

FORESTRY DEVELOPMENT AUTHORITY (FDA), by and thru its Managing Director,  
Appellant/Petitioner, v. FORESTRY DEVELOPMENT AUTHORITY WORKERS  
UNION (FDAWU) and THE MINISTRY OF LABOUR, by and thru MR. STEPHEN G.  
SCOTT, Appellees/Respondents.

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

Heard: May 23, 2001. Decided: July 6, 2001.

1. Personal service of precepts upon a domestic or foreign corporation shall be made by reading and personally delivering the summons within Liberia to an officer or managing or general agent, or to any other agent authorized by appointment or by statute to receive service of process.

2. Where service is made upon an employee of a corporation, there must be evidence indicating that the person to whom the process was delivered was either appointed by the corporation to receive service of process or that he or she was directed or designated by the appropriate officer to receive the precepts.

3. Precepts not served on a corporation according to law will not be considered to have been duly served, and the corporation upon whom such service is alleged to have been made will be deemed not to have had its day in court, or to have been denied due process of law.

The appellees instituted in the Ministry of Labour an action of unfair labour practices against the appellant, alleging that they had been denied their just and basic incentives, including housing allowances, increment in salary, transportation, and rice, and that they had been illegally transferred and dismissed. The notice of assignment for the hearing of the case before the hearing officer at the Ministry of Labour, along with the complaint, were delivered to the executive secretary to the managing director of the appellant, and who was also one of the complainants in the action. A second notice of assignment was delivered to another employee who was special assistant to the managing director, and who also was one of the complainants in the case. On both occasions, the appellant did not put in an appearance for the hearing of the case. Because of the non-appearance of the appellant, the appellees prayed the hearing officer for a default judgment. The request was granted, a default judgment was entered against the appellant, the appellees were permitted to present evidence in support of their complaint, and a final judgment of liable was rendered against

the appellant. From this final judgment, the appellant filed a petition for judicial review in the National Labour Court for Montserrado County. The National Labour Court affirmed the ruling of the hearing officer, with the modification that the awards be increased. From this judgment the appellant appealed to the Supreme Court for final review.

The Supreme Court held that the National Labour Court had erred in affirming the ruling of the hearing officer. The Court agreed with the contention of the appellant that service upon a Liberian corporation must be made by reading and delivering a copy of the summons and other documents upon a corporate officer or agent duly authorized by statute or appointment to receive process on behalf of the corporation. The Court observed that in the instant case, there was no evidence that the persons who received the assignments on behalf of the appellant, and who incidentally were also complainants in the case, had the authority or had been given the authority, or were appointed by the managing director of the appellant corporation to receive process on behalf of the corporation. In the absence of such evidence, the Court said, the service could not be said to have been duly made, and accordingly the appellant must be deemed not to have had its day in court, and also to have been denied due process of law. The Court therefore reversed the judgment of the National Labour Court and the ruling of the hearing officer, and ordered that a new trial be held.

Francis Y. S. Garlawolo of Garlawolo and Associates appeared for the appellant. Ishmael P. Campbell of Legal Aid Incorporated appeared for the appellees.

MR. JUSTICE SACKOR delivered the opinion of the Court.

The co-appellees herein, former employees of the Forestry Development Authority and the Forestry Development Authority Workers' Union, filed a complaint on October 30, 1998 with the Ministry of Labour against the Forestry Development Authority (FDA) for unfair labor practices. The co-appellees alleged in their complaint, amongst other things, that the appellant had denied them of their just and basic incentives, such as housing allowances, increment in salary, and transportation, as contained in FDA's 1998 fiscal budget, as well as one bag of rice for each of the employees. They also alleged that they had pleaded with the FDA Management for their benefits and incentives, but that they had received only threats, intimidation, harassment and molestation. Further, they alleged that the FDA Management had demoted and illegally transferred and retired Union Officials, and had even proceeded to dismiss some of them.

The complaint was forwarded to Mr. Stephen G. Scott, Director of Trade Union Affairs, for an investigation. The records showed that a notice of assignment was issued on the 6th day of November for the hearing of the case on November 11, 1998, at the hour of 10:00 a.m.

The returns to the service of this notice of assignment indicated that it was served on one Marie G. Howard. The records also showed that Marie G. Howard was one of the complainants. (See page 21 of the appellees' exhibit "C-6"). The appellant did not appear on the 11th of November, A. D. 1998 for hearing of the case. Hence, on the 11th day of November, A. D. 1998, another notice of assignment was issued and served on one P. Stewart for the hearing of the case on the 17th day of November, A. D. 1998, at the hour of 10:00 a.m. The records showed that on that date also the appellant failed to appear. Whereupon, the appellees prayed for the entry of a default judgment against the appellant, which the hearing officer granted pursuant to decree No. 21. On the 2nd day of December, A. D. 1998, the hearing officer rendered his decision in favor of the appellees, awarding them L\$1,192,125.00 as their total salary claim, L\$1,646,150.00 as transportation allowance (totaling L\$2,838,175.00), and US\$459,742.66 as housing allowance.

The appellant, upon receipt of the hearing officer's ruling, excepted thereto and filed a motion for relief from judgment, praying the hearing officer to rescind his ruling on the grounds that the appellant was never served with a notice of assignment and a copy of the complaint. The appellant also alleged that the Ministry of Labour should not have entertained the complaint because the Ministry had not recognized the Union. That motion is still pending before the Labour Ministry undetermined.

On the 11th day of December, A. D. 1998, the appellant filed a six-count petition for judicial review. This Court deems counts 1, 5, and 6 to be worthy of consideration and to be cogent to the determination of the case. In counts 1 and 5 of the petition, the appellant contended that it did not have its day in court and that it was denied due process of law, in that no notice of assignment or any complaint was ever served on its management. In count 6 of the petition, the appellant averred that the service of process on a corporation shall be made on its corporate officers, such as managing director or an agent or a person duly authorized by the corporation to receive precepts. The appellant alleged that none of the corporate officers ever received any notice of assignment and a copy of the complaint from the Ministry of Labour.

On the 21st day of December, A. D. 1995, the appellees filed a 12-count returns to the petition. We deem counts 1, 8, and 9 to be relevant to the resolution of the case. In counts 1, 8, and 9 of the returns, the appellees contended that the appellant was served with notices of assignment and a copy of the complaint, in that the appellant's agents, in persons of Marie G. Howard and P. Stewart, executive secretary and special assistant to the managing director respectively, received and signed for the notices of assignment, the complaint, and all the exhibits, upon the directive and order of the managing director. Thus, the appellees argued that the appellant was duly served, that it had its day in court, and that it was not denied due process of law.

On the 22nd day of March, A. D. 1999, the National Labour Court for Montserrado County rendered its final judgment confirming the ruling of the hearing officer, with the modification that the appellees be awarded the sum of one million one hundred ninety-two thousand one hundred and twenty Liberian dollars and fifty cents (L\$1, 192, 120.50), representing transportation, salary arrears, and housing allowance, as well as one bag of rice monthly for each employee. The appellant excepted to the ruling and announced an appeal to this Court upon a nine-count bill of exceptions. We consider counts 1 and 9 of the bill of exceptions to be germane to the determination of this case.

In count one of the bill of exceptions, the appellant alleged that the conclusion of the trial judge that the managing director had instructed and designated Co-appellees Marie G. Howard and P. Stewart as the corporation's agents was indicative of the fact that the trial judge had received and had given credence to extra judicial evidence, in that allegations to that effect were never substantiated before the hearing officer and that the records before the trial court was void of such evidence. In count nine of the bill of exceptions, the appellant also alleged that the trial judge erred when she denied the petition for judicial review and confirmed the ruling of the hearing officer since she had failed to hear and receive evidence regarding whether the service of the notices of assignment and the complaint was on the appellant's authorized agent, in keeping with law.

With respect to the foregoing, the appellant raised and argued four issues before this Court, the third of which this Court deems worthy of consideration. In that regard, and with respect to the said issue, the appellant strongly argued that it was never served with the notice of assignment and the complaint, and that the alleged recipient of the notice of assignment was not by law authorized or regarded as corporate officers to receive precepts for and on behalf of the appellant. The appellant also contended that the statute clearly states that in this jurisdiction personal service should be made upon a corporate officer. The appellant asserted that such officers in its hierarchy included the managing director or deputy managing director, and not persons of ordinary ranks, one of whom, Marie G. Howard, was also co-complainant in the case. The appellant therefore prayed this Honorable Court to reverse the judgment of the lower court.

The appellees, on the other hand, raised and argued five issues, the first of which this Court considers paramount to the determination of the case. With respect to that issue, the appellees contended that the appellant was duly served and returned served, but that it had failed to appear for the hearing of the case and had provided no excuse therefor. The appellees argued that it was in light of this failure that they had prayed the hearing officer for a default judgment which was granted pursuant to section 8, article 1, of Degree no. 21, and

sections 42.1 and 42.6 of the Civil Procedure Law, as contained in 1 LCLR, at pages 214 and 216. Essentially, the appellees maintained that the appellant had its day in court and that it was therefore estopped from raising the issue of non-service of precepts. The appellees therefore prayed that this Court would confirm the judgment of the lower court.

As noted earlier, the issue which is decisive of the final determination of this case is whether or not the appellant had its day in court? Section 3.38(6) of the Civil Procedure Law on service of process, as contained in 1 LCLR, provides, *inter alia*:

“Upon a corporation. Personal service shall be made upon a domestic or foreign corporation by reading and personally delivering the summons within Liberia to an officer or managing or general agent, or to any other agent authorized by appointment or by statute to receive service of process. ...

The returns of November 6, 1998 showed that the appellant was served with a notice of assignment for the hearing of the case on the 11th day of November, A. D. 1998 at the hour of 10:00 a. m. The returns do not state the person upon whom the notice of assignment was duly served. The returns also failed to indicate that a copy of the complaint was also served on the appellant. The appellees, on the one hand, contended that Marie G. Howard and P. Stewart were agents of the appellant and that they had received and signed for the notices of assignment and complaint. They also maintained that Marie G. Howard and P. Stewart were executive secretary and special assistant to the managing director, and that the managing director had instructed and ordered them to receive and sign for the notices of assignment. The appellant, on the other hand, contended that Marie G. Howard and P. Stewart were not corporate officers or agents appointed by the appellant to receive service of process. The records showed that Marie G. Howard, upon whom the notice of assignment was served on the 6<sup>th</sup> day of November, A. D, 1998, was a co-complainant in the case, as indicated at page 21 of the appellees’ exhibit “C-6”. The records, however, are void of any evidence indicating that these two individuals were directed and designated by the appellant’s managing director to receive said notices of assignment.

The appellees further argued that the issuance and service of summons by the hearing officer were not required by law, and that a notice of assignment, along with a copy of the complaint, when served on the appellant, constitutes sufficient service of the summons. It therefore followed, they said, that the notice of assignment alone, with the complaint and any other relevant documents, being in the nature of summons, could be and were served in accordance with the statute regarding the service of summons in this jurisdiction.

The statutory provision, quoted *supra*, clearly provides that service of process on a domestic or foreign corporation shall be made by reading, and personally delivering the precept to an

officer, managing or general agent, or any other agent authorized by appointment or statute to receive service of process. There is no evidence before us indicating that Marie G. Howard and P. Stewart were either appointed by the appellant to receive service of process, or directed and designated by the managing director to receive precepts. This Court therefore holds that the precepts issued by the hearing officer were not duly served upon the management of F.D.A., as required by law. Thus, we conclude that the appellant did not have its day in court, and that it was therefore denied due process of law.

Wherefore, in view of the foregoing, it is the considered opinion of this Court that the judgment of the trial court should be and the same is hereby reversed and the case is remanded to the Ministry of Labour for a trial de novo. The Clerk of Court is hereby ordered to send a mandate to the court below informing the judge presiding therein to resume jurisdiction over the case and give effect to this opinion. Costs of these proceedings are to abide the final determination of the case. And it is hereby so ordered.

Judgment reversed; case remanded.