

**FIRESTONE PLANTATIONS COMPANY**, by and thru its Manager, **HARRY W. HERMERLING**, Petitioner, v **HIS HONOUR E. S. KOROMA**, Presiding Judge, People's Fourth Judicial Circuit, Maryland County, May Term, A. D. 1981, the Sheriff of said Court, and **COLLINS TOE et al.**, Respondents.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE DENYING THE  
PETITION FOR A WRIT OF PROHIBITION

Heard: June 13, 1983. Decided: July 8, 1983.

1. The withdrawal of an appeal is tantamount to acquiescing to the judgment of the trial court, and the appellate court has nothing before it to prohibit the enforcement of the judgment.
2. The practice in this jurisdiction regarding the withdrawal and refiling of pleadings is that there must be a simultaneous filing of the notice of withdrawal and the filing of the amended pleading, if the party desires to re-enter the action.
3. Where the judge of the circuit court is exercising appellate rather than original jurisdiction in a case, he is not bound to follow the procedure regulating pleadings in cases pending before him on appeal. Therefore the ten days within which a party is required to file a responsive pleading does not apply where the party has withdrawn his petition of appeal.
4. A trial judge exercising appellate jurisdiction acts within the rule of the law in ordering the immediate enforcement of a judgment upon the withdrawal of the appeal, even where such withdrawal is done with reservation.
5. If a pleading is not properly verified, or if it is verified or certified with intent to defeat the purpose of an action, it may be stricken and the action may proceed as though the pleading had not been served.

Co-appellees/respondents, Collins Toe and others filed an action of unfair labour practice against the appellant/petitioner, in the office of the labour inspector for Maryland County, charging the petitioner with wrongful dismissal. The labour inspector ruled against the petitioner, holding that in not acting timely in the action taken against the Co-respondents Toe and others, it had suffered from waiver. He therefore awarded the corespondents three months pay, payment in lieu of notice, and other amounts which the said co-respondents alleged they had paid to the police. On appeal to the Board of General Appeals, the ruling of the labour inspector was affirmed. A further appeal was then taken by petitioner to the Circuit Court for the Sixth Judicial Circuit, Maryland County. However, when the case was called for hearing, the petitioner, through its representative, announced a withdrawal of its appeal with reservation. The trial judge took note of the withdrawal, dismissed the appeal, and ordered the immediate enforcement of the decision appealed from. Whereupon, a bill of

costs was prepared and served on the petitioner. In an attempt to prevent enforcement of the Labour Inspector's decision, petitioner sought prohibition from the Justice in Chambers.

The Justice in Chambers, holding that the petition was without merit, denied the same and ordered that the trial court proceed with enforcement of the labour inspector's decision. From this ruling, an appeal was taken to the Full Bench of the Supreme Court, with the petitioner contending that since it had withdrawn its appeal with reservation, it had a period of ten days within which to file a new petition for review in the trial court. It argued, therefore, that the trial court erred in ordering the immediate enforcement of the decision of the labour inspector.

The Supreme Court disagreed, holding that the Justice in Chambers was correct in denying the petition on the ground that a trial judge exercising appellate jurisdiction in a case is not bound by the procedure governing pleadings in matters over which he has original jurisdiction, and that once the appeal was withdrawn, the trial judge had the authority to order the immediate enforcement of the labour inspector's decision which had been appealed from to the Court. The Court therefore affirmed the denial of the petition and the quashed the peremptory writ.

John A. Dennis appeared for petitioner/appellant Lewis K Free appeared for respondents/appellees.

MR. JUSTICE SMITH delivered the opinion of the Court.

A complaint for unfair labor practices was filed against the management of the Firestone Plantations Company, Cavalla Group, Maryland County, petitioner herein, by co-respondents Collins Toe, Jasper and Bestman to the labor inspector for Maryland County, Levi C. Williams, who heard the matter and decided that the petitioner company was "guilty of waiver" and should therefore pay the employees (Co-respondents Toe and others) three months each in lieu of notice and refund the amount of \$30.00 which two of the co-respondent employees had paid to police officers. The defendant company, now petitioner, noted exception to the labor inspector's ruling and appealed the case to the Board of General Appeals, Ministry of Labor, Monrovia.

The records show that the case was assigned for hearing several times by the Board, but the petitioner company failed to appear; consequently, on the 8th day of October, 1979, the Board rendered its decision in the matter confirming the ruling of the hearing officer in which the three employees, complainants before the hearing officer, were awarded three months salary each in lieu of notice plus the \$30.00 which two of the complainants had paid to the police.

Co-respondents Toe and others in their complaint claimed the loss of \$3,330.00, but the hearing officer ruled this claim out, holding that Collins Toe, the claimant, may seek civil action for the recovery of said amount, if he so chose.

Having received a copy of the decision of the Board of General Appeals, the petitioner appealed and petitioned the Fourth Judicial Circuit Court, Maryland County, for a judicial review of the Board's decision. When the petition was called for argument before His Honour E. S. Koroma, who presided over the May, 1981, Term of the said court, counsel for Petitioner Company made the following record:

"REPRESENTATION: The defendant/appellant is represented by the Public Interest Law Firm, and gives notice of the withdrawal of said case with reservation, and submits."

In view of the notice of withdrawal quoted supra, the judge ordered the enforcement of the ruling of the Board of General Appeals, and directed the clerk of court to prepare a bill of costs together with a writ of execution for the payment by Petitioner Company of the amount involved.

In preparing the bill of costs, the clerk included the \$3,330.00 which complainant Collins Toe claimed to have lost, but which claim the hearing officer had denied and suggested that the claimant may seek redress in a civil suit for the recovery of said amount. It was against the enforcement of the court's judgment that petitioner in these proceedings sought review by the Chambers of this Court, by a petition for a writ of prohibition.

The alternative writ of prohibition was issued and served and returns thereto filed. The issues raised by respondents' returns are: (1) That the affidavit to the petition is defective because the title of the case which was filed is omitted from the affidavit; (2) that the petitioner having withdrawn its petition, there was nothing left in court, and, hence, the trial court had no other alternative but to order the enforcement of the ruling of the Board; (3) that the failure of petitioner to simultaneously file an amended petition with the notice of withdrawal, or within ten days thereafter, was tantamount to withdrawing the appeal and submitting to the decision of the Board, and, therefore, prohibition would not lie to restrain the enforcement of the judgment.

Our distinguished colleague who heard and decided the prohibition proceeding, summarized the issues presented by the parties into four categories, as follows:

- "1. What is the effect of the withdrawal of an appeal by a Party?
2. Was there anything pending before the court prohibiting the enforcement of the judgment after the withdrawal of the appeal?
3. What is the effect of the absence of the caption of a case in an affidavit?

4. Had the trial court acquired jurisdiction over the case, and what irregularities, if any, were committed by the correspondent judge which are prejudicial to the interest of the petitioner?"

The Chambers Justice discussed these issues, and because we are in complete agreement with his conclusion on the points with the modification made herein, we quote hereunder a relevant portion of said ruling disposing of the issues:

We will pass upon these issues in the reverse order. "The court may acquire jurisdiction by service of precept and by voluntary appearance of the party. In re Tubman v. Mordoch, 4 LLR 179 (1934). In that case, a petitioner announced appeal, thereby submitting itself to the jurisdiction of the appellate court, and in the exercise of appellate jurisdiction, after the withdrawal of the appeal by the petitioner, the court ordered enforcement of the judgment. It is obvious therefore that the trial court had acquired jurisdiction over the case as well as the parties. The withdrawal of an appeal is tantamount to acquiescing the judgment of the trial court, and the appellate court not having anything before it to prohibit the enforcement of the judgment, the respondent judge did not err by ordering the lower court to resume jurisdiction and enforce its judgment. Every document that is filed in a case must contain a caption, which includes the names of the parties. An inspection of the affidavit attached to the petition does not show the caption of the case and no reference to the names of the parties is made therein as required by statute and several opinions of this Court. Civil Procedure Law, Rev. Code 1:8.1, and Brown et al. v. Allen et al., 2 LLR 113 (1913). The records show that when the case was called, the petitioner withdrew his appeal with reservation, and counsel for petitioner argued that he should have been given 10 days to refile his petition in keeping with the notice of withdrawal. The practice in this jurisdiction has been simultaneous filing of the notice of withdrawal and the filing of the amended pleading, if the party desires reentering the action; and we hold that this procedure should have been followed by petitioner if it intended to have this case reviewed by the appellate court. The respondent judge was exercising appellate jurisdiction in this case; therefore, he was not bound to follow the procedure regulating pleadings in cases that were pending before him in which he was exercising original jurisdiction. Therefore, the 10day period within which a party is required to file a responsive pleading does not apply in this case. Consequently, the co-respondent judge was within the pale of the law and procedure when he ordered the enforcement of the judgment immediately upon the withdrawal of the appeal.'

A party may withdraw his appeal and thereby waive his right to have the case reviewed by the appellate court. Hill v. Republic, 13 LLR 381 (1959).

As correctly ruled by the Chamber Justice, the notice of withdrawal, in our opinion, was intended to withdraw the action that was pending before the court and comply with the

decision; otherwise, the petitioner would have filed a new action within ten days after the withdrawal with reservation. However, it is needless to belabor the point any further because in the first place, the petition for a writ of prohibition ought to be stricken for improper verification, the affidavit which is mandatorily required being manifestly defective.

The Civil Procedure Law, Rev. Code 1: 9.4(5), provides that if a pleading is not properly verified or certified, or if it is verified or certified with intent to defeat the purpose of said action, it may be stricken and the action may proceed as though the pleading had not been served. See also the case *Brown v. Allen et al.*, 2 LLR 113 (1913), as correctly relied upon by our distinguished colleague.

In view of the foregoing, it is our opinion that the ruling of the Chambers Justice should be, and the same is hereby confirmed and affirmed with the following modification: that the claim of \$3,330.00, representing alleged losses as claimed by Collins Toe, one of the employees, not having been awarded in the judgment or ruling of the hearing officer, the same is hereby ordered excluded. The Clerk of this Court is hereby ordered to send a mandate to the trial court commanding the judge presiding therein to resume jurisdiction over this cause and give effect to this opinion. Costs against the appellant/petitioner. And it is hereby so ordered.

*Judgment confirmed with modification*