the petition for judicial review filed before the Civil Law Court should first be heard to review the entire records in the case since the appellee had excepted to and appealed from the ruling of the Board of General Appeals.

The case was then assigned for hearing on Friday, October 9, 1987. The petition was heard and granted by the National Labour Court, thereby reversing the ruling of the Board of General Appeals and upholding the ruling of the hearing officer adjudging the appellant liable for the wrongful dismissal of the appellee and awarding the appellee the sum of $16,000,00. It is from this judgment of the National Labour Court that the appellant management excepted and appealed to this Court upon a three-count bill of exceptions.

Appellant alleged in count 1 of the bill of exceptions that the trial judge committed a reversible error when he reversed the ruling of the Board of General Appeals without first ascertaining whether notices of assignment were legally served on the appellant or its authorized agent. Appellant also alleged in the said count that the trial judge had overlooked the irregularity in the service of the notices of assignment as well as the disputed signatures of appellant's alleged representative.

In count 2 of the bill of exceptions, the appellant contended that a default judgment should be granted only where it is clear and cogent, and there is no dispute as to the service of summons or notices of assignment on a defaulting party litigant. Appellant also contended that a default judgment can only be granted where a party acknowledges the service of precepts but fails or neglects to appear.

In count 3 of the bill of exceptions, the appellant admitted receiving one notice of assignment but contended that it appeared for the hearing before the hearing officer at the designated time. Further to that contention, the appellant maintained that except for the admitted assignment, it received no further notice of assignment for the hearing of the case. In this regard, appellant argued that a party is not bound by a judgment unless such party has been personally cited to appear and has been afforded an opportunity to be heard.

The appellant also argued before this Court that the writ of summons and the notices of assignment were irregularly served and, hence, it is not personally bound by the judgment in the case, not having been duly summoned and cited to appear to be heard. In other words, the appellant argued that no process was served on its authorized agent and that it therefore did not have its day in Court. The appellant also argued that the trial court committed a reversible error in confirming the ruling of the hearing officer, given the fact that the hearing officer had failed and refused to investigate the manner in which service of the precepts had been effected upon the appellant management by the ministerial officer of the Ministry of Labour.

Another issue of importance raised and argued by appellant is that the awarding of $16,000.00 by the hearing officer in his ruling was violative of section 9, chapter l, title 19-A, of the Labour Practices Law of Liberia, in that the hearing officer awarded the appellee 36 months instead of the 24 months prescribed by the labor statute as it relates to wrongful dismissal. The appellant's argument is that the appellee was not entitled to 36 months compensation, in addition to his severance pay, because there were no reasonable grounds for

believing that appellee's dismissal was intended to avoid payment of pension benefits. The appellant therefore requested this Court to reverse the judgment of the trial judge.

The appellee, on the other hand, raised and argued three issues before this Court, issues 1 and 2 of which we deem relevant for the determination of this case.

The first contention of the appellee is that the failure of the appellant to respond to three successive notices of assignment, which resulted into a default judgment, does not constitute a denial of appellant's constitutional right to due process of law. The appellee argued that the failure of the appellant to appear, either in person or by counsel, when duly served with process by a court of competent jurisdiction, constitutes a waiver of its right to due process.

The appellee further argued that the returns of the ministerial officer are by law deemed true and correct, and that a court may exercise personal jurisdiction over a person after proper service of summons. The appellee therefore prayed this Court to affirm the judgment of the National Labour Court.

The pleadings of the parties in litigation present two cardinal issues for the determination of this case. They are:

1. Whether or not the trial court committed reversible error in upholding the ruling of the hearing officer of the Ministry of Labour?

2. Whether or not appellant had its day in court?

We shall decide these issues in the reverse order.

As to issue of whether or not appellant had its day in court, this Court observes from the records in this case that several notices of assignment were served on the appellant, but that it failed to appear before the hearing officer for the hearing of the case. This is evidenced by the returns of the ministerial officer at the Ministry of Labour. The records reveal that the first notice of assignment was issued on April 2, 1985 for the hearing of the case on April 15, 1985, but that the appellant management failed to appear. On May 16, 1985 another notice of assignment was issued and served on both parties for the hearing of the matter on May 29, 1985, but that, as before, the appellant management failed to appear. The third notice of assignment was issued and served on both parties for the hearing of the case on June 19, 1985. Again, the appellant management failed to appear. Thereafter, a fourth notice of assignment was issued for hearing of the case on the 25th day of June, A. D. 1985. This Notice was served on the parties, but the appellant management failed to appear for the hearing. Where-upon, counsel for appellee prayed for a default judgment on the 25th day of June, A. D. 1985. The appellee's prayer to the hearing officer was granted, consistent with section 5 of Regulations # 4 issued by the Ministry of Labour.

In count three of appellant's bill of exceptions it admitted receiving only one notice of assignment which it said it honoured by appearing for the trial conducted by the hearing officer. It however denied receiving any further notice of assignment. Hence, it contended that it was not bound by the ruling of the hearing officer granting the default judgment prayed for by the appellee. The Court notes, in connection with the contention of the appellant, that the appellant failed to state which of the four notices of assignments it had received indicating its appearance and the hearing of the case. Moreover, the records in this case are devoid

of any evidence indicating that the appellant appeared even once before the hearing officer upon receipt of any of the four (4) notices of assignment. The admission by the appellant that it received one notice of assignment negates its contention that it did not have its day in court. Hence, the hearing officer correctly denied appellant's motion for a re-hearing and we herewith reject the allegation of non-service of notice on the corporation's authorized agent and its legal counsel.

Additionally, allegation regarding the improper service of summons on appellant was never raised in the motion for re-hearing. We therefore conclude that the appellant was indeed served with a writ of summons. Accordingly, this Court holds that the appellant was afforded the opportunity to be heard but failed to honor the notices given it for the hearing of the case at the Ministry of Labour. The Court further holds that the appellant was not denied its day in court, contrary to what was strongly argued by its counsel. It is also our holding that the default judgment was properly granted by the hearing officer. A default judgment under our law, practice, and procedure, can be granted where a party litigant fails and neglects to appear for trial upon service of process. Civil Procedure Law, Rev. Code 1:42.1.

The second issue for determination of this case is whether or not the trial court committed a reversible error in upholding the ruling of the hearing officer of the Ministry of Labour. The answer to the question is no. The trial judge correctly upheld the ruling of the hearing officer due to the failure of the appellant to appear before the hearing officer in spite of the several notices of assignment issued by the hearing officer and served on the appellant for the hearing of the case.

In this jurisdiction, the failure of a party, upon service of process to appear, plead or proceed to trial, is ground for entering a default judgment against the defendant. Williams v. Horton and Bull, 13 LLR 444 (1960), text at 447.

As to the issue of the award, the records in this case show that the appellee was dismissed on November 7, 1983 for an alleged theft of property. The records also show that the appellee has not been prosecuted and found guilty of the offense for which he was dismissed. This Court holds that the appellant should not have been dismissed by the appellant on the mere allegation of theft of property without being accorded his due process of law. We therefore hold that as the appellee was willing, capable, and prepared to serve the appellant management, he is entitled to the time lost, especially since he suffered no disability to preclude him from performing his official duties.

Wherefore, and in view of the foregoing, it is the considered opinion of this Court that the judgment of the trial court be and the same is hereby affirmed. The Clerk of this Court is hereby ordered to send a mandate to the court below informing the judge presiding therein to resume jurisdiction over the case and enforce its judgment. Costs are ruled against the appellant. And it is hereby so ordered.

Ruling affirmed