

FIRESTONE PLANTATION COMPANY, by and thru its representative, Appellant,
v. **JOHN T. KOBBAH** and **THE BOARD OF GENERAL APPEALS**, Ministry of
Labour, Appellees.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT,
MONTSERRADO COUNTY.

Heard: November 2 and 7, 1983. Decided: December 21, 1983.

1. Amnesty is the prerogative of the President or Head of State to pardon convicted criminals; while abandonment is the prerogative of a party to an action to exercise.
2. The appellee having been informed that the abandonment of a criminal case against him was predicated upon a general amnesty proclaimed by the Head of State, and knowing that he was adjudged guilty by a criminal court for the crime of theft of property, he had an election to either accept or reject the amnesty.
3. A general amnesty in a criminal case does not automatically mean that a labour action based on similar facts is also abandoned, or has been won. Rather the labour action must be heard on its merits.

Co-appellee John T. Kobbah was dismissed by appellant corporation on grounds that he manipulated company's records and committed theft. The co-appellee commenced an action of wrongful dismissal but while same was still pending, the co-appellee was indicted for the crime allegedly committed against his former employer. The co-appellee was adjudged guilty of the crime of theft of property in the lower court and he appealed to the Supreme Court. While the appeal was pending, the Government of Liberia was overthrown. Subsequently, the criminal trial was abandoned by the Government under a general amnesty granted by the new Government. The conviction of the co-appellee was therefore reversed in a judgment without opinion delivered by this Court. Thereafter, the co-appellee returned to the Ministry of Labour and obtained a ruling therefrom adjudging the appellant liable in the action of illegal dismissal, based upon the general amnesty, without conducting a hearing.

The appellant appealed from this decision to the Board of General Appeals which affirmed the hearing officer's ruling. The appellant then further appealed to the Sixth Judicial Circuit Court for judicial review and the Court also affirmed the decision of the hearing officer and the Board of General Appeals. Being dissatisfied with the court's judgment, the appellant perfected its appeal to the Supreme Court for a final review. The Supreme Court reversed the judgment on the ground that the hearing officer had failed to conduct further investigation of the matter to determine the merits of the contentions raised by the parties, especially the question as to whether the dismissal was illegal or justified.

Victor D. Hne of the Carlor, Gordon, Hne and Teewia Law Office appeared for the appellant. Lewis K Free appeared for the appellees.

MR. JUSTICE MORRIS delivered the opinion of the Court.

The facts presented by the records in this case revealed that John T. Kobbah, co-appellee herein, was an employee of the appellant company serving in the capacity of a cafeteria manager at Harbel, Liberia. The co-appellee was also responsible for the processing of requisitions for food supplies to overtime laborers. It would seem that the appellant company had discovered from co-appellee's dealing with the requisitions some discrepancies in that extra figures were allegedly placed on the requisitions which brought about the expenditure of larger amounts when actually there were a few persons who did overtime work. Predicated upon this assumption, the appellant wrote the co-appellee the below quoted letter terminating his services:

"FIRESTONE PLANTATIONS COMPANY

HARVEY S. FIRESTONE FOUNDER

HARBEL, LIBERIA

WEST AFRICA

FIRESTONE INVESTIGATION

July 16, 1979

Mr. J. T. Kobbah

Firestone Plantations Company Harbel, Liberia Dear Mr. Kobbah:

Effective as of the above date, your services with the Firestone Plantations Company have been terminated for manipulating company records to the detriment of the company.

You will have two weeks as of the above date, to vacate your assigned company house. When you are ready to vacate the house, you should turn the keys over to Mr. S. Doe. You should also ensure that you turn over all office keys etc. to your immediate supervisor.

Very truly yours, FIRESTONE PLANTATIONS COMPANY

W. R. Krasij ACTING FACTORY MANAGER"

Co-appellee being dissatisfied with his dismissal filed a complaint with the Ministry of Labour representative in Firestone. It is alleged that several citations were issued but the appellant did not appear. Consequently, the co-appellee referred his complaint to the Minister of Labour, Youth and Sports who in turn assigned the same to an official of his Ministry. Investigation commenced from December 3, 1979 but was not concluded when the co-appellee was indicated by the grand jury of Montserrado County during the August 1979 Term of the Criminal Court for theft of property. The hearing officer after being notified of the co-appellee' s indictment made the following ruling:

"This investigation rules that in view of the fact this case of wrongful dismissals bears such close relationship to the indictment brought by the defendant against the complainant in the criminal court and cannot be concluded until the court has rendered its final verdict or decision, this matter is suspended until such time. The Ministry of Labour, Youth and Sports

requests the complainant to inform us when this case has been finalized so that this investigation may proceed into hearing his case of wrongful dismissal."

The co-appellee was tried by the Special Theft Court, Criminal Court "C" during its January and February Terms, A. D. 1980 presided over by His Honour Napoleon B. Thorpe and a verdict of guilty was brought against the co-appellee which was confirmed by a final judgement. He appealed to the Supreme Court of Liberia. While the appeal was pending, the military coup took place and the operations of the courts were suspended. When the courts were reconstituted, the Solicitor General, Jammie S. Geizue and Minister of Justice Chea Cheapoo presented a list of criminal cases ranging from manslaughter to theft of property as cases in which the Government of Liberia had granted general amnesty and therefore the Government, through the Ministry of Justice, was abandoning the prosecution thereof. The Court, however, held that the Ministry of Justice through its representatives could make the necessary record if they so desire, whenever these cases were called for hearing, but the Court will assign each case for hearing. Several cases assigned were abandoned by the Justice Ministry in the light of the alleged general amnesty. Consequently, when this case was called for hearing even though no one appeared for the co-appellee who was then appellant in the theft of property case, yet, the Solicitor General, Jimmie S. Geizue informed this Court that the prosecution had abandoned said case. The Court then ruled ordering the defendant/appellant (co-appellee in this case) discharged without day. Co-appellee took a copy of the Court's judgement without opinion to the hearing officer of the Ministry of Labour who then ruled that:

"On July 16, 1979, the defendant management terminated the service of Complainant John T. Kobbah on ground that the complainant, according to the defendant company, manipulated records to the detriment of the defendant company.

Complainant in these proceedings worked for the defendant company for seventeen (17) years with the monthly salary of Three Hundred Sixteen Dollars (\$316.00).

The complainant reported this matter to the labour inspector, Mr. E. K. Johns, and while the matter was pending before the labour inspector at Harbel, Firestone, an indictment for theft of property was brought against the complainant by the grand jury of Montserrado County. On July 31, A. D. 1981 the People's Supreme Tribunal (former Supreme Court of Liberia) finally adjudicated the criminal case and acquitted the defendant/appellant (John T. Kobbah) of the charge of theft of property. This acquittal therefore made the illegal dismissal of complainant John Kobbah a wrongful dismissal.

OBSERVATION

The complainant has been in the employ of the defendant company for the past seventeen (17) years making the monthly salary of Three Hundred and Sixteen Dollars (\$316.00); under the Labour Practices Laws of Liberia, one who is less than fifty (50) years of age, and has served for twenty-five (25) years is eligible for pension. Mr. John T. Kobbah is much less than fifty (50) years of age, and had served the defendant company for seventeen unbroken years; this is pretty close to twenty-five (25) years of service. Under the Labour Practices Law of Liberia, an employee who has been wrongfully dismissed, is entitled to receive a compensation of two (2) years, but not more than five (5) years. See the Labour Practices Laws, 18-A: 1508, Subsection 9 (a)(ii)(wrongful dismissal).

RULING

In the light of the above, it is our candid and considered opinion that the defendant company is liable for wrongful dismissal and is ordered to pay the complainant two (2) years or 24 months compensation, that is $\$316.00 \times 24 \text{ months} = \$7,584.00$ (Seven Thousand Five Hundred and Eighty Four Dollars). Defendant company is ordered to pay this amount immediately upon the rendition of these our Ruling (Judgement).

AND IT IS HEREBY SO ORDERED. GIVEN UNDER MY HAND THIS 27th DAY OF AUGUST, A.D. 1981 Paye D. Trokpao DEPUTY DIRECTOR/LABOUR STANDARDS,

LABOUR MINISTRY. This is the ruling that has been affirmed by the Board of General Appeals and the circuit court.

We also wish to quote the communications between the Solicitor General and counsel for the appellant relative to the abandonment by the Solicitor General of the theft of property case which were made parts of the records in the instant case:

"September 4, 1981 Counsellor Jimmie S. Geizue Solicitor General, R.L. Minister of Justice Monrovia, Liberia Mr. Solicitor General:

Re: John T. Kobbah v. Republic Theft of Property According to a judgement without opinion rendered by the People's Supreme Tribunal on July 31, 1981, the judgement was handed down in view of the entry of an abandonment of the prosecution by the Solicitor General. A copy of the judgement is hereby enclosed by ready reference.

We would appreciate it if you will kindly advice whether or not the abandonment of the prosecution by your Ministry was a result of the general amnesty granted by the Head of State when the PRC Government came into power in 1980.

Thank you for your kind attention. Very truly yours, CARLOR, GORDON, HNE AND TEEWIA Victor D. Hne

COUNSELLOR-AT-LAW John T. Teewia COUNSELLOR-AT-LAW

S. Edward Carlor COUNSELLOR-AT-LAW "8657/4-4/'81 September 17, 1981 Gentlemen:

Your letter of September 4, 1981 in which you asked our advice on abandonment cases due to the general amnesty granted by the Head of State is hereby acknowledged.

We wish to advise that the abandonment of the many cases was a result of the general amnesty by the Head of State after the April 12, 1980 revolution.

Kind regards, IN THE CAUSE OF THE PEOPLE, THE STRUGGLE CONTINUES! Very truly yours, Jimmie S. Geizue SOLICITOR GENERAL The Carlor, Gordon, Hne and Teewia Law Office Broad and Gurley Streets Monrovia, Liberia

Counsel for co-appellee eloquently argued before us that if the co-appellee was discharged because of general amnesty the judgement of this Court would have so indicated. Instead the judgement revealed that the Solicitor General abandoned the case. Therefore, amnesty not being synonymous or interchangeable with abandonment cannot be given as the reason for the prosecuting attorney's abandoning the trial. The fact that amnesty and abandonment are not synonymous does not destroy the existence of a cause or reason for abandonment. Amnesty is the prerogative of the President or Head of State to pardon convicted criminals; while abandonment is the prerogative of a party to an action to exercise. In the instant case, the Solicitor General of Liberia referred to the general amnesty granted by the Head of State as the ground or reason of the Republic of Liberia abandoning the case. These allegations are contained in correspondence exchanged between counsel for defendant and the Solicitor General as quoted supra which are parts of the record before us. The records show that this issue was raised before the hearing officer, the Board of General Appeals and the presiding judge of the Sixth Judicial Circuit of the Civil Law Court of Montserrado County.

The records revealed that when the case was called for hearing before this Court no one appeared for appellant in the theft of property case which is one of the grounds for dismissing an appeal, yet, the prosecution instead abandoned said case. This is the relevant statute:

"An appeal may be dismissed by the trial court on motion for failure of the appellant to complete the appeal and file a notice of completion as required by this chapter, and by the appellate court for failure of the appellant to appear on the hearing of the appeal." Civil Procedure Law, Rev. Code 1: 24.17, Dismissal of Appeal for Failure to Proceed.

The co-appellee having been informed that the abandonment was predicated upon a general amnesty proclaimed by the Head of State, and knowing that he was adjudged guilty by Criminal Court "C" for the crime of theft of property, he had an election to either accept or reject the

amnesty and insist upon the hearing of his appeal. We also discovered from the records that the hearing officer, whose decision had been affirmed by both the Board of General Appeals and the circuit court and which decision the co-appellee is seeking affirmation of by this Court, did not continue the investigation in order to afford each party the opportunity to establish his side of the case, especially the appellant who claimed that the dismissal of the co-appellee was legal. Instead, The hearing officer held that "...on July 31, 1981 the People's Supreme Tribunal (former Supreme Court of Liberia) finally adjudicated the criminal case and acquitted the defendant/appellant (John T. Kobbah) of the charge of theft of property. This acquittal therefore made the illegal dismissal of complainant John Kobbah, a wrongful dismissal." Can an abandonment of a criminal trial be automatically taken as a proof of a civil action duly instituted without further hearing or investigation? Our answer is in the negative, for the statute provides that:

"1. Party having burden. The burden of proof rests on the party who alleges a fact except that when the subject matter of a negative averment lies peculiarly within the knowledge of the other party, the averment is taken as true unless disproved by that party.

2. Quantum of evidence. 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, Burden of proof (1) and (2).

The plaintiff/co-appellee having complained that he was illegally or wrongfully dismissed and the defendant/appellant having maintained that she was justified for dismissing co-appellee, the hearing officer should have instituted and/or continued the investigation for defendant/appellant to establish what was termed "manipulation of defendant's records", as well as whether or not the ground of dismissal was wrongful or justified. This was not done. Instead, after reading the People's Supreme Court's judgement without opinion, the hearing officer ruled that defendant/appellant was liable to the co-appellee without conducting any further investigation.

In view of all what we have said and the laws relied upon, it is the opinion of the Court that the judgement of the lower court affirming the ruling of the Board of General Appeals be and the same is hereby reversed. The Clerk of this Court is hereby instructed to send a mandate to the Ministry of Labour, Youth and Sports to resume jurisdiction over this case and to determine the said matter on its merits. Costs to abide final determination. And it is hereby so ordered.

Judgment reversed.