IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A. D. 2019

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR. .....CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE ... .ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH .....ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE..... .....ASSOCIATE JUSTICE

The Management of Eternal Love winning Africa (ELWA) of the City of Paynesville, Montserrado County.....APPELLANT	)	
Versus	)	ACTION: APPEAL
Her Honor Comfort S. Natt, Judge, National Labor Court, Temple of Justice, Monrovia and Joseph Mulbah et al. of the City of Monrovia, Liberia .....APPELLEESSS	)	
Joseph Mulbah et al. of the City of Monrovia, Liberia .....COMPLAINTANTS	)	
Versus	)	ACTION: UNFAIR LABOR PRACTICE
The Management of Eternal Love winning Africa (ELWA).....RESPONDENT	)	

HEARD: May 1, 2019 DECIDED: August 9, 2019

MADAME JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

The records in this case established that the appellees, Joseph L. Mulbah et al., a total of twenty four (24) individuals, were hired by the appellant, the Management of Eternal Love Winning Africa (ELWA), as casual workers and contractors from 2006 to March 2012. During that period the appellees served the appellant as security guards under the appellant's policy of casual workers, and were paid bi-weekly for their services. On April 1, 2012, the appellees alleged that the appellant decided to permanently employ them, back-dating their employment as of 2008, and thereby effectively terminating their status as casual workers or contractors. On January 14, 2013, the appellees addressed a letter to the appellant, requesting payment of accumulated benefits and other incentives for the period 2008-2012 that are required under the Labor practices Law; that the appellant also pay them balance payment for the period since they were paid below the minimum wage rate set forth by the government of Liberia when they worked as casual workers. Appellees specifically requested in their complaint that the appellant pay sick leave

pay, yearly and annual leave pay due from 2008 to 2012. Attempts at amicably resolving the issues raised by the appellees in their letter yielded no result.

Consequently, on April 25, 2014, the appellees, through their legal counsel, filed a complaint of Unfair Labor Practice against the appellant with the Ministry of Labor claiming benefit payments due them from 2008 to 2012, since the appellant had backdated their employment to 2008 and had disregarded the accompanying benefits and incentives required under the Labor Practices Law of Liberia; that the total accumulated benefits owed the appellees from 2008 to 2012, for sick leave pay, balance pay due and yearly leave payment amounted to L$2, 815,470.00 (Two Million Eight Hundred Fifteen Thousand Four Hundred Seventy Liberian Dollars).

The matter was assigned to Hearing Officer, Charles M. Tuazama, at the Ministry of Labor for investigation. The Hearing Officer conducted a pre-trial conference intended to resolve the issues between the parties or to have a meeting of the minds in order to obviate the need for trial. The parties having failed to have a meeting of the minds on the matter, the case was ruled for a formal investigation.

On December 8, 2015, at the conclusion of the investigation, both parties having presented oral and documentary evidence in support of their respective position, Hearing Officer Charles M. Tuazama entered final ruling, the conclusion of which we quote:

A. "That the Defendant/Management (ELWA) is not liable to reimburse the L$2,815,470.00 (Two Million Eight Hundred Fifteen Thousand Four Hundred Seventy Liberian Dollars) claimed by the complainants (Joseph L. Mulbah et al.). Income Tax and Social Security Premium deduction from employees' earnings is not illegal as alleged by the complaint.

B. "That considering the Government exchange rate at the time, it shows that their salaries/wages was not below the minimum rate as also alleged in their complaint.

C. "That Defendant/Management (ELWA) pays to complainants (Joseph Mulbah et al.) severance and accrued annual leave pay for those past years that complainants served Defendant/Management (ELWA) prior to their employment on April 1, 2012."

The record indicates that copies of the ruling of the Hearing Officer were served upon and received by the counsels of the appellant and the appellees on December 10, 2015, two days after the rendition of said ruling. None of the parties excepted to the ruling of the Hearing Officer or filed a petition for judicial review before the National Labor Court within the time required by law.

On March 14, 2016, the appellees filed a motion for modification before the Hearing Officer requesting him to modify Clause "C" of his ruling entered on December 8, 2015, by stating a specific amount to be paid by the appellant to the appellees as severance and accrued annual leave for the years 2008 to 2012. The motion also requested the Hearing Officer to issue a *subpoena duces tecum* to compel the appellant to produce the necessary accounting records from which the total amount to be paid to appellees would be determined. The records show that several notices of assignment were issued by the Hearing Officer for the hearing of the "Motion for Modification", but no action was taken to dispose of the motion.

On May 4, 2016, appellees filed a seven-count petition for enforcement of judgment against the appellant with the National Labor Court. The petition requested the aid of the National Labor Court to enforce Clause "C" of the ruling of the Hearing Officer which had ordered the appellant to pay severance and accrued annual leave benefits to the appellees for the period prior to their permanent employment in 2012. The appellees predicated their petition on the failure of the appellant to file a petition for judicial review within the time provided by law, that is, within thirty days following the receipt of the final ruling of the Hearing Officer of the Ministry of Labor. The appellees attached to their petition a clerk certificate from the National Labor Court indicating that the appellant had failed to file a petition for judicial review up to and including the date of the issuance of said certificate on February 24, 2016.

The appellant filed its returns to the petition for enforcement of the judgment along with a motion to dismiss said petition. In its motion, the appellant challenged the jurisdiction of the National Labor Court to entertain the petition for enforcement of judgment, contending that the National Labor Court being a court of appellate review cannot all by itself issue summons especially for the enforcement of judgment without a petition for judicial review filed before it by a dissatisfied party who has appeared before a Hearing Officer at the Ministry of Labor and excepted to the ruling and announced an appeal, serving a copy of the petition on said officer and the adverse party before proceeding to the National Labor Court. In essence, the main contention of appellant's motion to dismiss the appellees' petition for enforcement of the Hearing Officer's ruling was that in order for the National Labor Court to assume jurisdiction to enforce the judgment of the Labor Ministry the appellees should have first excepted to the Final Ruling of the Hearing Officer and file a petition for judicial review with the National Labor Court within the time provided by law. Appellant also averred that it was not served notice of assignment for the reading of the ruling of the Hearing Officer and therefore had no opportunity to except to the ruling and announce an appeal therefrom.

The appellees filed their resistance to the appellant's motion to dismiss the petition for enforcement of the Labor Ministry's Ruling, asserting that it is the National Labor Court which has the power, authority and jurisdiction to enforce rulings of the Ministry of Labor based on the law that the Ministry of Labor does not have enforcement powers. The appellees further averred that the failure of the appellant to file a petition for judicial review against the ruling of the Hearing Officer on the sole ground that it was not served assignment for said ruling and therefore was not present to have excepted to and appealed from that ruling was contrary to the procedure under the Labor Practices Law where representation at the time of the rendition of a judgment at the Ministry of Labor is not necessarily required; rather the judgment is typed, rendered and served on all parties and a party who disagrees with said ruling or a portion thereof, when served, may except and appeal therefrom and petition the National Labor Court for judicial review. The appellees stated that the appellant having received the Hearing Officer's ruling on December 10, 2015, but neglected and failed to file its exceptions to the ruling within thirty days, the petition for enforcement of judgment which was primarily based on Clause "C" of the final ruling of the Hearing Officer, ordering the appellant to pay the appellees severance and accrued annual leave pay for the years the appellees served the appellant and as per the period of their permanent employment was proper.

The Judge of the National Labor Court, Her Honor Comfort S. Natt, listened to arguments on appellant's motion and the resistance thereto. Thereafter, she entered judgment denying the motion to dismiss and remanded the case to the Hearing Officer at the Ministry of Labor with instruction that the Hearing Officer states a sum certain for the severance pay as well as accrued annual leave pay awarded to the appellees.

The appellant excepted to the judgment of the National Labor Court, announced and perfected its appeal to this Court of last resort, seeking review of the Labor Court's judgment.

The appellant advances the following arguments as the basis for urging this Court to reverse the judgment of the National Labor Court.

Appellant claims that the ruling of the Hearing Officer ordering the appellant to pay the appellees severance and accrued annual leave is void and unenforceable on the basis that it did not state a sum certain and further avers that appellees were not employees of the appellant before 2012, as they were casual laborers in keeping with its policy of employment, and therefore they are not entitled to severance and accrued annual leave pay; and that the National Labor Court lacked jurisdiction to entertain and determine the petition for enforcement of judgment filed by the

appellees given that no party excepted to and filed for a judicial review within the prescribed time of thirty days.

From the foregoing contentions, we find two issues determinative of this appeal:

1. Whether the National Labor Court has jurisdiction to entertain a petition for enforcement of a judgment of the Ministry of Labor where no party excepted to nor file a petition for judicial review from said ruling?

2. Whether the appellees are entitled to severance and accrued annual leave pay as awarded by the Hearing officer and affirmed by the National Labor Court?

We must note here that the labor practices law of 1961 is the applicable law in the determination of this appeal.

The appellant stressed in its argument before this Court that the main reason underlining its appeal is for this Court to make a determination whether casual workers are entitled to severance benefit and accrued annual leave payment. Appellant's counsel stated that he was not present when the Hearing Officer made his ruling and that the Hearing Officer sent no assignment for the reading of his Ruling. The appellant counsel however admitted that he received the ruling of the Hearing Officer on December 10, 2015, two days after the ruling was made, but failed to except to the ruling and seek judicial review before the National Labor Court in accordance with the Labor Practices Law, INA Decree 21, which states that, "any party dissatisfied with the decision of a Hearing Officer may take an appeal by filing a petition for review with the National Labor Court within 30 days *after receipt* of the Hearing Officer's decision and copies of the petition served promptly on the Hearing Officer who rendered the decision and all parties of record. The decision of a Hearing Officer shall become final and conclusive upon the expiration of the 30 days after the copies of his ruling have been received by the parties to a case."

The appellees on the other hand argued that the Hearing Officer's Ruling was served on the parties on December 10, 2015, and that the appellant had thirty days from the date of receipt of the Hearing Officer's ruling to except to said ruling and file for judicial review before the National Labor Court; that the appellant having failed to do so, it could not object to the enforcement of the ruling almost five months after it had received said ruling.

Further, the appellees stated that they are entitled to severance and accrued annual leave pay because they had worked for the appellant management of ELWA for a continuous period from 2006 to 2012, when they were written in 2012 and informed that they were permanently employed retroactively as of 2008. The appellees also argued that the Hearing Officer was unable to determine a sum certain for their

severance and accrued annual leave pay because of the appellant's intransigence in refusing to produce their work records during the investigation.

Appellant counsel's contention that the National Labor Court lacks jurisdiction to entertain a petition for enforcement of judgment of the Ministry of Labor without the appellees firstly filing a petition for judicial review is untenable under our labor practices law. Counsel Milton D. Taylor, representing the appellant, is a long time practicing lawyer in our jurisdiction, and who, we believe, definitely knows the standing practices and procedures of labor cases in our jurisdiction. This Court says that the absence of counsel or legal representative at the time of the making of a ruling at the Ministry of Labor does not deprive that counsel or legal representative from excepting and appealing the ruling upon receipt of. We note that a ruling made in a labor dispute is normally typed and served by the Ministry of labor on all parties, and a party excepting to said ruling may note his exceptions and appeal therefrom within thirty days as of receipt of the ruling. The appellant's counsel having admitted receiving the Hearing Officer's ruling on December 10, 2015, his disagreement with a portion of that ruling that ordered the payment of severance and accrued annual leave pay to the appellees, should have been excepted to and appealed from, pursuant to Section 203 of the Labor Law.

Chapter 3, Section 203 provides:

> *"Any respondent aggrieved by an order of the Ministry may appeal therefrom and the Ministry may obtain an order of the court for enforcement of its own order,.... Thereupon, the Court [Labor Court] shall have jurisdiction of the proceeding and shall have power to grant such temporary relief or restraining order as it deems fit and to make an order enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Ministry..."*

The above quoted section of the Labor Practices Law empowers the Labor Court not only to hear appeals from ruling emanating from the Ministry of Labor but it also grants unto the Labor Court the authority to modify [emphasis ours] and enforce orders of the Ministry upon a petition, whether a petition for judicial review or a petition for enforcement of judgment, made by a party that has appeared before the Ministry of Labor. The authority to enforce orders of the Ministry of Labor is vested solely in the Labor Court, and as this Court stated in the case *Inter-con Security Systems Inc. v. Pero M. Kerkula et al. 41 LLR 305, 312 (2002),* "the Ministry of Labor does not have enforcement powers".

We hold, consistent with the Labor Practices Law and decisional laws of this Court, that the Labor Ministry has no enforcement power to enforce its judgment where there is no appeal by the parties from the Hearing Officer's ruling, but that the Ministry or party in whose favor an award is made or the Ministry of labor may

petition the National Labor Court for enforcement of said ruling, as the appellees in this case rightly did.

The contention of the appellant that the award of the Hearing officer was void and unenforceable as it did not state a sum certain was adequately dealt with by Judge Comfort Natt in her ruling on the petition for enforcement of the National Labor Court and the reason why she remanded the matter to the Hearing officer to make a determination of the amount of the severance and accrued annual leave pay which ruling the appellant's counsel did not appeal from.

This brings us to the second issue, whether the appellees are entitled to severance and accrued annual leave payment?

The appellant strenuously argued that the appellees are not entitled to severance and accrued annual leave pay because they served as casual workers or contractors up to the time that they were permanently employed in 2012. In short, appellant takes the position that in light of the appellant having written the appellees that their permanent employment was retroactive as of 2008, the appellees remained casual workers during the course of that period before April 2012, and therefore are not entitled to any benefit payable to permanent employees during that period.

The appellees, on the other hand, contend that they are entitled to receive severance and accrued annual leave benefit for the period of their permanent employment; that the policy of the appellant policy denying them severance and accrued annual leave benefit during this period violates the Labor Practices Law.

Recourse to the Labor Practices Law reveals that a casual worker is defined as unskilled labor employed for a period of less than a working day. (*Lib. Code 18a:2.2. c).* In *Firestone Plantations Co. v. Berry, 30 LLR 702 (1983),* this Court noted that the definition of casual worker as contained in the Labor Practices Law is "too narrow and restricted" and pointed out that "a casual laborer is not necessarily unskilled", stressing that the emphasis is not on the "unskilled" aspect of the casual employment, but rather the "uncertainty" aspect of the employment. The Court then stated that a casual laborer is thus a person whose employment is temporary, seasonal, fortuitous, unfixed, uncertain and irregular. This interpretation of the Labor Practices Law on casual employment was followed in the case *National Port Authority v. Massaquoi, et al. 38 LLR 195 (1996),* wherein this Court held that the classification of laborers as casual workers after a period of continuous service is a violation of the Labor Practices Law. The test, we believe, for deciding whether an employee is a casual worker or not, is not whether the employee is skilled or unskilled, but rather whether the service provided by the employee is regular and at a recurring period.

We note that the parties here do not dispute that the appellees were engaged continuously in the employ of the appellant as security guards for a protracted period beginning 2006 to the time of their permanent employment in 2012, and that in fact the appellant deducted social security premium and income tax from the appellees' payments over the course of their service with the appellant. It must have been in light of the appellees continuous employment that the appellant in granting permanent employment to the appellees in 2012, backdating the appellees employment as of 2008, making the appellees permanent employees as of 2008, and which entitled them to annual vacation pay, and other payments stipulated under our Labor Practices Law for permanent employees.

Appellant's defense that its policy of employment of casual workers forecloses the payment of employment benefits to the appellees despite the number of years of continuous service with the appellant is contrary to the Labor Practices Law in our jurisdiction. All employers living and operating in our jurisdiction are bound by the laws of our Country. As per our Labor Law, the appellees could not have been casual workers when they worked normal hours continuously for five (5) years. As stated, this must have prompted the appellant to backdate the appellees permanent employment as far as four years as of the date their status was changed in 2012 and which then entitled them to accrued benefit of annual leave as permanent employees as of 2008.

We must now determine whether the appellees herein are entitled to severance pay as demanded by them and ruled by the Hearing Officer and affirmed by the National Labor Court.

Appellant avers that severance pay is a payment made to one who is employed and due to some other situation management decided to downsize its work force, in consequence of which it becomes incumbent on that management to settle with that employee for the number of years he/she serves and which is not the case here.

We agree that the appellees cannot be awarded severance pay as they are still within the employ of the appellant. Generally, severance payment is payable to an employee when that employee's employment relationship with the employer is severed because the employer losses business and it is impracticable to maintain the employee. This is certainly not the case here as the appellees are still in the employ of the appellant. Though the appellant admitted receiving a copy of the Hearing Officer's Ruling but did not take steps to appeal said ruling, Section 203 of the Labor Practices Law (1964) however empowers the National Labor Court in enforcement of orders and awards of the Ministry of Labor to *make an order modifying, and enforcing as so modified, or setting aside in whole or in part the*

order of the Ministry…" and the award of severance benefit to the appellees been erroneous, the Labor Court Judge should have reversed the award granting severance pay to the appellees.

Hearing Officers of the Labor Ministry are cautioned to take due note of the Opinions of this Court which emphasize the labor procedures for proper determination of awards. This Court has in numerous cases stressed the law that Hearing Officers in labor dispute before the Ministry are to ensure that awards are certain and supported by evidence, and where need be, the Ministry may issue a *subpoena duces tecum* to compel the production of relevant records from employers. (Labor Practices Law (1064), Chapter 2. Section 200. "*Securing Evidence"; Davis Sr. et al. vs. LTA,* Supreme Court Opinion, October Term, A.D. *2016; Hsiao G.M . Trading Company v. Natt et al. ,* Supreme Court Opinion, March Term, 2015.

In *Hsiao G.M. Trading Company v. Natt et al. ,* Supreme Court Opinion, March Term, 2015 (decided August 7, 2015), this Court held that where the Hearing Officer issues a subpoena to compel the attendance of an employer to produce books, papers, documents, and other evidence to substantiate the claim(s) made by an employee and the employer fails to show up or resists said order, the Hearing Officer should then institute a contempt proceedings before the National Labor Court which shall uphold said contempt as provided for under the law. In the instant case, the Hearing Officer should have subpoenaed the records from the appellant's management, and upon its refusal to appear with the records, forward to the National Labor Court a petition for contempt of the management for refusing to produce the records subpoenaed. More besides, the appellant not having appealed the ruling of the Hearing Officer, it was under a duty, when the appellees made a motion to the Hearing Officer to modify his ruling setting out the award without certainty, to appeared and give supporting employment documents to ensure that the calculation of the accrued annual leave award due each appellee was based on his/her date of employment.

We must also state that the Court frowns on lawyers who neglect to adequately represent their clients, especially at the Ministry of Labor as Counsellor Milton D. Taylor has done in the instant case, and subsequently employ some means of legal debauchery to circumvent their neglect in seeking appeal from a ruling of the Hearing Officer from the Ministry of Labor. The attempt by Counsellor Milton Taylor, appellant's counsel, to seek an appeal under a pretense of ignorance of the settled law, we believe, was purposely done to do what he failed and neglected to do for his client, by challenging the Hearing Officers ruling within the statutory time of thirty days. Let Counsellor Taylor be warned that any further attempt by him in the future

to exhibit such unethical behavior will warrant this Court's taking disciplinary measure against him.

In view of the foregoing, the award granting accrued annual leave payment to the appellees from 2008 to 2012 by the Ministry of Labor and confirmed by the National Labor Court is hereby affirmed; however, the appellees' employment with the appellant being continuous and has not been severed, the award of severance benefit to the appellees is legally inapplicable and therefore disallowed.

The case is therefore ordered remanded to the National Labor Court with instructions that the Hearing Officer at the Ministry of Labor resumes jurisdiction over this case, subpoena the records of the appellees from the appellant management, calculate the accrued annual leave payment for each appellee and have same paid by the appellant.

The Clerk of this Court is ordered to send a mandate to the court below to resume jurisdiction and give effect to the Court's Judgment. Costs are ruled against the appellant. AND IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING THE APPELLANT WAS REPRESENTED BY COUNSELLORS MILTON D. TAYLOR AND FREDERICK L.M. GBEMIE OF THE TAYLOR AND ASSOCIATES, INC. THE APPELLEESSS WERE REPRESENTED BY COUNSELLOR PETER Y. KERKULA OF THE JONES AND JONES LAW FIRM.