FAMILY PLANNING ASSOCIATION OF LIBERIA (FPAL), Appellant, *v.* **EDITH HARRIS**, Appellee.

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

Heard: April 14, 2004. Decided: August 13, 2004.

1. Where counsel for a party, in the course of proceedings in a lower tribunal, files a notice of withdrawal as counsel for the party, notice of the rehiring of the counsel by such party must be served on the court and on the opposing party before the counsel can again resume representation of the party.
2. No liability attaches to an individual for the acts of one who assumes without authority to act for him in the capacity of an agent, all elements of ratification estoppels being absent.
3. A party is not bound by the act of counsel who voluntarily appears without the relation of attorney and client having previously been established.
4. An attorney of record may be changed by order of court, unless a party is an infant or incompetent person, by filing with the clerk of the court a notice of change, a copy of which notice of change must be served on the other party.
5. The provision of the statute relating to change of counsel is applicable where a counsel who has withdrawn from representation of a party is rehired by that party.
6. A party litigant may, during the course of legal proceedings, at any stage employ other counsel to represent his interest, but he must designate such counsel by proper notice to the court and parties.
7. Where the lawyer-client relationship is terminated by the withdrawal of representation of the client by the lawyer, the subsequent rehiring of the same counsel relative to the same matter or proceedings establishes a new contractual relationship which must be confirmed by proper notice to the court and to the opposite party.
8. It is a conflict for a lawyer employed with the Ministry of Justice to act as lawyer in a civil matter in which his personal interest or that of the Government is not involved.
9. The Solicitor General of Liberia must desist from acting as a private lawyer while serving in Government at the Ministry of Justice.
10. Where a defendant fails to appear in person or by counsel on a date of assignment of a case for hearing, default judgment shall be granted.
11. A complainant in a labour matter may seek default judgment where the defendant has failed to appear, plead or proceed to trial.
12. It is sufficient if the party who has the burden of proof establishes his allegations by a preponderance of the evidence.

13. On application for judgment by default, the applicant must file proof of service of the summons and complaint, and give facts constituting the claim, the default and the amount due.
14. Where wrongful dismissal is alleged, the Board of General Appeals shall have power to order reinstatement, but may order payment of reasonable compensation to the aggrieved employee in lieu of notice. The party against whom the order is made shall have the right of election to reinstate or pay such compensation.
15. An employer cannot legally be held to pay an employee for a period when its operations were closed due to the Liberian civil war.

The appellee, who was employed by the appellant, was asked to stay off the job because of the escalation of the Liberian civil war and the impossibility of any operations by the appellant in the war environment. The appellee, along with other employees, were given six months' salary by the employer as a humanitarian gesture to help alleviate their hardship brought about by the war, and they were told that they would be re-employed when the war situation returned to normal. However, although most of the other employees were recalled when the appellant resumed its operations several years later, the appellee was not amongst them, in spite of her repeated contacts, including written communications, to and with the appellant for her recall. When the employer failed to respond and to recall the appellee, she filed a complaint with the Ministry of Labour for unfair labour practice, claiming salary arrears for the eleven years she was without employment with the appellant.

When the case was called for hearing, counsel for the appellant sent a letter to the effect that it no longer represented the appellant and hence was withdrawing representation of the appellant in the case. The case was then postponed to another day, but upon the case being resumed, another letter was sent under the name of the appellant informing the hearing officer that its counsel, who was also the Solicitor General of Liberia, was out of the country on official Government business. It therefore requested that the case be postponed until his return to the country. The case was therefore reassigned. However, upon the call of the case on the reassigned date, neither the appellant nor its counsel was present. Hence, counsel for the appellee moved the hearing officer for entry of a default judgment, which motion was granted and the appellee allowed to present evidence to make perfect the imperfect default judgment. Thereafter, a ruling was entered against the appellant holding it liable for eleven years of salary arrears to the appellee, in the amount of US$41,406.00.

From the ruling of the hearing officer, the appellant, again represented by the same counsel that had earlier notified the proceedings of its withdrawal from the case, filed a petition for judicial review before the National Labour Court. The National Labour Court granted the appellee's motion to strike the petition on the ground that the appellant had failed to serve notice of the re-hiring of its counsel on the court and the appellee. The judge therefore dismissed the petition and affirmed the ruling of the hearing officer.

On appeal, the Supreme Court affirmed the judgment of the National Labour Court and held that the failure of the appellant and/or its counsel to appear for hearing of the case on the assigned date was adequate grounds for the application for default judgment made by the appellee and for the granting of same by the hearing officer; that the granting of the default judgment was in conformity with the statute and decided cases of the Supreme Court; and that the evidence produced by the appellee was sufficient to sustain the burden of preponderance of the evidence required by law.

On the issue of the representation by previous counsel, which formed the basis for the motion to strike the petition for judicial review, the Court held that the lower court judge acted legally and properly in denying and dismissing the petition for judicial review, as same was filed by counsel who had not complied with the statute relating to the representation of a party. The Court noted that once the counsel had notified the hearing officer at the Labour Ministry of its withdrawal of representation of the appellant in the case, the relationship of lawyer and client ceased to exist and if the appellant decided to rehire the same counsel to again represent its interest in the same proceedings, it should have served notice on the court and the opposing party. In the absence of such notice, the Court opined, the counsel was without authority to file a petition for and on behalf of the appellant, noting that liability could not attach to a party for the acts of counsel who assumed without authority to act for the party in the capacity of an agent. The Court reasoned further that the statute governing change of counsel was also applicable to the situation where a lawyer who had ceased to represent a party and thereby terminate the relationship of lawyer-client, was re-engaged by that party to continue to represent its interest.

On the question of the representation of a private party in a private action by the Solicitor General of Liberia, a lawyer working for the State, the Court opined that this was a conflict of interest and warned the Solicitor General from engaging in such acts.

Lastly, the Court held that notwithstanding its affirmance of the judgment of the National Labour Court, there was need to modify the ruling to conform to the law. The Court noted that while the appellant should have recalled the appellee or notify her of the termination of her employment with it, and that the failure by the appellant amounted to a wrongful dismissal, the award made by the hearing officer was derived from the erroneous conclusion that the appellee was entitled to eleven years pay (from 1990 to 2001) rather than as provided by section 9 of the Labour Practices Law which stipulates a payment of 24 months. The Court therefore reduced the award to US$7,200.00.

S. Othello Payman of Kemp & Associates appeared for the appellant. *Cooper W. Kruah* and *James N. Gilayeneh, Sr.* of The Henries Law Firm appeared for the appellee.

MR. JUSTICE KORKPOR, SR., delivered the opinion of the Court

This case is on appeal from the ruling of Her Honour Comfort S. Natt, Judge of the National Labour Court, growing out of a petition for judicial review. The National Labour Court dismissed the petition for judicial review and confirmed the ruling of the hearing officer from which the judicial review was sought.

The records reveal that the appellee, Edith Harris, was employed by the appellant, Family Planning Association of Liberia (FPAL), in August 1979 and assigned to Yekepa, Nimba County, where she worked until the inception of the Liberian Civil War. As a result of the civil war, she was forced to move to Monrovia in January 1990 and was assigned at the FPAL's Monrovia Office until June 1990, when, due to the escalation of the civil war, her employer asked her, along with other employees, to stay off duty until the war situation returned to normal. All of the employees, including the appellee, were paid six months salary "as humanitarian assistance" while they waited for the war to cease. The Management of FPAL resumed operations in 1993 and started to recall its employees individually to report to work. The appellee reported to work from the day the appellant resumed operations in 1993, but was told by the Management of FPAL to wait for reassignment. She paid frequent visits to the offices of FPAL, but was repeatedly told to wait.

On August 26, 1999, the appellee and five other employees, observing that almost all of their colleagues who were told to stay off duty had been recalled, wrote the Management of FPAL informing it of their readiness to resume their respective duties, but FPAL did not reply their letter. However, two of the five employees who signed the letter were recalled and reinstated, leaving the appellee and two others without redress. Subsequently, the appellee, on her own wrote the President of FPAL informing her of the refusal of the Management of FPAL to reinstate her and requested the President of FPAL to intervene in the matter. But again, there was no response to this letter.

The appellee then filed a complaint of unfair labour practice, by and through her lawyers, the Henries Law Firm, with the Ministry of Labour on June 18, 2001, claiming salary arrears due her for eleven years from 1990 to 2001 at the rate of US$300.00 per month, totaling US$40,788.00. Investigation into the complaint was scheduled for July 18, 2001. When the case was called for hearing/investigation, the counsel for FPAL invoked the statute of limitations and moved the hearing to dismiss the complaint claiming that the case should have been commenced within seven years after the right to leave accrued. The motion was resisted, argued, and denied by the hearing officer. The appellant did not except to the ruling denying the motion.

Thereafter, regular hearing into the case started and continued up to and including February 7, 2002. A notice of assignment was issued assigning the case for hearing on February 25, 2002, at 1:00 p.m., but the appellant's counsels refused to receive and sign for said notice of assignment. When the case was called on February 25, 2002, in keeping with the notice of assignment, the hearing officer brought to the attention of appellee's counsels a

letter under the signature of Attorney Othello S. Payman, one of the lawyers representing the appellant. The letter is quoted hereunder.

"THE KEMP & ASSOCIATES
LEGAL CONSULTANCY CHAMBERS, INC.
21st Floor, Mamarinna Building, Front Street
P. O. Box 1167, Monrovia, Liberia — West Africa
Tel: 224591

February 18, 2002

Hon. G. Rudolphus Brown
Asst. Minister/Hearing Officer
Ministry of Labour
Monrovia, Liberia

May It Please Your Honour:

This is to notify Your Honour that we no longer represent the legal interest of the Management of the Family Planning Association of Liberia in all cases pending before Your Honour and this Ministry as a whole.

Accordingly, all notices of assignments for the Management of Family Planning Association of Liberia should be served on her effective as of the date of this Notice of Withdrawal of counsel.

Kind regards.

Othello S. Payman, II
One of Counsels for Defendant
CC: Family Planning
File"

Due to the above quoted letter from the Kemp & Associates Law Firm, the matter was postponed and a new notice of assignment issued to be served directly on FPAL, together with the minutes of proceedings held on February 25, 2002, informing FPAL that its lawyers, Kemp & Associates Law Firm had withdrawn from the case. The matter was then assigned for March 12, 2002.

On March 12, 2002, when the case was called for hearing, another letter was brought to the attention of the appellee's counsels. This time, it was Honorable Christian H. Neufville, President Emeritus of FPAL, who wrote that letter. We also quote his letter hereunder.

"March 11, 2002

Hon. G. Rudolphus Brown
Assistant Minister
Ministry of Labor
Monrovia, Liberia

Dear Hon. Brown:

We are in receipt of the writs of summons re: Miss Edith Harris vs. FPAL and Mr. Larry Younquoi vs. FPAL, respectively, assigned for March 12, 2002 at 1:00 p.m. at the Labor Court.

Presently, we are unable to locate our Legal Advisor, Cllr. Theophilus C. Gould. We understand over the weekend that he is out of the country on official business.

In view of the aforestated, we respectfully request postponement of the hearing by ten (10) working days to enable FPAL contact its lawyers for full and adequate legal representation.

Thanks for your kind indulgence and understanding.

Very truly yours,
Christian H. Neufville
PRESIDENT EMERITUS."

The request for postponement made by Mr. Neufville was resisted by appellee's counsels on grounds that Counsellor Theophilus C. Gould was a state prosecutor with the Ministry of Justice and whether or not he was in Liberia, his presence was irrelevant to the case since he is not authorized under the law to participate in private cases which do not involve the interest of the State or officials of Government. But the resistance was denied and the appellant was given ten days as requested. Thereafter, the case was reassigned for hearing on March 25, 2002. Even though the appellant, FPAL, received and signed for the notice of assignment it failed, in person or by counsel, to appear for the hearing, without providing any excuse indicating its inability to attend the hearing. It was at this point that the appellee's counsel moved for a default judgment against the appellant. The motion for default judgment was granted by the hearing officer and the appellee produced two witnesses and documentary evidence in support of her case. On April 6, 2002, the hearing officer entered final ruling in favor of the appellee and awarded her the amount of US$41,406.00 as salary arrears for eleven years. The ruling was served on the appellant on April 8, 2002.

On April 18, 2002, the Kemp & Associates Law Firm who on February 18, 2002, withdrew its representation in the matter for the appellant, filed a petition for judicial review on behalf of the same appellant, FPAL. The petition for judicial review states, *inter alia,* that the hearing officer granted the default judgment "even though petitioner's counsel was still out of the country on state matters; that is to say, to attend the Mano River Security Council Meeting in the Republic of Guinea." The petition also stated that the final ruling against FPAL is contrary to the weight of the evidence adduced at the hearing; and that there was no proof of the facts establishing default judgment.

The appellee filed her returns challenging the petition for judicial review and simultaneously filed a two-count "motion to strike the petition" stating the following grounds:

1. "That, though the Kemp & Associates Legal Consultancy Chamber, Inc. was counsel of record when the proceedings started, however, on the 18th day of February 2002, the said Kemp & Associates Legal Consultancy Chambers, Inc. withdrew its legal representation in this matter through a formal notice to the hearing officer and copy served on the defendant management. Your Honour is requested to take judicial notice of count 6 of the petition for judicial review."
2. "Further to count (1) above, the filing of the above notice of withdrawal by the Kemps & Associates means that the Kemp & Associates was no longer counsel of record in this matter and in order for the said Kemp & Associates to return as legal counsel in a matter that it had earlier withdrawn, a notice of additional counsel must be filed or should have been filed and copy served on the adversary party. Under our law and practice, a pleading filed by a lawyer who is not counsel of record in a matter is not legally before the court and therefore a motion to strike will lie and movant so pray."

The lawyers for Appellant FPAL requested court to file FPAL's resistance to the 'motion to strike' on the records of court. The request was granted and said resistance essentially stated: That Kemp & Associates' earlier withdrawal from the case was in keeping with law and that said withdrawal terminated the previous lawyer/client relationship; that the subsequent appearing of Kemp & Associates in the case was based on a new contractual relationship, as indicated by a letter written to the hearing officer rehiring the services of Kemp & Associates; that the contention of the appellee/ movant that the appellant/ respondent should have filed a notice of additional counsel with the hearing officer and served copy on the appellee is untenable because the subsequent re-hiring of Kemp & Associates made them new counsels and not additional counsels, since at the time of re-hiring Kemp & Associates, the FPAL had no lawyers to which addition could be made.

The National Labour Court Judge heard arguments on the 'motion to strike' and the resistance thereto and granted the motion. The court held that the appellant should have served notice on the court and on the opposite party informing them that it had re-hired the services of Kemp & Associates to again represent FPAL's legal interest in the case. The judge subsequently dismissed the petition for judicial review and confirmed the ruling of the hearing officer in which the appellee was awarded the amount of US$41,406.00.

The issues for the determination of this case are:

1. Whether a party whose counsel withdraws from a case before the Ministry of Labour is required, upon rehiring the very same counsel to resume representation in the same matter, to serve notice on the court and on the opposite party?
2. Whether the ruling of the hearing officer which was upheld by the National Labour Court is against the weight of the evidence adduced, as alleged by appellant?

Concerning the first issue, i.e. whether a party whose counsel withdraws from a case before the Ministry of Labour is required to serve notice on the court and the opposing party upon rehiring the same counsel to resume representation in the same matter, we

answer in the affirmative. The law extant in our jurisdiction is that "No liability attaches to an individual for the acts of one who assumes without authority, to act for him in the capacity of an agent, all elements of ratification or estoppel being absent." *Denco Shipping Lines v. Aminata & Sons, Inc.*, 37 LLR 77 (1992), Syl. 2.

It has also been held by this Court that a party is not bound by act of counsel who voluntarily appears without the relation of attorney and client having previously been established. *Liberia Industrial Development Corporation v. Thorpe and El Nasr Export-Import Company*, 31 LLR 714 (1984).

It is clear from the principles of law cited in the foregoing cases that a lawyer who files pleadings on behalf of a party must be authorized to do so. The National Labour Court Judge held in her ruling that the appellant did not serve any notice on the court and on the opposing party to inform them that Kemp & Associates who had earlier withdrawn from the services of FPAL, had been rehired. Our review of the records before us supports this position. There was no notice served on the court and the opposing party indicating that Kempt and Associates had been rehired.

Under our statute, "an attorney of record may be changed by court's order or, unless a party is an infant or an incompetent person, by filing with the clerk of the court a notice of change .... A copy of notice of such change shall be served on the other parties." Civil Procedure Law, Rev. Code 1:1.8(2). Even though the appellant in this case was not changing counsel, or adding to existing counsel(s), the foregoing provision of our statute is applicable where the party hires a new counsel. In the case *Findley and Rasammy Brothers v. Weeks*, 18 LLR 245 (1968), Mr. Justice Wardsworth, speaking for the Court, held that: "A party litigant may, during the course of legal proceedings, at any stage employ other counsel to represent his interest, but he must designate such counsel by proper notice to the court and parties." Since the client-lawyer relationship between Kemp & Associates was terminated when the Firm withdrew from the services of FPAL with notice to the said FPAL, their subsequent rehiring established a new contractual relationship which ought to have been confirmed by FPAL through notice not only to the court, but also to the opposing party. How else could the National Labour Court and the opposing party have known that Kemp & Associates who terminated its services with the appellant had been rehired in the absence of such notice?

We therefore hold that the filing of the petition for judicial review by Kemp & Associates was not in keeping with law and procedure, absent any showing that there again existed a new lawyer-client relationship between FPAL and Kemp & Associates. The National Labour Court Judge therefore did not err when she ruled dismissing the petition for judicial review, which was filed by Kemp & Associates.

At this point, we must register the Court's concern and displeasure with the manner in which Kemp and Associates conducted the matter of its client. Firstly, the firm withdrew from its client's case during investigation without stating any reason. And barely two months

after withdrawing from the case, the same firm filed a petition for judicial review on behalf of the very client and in the very case from which it had withdrawn. Our law on withdrawal of a lawyer from a client's employment provides:

> "The right of a lawyer to withdraw from employment, once assumed, arises not only from good cause. Even the desire or consent of the client is not always sufficient. The lawyer should not throw up the unfinished task to the detriment of his client, except for reasons of honor or self-respect..." *Rule 36, Code of Moral and Professional Ethics, Code for the Moral and Ethical Conduct of Lawyers* (1999).

The reason for Kemp and Associates' withdrawal from its client's case leaves much to be desired.

Secondly, there was the serious revelation that Counsellor Theophilus C. Gould was still practicing law with the Kemp & Associates Law Firm and was lawyer for the appellant, at least at the time the matter was with the Ministry of Labor. The above quoted letter of Mr. Christian H. Neufville, President Emeritus of FPAL sent to the hearing officer referred to Counsellor Gould as legal advisor of FPAL who was "out of the country on an official business." And count 8 of the petition for judicial review filed by Kemp & Associates on behalf of the appellant states in part:

> "That co-respondent, G. Rudolphus Brown, erroneously granted a default judgment against petitioner/defendant management even though petitioner's counsel was still out of the country on state matter; that is to say, to attend the Mano River Security Council Meeting in the Republic of Guinea."

Of course, the petitioner's counsel referred to in count 8 of the petition for judicial review is Counsellor Gould. How can the appellant request court to postpone a labor case because a lawyer who works for the State as prosecutor is outside of Liberia? Under our practice, it amounts to conflict of interest for a lawyer employed with the Ministry of Justice to act as lawyer in a civil matter in which his personal interest or that of the Government is not involved. This Court at this time will only warn Counsellor Gould, who is currently serving as Solicitor General of Liberia, to desist forthwith from acting as private lawyer while serving in Government position at the Ministry of Justice.

Concerning the issue as to whether the ruling of the hearing officer, which was upheld by the National Labour Court, is against the weight of the evidence adduced, this Court says that the National Labour Court acted properly in confirming and affirming the ruling of the hearing officer. The records before us show that the appellant wrote a letter to the hearing officer requesting postponement for ten days to contact its lawyers for full and adequate representation." But after more than ten days when the case was assigned, the appellant failed, without excuse, to appear for the hearing of the matter involving the appellee whose claim is already bordered on prolonged delay to have her recalled and reinstated. Under the circumstance, we think the default judgment was properly granted. Where a defendant fails to appear in person or by counsel on a date of assignment of a case for hearing, default

judgment shall be granted. *Konah and Tiawon v. Carver,* 36 LLR 319 (1989). Specifically, this Court has held that a complainant in a labor matter may seek default judgment where the defendant had failed to appear, plead or proceed to trial. *Monrovia Tobacco Company v. Flomo and Barnh*, 36 LLR 523 (1989).

Upon granting the default judgment, two witnesses testified for the appellee, including the appellee herself. The testimonies of the two witnesses established essentially that the appellee was employed by appellant in 1979 and worked up to and including 1990 when the civil war forced her to move to Monrovia, where she was assigned with the appellant's Monrovia office in January 1990; that she worked in the Monrovia office of appellant until June 1990 when due to the escalation of the civil war, she and other employees were paid six months salary as "humanitarian assistance" and told to wait for the civil war to cease; that the appellant resumed operations in 1993 and appellee promptly reported to work, but she was told to wait for re-assignment; that even though almost all of appellee's colleagues were recalled and reinstated, appellant did not reinstate the appellee and all efforts made by appellee to prevail on appellant to recall her to work proved futile. These statements of facts, supported by documents, in our opinion, established by preponderance of the evidence, the appellee's case of unfair labour practice before the Ministry of Labour. Our statute provides that: "It is sufficient if the party who has the burden of proof establishes his allegations by a preponderance of the evidence." Civil Procedure Law, Rev. Code 1:25.5(2). And on application for judgment by default, the applicant must file proof of service of the summons and complaint, and give facts constituting the claim, the default and the amount due. *Franku et al. v. Action Contre La Faim*, 39 LLR, 289 (1999). The appellee in this case met all of these legal requirements. Given the numerous postponements on account of the appellant, as seen from the records of this case file, coupled with the appellant's unexcused absence from the hearing of the case on March 25, 2002, to which it was duly notified, we hold that the appellant abandoned its defense.

However, we must modify the ruling of the hearing officer which was confirmed by the National Labour Court. The hearing officer ruled as follow: "...since said agreement or contract of employment between the appellee and the appellant was not void by defendant management and the within complainant persistently presented herself ready to resume her assignment, but was denied assignment, said action on the part of the defendant management constitute constructive illegal dismissal, hence she should and must be forthwith paid her just entitlements for the period of eleven years off the job, one month 's salary for time served and one month 's salary in lieu of notice, totaling US$41,406. 00."

To the mind of this Court the facts and circumstances of this case clearly established that the appellant management did not recall the appellee for assignment or declare her employment status with FPAL. We hold that the appellant should have either recalled the appellee for reassignment or severed her employment status with FPAL and provided compensation to her, if any, in keeping with the labour law. But this was not done, thereby

allowing the appellee's employment status with appellant management to remain in abeyance perpetually. This action was wrong, and amounted to the wrongful dismissal of the appellee.

Section 9 of the Labour Practices Laws of Liberia provides that:

> "Where wrongful dismissal is alleged, the Board of General Appeals shall have power to order reinstatement, but may order payment of reasonable compensation to the aggrieved employee in lieu of reinstatement. The party against whom the order is made shall have the right of election to reinstate or pay such compensation. In assessing the amount of such compensation, the Board shall have regard to:
>
> (a) (i) reasonable expectations in the case of dismissal in a contract of indefinite duration;
>
> (ii) length of service; but in no case shall the amount awarded be more than the aggregate of two years salary or wages of the employee computed on the basis of the average rate of salary received six months immediately preceeding the dismissal...; and
>
> (b) The Board of General Appeals may assess and order payment of all arrears or remuneration payable in any case referred to it."

This Court says that the total award of US$41,406.00 was derived from the erroneous conclusion that the appellee was entitled to pay for eleven years from 1990 to 2001. It must be noted that in June 1990, the appellant paid appellee and other employees' salaries for six months and told them to wait until the civil war was over. Thereafter, the appellant closed all operations and did not resume until 1993. Therefore, the appellant cannot legally be held to pay the appellee for the period when its operations were closed due to the civil war, a situation that was not caused by the appellant or the appellee.

We therefore hold that the appellant is liable to reinstate the appellee on the job or pay her the aggregate of two years' salary in compliance with section 9 of the Labour Practices Laws of Liberia. The appellee's last salary earned was US$300.00. This amount x 2 years or 24 months is equivalent to US$7,200.00.

Wherefore and in view of the foregoing the ruling of the National Labour Court appealed from is hereby confirmed with these modifications. Costs are ruled against the appellant. And it is hereby so ordered.

Ruling affirmed.