The Management of International Bank (IB) of Monrovia, Republic of Liberia, Appellant
Versus **Wilfredo C. Ochoada,** Also of Monrovia, Republic of Liberia, Appellee

LRSC 17

APPEAL FROM THE NATIONAL LABOUR COURT MONTSERRADO COUNTY

Heard/Resubmitted: October 18, 2012 Decided: February 19, 2013

MR. JUSTICE JA'NEH DELIVERED THE OPINION OF THE COURT

Wilfredo C. Ochoada, appellee in these proceedings, addressed a letter of complaint to the Minister of Labour, Samuel Kofi Woods. In the letter, dated September 8, 2006, Appellee Ochoada accused the Appellant International Bank Liberia (Limited)/International Trust Company (ITC) of wrongful dismissal/unfair labour practices.

Labor Hearing Officer, Nathaniel S. Dickerson, conducted a full hearing into Appellee Ochoada's complaint. By a Final Ruling dated April 30, 2009, Hearing Officer Dickerson dismissed the complaint.

He determined that the Appellee did not prove that he was an employee of International Bank Liberia (Limited)/International Trust Company (ITC). The Hearing Officer's conclusion appeared to have been based on a number of documentary evidence, including the Confidentiality and Non Solicitation Agreement, concluded between Ochoada and a US based agency, Administrative Control Services Inc., acronym ADCON.

But on August 6, 2009, Her Honor, Comfort S. Natt, Resident Judge of the National Labour Court for Montserrado County, disposed of a Petition for Judicial Review, by reversing the findings of facts as well as the judgment thereon rendered by the Hearing Officer of the Ministry of Labour. She adjudged that the Appellee, Wilfredo C. Ochoada was employed by IB/ITC and was illegally and wrongfully dismissed. Following reversal of the Hearing Officer, Judge Natt mandated the Labour Tribunal to calculate the benefits and award which the petitioner is entitled to and have same forwarded to this Honorable (Labour) Court within precisely one (1) week as of [this] date in order to have petitioner receive his full entitlements under the Action of Wrongful Dismissal/Unfair Labour Practices.

Appellant has tendered before us a six count duly approved bill of exceptions, cataloging its dissatisfaction with Judge Natt's Final Judgment. Appellant, in the bill of exceptions, has forcefully challenged the legal correctness of Judge Natt's Final Ruling setting aside the Hearing Officer's findings of facts and conclusion reached thereon. It is Appellant's argument that Judge Natt's conclusion of fact in substitution of, and contrary to those reached by the Hearing Officer, contravenes the scope of judicial review of an administrative decision.

For the benefit of this Opinion and except for count 6 (six) which we shall pass on later in this opinion, we have deemed it appropriate to quote verbatim, counts 1 (one) through 5 (five), of the bill of exceptions as follows:

1. That Your Honor ruled that The [this Labour] Court says with all these pieces of evidence one can clearly say that Petitioner Wilfredo C. Ochoada was indeed taken by surprise to have learned of his alleged resignation which we feel was a calculated attempt to get him out of his position.

By so ruling, Your Honor committed reversible error in that Your Honor completely disregarded the facts of the case and, at the same time, demonstrated a deliberate bias by Your Honor against the Petitioner/Appellant.

Petitioner/Appellant submits and the records of the case confirm that Respondent Ochoada stated on several occasions that he would resign because he was opposed to his salary being reduced due to a lack of confidence growing out of significant losses by the Petitioner's Bank. Thus Petitioner Wilfredo C. Ochoada was fully aware of and was not surprised to learn of his resignation.

2. That Your Honor ruled that all over the world employees are identified by employee's identification cards and signed by the employer. The ID cards are used for all major business transactions. In addition to ID card, Petitioner Ochoada was placed on the ITC/IB payroll as any other employee without any classification; issued work permit to him as employee, as well as resident permit to him as any other employee, which cannot and was never disputed. By so Ruling, Your Honor committed reversible error in that Your Honor once again completely disregarded the facts of the case and further demonstrated a deliberate bias against Petitioner/Appellant. Petitioner/Appellant submits and the records of the case confirm that all expatriates that render services in Liberia are required to be issued a work permit as well as a residence permit. So also if an expatriate is seconded by a foreign company to render services in Liberia, such expatriate, by law is required to have a work permit and a resident permit. The records of the case further confirm that Respondent Ochoada was seconded to Liberia to render service for and on behalf of Petitioner Bank and, in order to do so, it is required by law that Petitioner Bank obtains a work permit and a resident permit for Respondent Ochoada. The records of the case further confirm that Petitioner/Appellant expressly denied that the issuance of an ID card, the payroll with Respondent's name and the issuance of the work permit and resident permit made Respondent Ochoada an employee of Petitioner/Appellant. Notwithstanding, Your Honor erroneously ruled that the issuance of a work permit and resident permit made Respondent Ochoada to be employed by Petitioner/Appellant.

3. That Your Honor ruled that The [Labour] Court therefore holds that complainant therein has established a PRIMA FACIE EVIDENCE that under the circumstances he was indeed employed by ITC/IB. By so ruling, Your Honor committed gross error for the reasons that Your Honor in addition to disregarding the facts of the case as confirmed by the records certified to the Court, Your Honor erroneously substituted Your Honor's own findings of fact for that of the Hearing Officer's exhaustive findings of fact.

The substitution of Your Honor's own findings of fact for that of the Hearing Officer's exhaustive findings of fact is without the scope of judicial review of an administrative decision.

4. That Your Honor ruled that Petitioner in his testimony explained that he was not an employee of Administrative Control Services, ADCON, which Defendant/Management alleged employed him, but that ADCON was a company doing payroll services and was never his employer. This was clearly proven by Petitioner in his testimony.

By so ruling, Your Honor committed reversible error. Petitioner/Appellant submits and the records of the case confirm that Respondent Ochoada's allegation that he was not employed by ADCON was not proven as erroneously ruled by Your Honor. The lack of proof is substantiated by the irrefutable fact that besides Respondent Ochoada's denial, Respondent Ochoada's witness neither testified to nor corroborated Respondent Ochoada's allegation. On the contrary, in addition to the corroborated testimony of Petitioner/Appellant's witnesses that Respondent Ochoada was employed by ADCON, an American based company and seconded to render services in Liberia for Petitioner/Appellant, Petitioner/Appellant introduced the following documentary evidence in further substantiation that Respondent Ochoada was employed by ADCON.

1. Confidentiality Agreement dated May 3, 1999, between Respondent Ochoada as employee and ADCON as employer, relevant portions of which state that the Agreement is in consideration of Respondent Ochoada's employment and continued employment by ADCON and other benefits provided by ADCON in conjunction with such employment; and that during the period of Respondent Ochoada's employment with ADCON, Respondent Ochoada agrees that he will not own an interest in, operate, participate in or be connected with any entity that provides services which are in direct or indirect competition with ADCON;

2. Letter dated June 21, 1990, from ADCON under the signature of Hollis B. Stephens, Director of Human Resources of ADCON to the Embassy of the Republic of Sierra Leone by which ADCON introduced Respondent Ochoada as its employee traveling from the United States to Liberia and requesting the issuance of a visa for Respondent Ochoada;

3. Letter dated November 30, 1993, from ADCON to Blue Cross Blue Shield regarding health care for Respondent Ochoada as employee of ADCON and his family;

4. Letter dated April 22, 2004, from ADCON to Respondent Ochoada as employee of ADCON informing Respondent Ochoada of his separation of employment with ADCON, effective April 22, 2004, as well as informing Respondent Ochoada of the option to continue his participation in the life insurance scheme for the employees of ADCON.

5. Signed and notarized Affidavit of F. A. Guida dated April 8, 2008, that he, F. A. Guida, is President of ADCON; that ADCON employed Respondent Ochoada in 1989 which employment is substantiated by the Confidentiality Agreement executed between Respondent Ochoada as employee and ADCON as Employer, and that in a meeting on April 5, 2004, in Virginia, United States of America, he (F. A, Guida) informed Respondent Ochoada that he had lost confidence in him (Respondent Ochoada); that he would accept his (Respondent Ochoada's) resignation; and that he instructed ADCON's Human Resources Department to pay Respondent Ochoada's salary for the months of April, May and June and to remove Respondent Ochoada from ADCON'S payroll.

Moreover, the said evidence, oral and documentary, introduced by Petitioner/Appellant was not rebutted by Respondent Ochoada. The Hearing Officer therefore correctly ruled that Respondent Ochoada had failed to prove his allegation by a preponderance of the evidence and consequently rendered a ruling in favor of Petitioner/Appellant.

The Hearing Officer's ruling is supported by opinions of the Honorable Supreme Court [holding] that mere allegations are not proof, and factual allegations pleaded must be proven at the trial, for it is only evidence alone which enables the court to decide with certainty the matter in dispute, and the party that alleges a fact has the duty to establish during trial such proof by a preponderance of the evidence.

By Respondent Ochoada having failed to introduce any evidence to prove his allegation that he was an employee of Petitioner/Appellant, as well as by Respondent Ochoada having failed to rebut the evidence, oral and documentary, introduced by Petitioner/Appellant, Respondent Ochoada failed to prove his allegation by a preponderance of the evidence. Consequently, and as required by the prevailing law, the Hearing Officer's final ruling in favor of Petitioner/Appellant ought to have been confirmed and affirmed by Your Honor. Notwithstanding, Your Honor erroneously substituted Your Honor own erroneous finding of fact for that of the Hearing Officer and by so doing Your Honor committed reversible error.

5. That Your Honor ruled that the [Labor] Court says in addition to the evidence adduced by Petitioner Ochoada in proving his case by the preponderance of evidence and the Respondent's position to the admission made by the Chairman and his lawyer one can clearly see that Petitioner Ochoada was indeed an employee of IB as the Petitioner has established a PRIMA FACIE EVIDENCE by the preponderance of the evidence which is the standard for proof of all civil trials. By so doing, Your Honor committed reversible error. Petitioner/Appellant submits and the certified records of the case confirm that at no time did Petitioner/Appellant retain an Attorney in the United States to file a suit on Petitioner/Appellant's behalf, and that such suit as was filed in the United States was filed without the knowledge and consent of Petitioner/Appellant. Additionally and with particular reference to communication dated May 12, 2004, the said communication is a letter under the signature of the Director of Human Resources of ADCON reconfirming the contents of the communication dated April 22, 2004.

We have determined, in consideration of the respective positions of the parties as presented, that the following issues are germane to the determination of the dispute at bar:

1. Whether the judge of the Labor Court, exercising the authority granted under the law regulating judicial review, may set aside findings of fact made by an administrative agency and reach new findings as to those facts?

2. Did appellee support his claim that he was an employee of the appellant bank by a preponderance of the evidence as required by law in this jurisdiction?

3. Was the action of wrongful dismissal/unfair labor practices, instituted by Appellee Ochoada, sustainable under the facts and circumstances of this case?

We will direct our reflections to these issues in the order of precedence presented.

We direct our attention to the first issue: whether Judge Natt properly exercised the power of judicial review when she set aside the findings of fact and the conclusion thereon reached by the Labor Hearing Officer and substituted said ruling with new findings of fact.

In dealing with the first issue, it is appropriate to remember that His Honor, Nathaniel Dickerson, conducted an administrative hearing into appellee's complaint. The records indicate that during the hearing, not only the parties participated but they were afforded the opportunity to introduce witnesses as well as oral and documentary evidence in support of their respective positions. Thereafter on April 30, 2009, the Hearing Officer entered an exhaustive Final Ruling in which he concluded that Appellee Ochoada did not prove that he was an employee of the Appellant International Bank/International Trust Company of Liberia.

Based on these findings, the Hearing Officer held that the appellant bank was not liable for wrongful dismissal/unfair labor practices and for that reason dismissed the complaint.

As can be seen, the April 30, 2009 Final Ruling by the Hearing Officer sought to give a detailed analysis of the evidence deposed by the parties.

The ruling also contained the rationale and conclusion reached by the Hearing Officer. It is the reversal of the Hearing Officer's Final Ruling by the judge of the Labor Court that is at the core of the current appeal proceedings. In order to give a full appreciation of the crux of the controversy, we have determined as appropriate to firstly reproduce verbatim, the Hearing officer's Final Ruling as follows:

The genesis of the case is from the formal letter of complaint filed with the Ministry by Mr. Ochoada on September 5, 2006, against the Management of [international Bank Liberia (Limited)] IBLL alleging Unfair Labor Practices/ Wrongful Dismissal.

According to the letter of Complaint, Mr. Ochoada alleged among other things that he was employed by IBLL, formerly, International Trust Company (ITC) in September, 1989.

Mr. Ochoada said that on April 7, 2004, he took his annual leave and before leaving for the States, his Deputy, Mr. Arvind K. Seth was to act as Acting General Manager. He further explained that while in the States, a meeting was scheduled with Mr. F.A. Guida, Chairman and President of IBLL in order to discuss with him Operations at the Bank. It was in that scheduled meeting Mr. Guida demanded that he (Mr. Ochoada) has resigned his position and employment with the bank; and that his resignation has been accepted, when in fact he never resigned. In reaction to his alleged resignation, some concerned employees of the bank wrote Mr. Gulda on April 27, 2004, expressing their concerns on the issue.

Under these circumstances, Mr. Ochoada concluded, it is clearly shown that he was wrongfully dismissed without payment of his benefits which constitutes Unfair Labor Practices. He therefore, requested justice to be done in keeping with the Labor Practices Law of Liberia. Hence, the complaint.

The Defendant appeared and filed a motion to dismiss the complaint. Said motion was resisted, heard and denied and trial ordered proceeded with. When appellee/complainant rested evidence, again, appellant/defendant filed a motion for judgment during trial.

After an analytical review of defendant Counsel's 13 count motion to enter judgment during trial and the resistance thereto, the Hearing Officer, on October 2, 2007, denied the motion and ordered the trial proceeded, with the defendant given the opportunity to take the stand and give its side of the case.

But counsel for the defendant, not being satisfied with the ruling, fled to the National Labor Court on a Summary Proceeding against the Hearing Officer.

Judge Comfort S. Natt of the National Labor Court, having determined the correctness of the ruling entered by the Hearing Officer, on February 28, 2008, remanded the Case mandating the investigation to resume jurisdiction and proceed in keeping with law. Thereafter, on April 10, 2008, Defendant/Management's first witness, in person of Mr. Thomas S. Jeffery, III, Chief Executive Officer of International Bank (Liberia) Limited, took the stand.

In his testimony, Witness Jeffery informed the investigation that Appellee Ochoada was employed by the Administrative Control Services (ADCON) and seconded to Liberia to work at ITC, for which his salary and benefits - including medical, dental and life insurance were paid by ADCON in the United States of America. He further narrated that Appellee Ochoada's taxes were computed by ADCON and paid in the United States of America. Additionally, according to the witness, ADCON contributed to his 401 (K) Retirement Plan in the United States of America. This explains, said the witness, why all arrangements — payment of salary, benefits and secodment to Appellant Bank, were concluded between ADCON and Appellee Ochoada. In support of his testimony, Witness Jeffery told the Hearing [Tribunal] that Appellee Ochoada signed a "Confidentiality Agreement" with ADCON, which instrument reveals that the appellee's employer was ADCON.

Further testifying, Witness Jeffery said that the Confidentiality Agreement was to ensure that the appellee would not disclose information to an outsider. On appellee's dismissal, the witness explained that on several occasions, Appellee Ochoada expressed his desire to resign from the Company when Mr. Guida informed him that his salary would be reduced because of a lack of confidence in the appellee as General Manager due to significant losses suffered by the bank since [the year] 2000.

Furthermore, when Appellee [Ochoada] traveled to the United States April, 2004, Mr. Guida accepted his resignation at a meeting and informed me (Jeffery) that Appellee Ochoada had resigned. The witness also said that Mr. Guida signed an affidavit to that effect. The witness concluded as quoted:

In further evidence that Mr. Ochoada was employed by ADCON and that he left the Company is that Mr. Ochoada requested a continuation of his medical benefits through COBRA which is for individual leav[ing] company appointment. He also withdrew his 401 K Retirement Fund. Part of the reasons for Mr. Guida to accept the resignation was for the lack of confidence and losses incurred during Mr. Ochoada's tenure of service.

On July 22, 2008, Defendant/Management's second witness, Mr. Henry S. Saamoi, General Manager of Finance and Administration of IBLL, took the stand. In his testimony, Witness Saamoi, among other things, told the Hearing Tribunal that the appellee was not an employee of IBLL; that Ochoada was employed by ADCON for which reason all his taxes, life Insurance, dental insurance and medical insurance were covered by ADCON. The witness further testified that the appellee participated in the 401 K Insurance plan regulated by the laws of the United States of America.

Thereafter, Defendant/Management rested in toto with production of evidence and requested to argue its side of the case. Appellee Ochoada's rebuttal witness, Emmanuel Dolo, took the stand and testified to the issue of Appellee Ochoada being an employee of the Appellant Bank, IBLL. The parties then rested evidence and made final arguments citing legal authorities in support of their respective positions.

Given the facts and evidence produced by the parties, the central questions is whether or not Mr. Ochoada was employed by Defendant/Management (IBLL) or the Administrative Control Service, Inc. (ADCON), an American based Company.

As stated both in his the letter of Complaint and his Statement-in-chief, Appellee Ochoada's argument has consistently been that he was employed by IBLL, formerly, ITC.

On the other hand, the Appellant/Defendant/Management (IBLL) has insisted that Appellee Ochoada was never employed by IBLL, but, rather, was employed by the Administrative Control Services (ADCON) and seconded to ITC now IBLL for which his salary and other benefits were paid by ADCON, under American Law; therefore, he should seek redress against ADCON, his employer, who seconded him to IBLL.

That as evidence thereof, according to the appellant, Appellee Ochoada, on May 3, 1999, signed a confidentiality and Non-Solicitation Agreement which, in relevant part, reads:

This confidentiality and Non-Solicitation Agreement (the Agreement') is entered into this day of May, A.D. 1999, by and between Wilfredo Ochoada (Employee) and Administrative Control Services, Inc., a Virginia Corporation, its affiliates, and the Office of the Deputy Commissioner of Maritime Affairs for the Republic of Liberia (collectively, the Company). This Agreement further states:

WHEREAS, this Agreement is in consideration of the employee's employment and continued employment by the Company and compensation and other benefits provided by the Company in conjunction with such employment; and whereas, the Company is in the business of organizing, and serving as registered agent of Corporations, in the Republic of Liberia and the Marshall Islands, including making corporate filings and registration, maintaining corporate records, registering vessels under the flags of those nations, and generally advising clients regarding corporate and maritime transactions with respect to those nations.

Sub-Sections A, B, C, of said Agreement reads:

a. This Agreement shall be binding and inure to the benefit of the parties hereto and their successors and assigns, provided, however, that the obligations of employee under this Agreement are personal to employee and may not be assigned.

b. In an event that employee breached any obligations of this Agreement, the Company shall be entitled to recover any and all costs and expenses of any suit or action arising from such breach, including, but not limited to reasonable attorney's fees and costs.

c. This Agreement shall be interpreted and governed in accordance with the laws of the Common Wealth of Virginia without regard to conflicts of law.

THAT, on June 21, 1990, a communication under the signature of Hollis B. Stephen, Director of Human Resources of ADCON was addressed to His Excellency, the Ambassador of the Republic of Sierra Leone in Washington, D.C. introducing Mr. Wilfredo Ochoada as an employee of Administrative Control Services, Inc. to issue him Visa as he passes through his Country while in transit from the United States to Monrovia, Liberia.

THAT, on November 30, 1993, another communication under the signature of Jacqueline Fox, Secretary/Human Resources of ADCON was addressed to Mr. Brian Shields, Consultant, to note on record that Wilfredo C. Ochoada is an employee of ADCON, who works in Monrovia, Liberia requesting him (Mr. Brian Shields) to send any correspondence relating to health care, including I.D. Cards to his (Ochoada) wife, Mrs. Lucila Ochoada who and her child reside in the United States.

THAT, a communication dated April 22, 2004, under the signature of Rebecca L. Ledford, Director of Human Resources, ADCON, was addressed to Mr. Ochoada informing him amongst other things the following:

Confirming Mr. Ochoada's separation from the employment of ADCON (the Company) effective April 20, 2004; and that he will be paid for the month of April according to the regular payroll schedule; Company is under no obligation to provide you with severance; it will agree to pay you the amount of US$14,000.00;

Benefits ceased at midnight, April 20, 2004. However, the company will continue to provide you with medical/prescription and dental benefits through COBRA beginning April 21 thru June 30, 2004 with option under COBRA to elect continued coverage at your own expense for the remaining period approximately 15 months; Life and accidental death and dismemberment insurance will cease at midnight on June 30, 2004; and if you choose to continue the life insurance coverage at your own expense.;

A participation in the ADCON Employment Direct Retirement and 401 (K) Savings plan.

THAT, Mr. Ochoada, in his both letter of complaint and statement-in-chief, strongly argued that he was employed by IBLL (formerly ITC) in 1989, but he has presented no documentary evidence to substantiate his claims neither refuted the fact of being employed by ADCON and seconded to ITC, now IBLL as well as his salary and other benefits were provided by ADCON under American Laws. ILCLR, page 198, section 25.5 (Burden of Proof) Paragraph I states:

The burden of proof rests on the party who alleges the fact.

On the other hand, Defendant has presented sufficient documentary evidence which clearly authenticated that Mr. Ochoada was an employee of Administrative Control Services, Inc. (ADCON). This fact, Mr. Ochoada never disproved in the entire proceedings.

THAT, there is no dispute that Mr. Ochoada worked at the IBLL and held many positions, but the fact of the matter is, he was never employed by IBLL rather ADCON as per the documents presented by Defendant/Management; and that whether he resigned or not, the issue should be between him and his employer (ADCON) and not IBLL.

RULING:

WHEREFFORE AND IN VIEW OF THE FOREGOING FACTS and circumstances, it is a proven fact that Mr. Wilfredo C. Ochoada is indeed an employee of ADCON as in keeping with the Confidentiality and Non-Solicitation Agreement signed between him and ADCON on May 3, 1999, and other documents presented by Defendant/Management.

Accordingly, the Management of International Bank (Liberia) Limited is not LIABLE for the action of Unfair Labor Practices/Wrongful Dismissal because there is no employment contract between them (IBLL and Mr. Ochoada). Hence, this is our RULLING. AND IT IS HEREBY SO ORDERED.

It is noteworthy to observe here that the exhaustive judgment rendered by the Hearing Officer evidently accorded reflective consideration to the circumstances providing the basis for the conclusion reached by the Hearing Officer in this matter. The Ruling also accorded sufficient attention to the relevant facts and circumstances characterizing the relationship between the appellant and the appellee in respect of employer-employee relation. On the basis of these circumstances, the Hearing Officer concluded in the said Final Ruling that there was no privity of employment contract between Appellee Ochoada and Appellant International Bank Liberia (Limited).

However, the Hearing Officer's Final Ruling being adverse against Appellee Ochoada prompted him (the appellee) to file a Petition for Judicial Review before the National Labor Court for Montserrado County. In the Petition for Judicial Review, the appellee attacked the Hearing Officer's Ruling and termed it as erroneous and that the findings of fact and conclusion made in that Ruling were not in harmony with the facts of the case and the evidence deposed by the parties during the Hearing had at the Ministry of Labor. The Petition prayed the court to reverse the Hearing Officer and to order the Hearing Tribunal to calculate the benefits and awards which the Petitioner is rightfully entitled to and have same paid to him without delay.

Here again for the purpose of full appreciation of the controversy we shall proceed to examine the Petition for Judicial Review filed by the appellee and subsequently consider also the final judgment entered by Her Honor, Comfort S. Natt, Resident Judge, National Labor Court for Montserrado County.

The Petition for Judicial Review filed on May 7, 2009, states substantially, as follows:

1. That on September 5, 2006, Petitioner Wilfredo C. Ochoada, former General Manager of ITC/IB Bank filed a complaint of Unfair Labor Practice and Wrongful Dismissal against the Management of International Bank, Inc. (IB).

2. That the Defendant management of lB appeared by and thru the Sherman and Sherman, Inc. and the Dunbar Law Firm and filed a motion to dismiss the complainant complaint on ground that the complainant, petitioner, was not an employee of the Defendant management IB.

3. That the Motion was withdrawn and re-filed and was denied by the Hearing Officer, Nathaniel Dickerson, who concluded that the evidence adduced so far was clear that the complainant/petition was an employee of the International Bank.

4. That following the dismissal of the motion to dismiss, the defendant management filed a Summary Proceeding against the ruling of the Hearing Officer at the National Labor Court, alleging that the Hearing Officer erred and proceeded irregularly when he denied the defendant management motion to dismiss (the complaint).

5. That the Summary Proceeding was heard by the National Labor Court, same dismissed and the matter remanded to the Ministry of Labor for hearing on its merit.

6. That on July 19, 2007 Complainant Wllfredo C. Ochoada took the witness stand and testified for and on behalf of himself that he was employed by the ITC/IB on September 1, 1989, as assistant treasurer and subsequently promoted to the position of General Manager on January 1, 2000.

7. That the Complainant testified further that on April 5, 2004, he informed the Bank staff through a memo that he will be out of the country in the USA on his annual vacation for 4 weeks and also informed the Central Bank of Liberia.

8. The Complainant/Petitioner explained that while in the United States of America, he had a meeting scheduled with Mr. F.A. Guida, Chairman of the Board of Directors and President of IB on April 20, 2004, for briefing. He explained that when he show-up at F. A. Guida's office, the Chairman demanded his resignation and when he, Ochoada refused, the Chairman told him I have accepted your resignation and considered you resigned.

9. The complainant/Petitioner testified further that true to Mr. F.A. Guida's words, he wrote the Governor of the Central Bank of Liberia informing him of the alleged Ochoada's resignation and sent an email to Mr. Arvind Seth the Acting General Manager advising him that he Guida has regretfully accepted Mr. Ochoada resignation and advised him (Arvind) to share the information with the Bank staff.

10. The Petitioner/Complainant testified further that upon his return to Liberia, he was prevented from entering both the premises provided by the Bank for him as well as his office at the bank. The witness contends that assuming he resigned his post, the normal thing was to show him copy of his letter of resignation.

11. On the cross, the Petitioner/Complainant explained that the Administrative Control Service (ADCON) which the defendant management alleged employed him was a company doing payroll

services for IB expatriate employees which bill IB from month to month for its service and was never his employer. This testimony was never rebutted.

12. At the conclusion of the Petitioner's testimony the Management/Defendant again filed a motion for judgment during trial contending that complainant has failed to establish a case, which motion was argued and denied.

13. The Defendant/management returned to the National Labor Court for the second time with a summary proceeding for the denial of the motion for judgment during trial, which was also heard and denied and the case remanded for IB to take the witness stand.

14. The defendant/Management took the witness stand and reiterated its contention that Mr. Wilfredo C. Ochoada was an employee of ADCON and not IB and that he resigned and was not dismissed. The Management of IB failed to produce any documentary evidence to the effect that Ochoada was employed by ADCON and seconded to it.

15. On the cross, IB principal witness Mr. Tom Jeffery denied that Mr. F.A. Guida before whom Mr. Ochoada allegedly resigned was the President and Chairman of the Board of Directors of ITC/IB.

16. Further to the above, Petitioner, complainant produced a rebuttal witness who testified that F. A. Guida was President and Chairman of ITC/IB in which capacity he announced the alleged resignation of Wiifredo Ochoada, informed the Governor of the Central Bank about said resignation and appointed Mr. Arvind Seth to replace him. Documentary evidence were also admitted into evidence to prove this fact.

17. Further to count (16) above, Petitioner here below quote verbatim a letter from F.A. Guida to Wiifredo C. Ochoada. This letter to Ochoada also is quoted as follows:

18. Tom Jeffery as a principal witness also failed to explain why in both the damages suits filed by IB against Wiifredo C. Ochoada in Virginia, USA and the answer filed by IB to Wllfredo own damages suit against IB at the Civil Law Court in Liberia, Wllfredo was persistently referred to in several counts as an employee, General Manager and Agent of IB?

19. Petitioner/Complainant contends and maintains that if he was not an employee of IB the President and Chairman of the Board of Directors could not have written him a letter which he wrote you are no longer an employee of IB.

20. Petitioner maintains that under the Liberian Law the burden of proof rests on the party who alleges. Since IB Management alleged that petitioner was employed by ADCON the burden was on the defendant management to produce documentary evidence to that effect.

21. Petitioner also maintains that when he was wrongfully dismissed, the management of IB filed a civil action against him in the USA, and in counts 48, 49 and 50 of that action, IB Management referred to him, defendant, Ochoada as General Manager, Agent and employee of IB.

22. Also, in the damages suit filed by Wllfredo C. Ochoada against IB at the Civil Law Court in Liberia, IB by and through its Counsel, the Sherman and Sherman, Inc. and the Dunbar Law Firm

also admitted in several counts of their answer that Wilfredo Ochoada, the Plaintiff was an employee, General Manager and Agent of IB.

The judge of the National Labor Court entertained and ruled on the Petition for Judicial Review setting aside the Hearing Officer's Final Ruling. She instead found that appellee was an employee of the appellant bank. The judge also concluded that appellee was wrongfully dismissed and therefore entitled to benefits arising there from.

Here we must take a look at Judge Natt's Ruling of August 6, 2009, quoted hereunder as follows:

On September 5, 2006, Complainant/Petitioner, Wifredo C. Ochoada, former General Manager of International Bank filed a formal letter of Complaint of **UNFAIR LABOUR PRACTICES** and **WRONGFUL DISMISSAL** with the Ministry of Labor against his former employer, Co-Respondent International Bank (Liberia) Limited alleging among other things that he was an employee of Respondent. That on September 1, 1989, he served as Assistant Treasurer and subsequently on January 1, 2000, he was appointed as General Manager of the Bank.

On April 7, 2004, he took his annual leave and that before leaving for the State, his Deputy, Mr. Arvind K. Seth, was to act as Acting General Manager.

He further explained that while in the USA, a meeting was scheduled with Mr. F.A. Guida, President and Chairman of the Board of Director to brief him on the state of the Bank. Petitioner Ochoada further explained that upon his arrival at Chairman F.A. Guida's office, the Chairman demanded his resignation and when he failed to resign, the Chairman told him, I have accepted your resignation and considered you resigned.

That true to the Chairman's words, according to Petitioner, F.A. Guida, wrote a letter appointing Mr. Arvind Seth as Acting General Manager of IB and subsequently wrote the Central Bank of Liberia, informing its authority that Wilfred C. Ochoada was no longer General Manager of IB. This abrupt and unceremonial removal of Ochoada under pretext that he resigned his post raised tension among the Bank's employees.

Upon his return from the States to Monrovia, he said he was prevented by the Bank's Security from entering the Bank's premises.

He also said he was escorted by the Bank's Security to take his personal belonging from the compound which the Bank rented for him as General Manager.

At the commencement of this case, at the Ministry of Labor, Management filed a Motion to Dismiss the Complaint on ground that Petition Ochoada was not an employee as he did not exhibit evidence that he was employee of IB. The Motion was dismissed and the Defendant/Management filed a Summary Proceedings against the Hearing Officer alleging that the Hearing Officer proceeded irregularly. The proceedings were also dismissed and the case was scheduled for hearing on its merits.

In presenting his side of the case, Complainant/Petitioner Ochoada testified that he was employed by Co-Respondent International Bank on September 1, 1989, as Assistant Treasurer and subsequently promoted to the position of General Manager on January 1, 2000. He explained that

he did not resign from his job but was wrongfully dismissed by F.A. Guida, Chairman of the Board of Directors and President of the Bank.

He further testified that he was not an employee for Administrative Control Services and that (ADCON) was a company doing payroll services for IB expatriate employees and bill IB on a monthly basis and not his employer.

Complainant Ochoada presented one other witness in person of Emmanuel Dolo who corroborated the testimony of Petitioner Ochoada. In support of these two witnesses' testimonies, Petitioner's Counsel admitted into evidence the following:

1. Petitioner Ochoada's IB Employee's ID Card;

2. His IB Payroll showing that he was indeed an employee of the Bank;

3. A letter dated May 12, 2004 from F.A. Gulda in which he addressed Petitioner Ochoada YOU ARE NO LONGER AN EMPLOYEE OF THE BANK.

4. A letter from F.A. Guida as President and Chairman of the lB Board to the Central Bank of Liberia informing him of the alleged resignation of Petitioner Ochoada;

5. A letter from Chairman and President of IB, FA. Guida appointing Arvind Seth to replace Petitioner Ochoada;

6. An answer filed by IB lawyer in a Damages suit filed by Petitioner in which Petitioner was referred to as employee, agent and manager of IB;

7. A letter of May 19, 2004, from F. A. Guida as President of IB in which he wrote your employment was terminated effective April 20, 2004, moreover, you can no longer use documentation furnished to you in your capacity as Bank employee;

8. An IB Employee Payroll which enlisted Petitioner Ochoada as employee;

9. A Social Security ID Card and Payroll on which Petitioner Ochoada's Social Security contribution was forwarded to Social Security Office and last but not the least;

10. The corroborated testimonies of two witnesses to the effect that Ochoada was indeed an employee.

Petitioner says regardless of these pieces of evidences, the Hearing Officer pretended to be blind and ruled that Petitioner Ochoada was not an employee of IB/ITC Bank.

Petitioner not being satisfied with the decision of the Hearing Officer, on May 7, 2009, filed a twenty-two (22) count Petition for Judicial Review praying this Honorable Court to reverse the Ruling of the Hearing Officer and order the Hearing Officer to calculate the benefits and award which the Petitioner is rightfully entitled to and have same paid to him without delay and to grant unto Petitioner any and/further relief that is deemed just and equitable.

On May 18, 2009, Co-Respondent by and through his Legal Counsel, the Dunbar and Dunbar Law Offices, filed a nineteen (19) count Returns praying this court to deny and dismiss Petitioner's Petition and prayed this Honorable Court to confirm and affirm the Ruling of the Hearing Officer since Petitioner Ochoada failed to prove that he was employed with the Respondent and rule the costs against Petitioner.

That Respondent IB denies the allegations contained in Petitioner's Petition as to IB having appeared by and thru the Sherman and Sherman and the Dunbar and Dunbar Law Offices. Respondent says it filed a Notice of Additional Counsel naming the Dunbar and Dunbar Law Offices as additional counsel after the conclusion of Complainant's testimony.

Respondent denies that the Hearing Officer in denying Movant's Motion To Dismiss concluded that Petitioner was an employee of IB as alleged, as the motion was filed before any evidence was adduced and hence, the Hearing Officer could not have concluded as alleged.

Respondent says, Petitioner did not render services for lB based on the fact that Petitioner was seconded to render service to lB by Administrative Services (ADCON). Respondent says Petitioner has at no time introduced any documentary evidence that Petitioner was an employee of Respondent.

Respondent says the contention of Petitioner that assuming Petitioner had resigned his post the normal thing was to show a copy of his letter of resignation. However, Respondent has argued on the contrary that it has no obligation to show any resignation letter and Petitioner was not an employee of Respondent and that Petitioner was employed by and has resigned his employment with (ADCON) and to prove its allegation that Petitioner had resigned his employment with (ADCON), Respondent's Counsel has introduced into evidence on page three(3) of the investigation dated April 10, 2008, (1) a confidentiality agreement between (ADCON) as employer, (2) a letter dated April 22, 2004, addressed to petitioner by his employer (ADCON) by which (ADCON) confirmed the term and separation of Petitioner's employment from (ADCON) as found on page five (5) of the minutes of the Investigation dated April 15, 2004, which evidence was not rebutted by Petitioner.

Respondent further submits that the documentary evidence introduced by Respondent clearly shows that the Petitioner was employed by ADCON and seconded to work in Liberia, which evidences were not rebutted coupled with the failure of Petitioner to introduce a scintilla of evidence that Petitioner was employed by Respondent to substantiate that Petitioner was employed by ADCON and not Respondent.

Respondent says the fact that Respondent's witness did not provide Petitioner's Counsel with the answer that Petitioner's Counsel desire does not mean that Respondent's witness failed to explain.

Respondent's witness testified and the minutes of the investigation confirmed that at no time Respondent retained a lawyer to file a suit on Respondent's behalf, and that the suit was filed in the United States without the knowledge and consent or Respondent.

Respondent submits that it is indeed the Liberian Law that he who alleges has the obligation of proof. Respondent alleged that Petitioner was employed by ADCON and as proof of employment, Respondent introduced the following:

a. Corroborated testimony that Petitioner was employed by ADCON, and seconded to work for IB in Liberia;

b. Documentary evidence, which include the following:

1. Confidential agreement between Petitioner as employee and ADCON as employer;

2. Letter from ADCON to the Embassy of Sierra Leone requesting Visa for Petitioner as employee of ADCON to travel from the United States to Liberia;

3. Letter from ADCON to BLUE CROSS BLUE SHIELD regarding health care for Petitioner as employee of ACON and his family;

4. Letter from ADCON to Petitioner as employee of ADCON, informing Petitioner of his separation of employment with ADCON effective April 22, 2004, and the option to continue his participation in the Life Insurance Scheme for the employees of ADCON.

That Respondent denies all and singular the allegation of both facts and law as contained in Petitioner's Petition that were not specifically traversed in this Petition.

This Court having listened to arguments, pro et con, has decided on three (3) issues for determination of this case as follows:

1. Was Wilfred C. Ochoada an employee of IB, and if so, did he actually resign his position as alleged by Co-Respondent Management?

2. Whether or not Petitioner Ochoada was an employee of ADCON so as not to warrant benefits he so desires from Respondent IB?

3. Whether or not the pieces of evidence adduced at the hearing by Petitioner Ochoada are sufficient to substantiate the fact that he was an employee of Co-Respondent IB?

In addressing these issues, we shall do so in the descending order, and looking at issue number one, we shall take a keen look at the case files that are before this court.

In this testimony at the Ministry of Labor, Petitioner Ochoada informed the investigation that he was employed with ITC on September 1, 1989, as Assistant Treasurer and was later promoted to the position of General Manager of the Bank on January 1, 2000, a position he held until he was illegally dismissed by the President and Chairman of the Board of Directors in 2004. He also stated that prior to his departure and based on the usual procedure and practice at the Bank, on April 5, 2004, he duly informed the Bank's Staff about his travel.

He further explained that while in the United States, he had a meeting scheduled with the President and Chairman of the Board of Directors of IB, Mr. Guida, to brief him on the state of the affairs of the Bank. That surprisingly, when he arrived at the Chairman's office, the Chairman demanded his resignation. That upon his failure to produce such letter of resignation as he was taken by

surprise to hear of such, Mr. F.A. Guida told him, I have accepted your resignation and considered you resigned. To prove what was said by Mr. Guida, a letter was sent to one Arvind Seth of IB appointing him as Acting General Manager.

On the same day, a letter was subsequently written to the Executive Governor of the Central Bank of Liberia informing him that F.A. Guida had accepted his alleged resignation. As stated above, on the same day and date, Mr. Guida sent an email to Mr. Arvind Seth advising him that he had regrettably accepted my resignation and advised him to share the announcement with the entire Bank staff. That apart from the pieces of evidence adduced by Petitioner, Petitioner says the final authority of IB/ITC is Mr. F.A. Guida, who on May 12, 2004, wrote a letter to Petitioner Ochoada informing him that: **YOU ARE NO LONGER AN EMPLOYEE OF THE BANK,** which statement to the mind of this court needs no further explanation that there existed an employee, employer relationship which was later severed in 2004. Further, on May 19, 2004, the very President and Chairman of the Board of Directors of ITC addressed another letter to Petitioner Ochoada on Management's letter head and signed as usual by him, which reads:

In part moreover, you can no longer use the documentation furnished to you in your capacity as Bank employee. Therefore, the following items must be immediately returned to Tom Jeffrey. The items included:

1. The unused portion of the airline ticket to Liberia.

2. The Bank's Identification Card and

3. The Re-entry permit, world permit and residential permit.

President F.A. Guida also wrote the Governor of the Central Bank of Liberia informing him of the alleged resignation of the Petitioner, etc. etc.

The Court says with all these pieces of evidence one can clearly say that Petitioner Wilfredo C. Ochoada was indeed taken by surprise to have learned of his alleged resignation which we feel was a calculated attempt to get him out of his position.

According to Black's Law Dictionary/Preponderance of evidence is defined as the:

Greater weight of evidence not necessarily established by the greater number of witnesses who testify to a fact, but evidence that has the most convincing force, superior evidentiary weight that though not sufficient to free the mind wholly from all reasonable doubts, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.

The Court therefore holds that the Complainant herein has established a **PRIMA FACIE EVIDENCE** that under the circumstances he was indeed employed by ITC/IB.

Petitioner says all over the world employees are identified by employees' identification cards issued and signed by the employer.

The ID cards are used for all major business transaction. In addition to the ID card, Petitioner Ochoada was placed on the ITC/IB Payroll as any other employee without any classification; issued

work permit to him as employee, as well as resident permit to him as any other employee, which cannot and was never disputed.

Touching on issue number two (2), Petitioner Ochoada in his testimony explained that he was not an employee of Administrative Services ADCON which the Defendant/Management alleged employed him, but that ADCON was a company doing payroll services for expatriate employees which bill IB from month to month for its services and was never his employer. This was clearly proven by Petitioner in his testimony.

Looking at issue number three (3), the Court says in addition to the evidence adduced by Petitioner Ochoada in proving his case by the preponderance of the evidence and the Respondent's position to the admission made by the Chairman and his lawyer, one can clearly see that Petitioner Ochoada was indeed an employee of IB, as the Petitioner has established a PRIMA FACIE EVIDENCE by the preponderance of the evidence which is the standard for proof of all civil trials.

The Civil Procedure Law, Section 25.8, Page 200 reads:

All admissions made by a party himself or his agent acting within the scope of his authority are admissible against him.

In the instant case, the President, and Chairman of the Board of Directors who is the highest authority of IB having admitted persistently by his various communications, the ID Card and the Payroll listing etc. showing that Ochoada was in the employ of the Bank cannot be over-emphasized, as these admissions were buttressed by the Bank's own lawyer in Liberia as well as its lawyer in Virginia, USA.

WHEREFORE AND IN VIEW OF THE FOREGOING CIRCUMSTANCES, these acts and evidence leave any equitable mind with no other conclusion but that Wildredo C. Ochoada was employed by IB/ITC and was illegally and wrongfully dismissed.

The Ruling of the Hearing Officer is hereby set aside and reversed. The Management of ITC is liable to Petitioner Ochoada for the action of UNFAIR LABOUR PRACTICE/WRONGFUL DISMISSAL.

The Clerk of this Court is ordered to send a mandate to the Hearing Officer at the Ministry of Labor to calculate the benefits and award which the Petitioner is entitled to and have same forwarded to this Honorable Court within precisely one (1) week as of date in order to have Petitioner received his full entitlements under the Action of WRONGFUL DISMISSAL/UNFAIR LABOUR PRACTICES**.** AND IT IS HEREBY SO ORDERED. MATTER SUSPENDED.

Judge Natt's final judgment overturning the Hearing Officer's final ruling has prompted the appellant bank to prosecute this appeal before the Supreme Court. Count (6) of appellant's bill of exceptions, which basically summarizes the core issue of the appeal, is quoted hereunder as follows:

6. That as to the entire Ruling, Petitioner/Appellant submits that the scope of judicial review of an administrative decision as in the instant case represents an administrative decision of a labor case is that the findings of fact are the responsibility of the administrative agency and such findings are conclusive and not reviewable on judicial review in the absence of fraud or due process of law.

Consequently, An administrative agency's findings as to the fact which are supported by substantial evidence are binding and conclusive on, and may not be disturbed or set aside by a court in the absence of fraud or bias, where a hearing complying with the requirements of due process of law was accorded, the agency acted within Its jurisdiction and authority, and the findings were made in compliance with law and were the result of fair determination.

In [every] such case, the court must accept the findings as final and true, and may not substitute its own judgment or findings of fact for that of the agency. The Honorable Supreme Court has further stated that questions of fact involved in a proceeding before an administrative agency are to be determined at least primarily by the agency rather than a court; and in the absence of fraud, lack of jurisdiction or arbitrary, or capricious action constituting a denial of due process of law, the agency's findings of fact, or decision of a question of fact, is to be accepted as final, binding and conclusive, and may not be reviewed by a court except to the extent that a constitutional or statutory provision makes it reviewable.

Hearing Officer's Ruling and there being no fraud, lack of jurisdiction or denial of due process, the Hearing Officer's ruling is to be accepted as final and binding and the court may not substitute its own judgment or findings of fact for that of the agency.

By Your Honor erroneously substituting Your Honor's own findings of fact for that of the Hearing Officer's exhaustive findings of fact, Your Honor committed reversible error for the reason that the substitution of Your Honor's own findings of fact for that of the Hearing Officer's exhaustive findings of fact is without the scope of judicial review of an administrative decision.

In further substantiation that the substitution of Your Honor's own findings of fact for that of the Hearing Officer's exhaustive findings of fact is without the scope of judicial review of an administrative decision, Petitioner/Appellant submits that Respondent Ochoada's Petition for Judicial Review is factual in nature without any reference to errors of law having been committed by the Hearing Officer.

An administrative agency's findings of fact which is supported by substantial evidence, growing out of a hearing that complies with the requirements of due process are, binding and conclusive, and may not be set aside or substituted by a court's own judgment as erroneously done by Your Honor.

Wherefore, and in view of the foregoing, Petitioner/Appellant prays Your Honor to approve this Bill of Exceptions for the final review and determination of the above entitled cause by the Honorable Supreme Court of the Republic of Liberia.

For its part, counsel for Appellee Ochoada, both in the brief filed with this court and during argument made before us with fiery eloquence, has defended Judge Natt's judgment and prayed this Court to affirm same with modification. And for what he has termed as Wrongful Dismissal, counsel has urged the Supreme Court to award the appellee salary for 48 (forty eight) months, at US$7,000.00 (seven thousand United States dollars) monthly, totaling US$3663,000.00 (three hundred thirty –six thousand United States dollars).

The arguments presented by the parties, as indicated earlier, have generated the question as to whether the Resident Judge of the National Labor Court acted within the limits of the power of judicial review when she set aside the ruling rendered by the administrative Hearing Tribunal.

It is appropriate to remark here that in numerous Opinions, this Court has set the clear perimeters which, at all times, shall guide and attend to the proper review of a decision entered by an administrative agency or investigation tribunal. These guiding perimeters are mandatory limits in the undertaking of reviewing process of a hearing judgment entered by an administrative.

Instructive in this regard is the case: The Management of Liberia Katopas Fishing Company v. Klaus D. Myers and Luis Oreilana, 37 LLR 850 (1995). The legal standard set forth in that case, is further elaborated in the case: Liberia Bank for Development and Investment v. Her Honor, Comfort S. Natt, Judge of the National Labor Court, Monrovia, Liberia, Hon. Philip G. Williams, Director for Labor Standards and Labor Relations Officer, Hearing Officer and Baysamah E. Seville, also of Monrovia. Liberia, decided December 22, 2006. In the LBDI case, Chief Justice Lewis, spoke for a unanimous Court to the issue of scope of judicial review as well as the standards which, at all times, shall regulate judicial review of findings of fact and conclusion reached by an administrative agency founded on those facts.

Mr. Chief Justice Lewis, in reference to the findings of fact made by the Hearing Officer in that case, stated:

These were findings of fact which were binding and conclusive on the National Labor Court and could not be disturbed or set aside in the absence of fraud or bias, where a hearing complying with the requirements of due process of law was accorded, the agency acted within its jurisdiction and authority, and the findings were made in compliance with law and were the result of fair determination.

In the case, Johnson et al. v. Lamco J. V. Operating Company, reported in 31LLR735 (1984), the co – appellant, Mr. Willie Johnson, worked for the appellee, Lamco J. V. Operating Company, for a period of five (5) years as a heavy duty truck driver.

Co-appellant Johnson sprained his back while trying to repair the tire of Appellee Lamco's Volvo truck. Co-appellant Johnson was treated at Appellee's health facility for five (5) months and discharged. The attendant medical doctor told Johnson that his injury had reduced his physical capacity by 30%; therefore, he was advised to confine himself to light-duty driving.

Co-appellant was therefore assigned to operate a fuel tanker. Subsequently, and while checking the fuel in the tanker, the Co-appellant fell and worsened his injury. He was hospitalized and discharged in a couple of days. Two months later, Lamco terminated Co-appellant's services.

Co-appellant Johnson filed a complaint with the Labor Commissioner in Grand Bassa County, alleging unfair labor practice, wrongful dismissal and claim for workmen compensation. The Labor Commissioner awarded Co-appellant the amount of $4,450.00 for loss of earning capacity and $5,130.60 as severance pay, totaling $9,580.60.

Appellee Lamco Management appealed the ruling to the Board of General Appeals at the Labor Ministry. The Board affirmed the Labor Commissioner's ruling. Again, Lamco Management appealed said decision and filed a petition for judicial review before the Circuit Court. Lamco Management contended essentially that the Co-appellant Johnson was not entitled to receive any compensation because he did not prove that his back was in good condition prior to commencing work with Lamco Management.

The Circuit judge agreed with the appellant and reversed the ruling of the Board of General Appeals, discharging Lamco Management of liability.

The Supreme Court, in consideration of Co-appellant Johnson's appeal, entertained the issue whether an employer may dismiss an employee from work on condition of illness without compensation. The Supreme Court also reflected on the question whether a circuit court judge may review, set aside or disturb the findings of fact of the Board of General Appeals of the Labor Ministry, an administrative agency, in the absence of allegations of fraud, bias or lack of due process. The Supreme Court answered both questions in the negative. As to the second question on scope of judicial review of an administrative agency's decisions, the Supreme Court held that:

An administrative agency's findings as to the facts which are supported by substantiated evidence are binding and conclusive on, and may not be disturbed or set aside by a court, in the absence of fraud or bias, where a hearing complying with the requirements of due process of law was accorded, the agency acted within its jurisdiction and authority, and the findings were made in compliance with law and were the result of fair consideration in such case, a court must accept the findings as final and true, and may not substitute its own judgment or finding of fact for that of the agency Ibd. 746

It is appropriate to remark here that in numerous Opinions, this Court has set the clear perimeters which, at all times, shall guide and attend to the proper review of a decision entered by an administrative agency or investigation tribunal. These guiding perimeters are mandatory limits of reviewing a hearing judgment entered by an administrative.

By substantiated evidence are binding and conclusive on, and may not be disturbed or set aside by a court, in the absence of fraud or bias, where a hearing complying with the requirements of due process of law was accorded, the agency acted within its jurisdiction and authority, and the findings were made in compliance with law and were the result of fair consideration In such case, a court must accept the findings as final and true, and may not substitute its own judgment or finding of fact for that of the agency 73 CJ.S., Prohibition, Section 223. lbd. 746

Consonant with this law, a reversal of an administrative findings of fact, as concluded in the case at bar by Hearing Officer Dickerson, Sr., obtains:

(1)where fraud was evidently perpetrated against a party in reaching the judgment; (2) where the tribunal is guilty of established bias and prejudice against a party; (3) where a party was not accorded due process of law; and, (4) where the hearing agency acted in excess of, or outside the authority granted by law to said agency.

Stating it otherwise, it will be improper in the eye of the law for a court of competent jurisdiction, as in the case of the Labor Court, to set aside findings of fact made by an administrative hearing tribunal, without a clear and proven showing that the administrative agency's conclusion of factual circumstances was obtained by means of swindle or demonstrated prejudice against one party in favor of the other; or that the tribunal deprived a party of a hearing judgment, to which every party is entitled, consistent with the venerated principle of due process of law, enshrined and guaranteed under the Liberian Constitution. Accordingly, and in order to warrant a reversal of the findings of fact entered by Hearing Officer Nathaniel Dickerson, Appellee Ochoada must have demonstrated that he was denied the right of due process, or that the decision reached by the hearing tribunal was the product of fraud, or one acquired through fickle and capricious means, or that the tribunal conducted the proceedings with bias and prejudice, void of the cool neutrality every tribunal empowered to adjudge and determine the rights of parties must exhibit at all times, or that the agency acted without jurisdiction.

Strictly applying the above standards to the case at bar, it naturally follows that in order to be deemed as warranted under the law, the judgment entered by Judge Natt, reversing the Hearing Officer must clearly demonstrate that the hearing officer's ruling was clearly flawed and that it constituted an outrageous disregard of the standards enunciated in the numerous opinions of this Court.

In the same vein, where no such substantiated allegations were made, the findings of fact and conclusion thereon reached, as in the instant case, are conclusively within the province of the administrative agency and are therefore final and binding.

In every such case, the findings of fact may not be properly set aside through judicial review.

The arguments presented by the parties as indicated earlier, have generated the question whether the Resident Judge of the National Labor Court acted within the limits of the power of judicial review when she set aside the ruling rendered by the administrative Hearing Tribunal.

As to the petition for judicial review, same being the basis for Judge Natt's reversal of the Hearing Officer's ruling, we have to state that notwithstanding our most careful scrutiny of said petition, we were unable to discover any proven allegation by Appellee Ochoada of being denied his rights to an unhindered opportunity of fair hearing, or being circumscribed, in any form or shape, from full and equal participation in the proceedings had before the Labor Hearing Tribunal/Agency. We similarly did not see in the certified records, even by fleeting reference, any claim made by any party alleging that the Administrative Tribunal reached its conclusion fraudulently or through dubious scheme.

To the contrary, the records abundantly indicate that both parties were duly cited and did appear; that the parties presented evidence in support of their respective positions, and were also afforded ample opportunity to cross- examine the witnesses introduced by the other party. In other words, not only are the records void of any such showing, but additionally, none of the parties lodged a complaint for not being accorded their day in court as in keeping with the principles of due process enshrined in the Constitution of Liberia (1986).

Under these circumstances, finding no legal basis which would have availed itself to the judge of the Labor Court to appropriately consider the setting aside or reversal of the administrative agency's findings of fact and the conclusion thereon entered, this Court is compelled to conclude that the judgment entered by Judge Comfort S. Natt, reversing the administrative agency's a reversible error.

Hearing Officer, same being void of any showing that the agency's conclusion was bias and prejudicial, that the agency's conclusion was the product of fraud, and/or that the agency did not have jurisdiction, or exceeded its authority, or that the party was denied his day in court, is simply an outlandish contravention of the standards enunciated by this Court for judicial review.

Further, and we must also avail ourselves of this opportunity to say, that this Court is equally appalled to note that Judge Natt, in her judgment under review, appeared to have heavily relied on what she termed as admission by the Appellant IB that Appellee Ochoada was an employee of the said bank.

How Judge Natt reached that conclusion in the face of the recorded proceedings being replete with representations of stringent denials made by the appellant, contrary to any admission, remains amazement. We found no such evidence in the records.

Therefore, and considering all these circumstances, the judgment entered by the National Labor Court, setting aside the detailed final ruling made by the Hearing Officer, being without support of the law is reversed and set aside as if it was never entered.

Although we have reversed Judge Natt on the question of proper exercise of judicial review of findings of fact, we nevertheless have a duty to revert to the records in order to ascertain whether the appellee, Wilfredo C. Ochoada, by preponderance of the evidence, supported his claim of being an employee of the appellant bank.

It is needless to emphasize that appellee having claimed of being an employee of the appellant bank, and for this reason therefore entitled to compensation for proven wrongful dismissal/unfair labor practices, squarely imposes on the appellee the onus of proof. It being the law in this jurisdiction that he who makes allegations or presents claims against another must substantiate his claims by preponderance of the evidence. In the case 'Frankyu et al. v. Action Contre La Faim, 39 LLR 289, 296 (1999), as sundry other Opinions of this Court, we reiterated the long held legal principle hoary with time in this jurisdiction that allegations are simply intended to set forth a cause of action; that allegations unsupported by evidence amount to no proof. Salala Rubber Company v. Onadeke, 24 LLR 441, 444 (1976); Gibson v.Williams, 33 LLR 193, 196 (1985). This Court, in the case: The Management of the Forestry Development Authority (FDA) v. Walters et al., 34 LLR 777,783(1988), Mr. Justice Junius, speaking for the Court, put it most succinctly in the following words:

In this jurisdiction, it is evidence alone which enables the court, tribunal or administrative forum to pronounce with certainty the matter in dispute, and no matter how logical a complaint might be stated, it cannot be taken as proof without evidence.

It is required that every party alleging the existing of a fact is bound to proof it by a preponderance of the evidence.

Guided by this controlling principle of law and applying the required standard of proof, it is appropriate to juxtapose the fundamental allegation made by Appellee Ochoada that he was an employee of the Appellant International Bank Liberia (Limited) against the evidence deposed by the appellee in satisfaction of the burden of proof required of him by law. By this requirement, it is mandatory and pivotal that appellee demonstrate by preponderance of the evidence of the existence of an employer-employee relationship between Appellee Wilfredo C. Ochoada and Appellant International Bank (Liberia) Limited. To the mind of this Court, this is a sine qua non to maintain an action of wrongful dismissal/unfair labor practices, as appellee has undertaken to do. Needless to say also that without production of the evidence sufficient to establish that employer-employee relations between the appellant and the appellee, the unfair labor practices action Appellee Ochoada now pursues, shall crumble de jure.

Let's revert to the trial records. The records reveal that formal trial commenced on July 19, 2007. Two witnesses, including a rebuttal witness, testified in support of appellee's claim. Complainant Wilredo C. Ochoada, first took the stand and testified on his own behalf. For the benefit of this Opinion, we have quoted, word for word, Witness Ochoada's testimony in chief as follows:

I was employed by the International Bank, Liberia Limited, formerly the International Trust Company of Liberia on September 1, 1989, as Assistant Treasurer.

Subsequently, on January 1, 2000, I was appointed as General Manager of the bank. On April 7, 2004, I took my first vacation leave and left Liberia for Virginia, USA, my country of citizenship and where my family resides. Prior to my departure and based on usual procedure and practice at the Bank, on April 5, 2004, I duly informed the bank staff through a memorandum that my deputy in the person of Mr. Arvind Seth, would be the acting General Manager.

In keeping with the requirements of the Central Bank of Liberia, on April 6, 2004,I wrote a letter to the Executive Governor of the Central Bank of Liberia, Honorable Elie Saleeby, advising him that I will be out of the country for four (4) weeks, and that my deputy will serve as acting general manager.

On April 20, 2004, during the course of my vacation, I had a scheduled meeting with Mr. F.A. Guida, Chairman and President of International Bank who resides in the United States, Every time I am on vacation in the United States, I have to meet Mr. Gulda to discuss the operation of the bank. I assumed that the scheduled meeting was one of our usual meetings regarding the operation of the bank. I met Mr. Guida in his office at Reston, Virginia, USA, on the scheduled date. But the meeting was not regarding the operation of the bank. Instead, Mr. Guida demanded that I resign my position and employment with the bank. While in shock, I asked Mr. Gulda what he meant and why he was making such demand. And Mr. Gulda replied that he had accepted my resignation and considered me as resigned. True to his words, and fully aware that in fact I did not resign, Mr. Gulda immediately, on the same day, wrote a letter to the Executive Governor of the Central Bank of Liberia informing him that that he has accepted my alleged resignation. Also, on the same day and date, Mr. Gulda sent an e-mail to Mr. Arvind Seth, advising him that he has regretfully accepted my alleged resignation and advised him to share the announcement with the entire bank staff.

On April 21, 2004, Ms. Annie Otto, Human Resource Department Manager of the International Bank Liberia Ltd., put out a memorandum to all the bank's employees and contractors, announcing my alleged resignation. Given the unclear circumstances regarding my alleged resignation, when I have taken a vacation on April 7, 2004, concerned employees of the International Bank, wrote a letter to Mr. Guida in reaction to my alleged resignation.

The letter was signed by most of the employees and copies were provided to me, Central Bank of Liberia, Mr. Arvind Seth and Mr. Thomas Jeffrey.

On May 11, 2004, I got hold of a copy of the letter Mr. Guida wrote to the Executive Governor of the Central Bank regarding his acceptance of my resignation. Immediately, I faxed a letter to the Honorable Executive Governor of the Central Bank of Liberia, Mr. Honorable Elle Saleeby, advising him that I have not resigned my position as Director, Executive Vice President, General Manager and Treasurer of the International Bank. Upon my return to Liberia, I was prevented from entering both the premises provided for my residence by the bank as well as my office at the bank, even though my services were severed on mere allegation. My personal files and few things are still at the bank. Furthermore, International Bank has discontinued payment of my salary and benefits since May, 2004. Of course, assuming without admittance, that I have resigned, the normal thing will be to provide me the opportunity to see my alleged letter of resignation which the Management of the International Bank Liberia Limited failed to do up to the present. The facts and circumstance I have just stated clearly show that I was wrongfully dismissed by the International Bank Liberia Limited without pay or termination benefits. Also the same facts and circumstance constitute Unfair Labor Practices and violation of the Liberian Labor Law.

At the time of my removal, my monthly salary was US seven thousand dollars (US7, 000.00) net of Liberia taxes and deduction as evidence by my pay slip, dated April 23, 2004.

Said copy of the pay slip is in the hand of my lawyers. I have outlined these benefits, and they are now in the hands of my lawyer. To prove that I was entitled to these benefits, I have copy of the bank's budget (Projected income and expenses) for the year 2003 and 2004. These copies are now in the hand of my lawyer. AND I REST.

During direct examination, witness Ochoada, identified and testified to multiple instruments which were confirmed, reconfirmed, and subsequently admitted into evidence.

These pieces of evidence including: (a) letter the witness is said to have written and addressed to the Executive Governor of the Central Bank informing that institution – Central Bank of Liberia of his departure from Liberia for vacation and the appointment of Mr. Arvind Seth to act in the Appellee's stead as General Manager of International Bank Liberia Limited; (b) an inter- office memo informing employees of the Appellant Bank about the witness's leave of absence for his annual vacation; (c) copy of an e–mail said to have come from Mr. F.A. Guida, Chairman and President, International Bank Liberia Limited to Mr. Seth. Said mail was to the effect that Appellee/Witness Ochoada's letter of resignation has been accepted with regrets and that the employees of the Appellant International Bank Liberia Limited, be advised accordingly; (d) pay – slip showing Appellee Ochoada's monthly salary at USD7,000.00 (Seven Thousand United States Dollars).

Further seeking to substantiate his claim of being an employee of the appellant bank, Witness Ochoada testified to a number of instruments, sufficiently listed in Judge Natt's ruling, quoted herein above; hence need not be repeated. Nevertheless, we shall direct our reflection to the materiality of the admitted instruments later in this opinion.

Emmanuel Dolo was Appellee Ochoada's second witness. He testified in chief as follows:

When I joined the IB, I met Mr. Ochoada as General Manager and Treasurer of IB. After few weeks, he was going on vacation and put up a Memo to all employees and contractor that he was going for vacation for three (3) weeks; and then he left Arvind K. Seth as the acting General Manager while on vacation. After few weeks, to our utmost surprise, Mrs. Annie Otoo put up a memo informing all employees and contractors that Mr. Wilfredo C. Ochoada has resigned. After that we the concerned employees grouped ourselves and wrote a letter to Tony A. Gagger asking him that we wanted peace. After that, no one listened; the letter sent to Mr. Gagger we served copy to Thomas F. Jeffrey, II, Arvind K. Seth and one to Central Bank.

When Mr. Ochoada returned, he was denied entry in his premises at St. Joseph Compound. Why l am saying this, because I was the Compound Supervisor at the time. If you look on the paper, we the concerned employees signed. My name is number 16 on the sheet. AND I REST.

Witness Dolo was subsequently introduced as a rebuttal witness. When Appellee Ochoada rested, in toto, with the production of evidence, both oral and documentary, with the usual reservation, for its part, counsel for appellant moved the Investigation Tribunal to enter judgment during trial in its favor. The Hearing Officer denied the Motion observing that labor hearings are fact-findings and administrative in nature; that the case be expeditiously disposed of on their merits, hence legal technicalities do not apply as in courts of law.

Following hearing on both the summary and the resistance thereto, Judge Natt upheld the Hearing Officer's Ruling and ordered that hearing be proceeded with.

In keeping with the Labor Court's directive, the trial resumed with Thomas S. Jeffery, Ill, Chief Executive Officer of IB and Henry S. Samoi, General Manager of Finance and Administration, also of IB, both testifying for the appellant bank.

Thomas S. Jeffery, III, Chief Executive Officer of IB and Henry S. Samoi, General Manager of Finance and Administration, also of IB, testified for the appellant bank. The two told the Hearing Tribunal that Appellee Ochoada was not an employee of IB/ITC. The two witnesses corroboratively testified that Appellee Ochoada was an employee of ADCON and was never employed by the appellant bank; that all employee of ADCON and was never employed by the appellant bank; that all taxes on appellee's income as well as life insurance, dental insurance and medical insurance, were covered by ADCON, appellee's employer; that appellee was seconded by his employer, ADCON to appellant bank; that as ADCON employee, appellee participated in the 401 K insurance plan, regulated under United States Laws and intended for employee of such category. The two witnesses also testified to various testimonies in support of the, appellant's denial that appellee was an employee of the bank.

These instruments included the Confidentiality Agreement dated May 3, 1989, executed between the appellee and ADCON. We shall examine this instrument later in this Opinion.

When both parties rested evidence, the Hearing Officer entertained final arguments and thereafter ruled dismissing the complaint of wrongful dismissal/unfair labor practice.

The Hearing Officer held that the appellant bank was not 'liable for the action of Unfair Labor Practices/Wrongful Dismissal because there is no privity of contract between them (IBLL and Ochoada).

This takes us to the pivotal question whether appellee deposed the quantum of evidence sufficient to warrant a judgment in his favor thereby properly adjudging appellant bank liable for wrongful dismissal/unfair labor practice. In other words, did appellee support his claim of being an employee of the appellant bank, by preponderance of the evidence as mandated by law?

To answer this question, it is appropriate to undertake a critical survey the evidence deposed by the appellee during the proceedings had before the Labor Hearing Officer.

We note here that during investigation at the Labour Ministry, Appellee Ochoada was cross-examined on the central question whether he was employed by the appellant.

Appellee Ochada was asked the following pointed questions:

Q. Mr. Witness, in your testimony in chief, you said you were employed by the International Bank (Lib.) Ltd. formerly ITC, on September 1, 1989. Please say for the benefit of this investigation where did this employment take place?

A. Employment was done in Liberia. [See minutes of Investigation, July 27, 2007].

Q. By that answer, Mr. Witness, please say for the benefit of this investigation, which category did you at the time of your service to the bank, fall within?

A. Expatriate employee.

Q. Mr. Witness, in relation to our first question on the cross, please tell this investigation whether or not your employment was done orally or by means of a formal document?

A. When I came to Liberia, in September of 1989, I filled out my application at the office of the Bank Human Resource Manager, and Mr. Guida was here in Liberia and in fact welcomes me at the Airport in Liberia. Then, the succeeding day, the Company, (ITC) at the time, requested for my work permit at the Ministry of Labor. Also, as per the requirement of the Bureau of Immigration, IB/ITC filed semi-annual employment reports wherein my name was indicated as an employee of IB/ITC.

Both in his brief and during argument before us, counsel for the appellee has forcefully argued that the standard of proof required to substantiate a claim of civil nature is preponderance of the evidence. Counsel referred us to both the definition of said phrase in the Eight Edition of the Black's Law Dictionary as well as provided under section 25.5 (2), I LCLR. He has argued that it is sufficient if a party who has the burden of proof establishes his allegation by a preponderance of

the evidence. According to counsel, using this yard-stick leaves absolutely no doubt that the appellee established his case that he was indeed employed by ITC/IB and wrongfully dismissed. Counsel maintained that the appellee was employed in September 1989, the year the Liberian Civil war started, and like many other persons, has been on the run for his life many times. Because of numerous flights from Liberia, counsel admitted that Appellee Ochoada could not locate his employment letter after fourteen (14) years.

Counsel has further argued that to prove that appellee was an employee of the appellant bank is not done by, or limited to employment letter or employment contract. Counsel maintained that when all the instruments produced by appellee are considered and the facts and circumstances properly taken into account, no doubt is left in a mind driven by equity that appellee Ochoada was an employee of the appellant bank and that he was wrongfully dismissed by the appellant bank.

For its part, counsel for the appellant, arguing from his brief filed before this Court with forensic eloquence, maintained that appellee was indeed employed by ADCON and seconded to work in Liberia for the appellant bank. Counsel referred us to the various testimonies deposed by appellant witnesses as well as documentary evidence in support thereof. He specifically referred us to such documentary evidence as the Confidentiality Agreement dated May 3, 1989, entered between Appellee Ochoada and ADCON.

The relevant portions of this Agreement counsel referred us to state that said Agreement was in consideration of appellee's employment and continued employment by ADCON.

The Agreements also provided that during the period of Appellee's employment with ADCON, Appellee agrees that he will not own an interest in, operate, participate in or be connected with any entity that provides services which are in direct or indirect competition with ADCON. Counsel also referred this Court to ADCON's communication addressed to the Sierra Leone Embassy, dated June 21, 1990. The said communication from ADCON was signed by Hollis B. Stephens, Director of Human Resources of ADCON, in which Appellee Ochoada was introduced as ADCON's employee travelling from the United States to Liberia and requesting the issuance of a visa in his favor. Concluding, counsel for appellant indicated that appellant does not deny that Appellee Ochoada worked for the appellant. However, appellant stringently denied that the appellee was employed by the appellant bank.

In other words, it is appellant's position that the appellee was employed by ADCON and seconded to work for the appellant bank in the Republic of Liberia. Further, counsel for appellant has submitted that appellee having alleged to have been employed by the appellant but failed to carry the burden of proof as required by law, appellant bank's appeal ought to be upheld as a matter of law, judge Natt's final judgment be reversed and the ruling of the Hearing Officer, who held to the contrary, upheld and confirmed.

In the instant case, the thrust of Appellee/Plaintiff's complaint was that he was an employee of the Appellant International Bank (Liberia) Limited and that he was wrongfully dismissed by his alleged employer, the appellant bank.

Evidently, the law in this jurisdiction demands that a plaintiff/complainant, as Appellee Ochoada in the case at bar, substantiates his allegation by preponderance of the evidence. The standard of proof contemplated under the phrase "preponderance of the evidence" is deposition by the plaintiff of such testimonies which effectively persuade beliefs in the truthfulness of the allegation plaintiff seeks to prove.

Guided by this standard, we have carefully considered all the testimonies and documentary evidence proffered by the appellee/plaintiff seeking to carry the burden of proof as the law requires in this jurisdiction. In this connection, we here emphasize that we are in full agreement with the forceful argument contained in count seventeen of Appellee Ochoada's resistance to the motion for judgment during trial.

There he stated, and we agree, as follows:

Respondent says further [that] assuming without admitting that his testimony was not corroborated by a living witness, our law extant requires that a labor matter can be proven by the testimony of the complainant once it is supported by documentary evidence as in the instant case. [Emphasis Supplied]. [See count 17 of appellee/respondent's resistance to appellant's Motion for Judgment during Trial, filed by appellee in September, 2007.

To the mind of this Court, however, the witnesses' testimony supported by documentary evidence demonstrating that Appellee Ochoada was welcomed to Liberia by a senior executive officer of the appellant bank, or that appellee carried an identification Card of the appellant bank, or that appellee's name appeared on appellant (IB) payroll submitted to Social Security on a monthly basis, does not, ipso facto, preponderate in proof as best evidence this case admits of. The best evidence the case under review admits as proof that appellee was an employee of the appellant is an employment letter/contract. In our opinion, said documentary evidence could not have supposed the existence of a better evidence to prove that appellee was indeed employed by the appellant bank.

As enunciated by this Court in sundry of Opinions including The Management of the Forestry Development Authority (FDA) v Walters & the Board of General Appeals, 34 LLR 777 (1988), it is the law, practice and procedure in this jurisdiction that no evidence is sufficient which supposes the existence of a better evidence; that the best evidence which the case admits of must be produced. We however are not convinced that all the testimonies and documentary evidence adduced by appellee/plaintiff preponderate in proof that he was an employee of the Appellant International Bank (Liberia) Limited.

Appellee woefully failed to produce any such evidence. Appellee not only neglected to substantiate his pivotal claim by this standard of proof and requirement, but also made no efforts to cause the production of such documentary evidence by proper application for a writ of subpoena duces tecum to order the appellant bank to produce such record, if it ever existed.

This would have been an appropriate course of action in the light of appellee's assertion that he was employed by the appellant bank right here in Monrovia, Liberia, and that he filled the employment document at the Headquarters of the appellant bank here also in Monrovia, but lost his copy thereof due to numerous flights from Liberia occasioned by the civil conflict.

On the other hand, it is worth noting that there is one instrument which, at best, tended to shed light on appellee's status with the appellant bank. Inspection of that instrument indicated that same was duly executed between Appellee Ochoada and a United States based institution, in Reston, Virginia. This institution, acronym ADCON – Administrative Control, concluded an Agreement with Appellee Wilfredo C. Ochoada detailing employment responsibility and obligation to be undertaken by the two contracting parties. This instrument was styled as "Confidentiality and Non-solicitation Agreement" and was executed on May 3, 1999. We must note here that neither Appellee Ochoada nor Appellant International Bank Liberia (Limited) denied that such an instrument was duly executed between Appellee Ochoada and ADCON.

Pertinent sections read as follows:

This Confidentiality and Non-Solicitation Agreement (the Agreement), is entered into this 3d day of May 1999 by and between WILFREDO OCHOADA (Employee) and Administrative Control Services, In., a Virginia Corporation, its affiliates, and the office of the Deputy Commissioner for Maritime Affairs for the Republic of Liberia (collectively, the Company).

WHEREAS, this Agreement is in consideration of Employee's employment and continued employment by the Company and Compensation and other benefits provided by the Company in conjunction with such employment; and.

It is our considered opinion that the instrument, herein above quoted, is cogently clear. The aforesaid instrument leaves no ambiguity on the question of employment relation between the contracting parties, Appellee Ochoada and the Administrative Control Services, Inc., named in the Agreement as the Company. The word Company is also operationally defined in the executed instrument as the collectivity of the said Virginia based Corporation, its affiliates, as well as the office of the Deputy Commissioner for Maritime Affairs of Liberia.

To our mind, whether the appellee resigned voluntarily, or, that the discontinuation of appellee's services to IB was orchestrated at the instance of the appellant bank, constitutes no proof as who appellee's employer was, nor is any of those germane to the decisive issue of who the employer was. As it is, the Confidentiality Agreement executed between the contracting parties, ADCON and Appellee Ochoada, as employer and employee, deeply undermines any reasonable arguments that appellee was employed by the appellant IB. Is it not an appropriate query to ask why would appellee sign this Confidentiality Agreement in which he is referred to as EMPLOYEE of ADCON when he in fact knew and accepted, as he claimed all along, that his employer was the Appellant IB?

By affixing his signature to the Confidentiality Agreement, an instrument the contracting executed and covenanted shall be interpreted in accordance with the laws of the Commonwealth of Virginia, Appellee Ochoada by said executed instrument expressly defined his own employment status. By executing said legal instrument, appellee unarguably and expressly pronounced that he is indeed an employee of ADCON, his employer, and thereby also expressly and unambiguously identified himself in the duly executed instrument as employee of ADCON. Appellee could not have been employed simultaneously by ADCON and the IBIITC. This would have been a violation. Under the circumstance, he had to be employed by only one. The document executed by him clearly shows which company he was employed with, and lands greater credence to the findings of the hearing

Officer that appellee was employed by ADCON and was only seconded to work with the appellant. The fact that appellant bank paid appellee's salaries for the services rendered and determined the rank which he would hold under the secodment arrangement did not change the fact that appellee was employed with ADCON and that it had every right at any time to direct his withdrawal or terminate his employment with IB/ITC. Indeed we are of the further considered opinion that Judge Natt should have therefore relied on the Law of Virginia, not the Laws of Liberia. It was error for Judge Natt to do otherwise.

We are therefore in perfect agreement with the position advanced by the appellant that the appellee failed to substantiate his allegation of being an employee of the appellant bank. Judge Natt's conclusion reached to the contrary, same not being supported by the evidence before us, is hereby vacated.

The issue whether Appellee Ochoada may sustain an action of wrongful dismissal/unfair labor practice, within the context of this case, constitutes the third and final issue seeking our attentive reflections.

This issue as presented begs our consideration of the alleged wrong done to, and sustained by Appellee Ochoada as a consequence of illegal dismissal or unfair labor practice at the instance of the appellant bank. However, it being the case that where there is no privity of employment, a plaintiff cannot maintain an action of wrongful dismissal/unfair labor practice, and this Court, having already determined, as detailed in this Opinion, that Appellee Ochoada was not an employee of the Appellant International Bank Liberia (Limited), it logically follows that the action of wrongful dismissal/unfair labor practice instituted by the appellee is simply unsustainable, both as a matter of fact and law. Hence, this issue need not be further explored. Because of what we have said herein, it is our holding that the final judgment entered by Her Honor, Comfort S. Natt, presiding over the National Labor Court for Montserrado County, determined by this Court to be without the pale of the law, is hereby reversed; conversely, the Final Judgment rendered by the Hearing Officer, Nathaniel Dickerson, to the effect that no privity of employment contract was proven by appellee/plaintiff to have existed between the appellee and the appellant, same being supported by the records and grounded in law, is ordered reinstated.

The Clerk of this Court is hereby commanded to send a mandate to the Labor Court judge to give effect to this judgment. Costs are ruled against the appellee**.** IT IS SO ORDERED.

Counsellor Stephen B. Dunbar, Jr. of Dunbar & Dunbar Law Offices appeared for the appellant. Counsellor Yamie Quiqui Gbeisay, Sr., of the Tiala Law Associates, Inc., appeared for the appellee.