

LIBERIA LOGGING AND WOOD PROCESSING CORPORATION, Informant, v.
DAVID ALLISON, HER HONOUR COMFORT NATT, Judge, National Labour Court
for Montserrado County, and the Clerk and Sheriff of the National Labour Court for
Montserrado County, Respondents.

INFORMATION PROCEEDINGS

Heard: April 5, 2001. Decided: June 6, 2001.

1. Under the Revenue and Finance Law, the Liberian dollar and the United States dollar are one to one parity.
2. Where the parties to a contract agree to discharge their obligations in United States currency, they are bound to adhere strictly to the obligations, notwithstanding the law which permits an obligation to be discharged in either of the currencies, which are legal tender in Liberia.
3. The burden of proof rests on the party who alleges a fact, and that party is duty bound during the trial to establish such proof by a preponderance of the evidence.
4. The Liberian Revenue and Finance Law permits and allows parties to agree upon a currency with which to transact and discharge their obligations.
5. The issue as to whether payment should be made in United States dollar or Liberian dollar is an issue of fact which must be pleaded and established during the trial of the case in the lower court, which heard the evidence in the case, before submission of the same for determination by the Supreme Court.
6. The Supreme Court cannot take evidence which was not pleaded before the administrative tribunal that first heard the case, as the Supreme Court's appellate jurisdiction is confined to the review of the certified records transmitted to it.

In a hearing held before the hearing officer at the Ministry of Labour, the co-respondent, David Allison, was awarded \$16,000.00. The Board of General Appeals reversed the ruling, but on appeal to the National Labour Court for Montserrado County, the Board's ruling was reversed and the ruling of the hearing officer reinstated. The National Labour Court's ruling was affirmed by the Supreme Court, and the lower court instructed to enforce its judgment.

Information proceedings were commenced by the informant because of the decision of the National Labour Court in ordering that satisfaction of the judgment be made in United States dollars rather than Liberian dollars.

The Supreme Court granted the information, holding that the co-respondent, David Allison, had failed to present any evidence before the hearing officer or the National Labour Court to substantiate his claim that he was entitled to payment in United States dollars rather than Liberian dollars. The Court agreed that the Liberian and United States currencies were on a one to one parity and that the law permitted the parties to pay in United States dollars where they had agreed that such would be the currency for the transaction of business between them, but it observed that in order for a party to demand payment in such agreed currency, the party had an obligation to substantiate that such agreement was made. In the present case, the Court said, this required that Co-respondent Allison produced the employment contract or a pay slip showing that he was in fact being paid in United States currency prior to the termination of his services with the informant. The Court noted that the co-respondent had failed to meet that burden of proof, and that therefore payment of the amount should be made in Liberian dollars. Accordingly, the Court granted the information.

Roland F. Dahn of the Law Chambers of Youna and Associates appeared for the informant. Marcus R. Jones of the Jones and Associates Legal Consultants appeared for the respondents.

MR. JUSTICE SACKOR delivered the opinion of the Court.

These information proceedings emanated from the lower court's attempt to enforce this Court's mandate, handed down during the October A. D. 2002 Term of this Court. This Court, in its opinion, delivered during the aforementioned term, mandated the trial court to enforce its judgment of \$16,000.00 awarded Co-respondent David Allison by the hearing officer of the Ministry of Labour and confirmed by the trial court. The primary issue presented to us for the determination of the case is, whether or not the National Labour Court Judge improperly executed the mandate of this Honourable Court.

A brief history of the case is as follows: The Co-respondent herein, David Allison, was awarded the sum of \$16,000.00 by the Ministry of Labour hearing officer on the 25th day of June, A. D. 1985. The ruling of the hearing officer was reviewed and reversed by the Board of General Appeals of the Ministry of Labour. Co-respondent thereupon petitioned the National Labour Court for Montserrado County for a judicial review of the decision of the Board of General Appeals. The National Labour Court, in 1987, reversed the ruling of the Board of general Appeals and confirmed the ruling of the hearing officer. The informant

herein appealed to this Court for review of the National Labour Court's decision. As stated earlier, this Court, in its October Term, A. D. 2000 opinion, confirmed the judgment of the trial court and mandated that court to enforce the said judgment.

On the 11th day of January, A. D. 2001, the informant filed a five-count bill of information before this Court. This Court deems only counts 3, 4, and 5 thereof to be relevant for the determination of the case. In count 3 of the aforementioned bill of information, the informant contended that counsel for Co-respondent Allison had urged the trial court to have the informant pay the sum of US\$16,000.00, instead of \$16,000.00, without providing any evidence to justify the request for payment in United States currency.

In count four of the bill of information, the informant asserted that the trial court had then prepared a bill of costs in United States dollars, for which both counsels were cited by the co-respondent judge to make clarification thereon. The informant contended that the trial court thereafter attempted to improperly execute the mandate of this Court by requiring that the payment to Co-respondent Allison be made in United States dollars instead of the \$16,000.00 awarded Mr. Allison by the hearing officer, which was confirmed by the trial court and this Honourable Court.

In count five of the bill of information, the informant stated that Co-respondent Allison should have sought clarification from the National Labour Court with respect to his payment in United States dollars before the case was brought before us on appeal.

Notwithstanding the foregoing contentions, the informant raised and argued only one issue before this Court. The argument of the informant was that the co-respondent judge acted in error in trying to change the award of \$16,000.00 to US\$16,000.00, by which action, it said, the judge had improperly attempted to carry out the mandate of this Court. The informant also argued that Co-respondent Allison had failed, during the conference held on January 10, 2001, to produce his pay slip or contract of employment to substantiate his claim to payment in United States dollars. Thus, the informant said, the co-respondent judge was under no obligation to make a determination contrary to the opinion of the Supreme Court which confirmed the judgment of the trial court awarding Co-respondent Allison the sum of \$16,000.00. The informant therefore prayed this Honourable Court to grant the bill of information and to order the taxation of the bill of costs in Liberian dollar currency.

In their returns, the respondents contended that Co-respondent Allison earned United States dollars, as per the contract of employment. Hence, they said, it was unnecessary to indicate the denomination of the currency. The respondents also averred that the absence of an indication of the denomination of the currency did not negate the fact that from the time of the execution to the time of termination of the contract of employment, between 1978 and

1983, the informant had paid Co-respondent Allison in United States dollars. Thus, the respondents strongly argued the parties were bound by their conduct and actions and therefore estopped from denying the same.

Further, in his brief argument before this Court, Co-respondent Allison argued that the parties should adhere to the terms of the employment contract which provided for payment in United States dollars. The co-respondent also vehemently argued that the salary earned by him in 1978, at the time of execution of the contract, is controlling and determinative of these information proceedings. They therefore prayed this Court to deny and dismiss the information proceedings and to mandate the National Labour Court for Montserrado County to enforce its judgment in United States currency.

We shall now decide the sole issue for the determination of the case, which is whether or not the National Labour Court judge improperly executed the mandate of this Court?

A recourse to section 71.5 of the Revenue and Finance Law reveals that the Liberian dollar and the United States currency are one to one parity. The section also provides that where the parties contract to discharge their obligations in United States currency, they are bound to adhere strictly to that obligation, notwithstanding the law which permits an obligation to be discharged in either of the currencies which are legal tender in Liberia.

We are in agreement with the contention of the informant that Co-respondent Allison is legally required to produce either his pay slip or the contract of employment evidencing that while he was in the employ of the informant he was paid in United States dollars, and that therefore the payment of his award in United States currency is justified. Our law provides that the burden of proof rests on the party who alleges a fact and that a party alleging a fact has the duty to establish during the trial such proof by a preponderance of the evidence. Civil Procedure Law, Rev. Code 1:25.2(1)(2). In the case *American Life Insurance Company v. Ajami*, 37 LLR 530 (1994), this Court held that “the Revenue and Finance Law of the Republic of Liberia permits and allows parties to agree upon a currency with which to transact and discharge their obligation.”

Co-respondent Allison argued that he should be paid in United States dollars pursuant to the terms of his contract of employment executed in 1978, and which remained effective up to the termination of his services with the informant in 1983. The respondents relied on the case *U. S. T. C. v. Wray and Williams*, 37 LLR 649 (1994). This Court held in that case “that when a party contracts to discharge his obligation in a currency, he is bound to adhere strictly to that obligation notwithstanding the law which permits an obligation to be discharged in either of the currencies which are legal tender in Liberia.” The informant, for

its part, contended that Co-respondent Allison had failed to produce a pay slip or his contract of employment to substantiate his claims to payment in the United States dollars.

The records in this case is void of any evidence indicating payment to Co-respondent Allison in United States dollars whilst in the employ of the informant, as claimed by him. Indeed, the issue of which currency the payment is to be made in was raised for the first time during the execution of this Court's mandate. During the hearing of the case at the Ministry of Labour, the co-respondent herein, David Allison, introduced into evidence his letter of dismissal, dated November 7, 1983, and a letter to vacate the company's premises. The letter of his employment indicating his salary, as well as the currency of payment, was never presented into evidence. Moreover, while the co-respondent testified that his salary for the month of October 1983 was paid by the management of the informant, he did not produce into evidence his pay slip to substantiate his claim to payment in United States dollars. Further, the records revealed that on the 4th day of September, A. D. 1985, the hearing officer, Charles C. Tarn, awarded Co-respondent Allison the sum of \$16,000.00. The co-respondent never raised any issue regarding the currency in which he was to be paid, especially knowing that in fact and in truth the Liberian five dollar coin was in circulation.

A recourse to the ruling of the National Labour Court shows that the court, on the 3rd day of November, A. D. 1987, reversed the ruling of the Board of General Appeals and upheld the ruling of the hearing officer awarding Co-respondent Allison the sum of \$16,000.00. Still, Co-respondent Allison never raised the issue of payment in United States dollars whilst the matter was before the trial court. The issue of whether payment was to be made in United States currency was an issue of fact which should have been pleaded and established by the co-respondent during the trial of the case at the Ministry of Labour and before the National Labour Court prior to the final determination of the case by this Honourable Court. This Court cannot at this time take evidence which was not pleaded before the administrative tribunal and the National Labour Court. The appellate jurisdiction of this Court is confined to only the review of certified records transmitted to it.

Wherefore, and in view of the foregoing, the bill of information is hereby granted. The Clerk of this Court is herewith ordered to send a mandate to the court below, informing the judge presiding therein to resume jurisdiction over the case and enforce its judgment awarding the co-respondent L\$ 16,000.00. And it is hereby so ordered.

Information granted.