

NATIONAL PORT AUTHORITY, by and thru its Managing Director, A
LAMIN KROMAH, Appellant, v. **ARTHUR TARR et al., HIS HONOUR
SAMUEL M. KPANAN**, Judge of the National Labour Court, and **PHILIP G.
WILLIAMS**, Labour Relations Officer, Ministry of Labour, Appellees.

APPEAL FROM THE NATIONAL LABOUR COURT, MONTSERRADO
COUNTY.

Heard: December 8, 1993. Decided: February 18, 1994.

1. Since a corporation is an artificial entity, it cannot be personally served with process; instead it can be served only through an officer or agent of the company, or someone designated by law to receive service of process in its behalf.
2. All papers required to be served on a party in a pending action shall be served upon his attorney by: (a) delivering the paper to the attorney personally (b) mailing the paper to the attorney by registered mail (c) leaving the paper with a person in charge of the attorney's office and (d) leaving the paper at the residence of the attorney with a person of suitable age.
3. A party who makes an application for a default judgment shall file proof of service of the summons and the complaint, and give proof of the facts constituting the claim, the default, and the amount due.
4. All court officials empowered to serve precepts must always serve such document on the person authorized to receive process, otherwise the service will not be considered proper.

The appellees instituted an action of unfair labor practices against the appellant corporation at the Ministry of Labour. The appellant attended the hearing up to October 9, 1992, and thereafter did not attend subsequent hearings even though a total of five notices of assignment were allegedly served on appellant, which appellant claimed it did not receive. Consequently, default judgment was prayed for and rendered against appellant by the hearing officer on December 29, 1992. The National Labour Court initially reversed the ruling of the hearing officer on the grounds that the appellant was never served with notice of assignment for the hearing. However, the court later affirmed the default judgment, holding that the records revealed that the appellant did receive the notice of assignment for the hearing but failed to appear. On appeal, the Supreme Court held that the five notices of assignment allegedly issued were never served on or received by appellant as evidenced by the returns of the sheriff. The Court also held that since the earlier

notices of assignments were served on the counsel for appellant, all subsequent papers should have been served on said counsel. Finally, the Court held that the appellees failed to comply with the statute on default judgment because they did not establish any proof that the papers had been served and the facts constituting the claims. Accordingly, the Court *reversed* the ruling of the trial court and remanded the case for a trial *de novo*.

Osborne K Diggs Jr. appeared for petitioner/appellant. *Theophilus C. Gould* appeared for respondents/appellees.

MR. JUSTICE SMALLWOOD delivered the opinion of the Court.

This matter is before us on appeal from a ruling of the judge of the labour court of Liberia confirming a ruling of the hearing officer of the Ministry of Labour in a labor dispute between the National Port Authority and its workers, headed by Arthur Tarr.

A perusal of the records transmitted to this Court from the court below revealed that the hearing officer of the Ministry of Labour, Philip G. Williams, rendered a default judgment in a hearing of unfair labor practices against the National Port Authority on the 29th day of December, A. D. 1992 and awarded the complainants, now appellees before this Court, an amount of US\$115,580.69. This default judgment was affirmed by the labour court on the 31st day of March, A.D. 1993, hence this appeal to the Supreme Court.

According to the records in this case, the judge of the labour court rendered a ruling on the petition for judicial review on the 30th day of March 1993, in which he reversed the ruling of the hearing officer and remanded the case for retrial on the ground that the petitioner, National Port Authority, did not have its day in court because the notice of assignment for hearing of the matter for December 29, 1992, the day on which the default judgment was rendered, was not served on the National Port Authority. The complainants, now the appellees, took exception to the said ruling and announced an appeal to the Supreme Court of Liberia sitting in its October 1993 Term. The appeal was granted. The next day March 31st, 1993, the judge rendered a second ruling which is termed "correction of court's ruling on the 30th day of March, A. D. 1993." This time he ruled in favor of the complainants/respondents, and against the petitioner, National Port Authority. In his ruling the judge said:

"By oversight the court ruled during the last sitting that an assignment of December 21, 1992, the day the default judgment was given, was not served on the petitioner. However, a careful inspection of the file has revealed that an assignment was, in fact, served on the petitioner for the hearing of the case on that day. Court says therefore that in keeping with Rev. Code 1: 41.6, it wants the record to reflect that an assignment was made on that day on the petitioner. The Court relies on 25 LLR 131, 142 (1976), "...Wherefore, and in view of the foregoing facts and circumstances the judgment of the last sitting is hereby set aside. The ruling of the hearing officer is hereby confirmed and affirmed."

The petitioner, National Port Authority, excepted and announced appeal to the Supreme Court, sitting in its October Term 1993. The appeal was also granted.

The issue in this case surrounds the service of the notices of assignment for the continuation of the hearing of the case before the hearing officer at the Ministry of Labour. The records revealed that the appellant, National Port Authority, participated in the hearing of the matter up to and including October 9, 1992.

The hearing officer in his ruling on the application for a default judgment said:

"From the records of these proceedings, the defendant. received from this investigation several notices of assignment and attended the hearing of the case on the 21' day of September A. D. 1992; October 5, 1992; October 9, 1992, as well as November 18, 1992.

From that point, the defendant has elected to stay away from the hearing of this case and, not only that but, has advised employees of N.P.A. not to accept assignments when served on defendant in this case Therefore, the application for a default judgment so prayed for by the complainant representative is hereby granted and he may proceed with the continuation of this case".

The records before us reveal that a total of five (5) notices of assignment were issued on the following dates November 10, 1992; November 19, 1992, December 1, 1992, December 4, 1992, and December 16, 1992, for continuation of the hearing of the case on November 18 and 24, respectively, and December 4, 16 and 24, 1992, respectively. The spaces designated for the defendant to sign when he receives the notices of assignment are blank on all five of the above notices of assignment. The returns on the back of all five notices of assignment state that they were "served on the defendant/management parties but the management refused to sign the notice of

assignment...". These are the notices of assignment that served as the basis for the hearing officer granting a default judgment in this matter.

The National Port Authority is a public corporation established under an Act Repealing and Adopting Chapter Six of the Public Authorities Law, approved May 12, 1970. Section 51 reads:

"§ 51. *National Port Authority*: An authority to be known as the National Port Authority is hereby created pursuant to Chapter 1, Title 29 of the Liberian Code of Laws, 1956 as amended by the law of 1956; such authority shall be a body politic and corporate constituting a public authority and shall have the powers granted it under this chapter. An Act Repealing and Adopting Chapter Six of the Public Authorities Law page, 2.

"A corporation, since it is an artificial entity, cannot be personally served with process, and can be served only through an officer or agent of the company, or someone designated by law to receive service of process in its behalf." 19 AM. JUR. 2d., *Corporations*, § 2194, page, 105.

The returns on the five notices of assignment do not name anyone on whom the notices were served but merely states: "served on defendant management parties; the defendant management refused to sign the notice of assignment". It did not name the person on whom it was served and who refused to sign for it. Certainly, he could not have served the corporation, which must act through a human being.

Our law also provides that papers required to be served on a party in a pending action shall be served upon his attorney by:

(a) delivering the paper to the attorney personally (b) mailing the paper to the attorney by registered mail (c) leaving the paper with a person in charge of the attorney's office and (d) leaving the paper at the residence of the attorney with a person of suitable age. Civil Procedure Law, Rev. Code 1: 8.3 (3).

The records, as well as the ruling of hearing officer, reveal that the defendant, National Port Authority, appeared by counsel and participated in the hearing of the matter. The notices of assignment to which the defendant appeared were signed by Counsellor Osborne K. Diggs, Jr. Under the law and practice in this jurisdiction, all subsequent notices of assignment should have been served on Counsellor Osborne K. Diggs, Jr.

The law provides that on application for judgment by default, the applicant shall file proof of service of the summons and complaint, and give proof of the facts constituting the claim, the default, and the amount due. Rev. Code 1: 42.6. No proof of the alleged default was filed in this matter except the nonappearance of the defendant's counsel on those days when the notices of assignment were not received by him.

The notice of assignment of December 16, 1992, assigning the case for hearing on the 21st of December 1992, the day on which the default judgment was rendered, had not been served. It was this very same notice of assignment upon which the judge of the National Labour Court relied when he reversed himself and confirmed and affirmed the ruling of the hearing officer.

All sheriffs, bailiffs and other ministerial officers empowered to serve precepts must always serve the precept on a person authorized to receive process especially in the case of a corporation, and on the person named in the precept. Additionally, the returns should carry the name of the person or persons on whom the precept was served to avoid a repetition of what happened in this matter.

In view of the foregoing facts and law cited above, we hold that the National Port Authority, a corporation, was not served with the notices of assignment to appear for the continuation of the hearing of this matter before the hearing officer, and therefore the ruling of the judge of the labour court is hereby reversed and the matter is ordered remanded to the Ministry of Labour to be heard de novo.

The Clerk of this Court is instructed to send a mandate to the judge of the National Labour Court to give effect to this opinion. Costs are to abide final determination of the case. And it is hereby so ordered.

Reversed and Remanded.