

**Christian Aid Ministries (CAM)** represented by and thru Its Country Director,  
Edwin Sommers of the City of Monrovia, Liberia APPELLANT /PETITIONER  
VERSUS **James Moore** and Hearing Officer, Ministry of Labour, the National  
Labour Court, all of the City of Monrovia, Liberia APPELLEES /RESPONDENTS

APPEAL

HEARD: October 25, 2006 DECIDED: December 21, 2006

MR. JUSTICE KORKPOR, SR. DELIVERED THE OPINION OF THE COURT

This case is on appeal before us from the ruling made by Her Honor Comfort Natt, Judge of the National Labour Court, dismissing appellant's petition for judicial review.

The facts are that on July 1, 2001, James More (appellee) was employed by Christian Aid Ministries (appellant) under a written contract for a period of six (6) months. It appears that the appellee's employment contract was renewed from time to time upon its expiration. On March 28, 2003, the appellee was dismissed by his employer for allegedly misusing fuel oil entrusted to his care.

On March 31, 2003, the appellee filed a complaint against his employer alleging unfair labour practice. After an attempt during pre-trial conference at the Ministry of Labour to amicably resolve the matter failed, hearing was scheduled. The appellee took the witness stand and testified in his own behalf essentially contending that the reason for his dismissal was not justified; that he did not misuse any fuel oil entrusted to his care as alleged by his employer and that in connection to the allegation levied against him, he was never taken to court. One George Nimely also testified as witness for the appellee.

When it was time for the appellant to testify, the Country Representative of appellant, Wayne Stelfox, said that he was a Mennonite Christian and refused to touch or kiss the Bible. He informed the Hearing Officer that according to his faith, he cannot touch or kiss the Bible because "the Bible says that no man should swear on the heavens or the earth because they are God's throne and his foot stool." He opted instead, to raise his right hand and confirm that his testimony will be the truth and nothing but the truth, but not to touch or kiss the Bible.

The counsel for appellee insisted that the witness should swear on the Bible and the Hearing Officer agreed with the position of the counsel for appellee. The matter then traveled to the National Labour Court on summary proceedings and the Judge of the National Labour Court reversed the ruling of the Hearing Officer, relying on the concept of freedom of religion as the basis for her decision. The matter was sent back to the Hearing Officer at the Ministry of Labor for continuation of hearing. We will not pass on the issue of whether or not the appellant's witness should have sworn on the Bible, since no exception was taken to the National Labour Court's ruling on the issue, and since the issue was not squarely raised by any of the parties in their respective briefs filed before this Court.

The records show that after some futile attempts to have hearing into the matter resumed, the appellant took the witness stand on May 7, 2004 with testimony given by appellant's new Country Director, Edwin Sommers. The hearing was later adjourned and rescheduled for May 18, 2004, at the hour of 10:30 a.m. When the case was called on May 18, 2004 at the scheduled time, the Appellant was not present, neither were its counsels. However, there is nothing in the records to show that anything was done on May 18, 2004, the scheduled date of the hearing. That is to say, the matter was not called, no records were made, and no default was requested and entered on that day. According to the counsel for appellee, the case was called the next day, May 19, 2004 and it was at that time he requested for a default judgment which was granted by the Hearing Officer. The contention of the counsel for appellee that a default judgment was entered against the appellant on May 19, 2004, appears to be supported by the final ruling made by the Hearing Officer on June 10, 2004, the relevant portion of which reads as follows:

*"On the 19 th instant of May, A.D. 2004, the case was called for hearing as per schedule, Defendant and his Counsel failed to turn up or give any reason for his inability to have his day in Court.... Complainant's Counsel moved the Investigation and charged Defendant for Abandonment and invoked INA Decree # 21, Article 1 Section 8, Default Judgment.*

*After a careful and analytical perusal of the motion and the legal reliance's pro et con, this Investigation opines that the prayer made by Complainant's Counsel and since indeed, labor cases are strictly for speedy disposition, and Management has not [embodied] on any tangible reason(s), said motion was granted. Hence, the Default Judgment".*

It is not clear why the default is said to have been requested and granted on May 19, 2004 and not on May 18, 2004, the day the matter was assigned, and neither the

appellant and/or its lawyer(s) were present without excuse. But we shall return to this important and crucial point later on in this opinion.

The Hearing Officer made final ruling in the matter on June 10, 2004 in favour of the appellee awarding him the total of Four Thousand, Four Hundred and Eight United States Dollars and Seventy-Five Cents (US\$4,408.75) with breakdown as follows:

|  |              |
|--|--------------|
| Twenty-four (24) months salary at US\$170.00 per month - | US\$4,080.00 |
| 1 month in lieu of notice                                | US\$170.00   |
| Overtime pay -   | US\$258.75   |
|  | US\$4,408.75 |

The ruling was received and acknowledged by one of counsel for the appellant on June 16, 2006. On June 30, 2004, fourteen (14) days after receiving the ruling, the appellant filed a petition for judicial review at the National Labour Court, Temple of Justice, contending that the default judgment granted by the Hearing Officer is illegal and void because no notice of assignment was served on the appellant to appear for hearing on May 19, 2004 and that the award of Four Thousand, Four Hundred and Eight United States Dollars and Seventy-Five Cents (US\$4,408.75) is without legal and factual basis.

The appellee on the other hand had filed a Motion to Enforce the Hearing Officer's ruling in which he contended that the appellant had failed to file a petition for judicial review within statutory time and therefore prayed the National Labour Court to deny and dismiss appellant's petition for judicial review because it was belatedly filed.

The National Labour Court consolidated the Petition for Judicial Review and the Motion to Enforce the ruling of the Hearing Officer and ruled that the appellant's petition for judicial review was filed outside the statutory time of ten (10) days allowed by law. The Judge therefore dismissed the Petition for Judicial Review, granted the Motion to Enforce the Hearing Officer's ruling and ordered that that ruling be enforced.

The appellant excepted to the ruling and has brought the matter for our review and determination on a bill of exceptions consisting of seven (7) counts. We quote herein under counts 1, 3, and 4 which are relevant for the determination of this case.

*"1. Petitioner submits that Your Honour, in ruling on the petition for judicial review and the motion as consolidated, committed prejudicial and reversible error when Your Honour refused to open the*

*record from the Hearing Officer's ruling granting default judgment in favour of Appellee on May 19, A.D. 2004 as in keeping with law, practice and procedure to justify the Hearing Officer's June 10, A.D. 2004 ruling. Petitioner submits that despite the fact that Petitioner was never ever served notice to appear for the hearing of the case on May 19, A.D. 2004, as appears on the Minutes from the Ministry of Labour, Your Honour proceeded to confirm a void judgment of the Hearing Officer against Petitioner when the Hearing Officer did not have jurisdiction over Petitioner on May 19, A.D. 2004 when it rendered said void judgment there being no notice of assignment served on both parties. See page 34 of the Hearing Officer's ruling granting default judgment dated 19<sup>th</sup> day of May, A.D. 2004. Hence, Your Honour committed pre-judicial and reversible error."*

*"3. Petitioner submits that Your Honour again committed pre-judicial and reversible error when Your Honour ruled sustaining a void judgment of the Hearing Officer over which he had no jurisdiction of the parties on May 19, A.D. 2004, when Your Honour ruled that because Petitioner's petition for judicial review was filed out of statutory period, i.e. fourteen (14) days from the date of receipt of the Hearing Officer's ruling when Your Honour knows fully well or should know that a court of law will not enforce a void judgment or ruling made by a judicial or quasi judicial officer when the said judicial officer did not have jurisdiction over the said parties by notice of assignment in this case. Hence, Petitioner noted exceptions to Your Honour's void judgment/ruling of September 30, A.D. 2004 sustaining a void ruling made on June 10, A.D. 2004 by the Hearing Officer."*

*"4. Petitioner also submits that Your Honour miserably committed pre-judicial and reversible error when Your Honour ruled affirming the Hearing Officer's void judgment awarding (US\$4,408.75) Four Thousand Four Hundred Eight United States Dollars & Seven Five Cents to Appellee whose services were terminated under a written contract without any legal basis to support the said award notwithstanding the fact that the said judgment without any notice of assignment to the parties by the Hearing Officer. Hence, this Bill of Exception for the Supreme Court's review and correction."*

The counsel for appellant in his brief, argued two points, firstly that there was no notice of assignment for the hearing of the case on May 19, 2004, therefore the ruling of the Hearing Officer granting the default judgment was improper and should not have been confirmed by the National Labour Court. The second point of his argument is that, the appellant, having signed an employment contract of definite duration for the period of six (6) months, there was no basis for awarding him twenty four (24) months salary and one (1) month in lieu of notice pay.

The counsel for appellee for his part argued one issue: that appellant having filed its Petition for Judicial Review outside of statutory time, the National Labour Court

Judge was justified in dismissing it. He therefore prayed that this Court will confirm and affirm the ruling of the National Labour Court.

The sole question for the determination of this case is whether or not the default judgment granted by the Hearing Officer which was upheld by the National Labour Court was properly entered?

The law is that, Courts, before rendering judgment by default, should inquire whether service of process has been made. 47 AM JUR 2d, Judgment, Section 1174.

Under Section 42.6, 1 LCL Revised, Civil Procedure Law, "*On application for judgment by default, the applicant shall file prove of service of summons and complaint and give a proof of the fact constituting the claim, the default, and the amount due*".

Applying the foregoing laws to the fact of this case, it is clear that the default granted by the Hearing Officer which was upheld by the National Labour Court was not properly entered. The reason is that no notice of assignment was issued for the hearing of this matter at the Ministry of Labour on May 19, 2004, the day on which the counsel for appellee is said to have applied for default judgment which was granted by the Hearing Officer. The records in the case show that the notice of assignment was issued for the matter to be heard on May 18, 2004 but there is no indication that the appellant and/or its counsel appeared. We hold that if the counsel for appellee had intended to invoke the rule on default, he should have done so on May 18, 2004. But the case filed does not show that application for default was made and granted on May 18, 2004. We further hold that the failure of the appellee to have applied for default when the time was ripe amounted to waiver.

Under the circumstance of this case, it could be true that appellant and its counsel did not appear for the case. But it could also be true that the appellee or the Hearing Officer or all of them were not available for the hearing of the case on May 18, 2004, since no record was made to that effect. On what basis then was the case called the following day, May 19, 2004, when the default in question was entered. How was the appellant supposed to know that the matter was reassigned for continuation of hearing the next day, May 19, 2004 when there was no notice of assignment?

Because this point was so crucial to the determination of this case, the counsel for appellee was questioned repeatedly during argument before us to say whether he requested for default judgment on May 18, 2004, the day the case was actually

assigned, but he answered in the negative. As to why the default was entered on May 19, 2004, he could not say.

In law, notice is very cardinal to all proceedings in court. Without notice, a party cannot be expected to comply with any order of the Court such as to appear for a hearing as in the case before us. Thus, since there was no notice to the appellant that the complaint against it would be heard on May 19, 2004, there was no obligation on the appellant to appear at the Ministry of Labour on that day.

Counsel for appellee contended that the appellant filed its Petition for Judicial Review outside statutory time, so the Petition for Judicial Review should therefore be dismissed. True, based on the computation of time, the appellant was clearly out of line when its petition for Judicial Review was filed. But the records also show that the appellee had filed a Motion for Enforcement of the Hearing Officer's ruling.

Under our law and practice, it was incumbent upon the Judge of the National Labour Court to have determined that there was proof of service of process on the appellant and that the appellant failed to appear on the day and time after receiving notice, before confirming and affirming the default judgment entered by the Hearing Officer. Not having done so, the National Labour Court did not act in accordance with the law and practice extant, therefore she committed a reversible error.

We must also make mention of the award of Four Thousand, Four Hundred and Eight United States Dollars and Seventy-Five Cents (US\$4,408.75). The appellee in this case entered a definite contract of employment for a period of six (6) months. The records show that he worked for three (3) months prior to his termination. The question is, on what basis was he awarded 24 months salary as well as one month in lieu of notice pay. Clearly, this was an error as the facts do not support cogent proof of "the amount due" in the contemplation of our statute.

And under our Labor Practices Law, in such cases made and provided, the employee is only entitled to the unexpired portion of his contract and nothing more, should there be a finding that he had been improperly dismissed while his contract was in force and effect. Section 1508(1), Labour Practices Law of Liberia.

Based on the foregoing, we hold that the granting of the default judgment in this case was not done in keeping with law. This case is therefore remanded to the National Labour Court with instruction that it be sent back to the Ministry of Labour to afford the appellant the opportunity to take the witness stand and provide evidence in its

own behalf. Cost to abide the final determination of the case. AND IT IS HEREBY  
SO ORDERED.

*Case remanded*