

JAMES DORBOR and NATHANIEL S. DICKSON, Director/Hearing Officer,
Ministry of Labour, Appellants, *v.* **LIBERIA OPPORTUNITIES
INDUSTRIALIZATION CENTER (LOIC)**, Appellee.

APPEAL FROM THE JUDGMENT OF THE NATIONAL LABOUR COURT,
MONTSERRADO COUNTY.

Heard: April 1, 2004. Decided: August 17, 2004.

1. Res judicata is a point or question or subject matter which was in controversy or dispute and has been authoritatively and finally settled by the decision of a court.
2. Issuable fact, once legally determined, is conclusive as between parties in the same action or subsequent proceeding.
3. The Constitution specifies that obligations of contract shall be guaranteed by the Republic and no laws shall be passed which might impair this right.

The appellant, James Dorbor, filed with the Ministry of Labour an action of unfair labour practice against the appellee, the management of Liberia Opportunities Industrialization Center, alleging that he [the appellant] was dismissed by the appellee because he was ill and could no longer work with the appellee. He also alleged that the appellee had failed to compensate him even though he did not stop working on his own volition but due to illness.

The hearing officer at the Ministry of Labour ruled adjudging the appellee liable for reduction in appellant's salary, failure to pay NASSCORP amounts deducted from the appellant which resulted in denial of his pension benefit, and termination of appellant's employment without resolving appellant's health issue. The appellee excepted to the ruling and filed a petition for judicial review with the National Labor Court, Montserrado County.

The National Labour Court reversed the ruling of the hearing officer and discharged the appellee from liability, stating that the appellant was dismissed because of his inability to render service to the appellee and that the matter was res judicata, having been decided by the Supreme Court in another case. From this decision, the appellant announced an appeal to the Supreme Court.

The Supreme Court agreed with the lower court's decision that the dismissal of the appellant was not wrongful, but it disagreed that the issue presented in the case was *res judicata* or had been disposed of in a previous case, since some of the issues such as appellant's pension benefit premium was not a part of the previous suit. Notwithstanding the recognition of the issue, the Court held that the co-appellant should assert his claim for pension against NASSCORP and not the appellee, and that NASSCORP in turn should proceed against the appellee.

Addressing the issue directly of the dismissal of the co-appellant, the Court noted that the dismissal of the co-appellant was based on medical certificates showing that he was suffering from serious medical condition which rendered him unfit to work. It observed that the medical conditions which the appellant suffered from were not job related and therefore the appellee could not be held liable to compensate the co-appellant for the illness or for reducing his salary.

The Court opined further that the co-appellant contract with the appellee was for a definite duration of six months and that under the said contract the employee could be dismissed if he became ill. Yet, the Court said, the appellee had paid the appellant for a period of thirteen months while he was ill and not reporting for work.

Charles Williams and *Roland Dahn* appeared for the appellant. *Othello S. Payman, I*, appeared for the appellee.

MR. JUSTICE GREAVES delivered the opinion of the Court.

The history of this case reveals that the co-appellant herein, James Dorbor, instituted an action of unfair labour practices on June 12, 2000 before the Ministry of Labour against the management of the Liberia Opportunities Industrialization Center (LOIC). The appellant alleged in his complaint that he was employed by the appellee management as chief security and served the appellee for a period of more than twelve (12) consecutive years. He also complained that he got sick and was subsequently dismissed in January, 2000 without any compensation. The appellant therefore appealed to the Ministry of Labour to intervene so that he would receive his alleged just compensation or remuneration, since he did not stop working on his own volition, but due to illness. The Labour Ministry heard the matter and on April 18, 2001 ruled holding the appellee management liable and awarded Appellant Twenty-Seven Thousand Eight Hundred United States Dollars

(U.S. \$ 27,800.00) for the following reasons:

1. LOIC Management without any legal reason (s) in violation of the Labour Practices Law of Liberia, reduced the salary of Mr. Dorbor from U.S. \$ 175.00 to U.S. \$65.00 for 24 months (1998-2000); thus retaining the difference of US\$2,640.00.
2. That the failure of LOIC Management to pay United States Dollar deducted from Mr. Dorbor's salary monthly to NASSCORP denied him pension benefit of U.S. \$ 60.00 per month or U.S. \$ 720.00 per annum or a lump sum of U.S. \$ 20,160.00.
3. That LOIC Management without resolving the health problem of Mr. Dorbor, terminated his services after 12 years of dedicated service knowing very well that the medical report issued in his favor advised management for him to rest because of ill-health. Based upon this advice, Mr. Dorbor should have been paid off on Medical

ground; therefore, the dismissal of Mr. Dorbor was wrongful, and is to be paid for two (2) years (24 months) in the amount of US\$4,200.00 (US\$175.00 monthly salary)

SUMMARY

1. US\$2,640.00 retaining salary difference of US\$110.00 for 24 months
2. US\$20,160.00--- denial of pension benefit
3. U.S. \$ 4,200.00 ---wrongful dismissal (2years)
4. US\$27,800.00--- Grand Total

Appellee Management excepted to the ruling of the hearing officer and filed an eight (8) count petition for judicial review at the National Labour Court for Montserrat County. The Labour Court Judge after hearing arguments on the petition and returns reversed the ruling of the hearing officer of the Ministry of Labour, stating for reasons among other things, that: "It is the considered opinion of the court that the ruling of the hearing officer, Rudolphus Brown of March 13th, A. D. 2000 should be, and same is hereby reversed as complainant James S. Dorbor was dismissed due to his inability to render services to the Management of LOIC as declared by the two medical reports in his favor. That the two (2) witnesses produced by Co-respondent Dorbor have made no mention of his illness being job related. Therefore this Court has no alternative but to reverse the decision of the hearing officer, thereby discharging petitioner of all liabilities. However, petitioner being a humanitarian organization may use her good offices if she so desires to assist Co-respondent Dorbor, but the court is of the opinion that the ruling of the hearing officer does not support the weight of the evidence adduced at the trial".

We would also like to note here that the judge of the National Labour Court also invoked the legal principle of *res judicata* in her ruling against appellants since she found that the co-appellant was a party to a complaint filed by some employees of appellee management against it (Jerimiah T. Kumeh et al. versus LOIC-Unfair Labour Practices) in which the employees were compensated and the appropriate releases issued by them. The appellants excepted to said ruling and announced an appeal to this Court, which was granted; thus this appeal before us.

The sone issue, as we see it, is whether or not the Labour Court Judge committed a reversible error when she reversed the entire ruling of the hearing officer of the Ministry of Labour stating therein that the matter is *res judicata*.

Her Honour the National Labour Court Judge reversed the Ruling of the Hearing Officer of the Ministry of Labour based mainly on the fact that Appellant was among forty-three (43) employees of appellee who sued for unfair labour practices in the case *Kuqmeb et al. v. LOIC*, decided by this Court on December 20, 2001. She held that since the appellant issued a release to appellee management, he could not bring this action against the appellee. We disagree. The issue in the *Kuqmeb* case involved appellee cutting complainants salaries by 50% and another 20%, which complainants were claiming. The said *Kuqmeb* case did not

involve the issues of pension benefits, job related injury and wrongful dismissal, as in the instant case. We therefore conclude that the doctrine of *res judicata* would apply only as regard the issue of the deduction of Co-appellant James Dorbor's salary in United States Dollars, since he and the other complainants in that case were ordered to be 1 compensated/reimbursed in accordance with this Court's Opinion of December 21, 2001. The Supreme Court frowned on the releases signed by thirty-seven (37) of the complainants in the Kugmeh case as said releases were prepared and signed in the absence of their counsels. *Res judicata* is a point or question or subject-matter which was in controversy or dispute and has been authoritatively and finally settled by the decision of a Court; that issuable fact once legally determine is conclusive as between parties in same action or subsequent proceeding. BLACK LAW DICTIONARY 173 (5th ed).

Another contention in this matter is that of the alleged failure of appellee management to remit the Fifteen United States Dollars (US\$15.00) deducted monthly from Co-appellant Dorbor's salary to the National Social Security and Welfare Corporation (NASSCORP) as premium for pension benefit for him. Co-appellant Dorbor alleged that instead of remitting the Fifteen United States Dollars (US\$15.00) to NASSCORP, appellee management withheld the premium, thereby depriving Co-appellant Dorbor of his pension benefit of US\$60.00 monthly (US\$720.00 per annum) or a lump sum of US\$20,160.00. The appellee management's two witnesses in person of the Director of Finance and the Personnel Director testified to the effect that although US\$15.00 was being deducted from co-appellants salary, the premium was paid in Liberian Dollars and the hard currency returned to Co-appellant.

We are of the opinion that NASSCORP should pay the pension benefit to co-appellant and pursue appellee management to recover said premium if she has not done so.

The facts show that co-appellant complained of ill-health after he and two (2) co-workers were caught-up in the April 6, 1996 crisis at the compound of appellee management. In co-appellant's and David Nyensa's testimonies, before the Ministry of Labour they relayed their ordeal on that fateful day when they were forced to flee amidst a hail of bullets, mortars, etc., using swamps and bushes to get to safety. From that time, co-appellant alleged he began to experience unstable blood pressure and other ailments.

The facts also show that appellee management dismissed Co-appellant James Dorbor after medical certificates presented by him showed that his condition was serious, rendering him unfit to work. Co-appellant contended that his illness was job-related and therefore he could not be dismissed without compensation. We hold to the contrary as there is no evidence before us, either by way of witness (s) testimonies or documentary evidence (Medical Certificate, etc) to show that Co-appellant's illness was Job-related.

Moreover, co-appellant was an employee on a contract of definite duration (six months) which states in clause sixteen (16) "that this contract may be terminated immediately by the employer if (c) employee becomes ill, which illness is not the result of an accident which

occurred while employee is in pursuit of employer's business, and said illness continues for a period of three (3) consecutive months".

We are of the opinion that the dismissal of co-appellant James Dorbor was not wrongful as same was in keeping with clause 16(c) of the Employment Contract between him and appellee management. Further that Article 25, Chapter 111, of the Liberian Constitution (1986) states that "[o]bligation of contract shall be guaranteed by the Republic and no laws shall be passed which might impair this right". The said contract is valid and binding on the parties. We note here that appellee management paid co-appellant a total of thirteen (13) month's salary while he was ill and not reporting to work.

In view of the foregoing facts and circumstances, it is our considered opinion that co-appellee management is not liable to co-appellant James Dorbor for reducing his salary, allegedly withholding his pension premium or dismissing him for reasons stated in this opinion. That the ruling of the judge of the National Labour Court is hereby affirmed with the modification that the issues relating to the alleged withholding of the co-appellant's pension benefit premium from NASSACORP, the illness of co-appellant Dorbor and wrongful dismissal are not *res judicata* as alleged by the National Labour Court Judge as they were not at issue in the *Kugmeh* case. The Clerk of this Court is hereby ordered to send a mandate to the National Labour Court ordering the judge presiding therein to resume jurisdiction over the case and enforce this judgment. Costs are ruled against the appellant. And it is hereby so ordered.

Ruling affirmed with modification.