UNITED STATES TRADING COMPANY (USTC), Petitioner, v. **WALTER B. WRAY**, **SR**. and **PHILIP G. WILLIAMS**, Labor Relations Officer, Ministry of Labor, Respondents.

PETITION FOR RE-ARGUMENT.

Heard: May 3, 1994. Decided: September 23, 1994.

1. Any person who, except where otherwise provided by lawful agreement, refuses to accept for the discharge of a public or private obligation Liberian coins declared to be legal tender; or who refuses to accept at face value for the discharge of public or private obligation or in business transaction, Liberian coins declared to be legal tender, that is, as equivalent in value to coins of the United States of America of the same face value; or who demands for the discharge of a public or private obligation or in a business transaction coins other than those of Liberian coinage declared to be legal tender, shall be guilty of a misdemeanor and liable to imprisonment or a fine or both.

2. Where an employer undertakes to pay a percentage of his employee's salary in US dollars, and the balance in local currency, the employer, upon termination of the employee's services, must pay a portion of his severance or end of service benefits in US dollars in the same ratio as he was paid while on the job.

3. The redundancy benefit paid to a redundant employee is nothing other than one month's salary for each year of service rendered the employer and represents "severance pay" to sustain him until he can find another job in keeping with the regulation of the Ministry of Labour and is not merely an assistance or act of grace.

4. The fact that the appellate court does not in its opinion detail the evidence and circumstances thus showing the process by which it reaches its conclusion, is not ground for a re-hearing.

5. A petition for re-argument is not intended to challenge the opinion and judgment of the Supreme Court on the points of law and facts raised and already decided by the Court, simply because the petitioner is of the opinion that the Court is wrong in its conclusion on the law and fact.

6. Re-argument is intended to call the Court's attention to the points of law and fact previously raised in the argument and which the Court inadvertently overlooked to pass upon.

7. As the determination and interpretation of the law is for the court, to permit a party to a case before the court to determine the relevancy of the law would amount to a surrender of the important office of the court to the whims and caprices of such party.

8. If no omission or new authorities on points of law or facts are shown, the appellate court will seldom permit a re-hearing simply on the assertion of counsel that, notwithstanding the Court fully considered every thing wished to *be* argued on the re-hearing, it reached the wrong conclusion.

Upon entertaining arguments and review of the records certified to it, the Supreme Court during the October Term 1993, handed down an opinion in an appeal growing out of the final judgment in an unfair labor practice rendered by the National Labor Court. In its opinion, the Supreme Court affirmed and confirmed the judgment of the National Labor Court. Appellant, contending that the Court made a palpable mistake by inadvertently overlooking some points of law and facts in its opinion as delivered which, if taken into consideration, would have changed the position of the Court, petitioned the Court for re-argument. The Supreme Court, holding that it did not overlook any point of law and fact brought before her, *denied* the petition.

H Varney G. Sherman appeared for petitioner; *Eugene D. M Freeman* appeared for respondents.

MR. JUSTICE SMITH delivered the opinion of the Court.

This case is on appeal to this Court from the National Labour Court, Montserrado County, and heard during the October, 1993 Term of the Court. The judgment of the National Labour Court was affirmed, but in the exercise of its rights as provided by the rules of this Court, the petitioner company petitioned the Court for re-argument of the case on the ground that the Court made a palpable mistake by inadvertently overlooking some points of law and facts in its opinion as delivered during the October Term, 1993 which, if taken into account, would have changed the position of the Court. The twenty-count petition for re-argument is a repeat of the same argument held before the Ministry of Labour, the National Labour Court and before this Court of final determination in respect of redundancy payment to an employee in

U.S. dollars instead of local currency of the same parity; both being legal tender in the Republic of Liberia, contrary to Section 71.5 of the Revenue and Finance Law of the Republic of Liberia. For the benefit of this opinion, we quote hereunder counts 12, 17, 18 and 19, in which petitioner strenuously argued that the points raised therein were not passed upon by the Court. We reviewed the other counts and we have discovered them to be a repetition of the substance of the four (4) counts quoted below all of which in turn suggest that the court allegedly did not pass upon the issue of paying the redundancy benefit in US dollar, instead of local currency, which is on par with the US dollar, both being legal tender in the Republic of Liberia:

"12. A legal issue before Your Honours was whether the payment of 25% of appellee/respondent's salary in United States dollars between January 1989 and June 1990, was part of appellee/respondent's salary, and not merely an assistance from the appellant/petitioner. That issue was adequately passed upon in Your Honours' opinion. The additional legal issues before Your Honours is whether in view of "your holding, that the 25% United States dollars was a part of the salary, a binding and enforceable agreement between the appellant/petitioner and appellee/ respondent thereby arose and by virtue of said agreement, appellant/ petitioner may not pay Liberian dollars in discharge of its obligations for redundancy compensation. This additional legal issue, though raised throughout the hearing by the hearing officer at the Ministry of Labour, argued before the Labour Court and Your Honours, was inadvertently overlooked; hence, this petition for reargument.

17. That appellant/petitioner says that in Your Honours' opinion and judgment, Your Honours inadvertently did not take cognizance and inadvertently never ruled upon the principles of law that both the Liberian dollar and the United States dollar are legal tenders in Liberia and interchangeable on their face value, and either or both may be used to discharge all public and private debts, including the redundancy compensation obligations of an employer to the employee.

18. Appellant/petitioner also says that Your Honours inadvertently never ruled that a creditor, such as a former employer, is bound by law to receive Liberian dollars in discharge of obligations of the debtor, such as obligations of the employer arising out of the employer-employee relationship, by tender of Liberian dollars, unless the employee can show that there is a lawful agreement which binds the employer to pay United States dollars or any other currency.

19. Appellant/petitioner further says that Your Honours inadvertently never ruled as to whether or not a lawful agreement obligating appellant/petitioner to pay redun-

dancy compensation or any other end of service benefit to the appellee/respondent by tender of 75% in Liberian dollars and 25% in United States dollars exists between the parties."

The contention of the petitioner, judging from these four (4) counts is that the opinion of the Court did not address the issue of redundancy benefit being paid in U.S. dollars instead of in local currency both being of the same parity and legal tender in Liberia. Counsel for the petitioner based his argument in this respect on Section 71.5 of the Revenue and Finance law which we quote for the benefit of this opinion; it reads as follows:

"Except where otherwise provided by lawful agreement, the following persons shall be guilty of a misdemeanor and liable to imprisonment up to one year or a fine of up to $1,000.00 or both.

a. Any person who refuses to accept for the discharge of a public or private obligation or in a business transaction, Liberian coins declared to be legal tender;

b. Any person who demands for the discharge of a public or private obligation or in a business transaction coins other than those of Liberian coinage declared to be legal tender;

c. Any person who refuses to accept at face value for the discharge of public or private obligation or in business transaction Liberian coins declared to be legal tender, that is, as equivalent in value to coins of the United States of America of the same face value". Revenue and Finance Law, Rev. Code 36:71.5

The controlling and decisive factor upon which a violation of the statute may be determined is the exception made therein that "except where otherwise provided by lawful agreement...." Our interpretation of this statute as it relates to the issue is, where the appellant company has granted the request of the appellee to pay 25% of his salary in U.S. dollar and 75% in local currency and the company agreed and has been paying the 25% of his salary in U. S. dollar, in a United States Bank in Akron, Ohio, since 1988, which was not denied, a valid and lawful agreement was existing between the employer and the employee, and therefore the demand of the appellee for 25% of his salary to be paid in U.S. dollar as previously agreed upon is justified. The redundancy benefit paid to a redundant employee is nothing other than one month's salary for each year of service rendered the employer and represents "severance pay" to sustain him until he can find another job as in keeping with

regulation of the Ministry of Labour under the Government Labour Relations Policy and is not merely an assistance given the redundant employee as argued by counsel for petitioner. Let us see, however, if the issues were not passed upon in the original opinion of February 18, 1994. Here is what the Court said about the issues:

"After granting the appellee's request to pay a portion of his salary in U.S. dollars, the appellant from the latter part of 1988, paid 25% of the employee's net monthly salary in U. S. dollars up to the time of his redundancy We are led to conclude that in their employer-employee relation-ship, the payment to the employee by the transfer of 25% of his net monthly salary in U.S. dollars to his account in Bank One, Akron, Ohio, U.S.A., constitutes a part of his total remuneration for his service..."

This arrangement which was implemented constitutes a lawful agreement upon which the Court relied as having fulfilled the exception made in Section 71.5 of the Revenue and Finance Law on which petitioner relies. On page 18 of its opinion of January 18, 1994, this Court declares that "the 25% U.S. dollars component of the appellee's remuneration should therefore have been made a part of his redundancy payment of $20,065.82." The Court went on to say "The claim of the appellee in this regard is therefore upheld."

It would seem to us that the issues of paying redundancy benefit in US dollars and as to whether there was any lawful agreement between the parties to support the claim of the 25% salary in US dollars, were all addressed by this Court and therefore a petition for re-argument is not justified. In 5 C.J.S., *Appeal and Error, § 1414,* it is stated that the fact that the appellate court did not in its opinion detail the evidence and circumstances thus showing the process by which it reached its conclusion, is not ground for a re-hearing. Furthermore, a petition for re-argument is not intended to challenge the opinion and judgment of the Supreme Court on the points of law and facts raised and already decided by the Court, simply because the petitioner is of the opinion that the Court is wrong in its conclusion on the law and fact. Re-argument is intended to call the Court's attention to the points of law and fact previously raised in the argument and which the Court inadvertently overlooked to pass upon..." See the case *American International Underwriters (AIU) v. Fares Import-Export,* 30 LLR 524 (1982) October, 1982 Term of this Court.

As held by this Court in the case *Caranda v. Richards,* 14 LLR 294 (1961), the Court would be setting a very ugly precedent, detrimental to its dignity and repugnant to good society, if it would permit parties to a suit before it to determine the relevancy of laws controlling the case. As the determination and interpretation of the law is for

the Court, to permit a party to a case before the Court to determine the relevancy of the law would amount to a surrender of the important office of the Court to the whims and notions of such party.

If no omission or new authorities on points of law or facts are shown, the appellate Court will seldom permit a re-hearing simply for the purpose of obtaining a re-argument on, and a reconsideration of, points, authorities, and matters which have already been fully considered by the Court, on the assertion of counsel that, notwithstanding the Court fully considered every thing wished to be argued on the re-hearing, it reached the wrong conclusion...." 5 C.J.S., *Appeal and Error,* § 1411.

In view of all that we have narrated herein above, it is our considered opinion that this Court did not overlook any point of law or fact brought before the Court to warrant the granting of the application. The petition for re-argument is therefore hereby denied with costs against the petitioner. And it is hereby so ordered.
Petition denied.