LIBERIAN AGRICULTURAL COMPANY (LAC) by and through its General Manager, M. K. D. GERHART, Appellant, v. **DANIEL GUREGURE,** Appellee.

Heard: October 19, 1988 Decided: December 29, 1988

1. Except as otherwise provided for, the Civil Procedure Law allows a complaint, an answer and a reply, containing affirmative matters or a counter-claim, as the initial pleadings in a legal action.

2. Where pleadings are, irrelevant, frivolous or repetitive, not authorized by law or rules of court, a motion to strike is the proper recourse.

3. Upon a court's own initiative, it may order any redundant, immaterial, impertinent or scandalous matter stricken from any pleading.

4. An examination or investigation is an inquiry before a competent tribunal, according to the law of the land, of the facts or laws put in issue in a cause for the purposes of determining such issues.

5. An investigation or examination concerns the issues on which to bring an action or to sue upon.

6. To investigate is to make inquiry, judiciary or otherwise, for the discovery and collection of facts concerning the matter or matters involved.

7. Pleadings constitute the allegations made by the parties to an action or proceeding.

8. Pleadings contain the operative facts (as opposed to evidential facts) which constitute a party's claims or defenses, and relate to the cause of action, either to support or defeat it.

9. Pleadings are designed to develop and present the precise points in dispute between parties, and to inform the court of the facts in issue.

10. A pleading notifies the other party of the facts the pleader intends to prove, therefore allegations in them must be made with certainty that enables the adverse party to prepare his or her evidence to meet the alleged facts.

11. Generally, in order to confer jurisdiction on a court, so as to enable it to properly render a judgment, the subject matter of contention must be presented in a mode

sanctioned by law.

12. In this jurisdiction, where an action is commenced by a complaint, unless such a complaint is filed, the judgment of a court of record is void and subject to collateral attack, even though the court has jurisdiction over the subject matter referred to in the judgment.

13. Liberian law provides no remedy or penalty for indefinite suspension or constructive dismissal.

Appellee filed a complaint against Appellant Liberia Agricultural Company (LAC herein) with the Ministry of Labor, contending that appellant had demoted him, and subsequently suspended him for an indefinite period. The complaint did not clearly state whether it was an action for wrongful dismissal or for unfair labor practice. The labor commissioner nevertheless found for appellee. Upon review, the debt court also found appellant liable, and confirmed the ruling of the labor commissioner. Appellant then appealed to the Supreme Court where it was held that there was no legal complaint filed by appellee against appellant, and that appellant's indefinite suspension was justified for insubordination and refusing to obey orders, for which there was no legal recourse available under Liberian law. The Court remarked that the judge of the debt court ought to have known that the Liberian laws do not provide remedy in cases of indefinite suspension or constructive dismissal. The Court therefore reversed the trial court's judgment.

Victoria Sherman and Roger Martin for appellant. Boima K Morris for the appellee.

MR. JUSTICE AZANGO delivered the opinion of the Court.

On February 26, 1986 Daniel Guregure received a "confidential" letter from H. A. Morgan, Administrative Services Manager of Liberia Agricultural Company (L.A.C.), concerning his job classification as follows:

"The performance of the Maintenance Department in recent times has not proved to be satisfactory due to poor workmanship and supervision. As a result of this performance and supervision, the Company at times has experienced serious setbacks in certain areas of its operation. With the present cash flow exercise and the cost saving programs instituted by Management, LAC cannot afford to continue in this view.

In view of the foregoing and in the best interest of both parties, Management has

decided that effective February 28, 1986 you will revert to your original position of General Mechanic with the Maintenance Department.

Kindly note that you will have to move from your Company assigned house (6 House) to VAVOSO camp. Contact the Camp Master for your new house."

Prior to those observations, instructions and orders of H A. Morgan, Manager of Administrative Services, Mr. E. H. Whatley, factory maintenance manager, in a memorandum to administrative services, dated 15 February, 1986, had earlier informed management about poor workmanship in factory maintenance, also in the following manner:

Poor workmanship has caused unnecessary downtime loss of production, contamination loss of production, and contamination of rubber resulting in higher costs. Example: installing wrong seal in gearbox no. 1 creeper job had to be redone the following day. Guards left lines numbered 1 and 2 on the floor, letting oil run out, which goes into waste matter, thereby contaminating rubber stock. On dryer number 3 and dryer no. 2, bolts and nuts and scraps were left on the job site after job was supposed to have been completed. Workers are not starting to work on time, leaving for noon break early, and quitting early. Factory maintenance workers' areas have not been kept clean and orderly. Workers have not been notifying supervisors when major breakdown occurs at night as per instructions. An incident of this sort occurred on February 10, 1986 on line no. 1 and no. 2 Harmmerville. Other examples of poor workmanship are: bolts left out of dryers no. 2 and no. 3, inspection covers air flow guides around bolts on 2 and 3. Dryer fans were removed without permission. Manager asked that all absentees be reported; this has not been done. These and other problems relating to poor quality have been discussed with Daniel Guregure on many occasions. However, little progress has been made in these areas. As a result, Daniel Guregure is suspended for two (2) working weeks (12 working days) from 14th February, 1986 through 28th February 1986.

On February 23, 1986, Mr. E. A. Whatley wrote H. A. Morgan, the following memorandum: "Please remove Daniel Guregure from Management Staff to a new position of General Mechanic effective February 28th 1986. He is entitled to all privileges of the new position." (Our emphasis).

Continuing, Mr. E . A . Whatley informed Management that:

At or about 7:00 a.m., March 29, 1986, I met Mr. Guregure at the Factory

Maintenance area.. We shook hands and I asked Mr. Guregure to go to the Supervisor, David B. Sackie, for instructions as to the job he has to perform. At this time, Mr. Guregure stated that he would only take instructions from me as the Factory Maintenance Manager. I informed him that he worked for the Supervisor and for him to go for instructions from him. He again stated he would only take instructions from me. I asked Mr. Guregure to go with me to see the Workshop Manager, Mr. G . Stanton. In the presence of the Workshop Manager, I informed Mr. Guregure that he was to go to his Supervisor, David B. Sackie, for instructions as to his job for the day. Mr. Guregure again stated that he would only take instructions from me. I (meaning E. A. Whatley, Factory Maintenance Manager) suspended Mr. Guegure indefinitely pending an investigation. He was escorted to the factory gate and P.P.D. was asked not to let him re-enter the area until notified to do so by the Factory Maintenance Manager. A note was delivered to Mr. H . Hoe stating that Mr. D. Guregure was not to enter the factory gate without permission of the Factory Maintenance Manager.

On 5th April 1986, Mr. E. A. Whatley, Factory Manager, again wrote the following memorandum to the Administrative Service Manager:

After about 7:30 A..M., Saturday 5 th April 1986, in the presence of Mr. Kabba at the Factory Maintenance Manager's office, a meeting was held between Daniel Guregure and E. A. Whatley, Maintenance Manager. During this meeting, it was explained to Mr. Guregure that the investigation involving his refusal to work for Mr. Sackie, Maintenance Supervisor, was completed. Also that the suspension was over and for Mr. Guregure to resume his duties.

Mr. Guregure was asked whether he had received a letter from the Administrative Services stating that he was a General Mechanic. He stated that he had received the letter. It was explained to Mr. Guregure that he was expected to perform all the duties of a general mechanic when he reported for work, where to report for work, who his supervisor was, and what time to report to work. However, Mr. Guregure stated he would not report for work without documentation.

It was explained to Mr. Guregure that documentation would be presented at the factory maintenance office at 9:00 a.m., April 5, 1986. However, Mr. Guregure stated that he had to go to Buchanan and could not receive the documents at that time either. So Mr. Guregure was asked if he could receive the document at 7:00 a.m., Monday, 7th Anil, and he stated that he could not receive the documents at that time either. So Mr. Guregure was asked what was the earliest time for him to receive the

document. He stated that he could receive the document at 3:30 p.m., Monday, 7 April, 1986, at the office of the factory maintenance manager. The meeting was concluded.

On 5 April, 1986, in addition to this 7:30 a.m. conversation with Mr. G . M . Stanton, the workshop manager wrote to Mr. Morgan, the administrative manger and said: "I was asked to come to Mr. Whatley's office to meet with Mr. Guregure. Mr. Whatley told Mr. Guregure to report to work for Mr. Sackie as a mechanic. Mr. Guregure was told, while I was there, that his suspension was up. Mr. Guregure was to report to work to Mr. Sackie. as a mechanic. Mr. Guregure told Mr. Whatley and myself that he was not going to work for Mr. Sackie. He also said that he would not be back to work. He has not come back to work as of this time."

Moreover, according to a memorandum from E. A. Whatley, factory maintenance manager, to the administrative services manager, dated 8th April, 1986, concerning the meeting with Daniel Guregure on April 7, 1986, the said factory maintenance manager wrote and said among other things that:

On April 7, 1986, Mr. Daniel Guregure met with E. A. Whatley, Factory Maintenance Manager, at 3:30 p. m., in the presence of two witnesses, Mr. Kabba and Mr. Stanton, in the factory maintenance manager's office. Mr. Guregure was asked if he would like to have his union steward present at the meeting, and he said that he did not want a union steward. Mr. Guregure was given a copy of the minutes of the meeting between Mr. Whatley and himself, which took place on 5 April, 1986 at about 7:30 a.m. I asked that he sign stating that he had read the minutes of the meeting, but he refused. Mr. Kabba asked Mr. Guregure if he understood all portions of the document. Mr. Guregure was asked to report for work at 7:00 a. m. each work day and to perform the work of a general mechanic. Mr. Guregure was also informed that he had been marked absent from work. Mr. Guregure was given a copy of his suspension slip. He was asked to cooperate with his fellow workers in performing his job.

Mr. Guregure stated that he would not be at work the following day (Tuesday, 8 April), however, he still did not ask for an excuse from his job.

Again, according to memorandum dated 8 April 1986 from the factory maintenance manager, E. A. Whatley, to the administrative services manager, E.A. Morgan. Mr. Whatley wrote:

During the meeting held between Mr. D. Guregure and myself on April 5th 1986 at 7:30 a.m., I asked Mr. Guregure to go to his job. He did not go to his job, and he did not ask for an excuse from his job, therefore, he was marked absent for 5 April 1986. He also did not come to work on 7 April 1986 and therefore has been marked absent. At the meeting between Mr. Guregure and myself at 3:30 p. m., 7th April 1986, Mr. Guregure was told that he and 7th had been marked absent from work for the 5th April, 1986. He was asked to come to work at 7:00 a.m. each work day. On the 5t h day of April 1986, Mr. Guregure did not come to work, and has been marked absent for this day also. This memorandum is to notify your office that Mr. Daniel Guregure is not taking his attendance for work seriously, and if this pattern continues, it will affect his status of employment with LAC".

According to the "Terms and Conditions of Service for Local Staff Hired in Liberia "and in Accordance with the "Signed" Letter of Agreement," to which petitioner Guregure is a signatory, and in keeping with Sections 1, 13, and 19, it is provided:

Section IV - ON JOINING L. A. C.: The employee will enter into the employment of the Company and shall proceed to, and reside in such location and perform such duties as may from time to time be assigned to him/her by the Company. The employee will devote his/her full attention and efforts to the performance of his/her duties.

Section XIII - HOUSING: The Company will provide the employee with free living quarters in places designated by the Company. The employee will make proper use of the living quarters assigned to him/her. The employee will make no changes to the living quarters or surrounding areas without the written consent of the Company. In the event of termination of employment, the employee will vacate the living quarters within fifteen (15) days of notification by the Company prior to receipt of final payment."

ASSIGNMENT OF HOUSING: Furniture, equipment and utilities will be made in accordance with the current housing policy, and is entirely at the discretion of the Company."

SECTION XIX - EMPLOYEE'S RESPONSIBILITY: Whenever the Company so requests, in accordance with its rights to direct and apportion work, the employee will be required to perform work that falls within the Company's sphere of operations, and for which the employee is qualified to perform."

SECTION XXI - TERMINATION OF EMPLOYMENT BY DEFAULT: If the employee is absent from duty without the approval of the company, except in the case of illness, as verified by the medical director, or is guilty of any default or misconduct, or any breach of the Letter of Agreement, or at any time disobeys, neglects, or refuses to perform his/her duties, or comply with the directions of the company, or is guilty of habitual intemperance, or follows a course of conduct prejudicial to the company or its interests, the company may terminate this Letter of Agreement immediately without notice or payment in lieu of notice. Upon such termination, all obligations of the company to the employee will cease, except for any amount of unpaid salary and money owed by the employee to the company, etc. etc."

Added to these information and understandings, again was another memorandum from B.S. Nair on the subject of "Staff Performance Evaluation" quoted below to Daniel Guregure:

"During my evaluation on December 15, 1982 of your job performance, the details of the discussions are given below so that you do not forget what we expect from you during the period or before the next evaluation."

"PLANNED FOR THE NEXT REVIEW PERIOD:
1. Responsible for Factory Maintenance personnel, and record keeping of breakdowns and repairs.

2. Responsible for preventive maintenance of factory equipment and all other machinery under Factory control.

3. Responsible for factory water system .

4. Assist in maintenance of non-factory water system until final takeover by C.D.

5. Pay close attention to material usage to reduce unnecessary waste.

6. Maintain drier trays and trolleys in good condition.

7. Set up proper system for re-greasing program.

8. Built and maintain three units of croppers, and one unit of Harmmerville to act as spares at all times.

9. Responsible for proper allocation of jobs for improved efficiency and productivity.

10. Must institute proper control of tools."

11. Maintain better manpower control for individual jobs.

Additionally, the following description were given to Guregure as Maintenance Supervisor---Mechanical Division: "Responsibilities---repair, fabricate, install and maintain all mechanical equipment in the Factory area and any other mechanical jobs assigned by the Factory Maintenance Manager. This includes supervision of men and materials for the highest quality job at the lowest expense, with safety of men and materials being observed on all tasks. It also includes training of personnel by formal instruction or on the job instruction. He has the responsibility to collect, maintain, and report any data needed to perform a quality maintenance program, and is to cooperate with any other department in achieving these goals. The Supervisor's action must be in the best interest of the Company at all times."

Despite these revelations, instructions, information, warnings, requests, suggestions, or petitions to Daniel Guregure, to return to work after the suspension period was over, considering his salary remained the same at $640.00 per month, he refused to do so, or to perform any work assigned to him, but elected to seek legal action against the Company through the Adighibe Law Firm. The firm subsequently made the following representations, firstly to the General Manager of the Company and later in a complaint to the Labor Commissioner at Lower Buchanan for "unfair labor practice." Here is that complaint:

Mr. Commissioner:
This is to file a formal complaint against the Management of the Liberia Agricultural Company (LAC) on behalf of our client, Mr. Daniel Guregure, an employee of the said company. The attached photocopy of out letter dated March 5, 1986 addressed to Mr. H. A. Morgan, Manager, Administrative Services of LAC, carries the substance of our complaint which is reiterated in this formal complaint to you.

We request the Management to meet us at a meeting and they failed to do so, hence we are left with no alternative but to let your Ministry go into the matter and decide it. We respectfully request that you make an assignment and let us know as soon as possible.

Kinds regards and best wishes.

The complaint referred to states as follows:

March 5, 1986

"Messrs: Liberian Agricultural Company (LAC)

P .O. Box 1419

Monrovia, Liberia.

Attn: Mr. H . A. Morgan

Manager, Administrative Services:

Gentlemen:

In Re: Mr. Daniel Guregure:

The above named LAC employee is our client of record. He has complained and exhibited to us your Memorandum dated February 26, 1986 demoting him from his earned position of supervisor to general mechanic within the maintenance department effective February 28, 1986. According to you, the demotion removes him from the premises he now occupies as a staff employee, to an assigned inferior house at VAVOSO Camp for ordinary workers. We assume that his salary and other salary benefits will be affected. You indicated in the said Memo that the action was taken because the performance of the Maintenance Department, in recent time, has not proven to be satisfactory due to poor workmanship and supervision. At the same time, our client showed us your suspension slip I.R./2/82 dated February 13, 1986 suspending him for 2 working weeks, beginning 14 February 1986 through 28 February 1986, due to poor quality workmanship in the Factory Maintenance Department." (Emphasis ours).

We have reviewed the complaint of Mr. Daniel Guregure along with relevant documents thereto and conclude that LAC has erred seriously, in that your action in both instances are not only illegal and unfair, but also a gross violation of LAC's own Terms and Conditions of Services for Local Staff hired in Liberia, and in accordance with the signed Letter of Agreement of 1984."

Just to point a few:

(1) The Labor Laws of Liberia do not give the employer the legal right to penalize an employee for a group action. Therefore, the demotion and 2 working weeks suspension of Mr. Guregure for what you expressly stated to be the poor performance of an entire department (factory maintenance department) is illegal and unfair.

(2) Your demotion and suspension actions are not provided for in the employment contract and LAC's Terms and Conditions of Services for Local Staff hired in Liberia. Since you do not have authority to do so, the suspension of Mr. Guregure is unwarranted, illegal and unfair.

(3) You failed to justify the charge of poor performance attributed to Mr. Guregure as a supervisor, that is, itemizing specific areas of performance which he was personally responsible that caused LAC to experience `serious set backs in certain areas of its operations.' Under our law, this constitutes serious breach of duty for which his guilt, not group guilt, must be shown through an investigation. No punishment of any employee can be sustained in the absence of guilt under the Labor Practices Law of Liberia where serious breach of duty is alleged.

This is our opinion which we are prepared to defend up to the Supreme Court of Liberia.

We have the impression that your program of 'cost savings' instituted by LAC "Management may be responsible for the illegal and unfair labor practices action you took against our client.

We have no intention to litigate with you over this obvious wrong you have done to Mr. Guregure or to take advantage of your illegal act and unfair labor practices unless we are forced to so do. In this connection, since your employment terms and conditions of service for local staff hired in Liberia only provides for termination including redundancy, you may declare Mr. Guregure redundant, pay him the adequate compensation in such cases for his sixteen (16) years of services with LAC without any warning for any act he personally committed, and other benefits due him since it is clear that the overriding factor in your action against him is to effect `cost savings' in addition to your request of him to resign which clearly shows that you no longer want him at LAC.

We are prepared to meet you or your lawyer in conference to settle this matter on or before March 17, 1986. Otherwise, you will leave us with no other choice but to seek appropriate redress for our client through the Ministry of Labour and Court of Labour.

Kind regards.
Very truly yours,
(s) Julius Adighibe

COUNSELOR-AT-LAW

The complaint was heard by the labor commissioner at Lower Buchanan, Grand Bassa County, who ruled on the 9 th day of July, A. D. 1987, that the defendant company should pay to plaintiff the amount of $16,640.00 (sixteen thousand six hundred forty dollars) to cover twenty four (24) months salary at $640.00 (six hundred forty dollars) per month, representing salary earned during the last six months and $640.00 (six hundred forty dollars) vacation pay due at termination. The commissioner further ruled that the said amount should be paid on or before August 9, 1987, in the office of the labor commissioner, Grand Bassa County for proper documentation and issuance of release in keeping with the Labor Practices Law of Liberia controlling

Management, dissatisfied with this ruling, entered exceptions thereto and announced an appeal to the debt court, Lower Buchanan, Grand Bassa County, for judicial review. Appellant/ petitioner company filed a bill of petition containing seventeen (17) counts. In countering, appellees/respondents filed returns comprising eighteen (18) counts. Appellant/petitioner also filed a twenty one (21) count reply. (See petition, returns, reply and records of the case). A motion to strike out petitioner's reply was spread upon records, heard and granted by the debt court of Grand Bassa County. It proceeded to hear the petition and returns. (See Ruling dated 16th day of October A.D. 1987). The court reviewed the investigation conducted by the hearing officer and determined that the award made by the said hearing officer in the amount of $16,640.00 should not be disturbed. Appellant/petitioner (LAC) was adjudged liable as charged and ordered to pay Mr. Daniel Guregure the sum of $16,640.00 or reinstate him to his original position of supervisor as if he was never suspended, demoted or suspended indefinitely. Appellant/ petitioner entered exceptions to the court's ruling and appealed to this forum for final review. (See Ruling dated 16th day of October A. D. 1987).

When this case was called for hearing our attention was called to a bill of exceptions containing ten (10) counts.

In count (1) of the bill of exceptions, appellant contended that the debt court judge erred when he granted appellee/ respondent's motion to strike appellant/petitioner's reply as being a strange and illegal pleading on grounds that pleadings in a debt court are limited to complaint and answer under the rules and regulations of the debt court of 1968. Appellant maintains that the said rules and regulations of 1968 relied on by the judge are outdated and superceded by the revised rules of the circuit court and

the revised civil procedure laws provisions on pleading, under which a reply to returns or an answer is a legal and permissible, as well as, a recognized pleadings in Liberia.

Reacting to count one (1) of appellant's bill of exceptions, appellee strangely maintained that the judge did not err in granting appellee/respondent's motion to strike off appellant's reply to the returns because the statute controlling pleadings in a judicial review of a labor matter did not provide for a reply to be filed by the petitioner. Appellee argued that the Supreme Court has consistently held and maintained that where a statute mandates, it must be strictly followed, and that what the law does not give it withholds. Appellee further contended that judicial review of a labor matter is a special proceeding, and the law controlling special proceedings provides for a petition and returns to the petition, and finally, that the statute controlling pleadings in a particular case, as in the case of a judicial review, must be strictly adhered to.

In rejecting the contention of appellant's count one (1) of the bill of exceptions and sustaining count one of the appellee' s brief, the Court says that in keeping with the Civil Procedure Law, Rev. Code 1: 9.10, which states that "except as provided in paragraph 2, there shall be a complaint and an answer and there shall be a reply to the answer which contains affirmative matter of a counter claim. No other pleading shall be allowed."

Further, according to Decree No. 6, promulgated by the Interim National Assembly of The Republic of Liberia, dated 2nd day of May, A. D. 1985, titled, Amending Certain Sections of Chapters Four (4) and Seven (7) of the New Judiciary Law with Respect to Actions of Debt, it is provided in part, "[t]he debt court shall have exclusive original jurisdiction of all civil actions to obtain payment of debt in which the amount is $2,000.00 or more. [T]he procedure of the debt court and method of enforcement of its judgment shall be the same as that of the circuit court in civil actions."

Recourse to counts 1 to 21 of petitioner's reply and in particular, counts 1, 2, 3, 4, 5, 9, 10, 11 and 20 of the said reply, petitioner seems to be setting up a counterclaim - a cause of action existing in favor of appellant against appellee in the instant case. It is a claim which, if established, would have defeated, or in some way, qualify a judgment to which the appellant is otherwise entitled. In these counter claims or setoffs, appellant alleges that:

1. In count one (1) of the reply, appellant set up a legal issue that the complaint in administrative proceedings does not determine the nature of the case; that Decree No. 21, subsection 6, provides that 'an aggrieved employee shall commence a labor action by filing a complaint with the Ministry of Labor which determines the cause of action on the assignment issued by the Ministry.' Guregure did not, in his complaint nor on the records of the investigation, allege wrongful dismissal, which is required in order for the aggrieved employee to be entitled to compensation or reinstatement as a remedy. A fundamental rule is that the facts on which a cause of action is predicated must be alleged and be so stated as to fairly appraise the adverse party of the cause of action. Mr. Guregure did not complain on the records of this case about wrongful dismissal nor raise the issue of his wrongful dismissal.

2. In count 2 of petitioner's reply, it states that there is no penalty for illegal suspension; that no constitutional right of Respondent Daniel Guregure has been violated in this case.

3. In court four (4) of petitioner's reply, it states that an investigation was conducted and that respondent was only suspended for a period of six (6) days for insubordination as evidenced by exhibits D-15, 17, and 18, which suspension was not complained of by respondent on the records of the investigation. That no constitutional right of respondent has been violated and that the constitutional provision referred to is being misinterpreted. That employer has the right to suspend employees and that there is no statute on suspension.

4. In count five (5) of petitioner/appellant' s reply, it also stated that it denies the averments therein regarding multiplicity of suits and denies that the hearing officer's findings as to the facts are supported by substantial evidence on the records of the investigation. In particular, the hearing officer's findings that Mr. Guregure's dismissal is wrongful, was not made in compliance with law and is not supported by a preponderance of evidence. That the factual issue of indefinite suspension and whether that amounts to a wrongful dismissal was raised by Respondent/appellee Daniel Guregure on the records of the investigation.

5. In count nine (9) of petitioner/appellant' s reply, it remarked that the Supreme Court has only held that before an employee can be dismissed by his employer for having allegedly committed a gross breach of duty, there must be an investigation properly conducted at the place of business of the employer to establish the accused employee's innocence or guilt, or that the dismissal of the employee involved is legally

justified, and that the Supreme Court has ruled that all material issues raised should be passed upon.

6. In count ten (10) of petitioner/appellant' s reply, it denied the averments therein and said that no constitutional right of said respondent has been violated, and that the provisions of the Constitution is being misinterpreted. It also denied that the demotion of Mr. Guregure was a punitive measure, but rather an administrative measure involving a change of status, which was not illegal or unjustified, but the terms and conditions of employment binding on said respondent gave petitioner the right to demote him within its discretion.

7. In count eleven (11) of petitioner/appellant' s reply, it denied the averment therein and said that the constitutional provision referred to is misinterpreted and only related to persons charged or accused of a crime; that due process of law is law in its regular course of administration through courts of justice and it is an exercise of the powers of the government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights.

8. In count twelve (12) of petitioner/appellant's reply, it denied the averments therein as being conclusive that no investigation was conducted before said respondent was demoted, and that in counts 13, 14, 15, 16, 17, 18, 19, 20 and 21 of petitioner's reply, it denied all the averments therein contained, and commented on the legal issues raised in the entire answer.

In light of these contentions or replications in the petitioner's reply, it is our holding that respondent/appellee' s motion to strike should not have been granted. For while it is true that motions to strike are proper where the pleadings are unnecessarily prolix, irrelevant, frivolous, or unnecessarily repeated or if they are not authorized by law or the rules governing the practice, and that upon motion or upon the court's own initiative, it may order any redundant, immaterial, impertinent or scandalous matter stricken from any pleading, but none of those conditions and circumstances existed in the reply that was stricken by the judge. Hence, the debt court judge committed reversible error.

In count two (2) of appellant's bill of exceptions, it states that the debt court judge erred when he upheld the findings of the hearing officer, respondent labor commissioner of Grand Bassa County, in his ruling of November 6, 1987, that petitioner punished respondent three times for the same act. In so doing, the judge condoned the hearing officer's raising of an issue not presented in the respondent's

complaint, and making a finding not supported by the records. In count three (3), appellant contended that the judge erred when he upheld the hearing officer/labor commissioner's findings that appellant/ petitioner failed to conduct an investigation after appellee/ respondent was suspended on March 29, 1986, which was not alleged or complained of by respondent, and is unsupported by the records and petitioner's exhibits. In count for (4), appellant maintains that the debt court judge erred by citing in support of said findings in count three above, the case United Liberia Rubber Corporation and the Board of General Appeals v. Belleh and McCauley, 33 LLR 550 (1985), which has no reference to investigations relative to suspensions. In count five (5), appellant maintains that the judge erred in concluding that the main contention in petitioner's petition and argument was that there is no law governing indefinite suspension, and, therefore, the hearing officer erred by ruling in the manner he did, and the award should be denied. The appellant further maintained that the judge erred when he failed to pass upon material issues raised in petitioner's petition joined in respondent's returns, that is, whether the hearing officer erred in his findings that petitioner wrongfully dismissed respondent when petitioner, in fact, did not dismiss said respondent. Respondent did not allege or complain of as part of his complaint filed and spread upon the records that he was illegally suspended for time indefinite without facing an investigation, and did not raise the issue of a violation of the Constitution or of a constitutional right tantamount to wrongful dismissal; and further, that the labor commissioner erred in his award of two (2) years remuneration since section 9 of the Labor Practices Law of Liberia was not invoked nor such an award prayed for as a relief, and that a determination by the hearing officer that an indefinite suspension of respondent was tantamount to a wrongful dismissal is contrary to the Labor Law Practices Law provision on wrongful dismissal in section 9. Hence, the judge committed a reversible error.

In count six (6), appellant/petitioner contended also that the debt court judge committed a reversible error, in concluding that the case, Bong Mining Company v. McDowald and Karnga,, 28 LLR 14 (1979), contained law supportive of the assertion that respondent, Daniel Guregure, purported indefinite suspension for insubordination without facing an investigation is an infringement upon his constitutional right to work under Articles 18 and 20 of the Constitution of Liberia. Appellant contended further that the constitutional provision referred to in said case only relates to persons charged or accused of a crime, and that said case only declares unconstitutional an indefinite suspension of an employee for a period of three years for a criminal offense, without instituting criminal prosecution of the employee. Notwithstanding, this alleged constitutional violation was not raised at the hearing officer's level, but was raised for the first time at the appellate level in the returns of

respondent before the debt court judge, who should not have entertained said issue of the violation of the right to work or make a ruling thereon. His action in this respect is unlawful and prejudicial and constitutes reversible error.

In counts 7, 8, and 9 of appellant's bill of exceptions, appellant contended that the debt court erred in upholding the hearing officer's findings that Appellee Daniel Guregure was suspended for time indefinite without facing an investigation, which is considered an infringement of his constitutional right and tantamount to a constructive wrongful dismissal. Such a finding is not supported by the facts on the records of the investigation, as it was not alleged by said respondent, and is not supported by the Labor Practices Law. The judge committed reversible error by upholding the hearing officer's finding and award predicated on section 9 of the Labor Practices Law and based entirely on a suspension slip dated March 19, 1986, irregularly admitted into evidence after respondent's counsel had already rested oral and documentary evidence over petitioner's objection. The debt court judge further erred and showed bias in supporting the findings of the hearing officer as to the wrongful dismissal of respondent/appellee when same is unsupported by substantial evidence on the records and is not a result of a fair consideration of all the evidence. The debt court judge erred in affirming and confirming the award of twenty four (24) months remuneration amounting to $16,640.00 in favor of respondent/ appellee and ordering, in lieu thereof, his reinstatement, to which respondent is not entitled under section 9 of the Labor Practice Law. He therefore committed a reversible error.

Additionally appellant argued: (1) that the ruling of the debt court judge, affirming that of the labor commissioner for Grand Bassa County, should be reversed by this Honorable Court because there was no action of wrongful dismissal before said body. A recourse to the records will reveal that on March 25, 1986, when the so-called complaint was filed before the labor commissioner, Daniel Guregure had not yet been indefinitely suspended, instead the indefinite suspension was effected on the 29th day of March 1986. Therefore, the contention that appellee by said indefinite suspension, had been constructively dismissed cannot hold. At the time of the filing of the alleged complaint, appellee Daniel Guregure had just completed a suspension of two (2) weeks for his inability to perform. Thereafter, he was reassigned to the position of general mechanic, effective February 28, 1986. Therefore, the debt court judge erred and committed a reversible error when he awarded compensation to appellee Daniel Guregure in the absence of any action of wrongful dismissal brought before him. He also argued that in order for section 9 of title 19 creating the Labor Practices Review Board as amended under section 1, page 245 of the Labor Laws of Liberia to apply, there must be an action of wrongful dismissal alleged and

established in order for compensation under subparagraph (a), (i) & (ii) to be awarded, which is not so in the instant case. The trial judge of the debt court for Grand Bassa County, therefore, erred and committed a reversible error. Hence, the said ruling, awarding compensation to appellee Daniel Guregure, not for wrongful dismissal but for unfair labor practice, should be reversed.

Appellant argued further, that section 1508 of the Labor Practices Law of Liberia, essentially provides the absence of an employee from his employment for more than ten (10) consecutive days without good cause shall be deemed to have terminated his employment. In the instant case, appellee Daniel Guregure abandoned his duty on February 28, 1986 when he was to have resumed his duties as general mechanic under the supervision of David Sackie, the factory maintenance supervisor. He refused to perform and, instead, insisted that he is assigned as the workshop maintenance supervisor. He failed to report to work as general mechanic up to and including the date of the filing of his so-called complaint on March 25, 1986, a period far exceeding the ten (10) days provided for in the above cited Labor Law. Therefore, at the time of filing said complaint, Daniel Guregure was legally deemed to have terminated his indefinite contract of employment with appellant. He was no longer in the employ of appellant at the instance of Daniel Guregure himself. The debt court judge for Grand Bassa County therefore erred and committed a reversible error in awarding compensation to said co-appellee Daniel Guregure. The judgment should be reversed.

Appellant contended that the suspension of appellee Daniel Guregure on March 29, long after he had filed his complaint before the labor commissioner for Grand Bassa County, was due to his refusal, amounting to insubordination, to resume his duties as general mechanic. He also refused to work under David B. Sackie, and although said suspension was lifted on April 5, 1986, thereby allowing appellee Daniel Guregure to resume his duties, he refused to return to work up to the time of the hearing of his so-called complaint of unfair labor practice. Accordingly, both the labor commissioner and the debt court judge erred and committed reversible error. Their judgments should be reversed.

Counsel for appellant also argued, that under the Civil Procedure Law, Rev. Code 1:9.1, there are only three (3) kinds of pleadings in civil cases allowed by law: a complaint, an answer and a reply. This statutory provision supercedes the 1968 regulations of the debt court, since the revised Civil Procedure Law was enacted in 1972 and published in 1973 to govern and control procedures in all civil cases, and since a debt action is civil in nature, it is not an exception. Therefore, the debt court

judge for Grand Bassa County erred and committed a reversible error when said judge ordered the reply of appellant/petitioner stricken off the records based on the 1968 Regulations of the Debt Court. The ruling of the debt court judge for Grand Bassa County should therefore be reversed.

Counsel for appellant also argued that none of the laws relied upon by the debt court judge in his ruling of November 6, 1987, is applicable to the instant case. The debt court judge for Grand Bassa County only blindly accepted the citations of Appellee Daniel Guregure, without verifying them, to see whether they are applicable to the action before him. The erroneous ruling of the debt court judge should therefore be reversed.

Appellant's counsel also argued that even in the testimony in chief of Daniel Guregure, who took the stand to testify for himself, he did not mention at any time that appellant dismissed him. It is therefore inconceivable that a trial judge responsible for the administration of fair and impartial justice would proceed to award compensation on the basis of the suspension of an employee, which is the right of management and in the face of evidence clearly showing that it was the complainant who refused to work, even after said suspension was lifted. To uphold this kind of ruling would amount to a travesty of justice. The ruling should be dismissed and reversed.

Continuing his argument, appellant maintained that under section 1508 of the Labor Practices Law of Liberia, at page 295 and 296, sub-paragraph 5 and 6 (b), appellant/petitioner had the right to dismiss Daniel Guregure following his refusal to perform his duties as general mechanic under the supervision of David B. Sackie from February 28 - March 29, 1986. This act, appellant maintains, is nothing less than insubordination, for which the employer can terminate the services of the employee. However, appellant asserted, in the instant case management, in exercising its discretion, suspended Daniel Guregure instead, and later, on April 5, 1986, lifted the suspension. Yet Daniel Guregure refused to return to work up to the filing of his so-called complaint. It is therefore illegal and unfair to the management, and a miscarriage of justice for the debt court judge to have upheld the erroneous ruling of the labor commissioner for Grand Bassa County. This renders the debt court judge's ruling erroneous, unsupported by law and the facts surrounding the case, and it should therefore be reversed, for to uphold such a ruling, the Court would be setting a very dangerous precedent. (See bill of exceptions and minutes of argument).

Against these legal arguments, counsel for appellee has refuted and countered the

said bill of exceptions in the following manner:

1. That as to count two (2) of the bill of exceptions, appellee, having already responded to count (1) of his arguments elsewhere in his brief, says that the judge did not err in upholding the findings of the hearing officer that appellee, Daniel Guregure was punished three times for the same offense, because the hearing officer was clothed with the legal authority to make a determination based upon the facts presented at the administrative hearing which he summarized on page three of the ruling of July 9, 1987 and revised by the judge. Since the records submitted to the reviewing court contained the issues determined by the judge for supporting a hearing officer's findings based upon the records he made at the administrative hearing, the said count two (2) should be overruled.

2. That as to counts 3 and 4 of the bill of exceptions, the judge made no reversible error in upholding the hearing officer's findings - the trier of facts under the law - that no investigation was held after the employee appellee Daniel Guregure complained against his immediate boss' actions against him. The charge remained a mere allegation, without any investigation to establish appellee's guilt or innocence, because the records certified to the reviewing court dehors of any evidence of an investigation conducted after appellee had been accused of poor quality workmanship, in total disregard of the law enunciated by the Supreme Court of Liberia in the ULRC v. McCauley case. Hence, error cannot be attached to a judge for supporting his ruling with case law he considered applicable to his position in a particular case. It was defendant's/ appellant's own counsel who submitted the memorandum of March 29, 1986, in evidence on March 30, 1987 with other documents relating to the indefinite suspension of Complainant/appellee Daniel Guregure. Hence, the hearing officer was legally correct to pass upon it as he did.

3. That as to count 5 of the bill of exceptions, counsel for Appellee says and strongly maintains that the judge did not err when he said in his ruling that the main contention of the petitioner in both its petition and argument is that there is no law governing indefinite suspension, because this was the point or the main argument of the petitioner's counsel before the judge. Hence, the judge was legally correct to refer to same in the manner as he did.

4. That despite the fact that complainant did not file a complaint for wrongful dismissal and violations of the law or constitution and did not indicate that this was a case of indefinite suspension in his complaint, counsel for appellee says that the hearing officer was legally right as a judge of the facts, and after considering the facts

from the complainant and the defendant, to rule that indefinite suspension was tantamount to constructive dismissal. This is especially so when the complaint was suspended for two weeks and at the expiration of the two weeks, he was demoted from a staff position to non-staff position without any investigation, even though he requested for one in his letter to the general manager of defendant company, Mr. Gerhart, dated February 17, 1986.

5. That as to the non inclusion of the indefinite suspension of the complainant in the complaint, counsel for appellee says that the complainant or his counsel could not have included same in the complaint because the complaint was written on the 25th of March, 1986. The complainant and his counsel only contemplated on the two punishments, the two weeks suspension and the demotion of the complainant, and did not anticipate that Mr. E. A. Whatley, factory maintenance manager, would have been wicked enough to suspend Mr. Guregure indefinitely pending an alleged investigation, which investigation he never had. Appellee and his counsel were left with no alternative but to add same to the complaint during the hearing by the labor commissioner, especially so when the defendant/appellant itself submitted the suspension for time indefinite memorandum marked D/16 for admission into evidence. The hearing officer was clothed with the authority to come to a conclusion after receiving the facts of the case to the extent as to indicate whether or not the constitutional right of the complainant was tampered with, and what he considered to be an indefinite suspension without facing investigation as in keeping with the Honorable Court's holding in the case, Bong Mining Company v. McDowald and Karnga, 28 LLR 14 (1979). Count 5 of the bill of exceptions should therefore be dismissed, for the awarding also of the two years salary is in keeping with the holding of this Honorable Court in said McDowald case.

Appellee's counsel also argued that it was counsel for appellant who first cited the McDowald case which counsel for appellee also cited. According to the holding of this Court in that case, the indefinite suspension of an employee without facing investigation is an infringement upon his constitutional rights. Appellee further argued that the McDowald Court also regarded indefinite suspension as a shrewd device resorted to by companies to save money when an employee's salary reaches near the peak and is considered too good for him, as in the instant case. Apparently, LAC considered that six hundred forty ($640.00) dollars was too good for Daniel Guregure, the appellee herein, who had just received an increment and elevation as per a Letter of Agreement dated March 28, 1984 - Subject -Increment, and marked as "C" 4 and 5 respectively, as found in the file of the case.

According to appellee's counsel, therefore, the question of length of time or period the aggrieved party, in this case Daniel Guregure, was suspended for time indefinite and remained without investigation is immaterial, for whether he had remained home for one to two years, or even five years, after the indefinite suspension took place March 29, 1986, and he would still suffer the effects of not having an investigation or being reinstated.

Appellee's counsel also argued that as to counts 5 and 6 of the bill of exceptions, the debt court did pass on the issues presented to it and held that the hearing officer, as judge of the facts, did correctly pass upon the factual issues presented to him and that his conclusion supports the facts. Counsel for appellee further argued and contended that an administrative agency's findings as to the facts, which are supported by substantial evidence, as in the instant case, are binding and conclusive on a reviewing court, and may not be disturbed or set aside in the absence of fraud and/or bias. Counsel maintained that where a hearing officer complied with the requirement of due process of law, and the administrative agency acted within its jurisdiction and authority, the court must accept the findings as final and true, and may not substitute its own final judgment or findings of facts for that of the administrative agency.

Appellee's counsel also argued and contended that as to count 7 of the bill of exceptions, the judge did not err, for there is no record to show that an investigation was ever conducted to warrant the indefinite suspension of appellee/respondent, Daniel Guregure, and that both the hearing officer and the judge were within the pale of law to hold and affirm that the indefinite suspension of an employee without an investigation is tantamount to infringement on his constitutional rights and is equivalent to constructive dismissal, in accordance with the holding of this Honorable Court in the Bong Mining Company v. McDonald case previously cited.

Appellee's counsel also argued and contended that count 8 of the bill of exceptions should be overruled because an administrative hearing is a fact-finding exercise and, therefore, under the labor laws, it is not governed by the strict and technical rules of evidence. Counsel went on to state the fact that the appellee, Daniel Guregure, was suspended for time indefinite and the records of the suspension presented to the hearing officer, whether or not they were admitted into evidence, the hearing officer was legally correct to have said records of suspension form part of the evidence on record in this case.

Appellee's counsel also argued, that with regards to count 9 of the bill of exceptions, it should be outrightly dismissed because of its falsity, in that the indefinite

suspension which is considered a constructive dismissal, is supported by the records, and as such, the holding of both the hearing officer and the Debt Court judge should be confirmed and affirmed because they are in conformity with stare decisis of this Court.

Concluding, appellee's counsel finally argued, that to count 10 of the bill of exceptions should be overruled, in that the Supreme Court has held that indefinite suspension is a shrewd money-saving device, and by virtue of Appellee Daniel Guregure's efficient services for sixteen (16) consecutive years, he is entitled to nothing less than twenty four (24) months salary as decided by the hearing officer and confirmed and affirmed by the judge of the debt court for Grand Bassa County.

In out attempt to determine and bring to a close the contentions of the parties in this case, there are several questions and issues that are hovering in our minds that deserve answers:

1. In keeping with the Labor Practices Laws of Liberia and international labor standards, does a company have the legal right to penalize, suspend or dismiss an employee from service if there is a legal and justified cause to do so in keeping with its policy?

2. Did the appellee, Daniel Guregure, state in his complaint to the labor commissioner or hearing officer a cause of action, i.e (1) wrongful dismissal; (2) unfair labor practices; (3) illegal dismissal; or 4 illegal suspension?

3. Is indefinite suspension or constructive dismissal provided for under our statutes for which a remedy will lie?

4. What were the responsibilities of Daniel Guregure under the employment contract?

5. Were the measures taken against Daniel Guregure repressive by virtue of his being suspended three times for insubordination by two different corporate officers, for acts arising from the same series of events?

Let us now proceed to obtain answers to these questions as we revert to, and take into consideration, the controverted issues and determine them as they are presented to us in the bill of exceptions and appellee's response to the points of contentions in the briefs and arguments before us.

In our opinion, count one of the bill of exceptions should be sustained as against appellee's count one of his response or reactions to the said bill of exceptions, in that, according to the weight of authorities on pleadings, it is provided that "[m]otions to strike are proper only where the pleadings are unnecessarily prolix, irrelevant, frivolous, or unnecessarily reported, or if they are not authorized by law or the rules governing the practice." Since none of these conditions and circumstances existed from the face of the reply to have warranted the hearing officer to strike out appellant's reply, he therefore erred in doing so. Civil Procedure Law, Rev. Code 1:16.1, 16.2 and 16.3.

Whilst we are in agreement with the contention of appellee that judicial review may be a special proceeding and the law controlling special proceedings provides for a petition and returns to the petition, we note however, that the Act of the Legislature to Repeal an Act Amending the Labor Practices Law of Liberia with respect to Administration and Enforcement, and to Amend Decree No. 21 of the Interim National Assembly in Connection Therewith (Approved, October 20, 1986) at §23.4, Procedure on Review, provides: "In the conduct of all cases brought before it, the labor courts shall be guided by the rules of the debt court and shall make findings of facts and conclusions of law thereon in accordance with provisions of Chapter 23 of the Revised Civil Procedure Law of Liberia, and may modify, revise, affirm wholly or in part a judgment before it as to any party and when the interest of justice so require, remand a case to the hearing officer or labor commissioner for further proceedings with such instructions or orders as may be necessary and proper."

Further, the Judiciary Law, Rev. Code 17:4.0, Jurisdiction and Procedure, provides, inter alia: "The procedure of the debt court and the method of enforcement of its judgment shall be the same as that of the circuit court in civil actions."

And §4.9 of the New Judiciary Law, also provides that:

"The debt court shall be considered always open for adjudication of matters over which the court has jurisdiction and for the purpose of filing any pleading or other papers authorized by rule or statute of issuing and returning mesne and final process and of making and directing all interlocutory motions, orders and rules."

Also in the New Judiciary Law, §9.1, Kinds of pleading, it is provided:

1. Pleadings Required. Except as provided in paragraph

2. When Answer Not Required. "That is, if a defendant appears within the time prescribed by §3.62, his failure to interpose an answer shall be deemed a general denial of all the allegations in the complaint. At the trial, such a defendant may cross examine plaintiff's witness and introduce evidence in support of any affirmative matter. There shall be a complaint and an answer and there shall be reply to the answer which contains affirmative matters or counter claims. No other pleading shall be allowed."

In defendant's plea in the reply, not only did he state affirmative defenses which amounted to burden of proofs, or something more than a mere denial of plaintiff's allegation, or a defense which set up new matters not embarked upon in the ordinary scope of denial of the material averments of the complaint, but stated therein that the matter suggested by the plea of plaintiff affords sufficient reason why the plaintiff should not have the relief he prayed for or the discovery he seeks. 10 R.C.L. at 457; 21 R.C.L. §125 at 568.

According to settled principles of law:

"Affirmative defenses are required to be specially pleaded, being new matters within the meaning of the term. The reason for this rule is that such defenses are not embraced within the ordinary scope of a denial of the material averments of the complaint; hence it is that a plea of such defense is necessary to advise the opposing party as to the nature and scope of the defense. Matters to be specially pleaded within the rule above stated vary of course with the nature of the action and the scope of the pleadings; but in general, the principle stated will be found to be the one that marks the property and very often the necessity for special pleading." 21 R.C.L. §125 at 568 -69. (Our emphasis).

To have granted appellee's motion to strike out appellant's reply was irregular and therefore the debt court judge erred.

We now refer to counts 2, 3, and 4 of appellant's bill of exceptions and appellee's response and reactions thereto contained in counts 2 and 3 of his brief and argument. The Court will sustain the said counts 2, 3, and 4 of the bill of exceptions, in that, the complaint does not express in clear-cut, definitive, distinctive and unequivocal language that the charge of wrongful dismissal or unfair labor practices was alleged against the appellee. On the contrary, counsel for appellee expressed opinions regarding the demotion of Guregure from a higher position of supervisor to that of

general mechanic.

The complaint/opinion relates to what the Labor Practices Laws of Liberia would regard as unfair labor practices. He further expressed an opinion that the actions of the company with respect to the demotion and supervision were in violation of and breach of the "Terms and Conditions of Services for Local Staff Hired in Liberia." In his letter to the company, appellee's counsel stated that the company failed to justify the charge of poor performance attributed to appellee Guregure as supervisor, that is, the failure of the company to itemize specific areas of performance for which Guregure was personally responsible that caused LAC to experience serious set-backs in certain areas of operations. Counsel for appellee further expressed, in his letter to the company that under the Labor Practices Laws of Liberia, the action constituted serious breach of duty, in which individual guilt, not group guilt, must be shown through investigation. He also expressed the view that no punishment of the employee can be sustained in the absence of guilt under the Labor Practices Laws of Liberia where serious breach of duty is alleged. But, more importantly, and above all of these views, counsel for appellee expressly specifically and clearly stated that "this is our opinion which we are prepared to defend up to the Supreme Court of Liberia."

As counsel for appellee, he suggested (but does not allege as the cause of his complaint) that since the company's employment "Terms and Conditions of Service for Local Staff Hired in Liberia" only provided for termination due to a declaration of redundancy, it should declare Guregure redundant, pay him adequate compensation, as provided for in such cases, for the 16 years services with LAC, plus other benefits due him since he was terminated without any warning, and was not terminated for any act that he personally committed. According to counsel for appellee, the overriding design of the company's action was to effect a resignation. Of course, this argument was rejected by the appellant.

According to authorities on trials, investigation is an examination before a competent tribunal according to the law of the land, of the facts or law put in issue in a cause for the purposes of determining such issues. BALLANTINE'S LAW DICTIONARY1298-1299. In other words, an investigation or examination concerns issues on which to bring an action or to sue upon. Further, to investigate is to make inquiry judicial or otherwise, for the discovery and collection of facts concerning the matter or matters involved. BALLENTINE'S LAW DICTIONARY 632. (Our emphasis). In the light of the views expressed by counsel for Guregure to the company, could we say that a cause of action was alleged? Certainly not.

According to settled principles of law on pleadings, as is in the instant case:

"Pleadings are the allegations made by the parties to an action or proceeding for the purpose of presenting the issues to be tried and determined, whether such issues of law or of fact. They are the formal statements by the parties of the operative facts (as distinguished from evidential facts), which constitute their respective claims and defenses. Pleadings relate to the cause of action, either to support or defeat it, being comprised in the record of the case, as distinguished from papers that are not pleadings, such as a motion, or a mere statement not entitled to filing or affidavits."

Pleadings are designed to develop and present the precise points in dispute between parties. Their office is to inform the court of the facts in issue, that it may declare the law and the parties that they may know what to meet by their proof. In a more restricted, and commonly accepted sense, the object of pleadings is to notify the opposite party of the facts which the pleader expects to prove, so that he may not be misled in the preparation of his case. And so it is that the allegation of such facts must be made with the certainty which will enable the adverse party to prepare his evidence to meet the alleged facts."

In general, it is necessary in order to confer jurisdiction on a court to render a judgment, that the subject matter be presented for its consideration in some mode sanctioned by law. And so it has been ruled that unless a complaint or other pleading is filed, the judgment of a court of record is void and subject to collateral attack, even though it may be a court which has jurisdiction over the subject matter referred to in the judgment. This is the rule in jurisdictions (such as ours) in which an action is commenced by the filing of a complaint". 41 AM. JUR., Pleadings, §§2, 3, and 4. Moreover, it is a fundamental rule of law that the facts on which a cause of action is predicated must be alleged, and be so stated as to fairly appraise the adverse party of the cause of action. Bailey v. Sancea, 22 LLR 59 (1973).

According to our law on wrongful dismissal, it is specifically stated in §9 that:

"Where wrongful dismissal is alleged, the Board of General Appeals (now the National Labour Court, or debt courts in counties outside Montserrado County) shall have power to order reinstatement, but may order payment of reasonable compensation to the aggrieved employee in lieu of reinstatement. The party against whom the order is made shall have the right of election to reinstate or pay such compensation. In assessing the amount of such compensation, the Board shall have

regard to:

(a) Reasonable expectation in the case of dismissal in a contract of indefinite duration; length of service; but in no case shall the amount awarded be more than the aggregate of two years salary or wages of the employee computed on the basis of the average rate of salary received six (6) months immediately preceding the dismissal, however, if there are reasonable grounds to effect a determination that the dismissal is to avoid the payment of pension, then the Board may award compensation of up to but not exceeding the aggregate of three (3) years salary or wages computed on the basis of the average rate of salary received six (6) months immediately preceding the dismissal.

(b) The Board of General Appeals may assess and order payment of all arrears of remuneration payable in any case referred to it." Labor Practices Law, Lib. Code 19-A: 9.

In the instant case, appellee has failed to file for wrongful dismissal, illegal suspension, or unfair labor practice, and has failed to prove any at the trial or the investigation before the labor commissioner or hearing officer, even though all of these causes of action have been provided for under the Labor Practices Laws. On the contrary, he has relied upon, and contended for benefits under indefinite suspension or constructive dismissal, for which the statute provides no remedy.

Counts 5, 6, 7, and 8 of appellant's bill of exceptions, together with the arguments contained in his brief should be and the same are hereby sustained as against appellee's response and arguments contained in counts 5, 6, 7, 8 and 9 of appellee's brief for the reasons set forth in this opinion. In other words, there was no legal complaint filed by appellee against appellant, hence it was not necessary to conduct an inquiry, judicial or otherwise. Appellee's indefinite suspension was justified as he displayed insubordination by refusing to obey orders of the company to report to work and perform duties to which he was assigned. Moreover, he refused to change positions after he was warned to do so on several occasions, as well as failed to report to work despite the fact that the change in position did not affect his salary and other benefits, nor his responsibility and influence with workmen in the company. The hearing officer or the debt court for Grand Bassa County should have dismissed this action under the circumstances. The case Bong Mining Company v. McDowald, 28 LLR 14 (1979), concerning illegal suspension is inapplicable in the instant case because no crime has been alleged. We notice with dismay that this cause commenced with irregularities which continued throughout. The case began with no

distinct, clear-cut complaint, alleging a cause of action; rather, it commenced with allegations of constructive dismissal contained in opinions expressed by appellee's counsel. Constructive dismissal is not a cause of action provided for under our labor statutes. The debt court should have known that our current labor laws attach no penalty for constructive dismissal or illegal indefinite suspension. The ruling of the trial judge, having been pregnant with several errors, is hereby reversed and the case dismissed. Costs disallowed.

The Clerk of the Court is hereby ordered to send a mandate to the court below informing it of this judgment. And it is hereby so ordered.

Judgment Reversed.