THE LIBERIA OPERATIONS, INC., represented by its General Manager, MIKE MARTIN, Appellant/Respondent, v. **PETER VAH**, **THOMAS WEAH**, **HENRY MASSAQUOI**, **et al**, Movants.

MOTION TO DISMISS APPEAL FROM THE NATIONAL LABOUR COURT.

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

1. The failure of an appellant to file an approved appeal bond and to serve and file notice of completion of the appeal deprives the appellate court of jurisdiction and is cause for dismissal of the appeal.

Judgment was entered against the appellant on October 4, 1988 in the National Labour Court in an action of judicial review of an administrative decision growing out of a wrongful dismissal action filed by the appellees against the appellant in the Ministry of Labour, and adjudged in favor of the appellees. Within statutory time, following the National Labour Court judgment, appellant filed its bill of exceptions but failed and neglected to file an approved appeal bond and to serve and file a notice of completion of its appeal on the appellee up to the time the case was called for hearing of the appeal, that is six (6) months after the rendition of judgment in the trial court. The appellees therefore moved the Supreme Court to dismiss the appeal.

In granting the motion, the Supreme Court held that the failure of an appellant to file an approved appeal bond and to serve and file a notice of the completion of the appeal deprived the Supreme Court of jurisdiction over the case and was a proper ground for dismissal of the appeal. The motion was therefore *granted* and the appeal was accordingly *dismissed.*

James D. Y Kumeh for appellants. *Francis Y. S. Garlowolo* for appellees.

MR. JUSTICE AZANGO delivered the opinion of the court.

This case is based upon appellees' motion to dismiss appellant's appeal and a resistance thereto. The motion reads:

1. That on the 4th day of October, 1988, a final judgment was rendered by the judge of the lower court against the appellant in favor of appellees and on the 6t h day of said month, 1988, the judgment was duly modified to name a sum certain, in the presence of both parties, awarding unto appellees the aggregate sum of Forty Five Thousand Seven Hundred Ninety Two ($45,792.00) Dollars. To this judgment, counsel for appellant excepted and prayed for an appeal to the Honourable Supreme Court of Liberia. In pursuit of his announcement of the appeal, appellant accordingly filed a bill of exception on the 14' h day of October, 1988.

2. That appellant having filed its bill of exceptions, it woefully failed and neglected to file an approved appeal bond and a notice of completion of appeal and served same on appellees up to and including the filing of this motion, same being a period of six (6) months as will evidently appear by two clerk's certificates:

They therefore prayed that this Court should dismiss the appeal and accordingly order the trial court to resume jurisdiction over the case and enforce its judgment.

Appellant filed the following resistance:

1. That as to the allegations contained in count one (1) of the motion insofar as they relate to the purported subsequent amendment of the lower court's final judgment which was given on the 4t h day of October, 1988, respondent says that said allegations have taken them by surprise, constitute a peculiar brand of fraud which movants are ineptly attempting to perpetrate on this Honourable Court of last resort. Prior to the rendition of the lower court's judgment on October 4, 1988, the lower court cited both parties by means of the service upon them of a notice of assignment to appear on October 4, 1988, at which both parties were present, the lower court then rendered judgment against respondent, and to which respondent excepted and announced an appeal.

2.That further as to count 1 of the motion, with particular reference to movant's exhibit "A-2", respondent says that the court's last notice of assignment, which was issued and served upon the parties by the lower court was dated October 3, 1988, citing both parties to appear on the following day, that is, October 4, 1988, for a hearing and it was on that latter date that the lower court's final judgment was rendered against respondent, and to which respondent excepted and announced an appeal to the Honourable the Supreme Court of Liberia, sitting in its March Term, A. D. 1989, and which appeal was granted. Following that hearing, it now appears from movants' exhibit "A-2" that the lower court on the 6thday of October, 1988, irregularly resumed jurisdiction over the appeal without an order from a higher court and without notice to respondent, reopened the case, examined witnesses and rendered another judgment not in conformity with the previous judgment as can more clearly be seen from the movants' own exhibit "A2, as well as from certificate of the clerk of the lower court which is hereto attached.

3. That still further as to count 1 of the motion, with particular reference to movants' exhibit "A-2", respondent says that said exhibit "A-2" is a legal nullity, in that it is a settled rule of law that a court may not alter its judgment after it has been entered or made final, except with notice to both parties, as movants' exhibit "A-2" seems to have been obtained. Respondent therefore requests Your Honours to completely disallow count 1 of the motion.

4. That yet still further as to count 1 of the motion, respondent says that under our practice once a judgment is rendered as was done in this case on October 4, 1988, to which

exceptions were taken and appeal announced and granted, any amendment of such judgment by the trial court thereafter and without notice to the parties, is a nullity.

5. That as to count 2 of the motion, respondent says that neither they nor their attorneys were ever cited to appear at or to participate in the illegal proceedings of October 6, 1988, growing out of which the purported amended judgment of October 6, 1988, was entered and, which is materially different from the lower court's earlier judgment of October 4, 1988. Consequently, said subsequent purported judgment of October 6, 1988 cannot legally bind respondent nor could this Honourable Court entertain said subsequent fraudulent judgment of October 6, 1988, which forms the basis of this motion to dismiss. In this connection, respondent proffers an affidavit from one of its attorneys named in the movants' exhibit "A-2", Counsellor James Kumeh, and further asks your Honours to take judicial notice of their exhibit "CC".

6. That further to count 2 of the motion, respondent says that they and their attorneys not having been cited to participate in the subsequent proceedings growing out of which the lower court's subsequent final judgment of October 6, 1988 was rendered, as a matter of law, it follows that said subsequent judgment of October 6, 1988 was neither excepted to nor appealed from by respondent. Therefore, said illegal and fraudulent judgment cannot be made the subject of a motion to dismiss, nor could respondent's bill of exceptions taken to the lower court's judgment of October 4, 1988, which was filed by respondent on October 14, 1988, relate in any way to said fraudulent judgment of October 6, 1988. To support this allegation, respondent proffers copy of their bill of exceptions filed in the lower court which relates to that court's final judgment of October 4, 1988, and not to this subsequent, fraudulent final judgment of October 6, 1988, concerning which respondent had absolutely no knowledge until upon their receipt of copy of movants motion to dismiss respondent's bill of exceptions.

Hence, appellant prayed the denial of the motion in so far as it is related to the alleged amended judgment of October 6, 1988, because the records in this case revealed that on the 4' h day of October, A. D. 1988 final judgement was rendered against appellant declaring it liable to appellees for two (2) years salary each. Each appellee was also awarded annual leave as provided for in the Labour Practices Law, Lib. Code 18-A:901, as well as lunch break and services performed on Saturdays with modification that the amount awarded to appellees shall be accurately calculated and paid through the office of the clerk of the National Labour Court for its proportionate disbursement to the appellees in the presence of their legal counsel. That costs of court was ordered assessed against appellant with instructions that the clerk of the National Labour Court prepare a bill of costs against appellant to be taxed by counsels of both appellant and appellees and for the judge's approval and thereafter to be placed in the hands of the sheriff for collection

To this judgment, counsel for appellant excepted and announced an appeal to this forum supported by a bill of exceptions containing nine (9) counts.

During arguments before this Court, appellees' counsel emphasized that inasmuch as there was no approved appeal bond and a notice of completion of appeal was absent from the court's records, the appeal was therefore defective and should be dismissed in keeping with the certificates from the office of the clerk of court. When appellant's counsel was faced with this question from the Bench, he answered in the negative, but attempted to explain. Here are the certificates found in the records in support of appellee's counsel's argument.

NATIONAL LABOUR COURT OF LIBERIA
TEMPLE OF JUSTICE
MONROVIA, LIBERIA

The Liberia Operations Inc., Represented by its General Manager Mike Martin of Buchanan, Grand Bassa County PETITIONER/APPELLANT VERSUS Peter Vah, et al RESPONDENTS /APPELLEES

JUDICIAL REVIEW ADMINISTRATIVE DECISION UNFAIR LABOUR PRACTICE

CLERK'S CERTIFICATE

THIS IS TO CERTIFY THAT RULING IN THE ABOVE CAPTIONED CAUSE OF ACTION WAS RENDERED ON THE 4TH DAY OF OCTOBER, A. D. 1988. A CAREFUL SEARCH THRU THE FILE ALSO REVEALED THAT THE PETITIONER, THE LIBERIA OPERATIONS, INC..., REPRESENTED BY ITS GENERAL MANAGER, MIKE MARTAIN OF BUCHANAN, GRAND BASSA COUNTY, HAS NOT FILED ITS APPROVED APPEAL BOND NOR NOTICE OF COMPLETION OF APPEAL WITH THE COURT UP TO AND INCLUDING THE DATE OF THE ISSUANCE OF THIS CERTIFICATE. HENCE, THIS CERTIFICATE.

GIVEN UNDER MY HAND AND SEAL OF THIS HONOURABLE COURT, THIS 6TH DAY OF
DECEMBER, A. D. 1988.
t/Benedict D. Kragbe
s/Benedict D. Kragbe
CLERK, NATIONAL LABOUR COURT, R.L." SEAL:
NATIONAL LABOUR COURT OF LIBERIA
TEMPLE OF JUSTICE
MONROVIA, LIBERIA

The Liberia Operations Inc., Represented by its General Manager Mike Martin of Buchanan, Grand Bassa County PETITIONER/APPELLANT VERSUS Peter Vah, et al RESPONDENTS /APPELLEES

JUDICIAL REVIEW OF ADMINISTRATIVE DECISION

CLERK'S CERTIFICATE

A CAREFUL INSPECTION OF THE RECORDS IN THIS CASE REVEALED THAT ON THE 4TH DAY OF OCTO-BER, A. D. 1988, RULING WAS RENDERED AGAINST PETITIONER, THE LIBERIA OPERATIONS INC. BUT UP TO THE ISSUANCE OF THIS CERTIFICATE, LIBERIA OPERATIONS, INC. HAS NOT FILED ITS NOTICE OF COMPLETION OF APPEAL NOR APPROVED APPEAL BOND, HENCE THIS CERTIFICATE. GIVEN UNDER MY HAND AND SEAL OF THIS HONOURABLE COURT, THIS 25 TH

DAY OF JANUARY, A.D. 1988.

t/Benedict D: Kragbe

s/Benedict D. Kragbe

CLERK, NATIONAL LABOUR COURT, R.L. SEAL

On the other hand, counsel for appellant presented the below mentioned certificate from the records for what it may be worth. It is marked exhibit "CC" and reads thus:

NATIONAL LABOUR COURT OF LIBERIA
TEMPLE OF JUSTICE
MONROVIA, LIBERIA

The Liberia Operations Inc., Represented by its General Manager Mike Martin of Buchanan, Grand Bassa County PETITIONER/APPELLANT VERSUS Peter Vah, et al RESPONDENTS /APPELLEES

JUDICIAL REVIEW ADMINISTRATIVE DECISION UNFAIR LABOUR PRACTICE

CLERK'S CERTIFICATE

"THIS CERTIFIES THAT THE LAST ASSIGNMENT IN THE ABOVE CAPTIONED CASE WAS ISSUED ON THE 3 RD DAY OF OCTOBER, A.D. 1988 FOR HEARING ON THE 4T" DAY OF OCTOBER, A. D. 1988. HENCE THIS CERTIFICATE.

GIVEN UNDER MY HAND AND SEAL
OF THIS HONOURABLE COURT,
THIS 3RD DAY OF MAY, A.D. 1989.

t/Benedict D. Kragbe
s/Benedict D. Kragbe
CLERK, NATIONAL LABOUR COURT, R.L."

From those records, there is but one issue that should claim our attention for consideration. Has the appellant perfected its appeal by submitting an approved appeal bond and filing of a notice of completion of appeal as required by law. Regrettably, the records are without such evidence.

Consistent with our numerous opinion, we have insisted that:

1. Failure of an appellant to file an approved bond and to serve and file notice of the completion of the appeal deprives the appellate court of jurisdiction and is cause for dismissal of the appeal. *Marsh v. Sinoe,* 22 LLR 320 (1978).

2. An appeal will be dismissed for failure to serve a notice of completion of the appeal even where such failure is due to the neglect of the clerk of the trial court in complying with appellant's direction to issue such notice. It is the duty of the appellant to superintend the appeal and to see that all legal requirements are completed. *Cole et al. v. Alhaji Larmi,* 25 LLR 450 (1977). An appeal will be dismissed for failure to serve on appellee a notice of completion of appeal. *Taylor v. Yarseah,* 25 LLR 453 (1977).

3. Failure to file an approved appeal bond within sixty (60) days after rendition of judgment is a ground for dismissal of the appeal as is the failure to append to the appeal bond the affidavit of sureties and the certification required from the revenue service. *Jagun et al. v. Thompson,* 20 LLR 360 (1971)

In view of these authorities and several of our holdings in the past in support of the position we are about to take, we regret that the motion to dismiss will be granted for failure of appellant to prepare and submit an approved appeal bond together with a completion of appeal and have same served on appellant. The appeal is therefore dismissed.

The Clerk of this Court is hereby ordered to send a mandate to the court below informing it of this judgment with instructions that it will resume jurisdiction over the subject matter and enforce its judgment. Costs are ruled against the appellants. And it is hereby so ordered.

Motion granted: appeal dismissed.

MR. JUSTICE KPOMAKPOR *dissents:*

I have observed so many irregularities committed during the trial of this case before the lower court, which are apparent from the records certified to us that I cannot join my colleagues in the opinion just read. To my mind, the position adopted by them tends to

condone these irregularities, in addition to not finding support in either our statute or case law, as I understand them.

The facts of this case are simple, though peculiar and perplexing. When the case was called for hearing, it was requested of us by the appellees that we grant their two-count motion to dismiss appellant's appeal. The grounds assigned are that the appeal was defective because the said appellant failed and neglected to file both an approved appeal bond and a notice of completion of appeal within the period prescribed by law. The appellees buttressed their motion by annexing to it exhibits "A-1" and "A-2", that is, appellant's bill of exceptions and the judge's ruling, respectively. Also attached to their motion to dismiss are appellees' exhibits "C-1" and "C-2", or copies of clerk's certificates showing that no appeal bond and a notice of completion of appeal, respectively, have been filed.

The core of the problem raised by the motion to dismiss is embedded in this count:

"1. That on the 4thday of October, 1988, a final judgment was rendered by the judge of the lower court against the appellant in favor of appellees and on the 6 1h day of said month, 1988, the judgment was duly modified to name a sum certain in the presence of both parties, awarding unto appellees the aggregate sum of Forty Five Thousand Seven Hundred Ninety Two ($45,792.00) Dollars; and to which ruling counsel for appellant excepted and prayed for an appeal to the Honourable Supreme Court of Liberia. Pursuant to announcement of the appeal. Appellant accordingly filed a bill of exception on the 14thday of October, 1988. Copies of the judge's judgment are herewith proffered as exhibits "A-1" and "A-2" respectively and appellant's bill of exceptions as exhibit "B", forming a cogent part of this motion." (Emphasis added.)"

The appellant countered this motion by contending in a limited resistance that we deny the motion on the following grounds:

"1. Because as to the allegations contained in count 1 of the motion insofar as they relate to the purported subsequent amendment of the lower court's final judgment, which was given on the 4th day of October, 1988, respondent says that said allegations have taken them by surprise, constitute a peculiar brand of fraud, which movants are ineptly attempting to perpetrate on this Honourable Court of last resort. Prior to the rendition of the lower court's judgment on October 4, 1988, the lower court cited both parties by means of the service upon them of a notice of assignment, to appear on October 4, 1988, for a hearing. Following that hearing on October 4, 1988, at which both parties were present, the court rendered judgment against respondent to which they excepted and announced an appeal, as can more clearly be seen from movants' own exhibits "A-1", "C-1" and "C-2" which are hereto attached to form a part of this resistance.

2. And also because, further as to count 1 of the motion with particular reference to movants' exhibit "A-2", respondent says that the court's last notice of assignment which was issued and served upon the parties by the lower court was dated October 3, 1988, citing both parties to appear on the following day, that is October 4, 1988, for a hearing and it was on that latter date that the lower court's final judgment was rendered against respondent; and to which respondent excepted and announced an appeal to the Honourable the Supreme Court of Liberia sitting in its March Term, A. D. 1989, and which appeal was granted. Following that hearing, it now appears from movants' exhibit "A-2" that the lower court on the 6thday of October 1988 irregularly resumed jurisdiction over the appeal without an order from a higher court and without notice to respondent re-opened the case examined witnesses and rendered another judgement not in conformity with the previous judgment as can more clearly be seen from movants' own exhibit "A-2", as well as well from certificate of the clerk of the lower court, which is hereto attached and marked exhibit "CC" to form a part of this resistance. (Emphasis supplied).

"5. And also because, as to count 2 of the motion, respondent says that neither they nor their attorneys were ever cited to appear at or to participate in the illegal proceeding of October 6, 1988, growing out of which the purported amended judgment of October 6, 1988, was rendered: and, which is materially different from the lower court's earlier judgment of October 4, 1988. Consequently, said subsequent purported judgment of October 6, 1988 can not legally bind respondent nor could this Honourable Court entertain the subsequent, fraudulent judgment of October 6, 1988, which forms the basis of this motion to dismiss. In this connection, respondent proffers an affidavit from one of its attorneys named in the movants' exhibit "A2", Counsellor James Kumeh, and further asks Your Honours to take judicial notice of their exhibit 'CC',"

Taking the issues raised by the motion to dismiss, the resistance and the arguments of the parties before us there is but one decisive issue and this is:

Whether minutes made by a trial judge indicating that parties of opposing interests were present in court are *ipso facto* evidence that the contents of such minutes are genuine, especially in the absence of the issuance and service of a notice of assignment and a strong contention of appellant that said minutes were fraudulently made?

During the argument before this bar, counsel for appellant admitted to the allegations of appellees that neither an appeal bond nor a notice of completion of appeal has been filed by him. In other words, he admitted that appellant failed to comply with the statutory requirements with respect to filing an appeal bond. However, appellant strongly contended that the record made on the minutes of court on October 6, 1988 by the trial judge to the effect that appellant was represented in court by Counsellor James Kumeh of the Brumskine Law Firm were spurious.

According to appellant's counsel, the last assignment issued out of the court and served upon him, which he attended, was issued on the third day of October, A. D. 1988 for hearing of the case on the fourth day of October 1988.

The contention of counsel for appellant is that the trial judge, after rendering his final decision on October 4, 1988, subsequently and surreptitiously resumed jurisdiction, without citing the parties, and modified his earlier ruling. A certificate supporting appellant's contention and conclusion that Judge Bailey arbitrarily resumed jurisdiction in violation of the law and the practice and made record purporting to show that appellant's counsel was present in court on the 6th day of October when he modified his final judgment of October 4, was annexed to his resistance. We quote here verbatim, the contents of that certificate

"NATIONAL LABOUR COURT OF LIBERIA
TEMPLE OF JUSTICE
MONROVIA, LIBERIA

The Liberia Operations Inc., Represented by its General Manager Mike Martin of Buchanan, Grand Bassa County PETITIONER/APPELLANT VERSUS Peter Vah, et al RESPONDENTS /APPELLEES

JUDICIAL REVIEW ADMINISTRATIVE DECISION UNFAIR LABOUR PRACTICE

CLERK'S CERTIFICATE

"THIS CERTIFIES THAT THE LAST ASSIGNMENT IN THE ABOVE CAPTIONED CASE WAS ISSUED ON THE 3RDDAY OF OCTOBER, A.D. 1988 FOR HEARING ON THE 4TH DAY OF OCTOBER A.D. 1985. HENCE THIS CERTIFICATE.

GIVEN UNDER MY HAND AND
SEAL OF THIS HONOURABLE COURT,
THIS 3RD DAY Of MAY A.D. 1989
Benedict D. Kragbe
"CLERK, NATIONAL LABOUR COURT, R . L.

It is interesting to note here that the legal counsel of appellees admitted that no other notice of assignment was issued in the case after the one dated October 3, 1988, for the hearing on October 4; but he contended that even though the clerk's certificate confirmed this fact, it is the general rule that, once the minutes of court show on its face that a party to a cause was present in court the contents of such minutes will presumed to be genuine and un-rebuttable. My distinguished colleagues of the majority have oddly avoided even mentioning this salient point in their entire judgment.

According to the Court's opinion, Mr. Justice Azango speaking therein for the majority, the issue is:

"Has the appellant perfected her appeal by submitting an approved appeal bond and filing of a notice of completion of appeal, as required by law?" He added these words: "Regrettable the records are without." I cannot, by any stretch of the imagination, figure out how my distinguished colleagues arrived at this issue. Definitely the majority and I must have read from different files with different pleadings. Appellant's counsel vigorously contended that where the minutes of court indicate that a party was present in court when a ruling was made adverse to him, the party in whose favor such a ruling was made has the onus of establishing that a notice of assignment was regularly issued and duly served on his adversary, but that he failed or neglected to attend the hearing. This position of the appellant, in my view, is supported by our statutes and the case law; especially when, as in the instant case, the party to be adversely affected denies, backed by a certificate of the clerk of that court, being served with a notice of assignment. To hold as the majority of my colleagues have done is, in effect, overruling all previous judgments of this Court dealing particularly with notices of assignments from the inception of this Court to the present time, 1989. I hope my brethren will not one day apply the same illegal rule in this Court.

The opinion of the Court today will undoubtedly encourage fraud in the lower courts in that records of this type will be made without any basis. When one reads the court's judgment of the 4th of October, 1988, it is not difficult for one to see the reason for the modification. Here is that judgment:

"COURT'S FINAL JUDGMENT

"Wherefore in view of the foregoing the court is satisfied that complainant/appellees have proven a prima facie case against respondent/appellant management. It is therefore adjudged that the appeal of the respondent/appellant management is hereby dismissed without further consideration either in law and in equity and the decision that was rendered by the defunct Board of General Appeals on the 27th day of August, A. D. 1980, is hereby affirmed to all intents and purposes. It is further hereby adjudged that appellant/management is declared liable to complainants/ appellees for two years salary award to each appellee, annual leave as provided for in section 901 of the Labour Practices Law of Liberia as well as lunch break and services perform on Saturday, with the modification that the amount awarded to each appellee shall be accurately calculated, assessed and paid through the office of the clerk of this court for its proportionate disbursement to the appellees in the presence of their legal counsel. The costs in these proceedings are to be assessed against the appellant management. The costs against appellant management to be taxed by both parties' counsels for our approval and thereafter to be placed in the hands of the sheriff for its collections. And it is hereby ADJUDGED."

Apparently, while Judge Bailey was making his ruling of October 4, 1988, he discovered that said judgment would be rather difficult, if not impossible to enforce, it not containing a sum or amount certain. In order to correct what appears to be an oversight then, he put in the phrase, "with modification that the amount awarded to appellees shall be accurately calculated." The obvious question is, why the absence of a sum certain, since according to the learned judge he was affirming the decision of the defunct Board of General Appeals. Still other questions that come to my mind are: (1) was there in fact a decision of the Board of General Appeals? and (2) was there a ruling of a hearing officer? The reasonable inference to be drawn under these circumstances is that both the ruling of the hearing officer and that of the Board of General Appeals did not contain a sum or an amount certain. Incidentally, neither the ruling of the hearing officer nor that of the Board was included in the record certified to us. Consequently, I cannot say where the absence of a sum certain originated.

For the benefit of this opinion, here is the modified decision of the trial court:

"THURSDAY, OCTOBER 6, 1988 PAGE 1

6th DAY'S SESSION, NATIONAL LABOUR COURT, MONTSERRADO COUNTY REPUBLIC OF LIBERIA, SITTING IN ITS OCTOBER TERM, A. D. 1988.

IN RE: Peter Vah, Thomas Weah, Henry Massaquoi, Henry Massaquoi, Henry Kerkulah, Moses Kollie and Johnny Thompson versus LIBINC. Action of Wrongful Dismissal. CASE CALLED FOR SUBMISSION OF CALCULATION.

REPRESENTATION:

The petitioner is represented by Counsellor James Kumeh of the Brumskine Law Chambers and the respondents/ appellees are represented by Counsellor Francis Y. S. Garlawolu.

THE COURT:

On October 4, 1988, this court ruled that the entitlement of the appellees in this case be made and submitted so as to make the judgment certain and enforceable. Said calculation having been made awarding the appellees/ respondents the total sum of Forty Five Thousand Seven Hundred Ninety Two ($45,792.00) Dollars as contained therein, the same is hereby confirmed and affirmed, and incorporated into our final Judgment of October 4, 1988, to wit:

NAME	RATED PER HOUR	DAILY	MONTHLY	INCOME 2Yrs P"
Peter Vah	$1.25	$10.00	$300.00	$7,200.00
Thomas Weah	1.30	10.40	312.00	7,488.00
Henry Massaquoi	1.20	9.60	288.00	6,912.00
Henry Kerkulah	1.25	10.00	300.00	7,200.00

Moses Kollie	1.15	9.20	276.00	6,624.00
Johnny Thompson	1.80	14.40	432.00.	10,368.00

$45,792.00

The above calculation being consistent with our ruling, the same is hereby further confirmed. And it is hereby so ordered.

GIVEN UNDER MY HAND THIS 6TH DAY OF OCTOBER, A. D. 1988.
Sgd. Harper S. Bailey
JUDGE, NATIONAL LABOUR COURT

To which ruling of Your Honour, counsel for petitioner excepts and announces appeal as done before.

THE COURT: Exception noted and appeal granted."

In my opinion, the procedure extant in this jurisdiction which the trial judge should have followed, the National Labour Court being an appellate court of record, is the remanding of the case to the Labour Ministry, either on the minutes of the court or in his ruling. After this is done, the forum to which the matter is remanded, the labor inspector or hearing officer, would then cite the parties, make the calculations, to which act a party may except, and the case would then come back to the National Labour Court. When all of this is accomplished the trial judge would still be under an obligation to cite the parties by means of a notice of assignment duly served upon them. The ruling of October 6, 1988 is a nullity and of no effect, since it did not complied with the above requirements.

I am dissenting on the main issue, which is that the trial court did not, in keeping with law and the practice, issue and serve on the parties a notice of assignment as a prerequisite to modifying its final judgment of October 4, 1988, and that therefore his judgment is null and void *ab initio.*

For almost a hundred and fifty years this Court has consistently held, without a single deviation, that unless a party is duly cited to a hearing and he has failed to appear, a judgment of a court cannot be binding upon him. Today, the Court has abandoned this historic course, which in effect will overrule the many previous decisions of this Court. We have, on numerous occasions, struck down judgments and decisions of lower courts where it was clearly established, as here that the court failed to bring a party under its jurisdiction by means of a notice of assignment.

Over the years we have held, until today that the fundamental principle upon which all complaints, answers or replies shall be construed, shall be that of giving notice to the other party." *West & Company v. Lomax,* 3 LLR 147 (1930); *Saleeby Brothers Corporation v. Haikal,* 14 LLR 537 (1961); and *Richardson v. Gbassie et al.,* 15 LLR 50 (1962). This general principle of

law I have quoted above becomes meaningless if trial judges can arbitrarily make records and render judgments without citing the parties to appear and secure their interests.

There are several things which make the so-called modified final judgment of October 6, 1988 questionable and unworthy of affirmation. For example, in count one of the motion to dismiss, the appellees/movants stated that the judgment duly modified to name a sum certain was done in the presence of both parties. The question is, why did the appellees feel compelled to announce that both parties were present in court? Usually, the only time the phrase, "both parties being in court," or "both parties are present in court" is used, is when, for example, the court does not see the need to issue and send out a notice of assignment. In such a case, the trial judge will usually say "both parties being in court there will be no need for the issuance of an assignment." Was this information intended for 'the benefit of appellees? Of course not. Did the appellant need to be told that it was already present in court? Here again the answer is an obvious no. Finally, did the appellees then anticipate this very problem and others in the Supreme Court where the case would be reviewed? I am convinced they did while perfecting their motion. In fact as I have already stated in this opinion, counsel for the appellees admitted during the argument before this bar that the contention of appellant during the argument, that he was not present at the hearing during which the first judgment was modified, was correct, but that it was immaterial, since the trial court's minutes were in themselves evidence that both parties were present.

Another aspect of this case which has convinced me that there was definitely what I usually refer to as some "monkey business" being involved, is the fact that in count one of the motion to dismiss, the appellees annexed to this motion the appellant's bill of exceptions which bill of exceptions referred to the court's final judgment of October 4 1988 and not the so-called modified final judgment of October 6 1988. This fact, in itself, should therefore dispel any doubt that a notice of assignment was issued after the court's final judgment of October 4, 1988.

The treatment of the appellant's bill of exceptions in appellees' own motion clearly indicates that there was only one final judgment and that is the October 4th judgment. If I may emphasize here, the motion to dismiss made mention of only one bill of exceptions, and that is the one that was filed on the 14thday of October, 1988: ". . , and in pursuit of his announcement of the appeal, appellant accordingly filed a bill of exceptions on the 14th day of October, 1988. Copies of the judge's judgments are herewith proffered as exhibits "A-1 and "A-2" respectively and appellant's bill of exceptions as exhibit "B" . . . . (Emphasis added.). Still another point to be taken into consideration in this case is the fact that appellees have not denied the veracity of the clerk's certificate annexed to the resistance to the motion to dismiss. Obviously, they could not attempt that, since they too attached three certificates from the same clerk of that court to support their contentions that the appeal be dismissed.

A certificate has been defined as "written assurance made or issuing from some court, and designed as a notice of things done therein, or as a warrant or authority, to some other court, judge, or officer." BLACK'S LAW DICTIONARY 205 (5thed).

Also, "notice" is defined as a "means of information, and advice, or written warning, in more or less shape, intended to appraise a person of some proceeding in which his interests are involved or informing him of some fact which it is his right to know and the duty of the notifying party to communicate. *Ibid,* at 957.

The court was under a duty to notify appellant of the hearing. Neither the appellees nor the majority of this Court has denied that. In fact, they admit, at least by implication, that it was incumbent upon the court to serve such a notice, but they argue, that once the minutes of the court indicated that the appellant was present in court, the presumption is that a notice for him to appear must have been given to him, or else the minutes would not say so. I disagree with this argument. This is injustice, not justice. The usual and familiar averment from an Appellee in such cases as the instant one, is, "appellant neglected and failed, although duly notified, to appear and defend his interest." This phrase is peculiarly absent in the appellees' motion to dismiss.

This phrase was omitted because a notice to the parties was not issued.

This Court has on several occasions warned lawyers that they and we (judges) are all making the law; and that, therefore, we should be extremely careful how and what law we make. Certainly, by this decision, the Court seemed to have forgotten this all-important admonition. Opinions on this subject, the issuance and non-issuance of notices of assignments, are so numerous that I feel it is a waste of time to bother citing them. I will, however, cite a few. In *Barbor-Tarpeh et al. v. Dennis et al.,* 25 LLR 468 (1977), at 471, this Court decided that "a judgment is not binding upon a party who has neither been cited to appear before the court nor afforded an opportunity to be heard." The Court cited as authorities *Tubman v. Murdoch,* 4 LLR 179 (1934) and *Schilling & Company v. Tirait and Dennis,* 16 LLR 164 (1965).

The case of *Gbae et al. v. Geeby,* 14 LLR 147 (1960), is another case in point. After the case had been assigned several times without being heard, the judge informed Gbae's counsel that he would assign the case later and that the parties would then be notified. This the judge did not do; he instead disposed of an injunction without further notice. Gbae was made aware of the disposition of the injunction only when the bill of costs were served upon him. In the instant case, counsel for the appellant has contended in his resistance and argument that he also became aware of the so-called modified judgment when the motion to dismiss his appeal was served upon him.

In overruling the trial in *Gbae,* this Court held:

"Defendant-in-error should have made a definite showing that plaintiff-in-error was duly notified to be present in court on a certain day, at a certain hour, for the hearing of the injunction case in which he was the plaintiff. Defendant-in-error was given ample notice of the assignment of the injunction suit. . . ." (Emphasis added).

I have contended in dissent that the onus was on the appellees to clearly establish that the appellant was duly cited on October 6, 1988, but that he failed to appear.

In *Raymond International (Liberia) Ltd. v. Dennis, 25* LLR 131 (1976), where a problem of the trial judge's rescinding of his previous ruling was involved, this Court, in rejecting the rescission, held, at page 142:

"Certainly the law, both statutory and common, permits a judge to modify or rescind any ruling or judgment he renders in the term in which he is sitting, but this must be done properly; that is, upon notice duly served on the parties to the litigation. We are not convinced that this was done in this case."

Finally, the failure of the appellant to file an appeal bond and served a notice of completion of his appeal on the appellees is not, and has not been, an issue in this case, because the appellant admitted that it has neither filed an appeal bond let alone served a notice of completion of the appeal. From the appellant's point of view, and mine, the issue, is, as we have stated, whether or not the contents of the minutes of court are *ipso facto* correct and true, despite a refutation of a party, backed by a genuine certificate issued by the clerk of that court, as to the veracity of said minutes.

Appellant's prayer in his resistance is: "Wherefore, and in view of the above, respondent prays this Honourable Court to deny motion insofar as it relates to the alleged amended judgment of October 6, 1988."

Taking all the facts and circumstances into consideration, it is my view:

1. That the motion to dismiss the appeal be granted as the appellant has admitted that he failed to file any appeal bond in keeping with law, and

2. That being absolutely convinced that the only valid judgment entered in the National Labour Court against appellant is that one entered on October 4, 1988 in open court that judgment is to be enforced.

This being my position, I am withholding my signature from the judgment of the Court.