

**CHARLES UMEHAI** and **JOSEPH F. KPUKUYOU, ESQ.**, Hearing Officer,  
Ministry of Labor, Appellants, *v.* **THE MANAGEMENT OF MEZBAU, INC.**,  
Appellee.

APPEAL FROM THE NATIONAL LABOUR COURT, MONTSERRADO  
COUNTY.

Heard: October 17, 1998. Decided: December 29, 1988.

1. A court must in all cases refuse jurisdiction in cases where it is wanting.
2. The ruling of any court or tribunal is incurably defective and reversible where it is without jurisdiction over the cause or the parties.
3. A court must in all cases first consider whether it has jurisdiction.
4. An action for breach of a contract based on a written instrument should be brought within seven years after the right first accrues.
5. The failure of a party to bring an action within the time allowed by statute shall constitute an affirmative defense to the action; this defense should be pleaded affirmatively in the answer or reply.
6. Except where otherwise specifically provided by statutes, the time within which an action shall be commenced is computed from the time the right to relief accrued to the time the claim is interposed.
7. Petitions for judicial review or appeals from decisions of hearing officers to the National Labor Court or Debt Court must be perfected within ten (10) days and not thirty 30 days.

Appellant was employed as a sales agent for appellee. Under the terms of employment, appellant was remunerated by a fixed salary and commissions. Appellant tendered his resignation, giving 90 days notice. At the time of his departure, he was paid all salaries and allowances due, but not all the commission on the sales he had made. Appellee informed appellant that he would be paid commission only if those customers he had solicited actually purchased the items, but appellee refused to make commission payments to appellant even after the products were purchased. Appellant filed a complaint with the Ministry of Labour to recover

the unpaid commission. Appellee denied owing any commission, and maintained that in any case, appellant was barred from recovery by the statute of limitations, even if appellee owed the commission. The hearing officer rejected the appellee's affirmative defense and awarded \$30,644.61 to appellant. Appellee appealed the hearing officer's ruling to the National Labour Court about thirty (30) days after the decision. The National Labour Court reversed the decision of the hearing officer, from which ruling appellant announced an appeal to the Supreme Court. The Supreme Court held that appellant was not barred by the statute of limitation and that appellee had failed to file his appeal to the National Labour Court within the time allowed by law. Hence, the Court *reversed* the National Labour Court and ordered it to enforce the decision of the hearing officer.

*S. Edward Carlor* for appellant. *Samuel Cole* for appellee.

MR. CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.

The appellant, Charles N. Umehai, a Nigerian National, was employed by Mezbau Liberia Inc., to serve as a sales promotion agent for a fixed salary thus allowances. In addition, he was to be paid a commission for the value of each sale he promoted for the corporation, and the said commission payment was by some special contractual arrangement.

On January 9, 1978, appellant tendered his resignation to the management of Mezbau to take effect ninety (90) days from that date. He demanded a full clearance of all payments due him by the corporation in order to allow him to embark on other pursuits. It is not disputed that he was paid his salaries and allowances, but it is alleged that only a small portion of his commission was paid him and payment of the rest was made contingent on actual purchases by customers of products promoted by him for the corporation. This condition was obviously difficult for the appellant to determine since he was no longer with the corporation.

From 1980, appellant sought to obtain his commission from Mezbau by soliciting the intervention of the Ministry of Justice, the Executive Mansion and also the former Theft Court, apparently upon evidence that, in fact, some of the customers he had sought for Mezbau had indeed purchased the products he had promoted. Certainly, appellant Umehai did not secure his commissions from Mezbau despite the efforts he made.

After everything else had failed, appellant Charles N. Umehai, retained the services of

the Horace & Horace Law Firm and caused it to write the management of Mezbau, Inc., appellee, on June 27, 1983, demanding payment of the sales commissions due him. Appellee denied owing appellant any commissions, and alleged that the corporation had secured complete settlement with, and release from appellant exonerating it from all future claims. In any case, it argued that whatever claims might have existed were barred by the statute of limitations because the issue was being brought nine (9) years after falling due. Appellee contended that appellant had resigned since April 1978, but did not file claim against the corporation until May, 1987, and such claim should be brought within seven (7) years from the date the right to action accrued.

A formal complaint to recover unpaid commission from appellee was filed by appellant before a hearing officer of the Ministry of Labour in Monrovia on May 29, 1987. After hearing evidence, the hearing officer in his ruling of November 12, 1987, refused to allow the argument of appellee that the statute of limitations had tolled against the complainant and therefore held that:

“In determining the first issue, the basic principle to look at here is the time the above cause of action accrued. According to Regulation No. 4, “the right to relief shall accrue on the day the employee incurs a grievance”. The record shows that circumstances surrounding and leading to the present cause of action go as far back as 1972 and continued up to March 1978, when the complainant re-signed. The complainant filed this cause of action (dated May 18, 1987) before this Ministry on May 21, 1987 and this investigation received said complaint on May 29, 1987 at 10:00 a. m. Based on this finding, the above citation by defendant is not applicable in this case.”

In conclusion, the hearing officer ruled:

“Thus the basis of this calculation is to award the 5% commission on those monthly sales that exceeded the \$3,000.00 as per the stipulation of the 1972 contract, less the total amount of cash value paid by the defendant to the complainant in each month covering 1972, 1973, 1974, 1975, 1977 and part of 1978. The aggregate difference of the 5% commission of each month less the amount paid in that month constitutes complainant’s balance unpaid 5% commission. Please refer to the calculation on the attached sheet below which forms a cogent part of this decision.

Based on the facts and law controlling in this case, this investigation is of the opinion that defendant erred by not paying complainant his full commission as per the

stipulation in the contract.

On this ground, judgment of this investigation is for complainant. Defendant is ordered to pay the balance unpaid commission arrears to the complainant in the full and just sum of \$30,644.61 (Thirty Thousand, Six Hundred Forty-Four Dollars Sixty-One Cents). And it is hereby so ordered.”

The ruling of the hearing officer was made on November 12, 1987, and it was served on the appellee on November 14, 1987, two days thereafter. Thereupon, the appellee noted exceptions to the said ruling and indicated an intention to take an appeal to the National Labor Court in Monrovia.

Appellee’s appeal before the National Labor Court was a petition for judicial review dated December 14, 1987, but in fact, the said petition was not filed with the National Labour Court until December 14, 1987, about thirty (30) days after the ruling of the hearing officer.

The said petition contained seven (7) counts, and its major contentions are that the ruling of the hearing officer was speculative and not based on the facts. The most important contention being that the claim against it is barred by the statute of limitations which had tolled seven (7) years after the cause of action arose against defendant and that the complainant had given a release exonerating the petitioner from all future obligations to him for labor matters. Appellee further contended that, in fact it had met all of its obligations to the complainant. Petitioner/appellee contended further that the hearing officer had erred in refusing jurisdiction over the matter and had based his ruling on mere speculations. Therefore, petitioner/appellee prayed that the ruling of the hearing officer be reversed and the case dismissed with cost against Complainant/Co-respondent Charles Umehai.

In resisting, the respondent/appellant filed his returns along with a motion to dismiss, both of which he filed in the National Labour Court on December 18, 1987. Respondent/appellant contended that his claim was not barred by statute as petitioner/ appellee contended, since up to 1982/1983, some of his claims for a commission were still pending. Further, he prayed for dismissal of the petition for being filed out of the statutory period of ten (10) days, and was in fact erroneously filed after thirty (30) days from the day of the ruling of the hearing officer; and finally, that the petition ought to have been brought in the name of management in conformity with the Associations Law of Liberia, and that he had at no time issued appellee any release.

On January 21, 1988, after hearing arguments on both sides, the judge of the National Labour Court ruled, denying the motion to dismiss the petition for judicial review on grounds that:

“The case in point being administrative in nature, which does not entertain legal technicality, but the facts presented, we therefore rule that the motion to dismiss the petition for judicial review is hereby denied. Both petitioner and respondent are required to proceed with the arguments in the petition and the returns and it is hereby so ordered.”

To this ruling, respondent/appellant excepted.

Arguments were later heard on the substance of the petition and the returns. In the end, the judge of the National Labour Court granted the petition and reversed the ruling of the hearing officer with costs against the complainant/respondent. The court upheld the contentions of the petitioner that the cause was statute-barred; that complainant had been paid, and he had issued a genuine release to petitioner, and that for all of those reasons, there was no cause of action against the petitioner herein. The action was therefore dismissed. Complainant/respondent excepted to the ruling and announced an appeal, which was perfected within the prescribed statutory time.

Appellant filed a fifteen (15) count bill of exceptions, which was approved by the trial judge and therein contended that the judge erred in ruling that the action is statute-barred since it was brought in excess of the seven (7) year period within which labor actions may be brought. The very document of March 16, 1972 spelled out conditions for settling commission payments with Mr. Umehai, to the effect that future payments of his commissions would be paid only after his customers had actually purchased from the corporation those articles he had promoted in its behalf. Therefore, Mr. Umehai was compelled under the said conditions to wait from 1978 to 1983, the period in which purchases were actually made, before he could demand payment or in the alternative, bring an action for payment. Hence, Mr. Umehai was still in the limits of the statute when he brought the action for claim of wages in May, 1987.

Appellant further contended that the National Labour Court should have refused jurisdiction over the petition for judicial review as same was brought twenty (20) days in excess of time allowed by law to perfect an appeal from a hearing officer to the

National Labour Court or to the debt court outside Montserrat County. Only ten (10) days are allowed in such cases, but the appellee had waited thirty (30) days before petitioning the National Labour Court for a review of the hearing officer's decision. The court is by law bound to refuse jurisdiction over a petition for a review filed after 10 days. Finally, appellant maintained that the judgment was vastly against the weight of the evidence at the trial and in the records.

In its brief, appellee strongly contended that the action to recover unpaid commissions being a labor matter, ought to have been brought in seven (7) years while appellant had waited for nine years, two years in excess of the allowable time to file the said action. Therefore, the cause was statute-barred and could not be allowed without violating the statute. It contended that Mr. Umehai had resigned and was paid off with a clearance in 1978, and therefore, he ought to have instituted his action for unpaid wages or commissions by 1985. Since he had waited until 1987, allegedly nine (9) years after the cause had accrued, he was barred by statute from instituting same any further.

Appellee also maintained that the petition for judicial review brought thirty (30) days after the ruling of the hearing officer was in fact in place, considering that at the time of the Board of General Appeals of the Ministry of Labour, it was provided that any appeal or petition for judicial review from a hearing officer to the Board for review was to be perfected within thirty (30) days. Appellee contended that following the abolition of the Board, an appeal or petition for the review of the ruling of a hearing officer, before the National Labour Court or a debt court, would also require thirty (30) days. Appellee argued that the period of ten (10) days allowed at the time of the Board of General Appeals therefrom to the circuit court should not apply, as a dissatisfied party would obviously need more than the (10) days in which to perfect an appeal, and therefore the same thirty (30) days earlier allowed for appeals from a hearing officer to the Board of General Appeals is also what is intended by the statute for appeals from a hearing officer to the National Labour Court or to the debt court. Appellee argued that it was the first appeal by a dissatisfied party in labor matter, and therefore he should be given ample time to face a court of appeal. Appellee, accordingly, prayed for hearing of the appeal, that the Labour Court's ruling be upheld, and that the Court sustains appellee's contentions regarding jurisdiction over the cause.

One would certainly be right to restrict the issue to be resolved on this appeal to jurisdictional ones, since courts must in all cases refuse jurisdiction in cases where it is wanting. The ruling of any court or tribunal is incurably defective and reversible

where it is without jurisdiction over the cause or the parties, and a court must in all cases consider its jurisdiction first. *Lamco J. V. Operating Company v. Verdier*, 26 LLR 445 (1977); *African Mercantile Agencies v. Bonnah*, 26 LLR 80 (1977); *Cooper v. Alamendine*, 20 LLR 416 (1971); *Union National Bank v. MCC*, 20 LLR 525 (1971); and *Bestman v. Republic*, 20 LLR 216, 217 (1971).

From the records before us and the arguments of counsels on both sides, only two issues are relevant to a determination of this appeal:

1. Whether or not the complaint for the unclaimed wages or commissions was barred by the statute of limitations; and
2. Whether or not a petition for judicial review of the ruling of a hearing officer of the Ministry of Labour to the Labour or debt court should be brought within thirty (30) days from the date of the rendition of the ruling.

These are the two major issues on this appeal and their determination should precede all other determinations in this matter.

We begin with the first issue: to determine whether or not Mr. Umehai's action for claim of wages was barred under our laws for being brought after the statute had tolled. Mr. Umehai filed his complaint before the hearing officer at the Ministry of Labour in Monrovia in May, 1987. He had in fact resigned from Appellee Mezbau, Inc. in March, 1970. However, there is evidence in the records showing that appellant was not paid all his commission benefits by Mezbau and payment of same was deferred to a time when actual purchases were made by his customers of products he had promoted for the corporation. The records further show that actual purchase by some of these customers came later and extended up to 1983. Therefore, we are convinced that appellant's right of action accrued as of 1983, and not at the date of his resignation in 1978, as alleged by appellee, since the condition for the payment of his commissions extended beyond said date. This condition for payment of commissions beyond appellant's date of resignation from appellee cannot be disputed. Under our laws, action for breach of a contract based on a written instrument should be brought within seven years after the right to action accrues. Civil Procedure Law, Rev. Code 1: 2.1(1). And the failure to commence an action within the time limited therefor shall constitute a defense to the action, which shall be pleaded affirmatively in the answer or reply as required by statute. "*Id.*, 1: 2.2. Further, "the time within which an action shall be commenced shall, except as otherwise specifically prescribed by law, be computed from the time the right to relief

accrued to the time the claim is interposed.” *Id.*, 1: 2.31.

Mr. Umehai brought this action on the strength of a written instrument and, hence, should have been brought within seven (7) years from the date the right of action first accrued; that is, anytime the customers purchased goods including the period after his resignation. Therefore, his right of action accrued first when his customers purchased his promoted goods from Mezbau, and that time extended up to 1983. Consequently, computing the status from 1983, appellant was quite in place when he filed his complaint at the Ministry of Labor in 1987, four years after his right of action first accrued. Hence, the defense of the statute of limitations will not hold in this case when all its circumstances are considered.

Next, we will consider whether or not an appeal or a petition for judicial review of a hearing officer should be perfected before the National Labor Court or the Debt Court in thirty (30) days from the date of the rendition of the ruling.

We recall that at the time of the Board of General Appeals, an appeal or a petition for review of a hearing officer before the Board had to be perfected in thirty (30) days. But since the statute abolishing the board failed to provide for the time for appeal from a hearing officer to the National Labour Court in Montserrado County, or to debt courts in the counties, controversy has often arisen as to whether the allowable period should be limited to ten (10) days as allowed for reviews of rulings of the defunct Board of General Appeals by the circuit court, or to thirty (30) days as previously provided for in cases sent from a hearing officer to the Board for review.

However, this Court earlier made a ruling in such cases and, in fact, provided that all appeals from or petitions for judicial review of, a hearing officer’s decision to the National Labour Court or the debt court must be perfected in ten (10) days, and not thirty (30) days. *Liberian Bank For Development and Investment v. York*, 35 LLR 155 (1988).

In that case, appellant York waited beyond ten (10) days in perfecting a ruling from a hearing officer of the Ministry of Labor in Monrovia to the National Labour Court. He argued before us that the law provided thirty (30) days in which to perfect such an appeal. We rejected that proposition, and held that appellant had ten (10) days to perfect an appeal from a hearing officer to the National Labour Court or a debt court, and the *York* Court offer its rationale for holding as it did. We are still in harmony with the rule and the rationale of the decision in that case, which was beautifully and clearly stated by Associate Justice Junius, speaking for the Court as



follows:

“The jurisdiction of the labour court now is that of a circuit court or debt court and to perfect an appeal, appellant is given 10 days by law. The Board of General Appeals has been eliminated by legislative enactment and there are labor courts throughout the length and breadth of Liberia. The 30 days given from a hearing officer or labor commissioner to the Board of General Appeals was to give party litigant the opportunity to reach Monrovia, Ministry of Labour, where the Board of General Appeals was sitting. But now, judicial review is from hearing officer to labor court and, except for Montserrado County, the debt court in each county serves as the labor court. No one will conclude or reason that the Legislature intended 30 days to be used as the period required to file a petition for judicial review from a hearing officer to a labor court or debt court within the same county. Therefore, we are not to regard the canons of construction as a set of arbitrary rules which are to be applied to all statutes differently and which may or may not result in giving to the statute meaning and effect consonant with the purpose of those who formed it.

Amendatory acts are subject to rules and principles of construction applicable to original statute. *Neufville v. Diggs, et al*, 19 LLR 389, 393 (1969). From the foregoing, the Legislature did not intend that judicial review from hearing officer to labor court should be 30 days, but rather the 10 days time required from the defunct Board of General Appeals to the National Labour Court.”

From the foregoing, we hold that the trial judge ought to have refused jurisdiction over the petition for judicial review for being filed late; hence, he was in error when he allowed the review. And having earlier concluded that the appellant had filed his complaint within the allowable period and therefore not barred by the statute of limitations, the judgment of the National Labour Court is hereby reversed and the ruling of the hearing officer is hereby affirmed with instructions to the judge presiding in the National Labour Court to resume jurisdiction and enforce the hearing officer’s decision. And it is so hereby ordered.

*Judgment reversed.*