John G. Kerdoe of the City of Kakata, Margibi County, Republic of Liberia Appellee versus **Bright Rubber Plantation/Farm** of the City of Kakata, Margibi County, Republic of Liberia Appellant

APPEAL FROM THE NATIONAL LABOR COURT, MONTSERRADO COUNTY

Heard: March 22, 2007 Decided: August 9, 2007

MR. CHIEF JUSTICE LEWIS DELIVERED THE OPINION OF THE COURT.

On 16 June, 2004, Chief Jerry M. Gba Gonyon, on behalf of John G. Kerdoe, appellee, filed a complaint with the Ministry of Labor against Bright Rubber Plantation/Farm, appellant, for Wrongful Dismissal and Unfair Labor Practices. On 5 July 2004, the appellee withdrew his complaint with reservations. On the same day, Barclay S. Wollie, Sr., Labor Consultant with Tiala Law Associates, Inc., filed an amended complaint on behalf of Mr. Kerdoe.

The appellee alleged essentially in his complaint that he was employed by the appellant on 1 October 2001 as Security Officer, and that he served faithfully until 14 June 2004 when he received a letter of dismissal from the appellant. The appellee sought severance pay, annual leave pay, back pay, days off pay, rental allowance and April 2004 salary.

The matter was assigned to Philip G. Williams, Director of Labor Standards and Labor Relations Officer, who issued a citation to the appellant for a pre-trial conference. It would appear that several such conferences were had, but an out-of-court settlement did not result; consequently a full scale investigation was had.

On 4 May 2005, at the conclusion of the investigation, Hearing Officer Williams entered a default judgment against the appellant, the conclusion of which we quote:

"After a careful examination of the records and the surrounding circumstances in these proceedings, coupled with the facts, it is our candid and considered opinion that complainant's dismissal is wrongful, contrary to provisions of the Labor Practices Law of Liberia and he is therefore entitled to recover from his employer those benefits that have accrued unto him but he was denied, such as over time and annual leave, weekly days of rest, as well as public holidays. Thereafter, he should be accorded the benefit of reinstatement without any precondition. Any act to the

contrary, defendant/plantation should stand *ready* to comply with section 9 (a) (I) and (a) (ii) of Title 19-4 by awarding him four months compensation, taking into consideration his tenure of service in lieu of reinstatement along with a month's salary in lieu of notice plus those benefits that have already accrued, with the exception of the alleged eighteen months' rental obligation against the management which is surrounded by d;11 cloud. That is to say, in accordance with the below tabulations:

1. Overtime = 3.5 hrs. daily x 26 days = 91 hrs. (October 2001-June 2004) x 31 months = 2801 hrs. x 0.42 (time and a half) US$ 1,176.62
2. Three (3) weeks accrued annual leave = US15.00 x 3 weeks 45.00
3. Weekly days of rest = 124 weekly days of rest x 8 hrs. = 992 hrs x 0.42 419.64
4. Public holidays = 32 holidays x 8 hrs. = 256 hrs. x 0.42 107.52
5. Four months' salary in lieu of reinstatement = US$600.00 x 4 .. 240.00
6. One month's salary in lieu of notice 60.00

Total US$ 2,048.16
(Two thousand, forty-eight and 16/100 United States Dollars)"

The return of the ministerial officer of the Ministry of Labor indicates that a copy of the default judgment was served upon and acknowledged on 10 May 2005 by Mr. Barclay S. Wollie, Sr., Labor Consultant with Tiala Law Associates, Inc., on behalf of appellee Kerdoe. A copy of the default judgment was served upon and acknowledged on 11 May 2005 by Nancy C. Payne, receptionist at the Jones and Jones Law Firm, on behalf of the appellant.

On 16 September 2005, more than four months after service upon and acknowledgment by Jones and Jones Law Firm of the 4 May 2005 default judgment, the appellant filed a five-count petition for judicial review before the National Labor Court, Montserrado County. We quote the petition for judicial review.

"1. That the ruling of the Hearing Officer of May 4, 2005 is neither supported by the evidence adduced at the trial of this case nor the Hearing Officer's own finding of the facts and hence the said ruling should be reversed. Your Honor is most respectfully requested to take judicial notice of these proceedings.

"2. That the Hearing Officer failed to give petitioner its day in court. . . . The Hearing Officer did not exercise care in the hearing of this matter and as a result wrongly ruled against your humble petitioner because of his failure to give your petitioner the opportunity to properly defend himself for reason that sufficient notice was not provided to the petitioner to warrant a default judgment under the law.

"3. That the Hearing Officer failed and neglected to send a notice of assignment to the petitioner for the continuation of the case, but elected to satisfy the respondent, John G. Kerdoe, against the interest of the petitioner, forgetting to take due process of law procedures into consideration, and therefore the ruling of the Hearing Officer being not in the contemplation of the Labor Law should be reversed.

"4. That the ruling of the Hearing Officer, contrary to decisional laws of this jurisdiction and the fact that the Ministry of Labor is an administrative forum which procedures are not governed by the technical rules of evidence, failed to exhaust the proper procedure by not sending out notices of assignment adequately to the petitioner for the continuation of the case and wrongly entered a judgment by default. . . .

"5. That the entire ruling of the Hearing Officer is a travesty of justice and a legal blunder which, if allowed to stand, will make a mockery of the Labor Practices Law of Liberia and the Ministry of Labor which is charged with regulating the affairs between employer and employees in this jurisdiction.

"Wherefore, in view of the foregoing facts and circumstances, petitioner pray that Your Honor will reverse said ruling, and grant unto your petitioner any and all other relief as shall be just and proper."

On 23 September 2007, the appellee filed a seven-count resistance substantially as follows:

1. That the petition should be dismissed since the petition for judicial review was filed with the National Labor Court more than four months after the judgment of the Hearing Officer was served upon and acknowledged by counsel for the appellant.

2. That the ruling of the Hearing Officer is based on the evidence which was adduced at the trial, and is binding on the court.

3. That notices of assignment were served upon counsel for the appellant, but that counsel failed and neglected to appear in obedience to the notices of assignment. This, the appellant maintained, was tantamount to abandonment.

On 23 September 2005, before the petition for judicial review was entertained and passed upon by the National Labor Court, the appellees filed a three-count motion to dismiss the appellant's petition for judicial review, as follows:

"2. That movants say and aver that the final judgment from which the petition grew was served on the counsel for appellant on May 11, 2005, well over four months ago. . . .

"3. That on May 23, 2005 and May 24, 2005, the movants obtained clerk's certificates from the Ministry of Labor and the National Labor Court to the effect that the counsel for management, now [appellant], failed to appeal from the ruling, and did not file a petition for judicial review within statutory time. . . ."

Attached to the appellees' motion to dismiss were two certificates:

The first certificate, dated 23 May 2005, issued by David M. Neay, Recording Secretary, Ministry of Labor, reads:

"After a careful examination of the records in the above captioned cause of action, it is revealed that since the ruling/judgment in the case, no party has appealed from the said ruling/judgment since May 10 and 11, 2005, respectively.

"This therefore constitute that issuance of this Clerk's Certificate as future reference to that effect.

The second certificate, dated 24 May 2005, issued by G. Abednego N. Simpson, Sr., Clerk, National Labor Court, is as follows:

"A careful perusal of the records of this Honorable Court relative to the above captioned case reveals that up to and including the date of the issuance of this clerk's certificate, neither the defendant nor its counsel has filed with the Clerk of the National Labor Court for Montserrado County, any Petition for Judicial Review. Hence, this Clerk's Certificate to the effect."

Counsel for the appellant apparently did not comprehend the seriousness of the allegations contained in the appellees' motion to dismiss; for, he did not file a formal resistance to the motion; rather, in a most incoherent and unintelligible manner spread upon the minutes of the court on 16 February 2006 the following resistance:

"1. That the said motion is cleverly designed to mislead this court.

"3. That as to count two of the unmeritorious motion, respondent says same is false and misleading and cleverly designed to mislead this court for reasons that the said case was venued before the Margibi Court in Kakata, and counsel gives notice to this court that he shall present the relevant documents pertaining to this matter pending before the Margibi Court. The respondent says the said count being vague and indistinct, and pregnant with misinformation should be dismissed, and the case heard on its merits.

"4. That as to count three of the said vague motion, respondent respectfully requests this court to dismiss same for the said motion is in connivance with the Hearing Officer at the Ministry of Labor in order to extort financial benefit from the respondent for the consumption of both the Hearing Officer and the party litigant which is contrary to law and therefore the said count should be denied and dismissed.

"5. Respondent says all the delay referred to by movants are due primarily to the movants filing the said case before the Margibi Labor Court, and subsequently before this court, which is contrary to our practice of law and procedure in this jurisdiction, and counsel gives notice that he shall present the documents concerning this matter pending before the Margibi Court involving the same action and the same parties. The said count should therefore be denied and dismissed."

The motion to dismiss was heard by Her Honor Comfort S. Natt, Judge of the National Labor Court, who, by ruling dated 14 July 2006, granted the motion and confirmed the default judgment of Hearing Officer Williams. The appellant excepted to the judgment of the Her Honor Judge Natt, and has brought this case up on a five-count bill of exceptions.

We shall address two issues in the determination of this case:

1. Whether the Hearing Officer was justified in granting the appellee's application for a default judgment.

2. Whether the National Labor Court was justified in granting the motion to dismiss the petition for judicial review.

We agree with the decision of National Labor Court Judge Natt that Hearing Officer Williams was justified in granting appellee Kerdoe's application for a default judgment.

The record certified to this Court is replete with instances of counsel for the appellant not attending upon assignments issued by the Hearing Officer. Hearing of this case began on 26 August 2004, with appellee Kerdoe taking the stand. Following his testimony on the direct, appellee Kerdoe was cross-examined by counsel for the appellant. The last sitting of the case was 6 December 2004, and the hearing was reassigned to resume on 16 December 2004. On 16 December 2004, the case could not be heard because of an excuse and request for continuance by counsel for appellant, Counselor Molley N. Gray. On 3 January 2005, notices of assignment were issued and served on counsels for both parties scheduling the trial to resume on 10 January 2005. Neither the appellant nor his counsel appeared in response to the notice of assignment, nor had either of them requested an excuse from the Hearing Officer. Although counsel for appellee Kerdoe could have applied for a default judgment at the time, and if granted, proceeded with the hearing, counsel requested the hearing to issue another notice of assignment. The request was granted, and the hearing reassigned for resume on 21 February 2005.

On 21 February 2005, neither the counsel for the appellant nor the appellant appeared. Counsel for appellee Kerdoe, thereupon, made an application for a default judgment, which was granted. Daynuah M. Teah, former Chief of Security of the appellant, took the stand and testified, as the second witness, on behalf of appellee Kerdoe. The appellee rested evidence, and the hearing was postponed pending a ruling.

Labor Law, Liberian Codes Revised, tit. 18, appendix no. 3, art. II, § 8 (1977), on Default Judgment, provides:

"If a defendant in a labor case has failed to appear, plead or proceed to trial, or if the Hearing Officer orders a default for any other failure to proceed, the complainant may seek a default judgment against the defendant. On an application for a default judgment, the applicant shall file proof of service of the summons and complaint and give proof of the facts constituting the claim, and default judgment. The Ministry of Labor is hereby empowered to enforce such judgment by imprisonment until said default judgment is fully complied with."

We hold, in view of the record certified to this Court, that Hearing Officer Williams was justified in granting the appellee's application for a default judgment, and that the appellee satisfied the requirements of the law that he "give proof of the facts constituting the claim." *Monrovia Tobacco Corporation v. Flomo,* 36 LLR 523, 527-8 (1989); *Liberia Logging and Wood Processing Corporation v. Allison,* 40 LLR 199, 206 (2000); *Liberian Bank for Development and Investment v. Nett,* Opinion of the Supreme Court of Liberia, October Term, 2006; *Dagoseh v. The Management of the National Security and Welfare Corporation and Monrovia Breweries, Inc.,* Opinion of the Supreme Court of Liberia, March Term, 2007; *Sandolo v. The Management of the Liberia Agency for Community Empowerment (LACE),* Opinion of the Supreme Court of Liberia, March Term, 2007.

We address next the issue whether the National Labor Court was justified in granting appellee's motion to dismiss appellant's petition for judicial review.

As we have indicated in this opinion, Hearing Officer Williams entered a default judgment on 4 May 2005, following the conclusion of the investigation. The return of the ministerial officer of the hearing indicate that a copy of the default judgment was served upon and acknowledged, on 10 May 2005, by Mr. Barclay S. Wollie, Sr., Labor Consultant with Tiala Law Associates, Inc., on behalf of appellee Kerdoe, and served upon and acknowledged, on 11 May 2005, by Nancy C. Payne, receptionist at the Jones and Jones Law Firm, on behalf of the appellant. The petition for judicial review was filed with the National Labor Court on 16 September 2005, more than four months after service upon and acknowledgment by the Jones and Jones Law Firm of the 4 May 2005 default judgment.

Decree no. 21 of the Interim National Assembly (INA) titled Decree by the Interim National Assembly of the Republic of Liberia Amending the Executive Law to extend the Administrative Powers and Procedure of the Ministry of Labor, Amending the Labor Law to extend the Duties of the Labor Solicitor, and Amending the Judiciary Law to Establish National Labor Courts, art. II, § 7 (1985), on Time Limitation for taking an Appeal, provides:

"Any party dissatisfied with the decision of a Hearing Officer may take an appeal by filing a petition for review with the Labor Court within 30 days after receipt of the Hearing Officer's decision. Copies of the petition shall be served promptly on the Hearing Officer who rendered the decision, and all parties on record. The decision of a Hearing Officer shall become final and conclusive upon the expiration of the thirty days after copies of his ruling have been received by the parties to a case."

It having been shown that the petition for judicial review was filed with the National Labor Court more than four months after service upon and acknowledgment by Jones and Jones Law Firm of the 4 May 2005 default judgment of the Ministry of Labor, we hold that the decision of the Hearing Officer became final and conclusive upon the expiration of thirty days after copies of the Hearing Officer's ruling had been received by the parties to the case, and that the National Labor Court was justified in granting the motion to dismiss the petition for judicial review.

We take note, also, that the appellant did not comply with the provision of INA Decree no. 21 which requires, *inter alia,* that ". . . Copies of the petition *shall be served promptly on the Hearing Officer who rendered the decision,* and all parties on record" (emphasis supplied). The appellant did not serve a copy of the petition on the Hearing Officer. A second blunder by counsel for the appellant.

This Court in *LBDI v.* York, 35 LLR 155, 164-5 (1988), notwithstanding the clear language of INA Decree no. 21 providing that la]ny party dissatisfied with the decision of a Hearing Officer may take an appeal by filing a petition for review with the Labor Court *within 30 days after receipt of the Hearing Officer's decision,"* in an opinion by Mr. Justice Junius, held that the provision of INA Decree no. 21 applied only where the petition for judicial review is filed with the National Labor Court, and not where the petition is filed in the counties, with the Debt Court. The *LBDI v.* York holding was upheld in *Umehai v. The Management of Mezbau, Inc.,* 35 LLR 406, 415 (1988), in an opinion by Mr. Chief Justice Gbalazeh.

We disagree with those decisions, and hold that INA Decree no. 21 providing for Time Limitation for taking an Appeal in a labor matter applies to petitions for judicial review whether filed in Monrovia with the National Labor Court, or in the counties with the Debt Court. We hereby, therefore, recall both *LBDI v.* York and *Umehai v. The Management of Mezbau, Inc.*

In view of the foregoing, the final judgment of the National Labor Court is hereby affirmed. The Clerk of this Court is ordered to send a mandate to the National Labor Court for Montserrado County to resume jurisdiction over this case and to give effect to this judgment. It is so ordered.
Judgment affirmed.