

THE LUTHERAN CHURCH IN LIBERIA OF THE CITY OF MONROVIA
APPELLANT VERSUS HER HONOR **COMFORT NATT**, JUDGE OF THE
NATIONAL LABOUR COURT, **REGINA V. DOE**, DEPUTY DIRECTOR
LABOUR STANDARDS, & HEARING OFFICER, MINISTRY OF LABOUR,
AND **RENNIE GBANGBOLOR** ALSO OF THE CITY OF MONROVIA
APPELLEE

APPEAL. JUDGMENT AFFIRMED.

Heard: April 3, 2007 Decided: August 9, 2007

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

The records transmitted to this Court on appeal indicate that on January 1, 1965, the appellant-defendant, Lutheran Church in Liberia (LCL) employed the co-appellee and plaintiff below, Mr. Rennie Gbangbolor, as Maintenance Supervisor. Co-appellee Gbangbolor was assigned at the Lutheran Training Institute (LTI) in Salayea, Lofa County, Liberia, one of appellant's institutions. Accordingly, co-appellee served appellant from 1965 until his services were terminated in 1995 due to the civil crisis which adversely affected LTI and other institutions in Liberia belonging to appellant.

Although the termination notice is dated February 6, 1995, and signed by the Bishop of Lutheran Church in Liberia, said notice nevertheless expressly notified all concerned that appellant will not pay any salaries to the affected employees, including co-appellee, as of December 31, 1994.

Relevant portion of said notice reads:

"My co-workers, I want for you to know that due to the continued fighting in Liberia, which is preventing our institutions from being re-opened, the Lutheran Church in Liberia (LCL) will not pay any salaries after December 31, 1994."

The records also reveal that during the course of their services, co-appellee and other employees paid monthly salary contributions to appellant's pension scheme known as Provident Fund. As a policy, appellant required employees to contribute 4% of their gross monthly salaries to said Provident Fund. The number of years co-appellee Gbangbolor contributed to the Provident Fund during the course of his employment constitutes the core of this litigation.

Recourse to the records shows further that on April 18, 1997, appellant's Treasurer, Ms. Annie Moleyeaze, addressed a memorandum on "Pension Payment" to co-appellee Gbangbolor. Relevant portion thereof reads:

"Dear Mr. Gbangbolor,

We greet you in the mighty name of risen Lord, Jesus Christ.

Our Pension ledger reviewed [reveals] that you joined the Provident fund January 1, 1965 and contributed for 16 years [1965 — 1980].

Your Pension Payment is:

*41.91*16yrs *10% = 67.07*

2%(4.91) = 0.84*

Current Year = 3.29

Previously accumulated= 34.48

105.67

Monthly Pension USD = 106.00

It would appear that upon notification that he was entitled to 16 (sixteen) years pension benefits, in contrast to his claim for 29 years, co-appellee formally protested to appellant. In attempt to address said discontent, appellant's Pension Board Chairman Beyan D. Howard and the Rt. Rev. Dr. Sumoward E. Harris, on June 2, 2000 addressed a letter to co-appellee. The communication in part reads:

"We refer to your letter of December 8, 1999, in which you claimed that your contribution to the Provident Fund for the year 1980 to 1999 was not recorded in the pension ledger. In order to establish whether or not you made any contribution to provident Fund for the period mentioned above, the Board will invite you and two or more persons to appear before us to testify."

"We therefore request that you and the individuals who can establish that you made contribution to the Provident Fund during the period indicated above should be ready to appear when needed by the Board."

In obedience, to the Board's request, two letters from Messrs. George S. Temeh and Morley T. Moiphie, were thereafter addressed to the Chairman of the Pension Board, Lutheran Church in Liberia. Both Messrs. George S. Temeh and Morley T. Moiphie respectively served appellant from 1974 to 1983 and 1985 through 1986, in the capacity of Business Manager/Treasurer at Lutheran Training Institute (LTI) the very

place where co-appellee was also assigned. It is also worth noting that the two former Business Managers/Treasurers aforementioned were, amongst others, responsible for the 4% deduction from salaries of employees as contributions to the Provident Fund. We also note that the two former treasurers were in charge of the 4% salary deduction for the Provident Fund during part of the years here in controversy.

For the benefit of this opinion, essential portion of Mr. Timeh's letter to the Pension Board, dated July 14, 2000, reads:

"I believe Mr. Gbangbolor has asked me to write because from July, 1974 up to August, 1983, I served as Business Manager/Treasurer at LTI. Since I was directly responsible for preparation of the payroll and all deductions such as Government taxes (Income and Reconstruction taxes), LCL (Provident) Pension fund contributions by employees and the National Social Security Welfare Scheme contributions when LTI was directly responsible to pay her staff upon approval of the LCL, I can briefly write on this issue."

"At the time LTI Bank Account was opened with the then Chase Manhattan Bank-Liberia, each month's payroll of the Lutheran Training Institute employees was prepared by me on LTI and all necessary deductions made on the payroll. Monthly Pension contributions and Government of Liberia taxes deducted each month were remitted to the LCL Treasurer's Office to be credited to employee's individual account, and onward payment of taxes into Government Revenue respectively."

"I hope the above information will clarify pending issues regarding Mr. Gbangbolor's contributions."

The second letter from Morley T. Moiphie to the Pension Board also, dated September 9, 2000, essentially reads:

"This instrument serves as a testimony in favour of Mr. Rennie B. Gbangbolor who served the Lutheran Training Institute as Maintenance Supervisor during my tenure (1985 & 86) of service at LTI as Business Manager and Treasurer."

"Mr. Gbangbolor, like other employees of LTI at the time, contributed to the LCL Pension Fund through payroll deduction. Such deduction, which also included employee Income Tax, National Reconstruction Tax as well the NSS& WC Employee Injury and Pension Scheme contribution were withheld and subsequently remitted to the LCL for onward payment to the relevant Government agencies. I hope this testimony will help you in your information gathering."

Notwithstanding these letters supporting co-appellee's claim of contributions to the Provident Fund beyond 1980, Mother Susannah B. Telewoda, and Rev. Koiboi

Weegie, Secretary and chairman, respectively of appellant's Pension Board, addressed the following letter dated March 24, 2003, to coappellee. Again for the benefit of this Opinion, we quote the said letter in their entirety.

"Dear Bro. Gbangbolor:

Greetings to you in the name of our risen Lord.

During your interview with the Board of Pension of the Lutheran Church in Liberia (LCL), you mentioned among other things that you were claiming a balance of 13 years pension benefit from the LCL from 1981 — 1994.

Records from the Pension Funds showed that you had contributed to the Fund from 1965 — 1980, 16 years and not from 1965 — 1994, 29 years.

You also mentioned that you had witnesses to prove this fact and were willing to bring them to testify before the Board if it became necessary.

Based on this information, we invited Messrs. George Temeh and Morley Moiphie, former treasurer and Business Manager of the Lutheran Training Institute (LTI) for an interview. During the interview, the following information was given by your witnesses:

According to Mr. Morley, he served LTI as Treasurer and Business Manager from 1985 to 1986. During that period, "Mr. Rennie Gbangbolor like any other employees in the employ of LTI made pension contributions through monthly payroll deductions. Regrettably, these deductions, especially pension and government taxes were not remitted to the Liberian Government and the Lutheran Church in Liberia respectively, because LTI faced liquidation problem at the time.

He concluded by saying that LTI was an autonomous agency that had complete control of her own banking account without LCL interference."

According [to] the second witness, Mr. George Temah, former employee of LTI, said that "In 1970, payroll deductions were made from employees monthly salaries and submitted to the LCL Central Office in Monrovia. Later on, LTI became autonomous and opened her own banking account at the former Chase Manhattan Bank in Monrovia. Former Treasurer Beyan did the first transfer deposit on behalf of the LTI. In 1983 July, HE (Temeh) resigned and left LTI in August 1983. The period in question (1981 — 1984), the witness said: "I could not remember whether or not deductions made from employees at LTI were transmitted to the Central administration of the LCL." [emphasis supplied].

"In view of the testimonies given by your witnesses, the Board concludes that it has to keep to the records where you contributed to the pension fund from 1965 — 1980 15 ears or which you are now receiving pension benefits." [Emphasis ours]

Thereafter, on May 6, 2004, Rev. Korboi M. Weegie, LCL Board of Pension, sent a letter to co-appellee which in part states:

"Based on our discussion held with you today, May 5, 2004, relative to your quarterly pension payment, we wish to formerly inform you that your quarterly pension has been placed on HOLD until a competent court of jurisdiction within the Republic of Liberia can decide your case of an alleged miscalculation of your pension benefits."

"You will also note that our lawyer wrote your lawyer on January 9, 2004 and mentioned among other things that: "In view of the above, we hereby affirmed and confirmed the Board's Decision of March 24, 2003 and wish to inform you that if you strongly believe that your Client has a case, please go to court for redress. Because of this, we do not think that a meeting with your client on this issue is necessary."

On June 15, 2004, Counsel for co-appellee Richard Flomo filed a complaint against the appellant at the Ministry of Labour alleging unfair labour practice. The complaint alleges that co-appellee served the appellant as its Maintenance Supervisor for 33 (thirty three) unbroken years. The complaint further avers that during the course of service, co-appellee paid pension contribution to appellant's pension fund for 29 (twenty nine) years. But much to co-appellee's disappointment, appellant had chosen to pay co-appellee 16 (sixteen) years pension benefits, thereby denying him 13 (thirteen) years of pension benefits, for the period covering 1981 to 1994.

The complaint was bulletined, assigned and heard by Regina W. Doe, Deputy Director, Labour Standards and Hearing Officer, over a period of 10 (ten) months (July 9, 2004 to May 2005 with 24 (twenty-four) notices of assignment issued, served and return served.

Following conclusion of the hearing, the Hearing Officer rendered his final ruling on May 11, 2005.

Relevant portion of the said ruling reads:

FINDINGS:

"The Investigation from a careful perusal and analysis of the entire proceedings, and while going through the records page by page, observed the following:

1. That, Complainant Gbangbolor started a financial contribution of 4% (four percent) of his monthly salary in 1965 until December 31st 1994, at which time all salaries payment were stopped due to the continued civil crisis. In a letter addressed to sectional heads including Mr. Gbangbolor dated 6th February 1995, his last salary was US\$320.50.

2. That, Complainant was honourably retired in a letter addressed to him dated April 8, 1997, showing the calculation of his monthly pension benefit for sixteen (16) years; contribution indicated as follows:

$$41.19 \times 16\text{yrs} \times 10\% = 67.06$$

$$2\% \times (41.91) = 0.84$$

$$\text{Current Year} = 3.29$$

$$\text{Previously accumulated} = 34.48$$

$$105.67$$

$$\text{Monthly Pension USD} = 106.00$$

(SGD.) Annie D. Moleyeaze

TREASURER-LCL

3. That, two former employees, and Chief Executives of the Lutheran Church in Liberia/Lutheran Training Institute, (LTI), served as Treasurer and Business Manager respectively in persons of Messrs. Morley Moiphie and George Temeh reconfirmed that indeed, Complainant contributed towards the Provident Fund at 4% monthly and for more confirmation, witness George Temeh testified during direct examination, that he effected payroll deduction from July 1974 to July 1983, this was not denied by Defendant.

4. That, the instrument/ledger testified to by the witness is incomplete that the 4% contribution column which is the bone of contention or the cause of the matter on exhibit D/1 or ledger submitted is vacant and no posting for the following years: 1975, 1976, 1977, 1978, 1979 and 1980 respectively apart from the column, the 2% credit column too is not posted, to reflect any amount, cast a dark cloud of doubt which operates in favour of the Complainant.

WHEREFORE, and in view of the foregoing facts and circumstances surrounding this case, the HOLD placed on Complainant's Quarterly Pension is illegal and therefore should be lifted with immediate effect, and payment should commence from May 5, 2004 to the date of this Ruling. The investigation further says that the with-holding of Complainant's Pension is a complete violation of

Section 2500 of the Labour Law of Liberia. Therefore Defendant is liable for "Unfair Labour Practice"

That, Defendant/Management Counsel's argument or voluntary admission that US\$4,999.40 is a reasonable demand, suggests that indeed Defendant is obligated to Complainant for US\$8, 738.40 for the 13 years arrears.

Therefore, Defendant must pay Complainant his thirteen (13) years arrears mentioned supra in keeping with the laws cited herein above.

"AND IT IS HEREBY SO ORDERED"

It is from this ruling appellant appealed and filed a nine-count petition for judicial review before the National Labour Court for Montserrado County.

For the benefit of this opinion, we have hereunder recited counts 1, and 3 as relevant to the final outcome of this matter:

"1. Petitioner says ...The ruling of the Hearing Officer indicating that the LCL is obligated to co-respondent in the amount of US\$8,738.40 (eight thousand seven hundred thirty eight dollars and forty cents) for 13 years arrears raises the issue of subject matter jurisdiction for the first time. Is the Ministry of Labour clothed with authority to hear and determine Debt cases?Petitioner prays your Honour to dismiss this case on the ground that the Ministry of Labour does not have any authority to hear and determine Debt cases."

"3.The Hearing Officer ruled awarding the amount of US\$8,738.40(eight thousand seven hundred thirty-eight United States Dollars and forty cents) without any legal justification. For example, while on the cross, the Complainant was asked this question "Did they issue you pay slip reflecting your gross salary and different deduction'? The answer to this question was "yes, I use to pay in cash the various deductions were indicated on the pay envelope to show my gross and my net." See page 13 of the minutes. No pay envelope showing that 4% was deducted from Complainant's salary for the period of 13 years was introduced during the hearing. The Complainant introduced several letters some of which were dated 1995. He was able to keep all of these letters but he could not keep a single pay envelope to show that 4% was deducted from his salary as contribution to the provident fund. The pay envelop which is the best evidence to prove that the complainant made contribution

to the Provident Fund was never introduced during the hearing but the "Honourable Hearing Officer ruled awarding the amount of US\$ 8,738.40..."

The National Labour Court heard argument, pro et con, and on March 13, 2006, affirmed the ruling of the Hearing Officer with modification of the amount due to co-appellee.

The ruling entered by the Judge of the National Labour Court, Montserrado County, Her Honour, Comfort S. Natt reads essentially as follows:

"...With all of these indications, we have no alternative but to confirm and affirm the ruling of the Hearing Officer with modification. That respondent's monthly pension being US\$106.00, as calculated by the Treasurer of LCL, and having paid him for 16 years, out of the 29 years, leaving him a balance of 13 years to be paid by Management as follows:

12 months = 1 year

12 X 13 = 156 months

Monthly payment = US\$ 106 X 156 = **US\$ 16, 536.00."**

"This amount of SIXTEEN THOUSAND FIVE HUNDRED THIRTY SIX (US\$16,536.00) UNITED STATES DOLLARS is the balance of the Providence Fund that management has for Respondent. Gbangbolor which amount is to be paid"

"The Court also holds that the withholding of Respondent Gbangbolor 's pension fund is a violation of his rights, in keeping with Section 2500 of the Labor Laws of Liberia. Hence, the withholding placed on Respondent Gbangbolor 's: pension fund should be immediately lifted without any delay."

From this judgment, appellant has appealed to the Honourable Supreme Court and placed a five-count Bill of Exceptions before us for final review and adjudication.

Counts 1, 4 and 5 of the bill of exceptions, as here under stated, have been deemed worthy of our consideration.

"1. That your Honour made a reversible error by deliberately refusing and failing to address the issue of subject matter jurisdiction which was squarely raised and argued before you. Can the Ministry of Labour or the National Labour bear and determine a debt case? In his ruling, the Hearing officer did not only define debt but held that petitioner was indebted to Respondent in the amount of US\$8,

738.40 (Eight Thousand Seven Hundred Thirty Eight Dollars Forty Cents United States Dollars). This issue was raised in the petition and argued but you refused to address it in your ruling. In keeping with law, you were under a duty to determine whether or not the Ministry of Labour and the National Labour Court had the authority to hear and determine a Debt case before entertaining any other issue(s)."

"4. That your Honour erred by awarding the amount of US\$16,536.00 (Sixteen thousand five hundred thirty six United States Dollars) to the Respondent. The amount awarded by you far exceeds the amount the respondent is claiming and the amount awarded by the Hearing Officer. The Respondent in his testimony before the hearing officer was claiming the amount of US\$8, 738.40 (Eight thousand Seven Hundred Thirty-Eight dollars Forty Cents United States Dollars). The Hearing Officer awarded the amount of US\$8,738.40 (Eight thousand Seven Hundred Thirty-Eight dollars Forty Cents United States Dollars) on the ground that Defendant's counsel made a voluntary admission during argument before him. How did you arrive at the conclusion that Petitioner is liable to Respondent in the amount of US\$16,536.00 (Sixteen thousand five hundred thirty six United States Dollars)?

"5. That Your Honour's ruling is grossly against the weight of the evidence adduced at the trial."

This case presents two salient issues for determination:

1. *Whether the Ministry of Labour or the National Labour Court has subject matter jurisdiction over payment of pension arrears; OR PUT DIFFERENTLY:*

Whether Debt Action will lie against an employer over non-payment .of pension benefits to a retired employee arising from payroll deductions? AND;

2. *Whether the judgment of the trial court was manifestly against the weight of evidence?*

As to the first issue, which is: *Whether the Ministry of Labour or the National Labour Court has subject matter jurisdiction over non- payment of pension arrears to retired employee? OR,*

Whether Debt Action will lie against an employer over non- payment of a retired employee's pension arrears growing out of payroll deductions, is an issue which strictly speaks to jurisdiction. The appellant has vehemently argued that the trial tribunals committed reversible error by deliberately refusing and failing to address the issue of subject matter jurisdiction which was squarely raised. Also in the Bill of Exceptions, appellant has posed this question:" Can the Ministry of Labour or the National Labour Court hear and determine a debt case?"

This Court has repeatedly said that as a matter of law, no court can legally exercise power not conferred on it by law. It has been said time and again that in order for a court to render a valid judgment, it must first be vested by law with the authority to do so; otherwise its judgment is void ab initio. The Supreme Court has held also that "to render a judgment binding, the court must have jurisdiction over the person and subject matter, otherwise the judgment is void and of no effect. LEE Versus REPUBLIC ILLR, 184, 185 (1884). "A judgment is void if it is not rendered by a Court with competency to render it. Compagnie Des Cables Sud-American Versus Johnson 11 LLR, 264, 269 (1952).

Also commenting on the requirement of competency of a court, the Supreme Court in the case: Camer Liberia Corporation Versus A.H. Basma & Sons, said:

"Even though the State in which a judgment is rendered has jurisdiction over the defendant, a court of the State has no jurisdiction to render a judgment against him if the State has not given to the court power to entertain the action. Although a State has jurisdiction over the person of the defendant, it may not have given to a particular court or it may not have given to any of its courts power to entertain the action. In such a case the court has no competency to render a valid judgment. The court has no power to render a valid judgment, not because the State lacks power but because it has not conferred power upon the court. Ibid. 32 LLR 100, 112,113 (1984).

Appellant having questioned the jurisdiction of the two tribunals, that is, the Ministry of Labour and National Labour Court as to subject matter, we must proceed to examine separately, the authority conferred by law on each of these trial tribunals that was challenged by appellant.

The People's Redemption Council (PRC) Decree no. 35, Section 34.2 published on May 27, 1981, details the functions of the Ministry of Labour. Said section provides:

"The functions of the Ministry shall include the promotion, administration, development, regulation, control of Labor Law and Labor Practices Law of the Republic. To the achievement of these objectives, it shall:

- a. Regulate, in the public interest, relations between employers and employees in the Republic;*
- b. Provide employment services in pursuit of development and exploitation of all resources and the furtherance of commerce;*

c. Provide for the classification, registration and licensing of tradesmen and craftsmen;

d. Conduct manpower studies;

e. Protect the rights of labor and management in the Republic;

f Perform such other functions as may from time to time be assigned by the Head of State. "
[emphasis supplied]

On December 24, 1986, the Interim National Assembly approved Decree no. 21 providing for the establishment and creation of the National Labour Court seated only in Montserrat County. INA Decree no. 21 gives the National Labour Court "appellate jurisdiction over all labor cases as appealed from the rulings of Hearing Officers". [our emphasis]

Article III of INA Decree NO. 21, aforementioned, was amended and revised. Section 23.2 of said Decree provides:

The Labor Court shall be a court of limited jurisdiction and shall have exclusive appellate jurisdiction over all labour cases as appealed to it from the decisions of the Hearing Officers or labour commissioners in the county where it is established. The procedure and method of enforcement shall be the same as that of the debt court except as modified herein. [emphasis supplied]

In his brief filed and vigorously argued before the Supreme Court, counsel for appellant has maintained that the hearing Officer's determination to the effect that appellant is obligated to co-appellee in the amount of US\$8,78.40 for 13 years pension arrears as well as his subsequent determination of said obligation as debt, raises the issue of subject matter jurisdiction. For this reason, counsel for appellant has squarely questioned the jurisdiction of the Ministry of Labour and by extension, the National Labour Court, over said subject matter.

This Court disagrees with the logic driving appellant's argument. The laws creating both the Ministry of Labour and the National Labour Court, quoted herein, confer on said Ministry the power to exercise original jurisdiction over and in matters of *Protection of labour-management related rights and obligations stipulated under the laws of the Republic*, while the National Labour Court is vested with "exclusive" appellate jurisdiction over all labour and industrial related cases and disputes.

The arrears in dispute herein, for all intents and purposes, are labour related. It was on the basis of employee-employer relations salary deductions were effected and thereafter paid to the Provident Pension Fund.

In some respect, the case at bar is similar and analogous to "The Liberia Produce Marketing Corporation Vs. The National Seamen's Port & General Workers Union of Liberia." 33 LLR, 132,142 (1985). The National Seamen's Port and & General Workers Union of Liberia filed an action of debt in the Debt Court against the Liberia Produce Marketing Corporation. The Union sought to recover \$161,700.00 which they claimed was membership dues reportedly collected by the Management of LPMC through salary deductions from employees of said LPMC as members of the Union.

In their debt action, the Union alleged that the corporation collected dues from Union Members but refused to turn over the collected fees to the Union in violation of the stipulations of the collective bargaining agreement. The L.P.M.C. filed its answer challenging the jurisdiction of the Debt Court on ground that the allegation stated in the complaint did not constitute element of debt. LPMC also questioned the legal capacity of the Union members to file the debt action since they were not president and officers.

In disposing of the issue of jurisdiction in the referenced case, this Court opined that "the only remedy available to the Union was to seek redress from the source where the orders to withhold the dues originated....." [emphasis supplied] This Court therefore held:

"The Ministry of Labour was the proper administrative forum where the National Seamen's Port & General Workers Union should have sought redress for the recovery of any membership dues collected by appellant ..." The Court also indicated: *"To come to the courts to seek redress by means of debt action has the tendency to obstruct the normal administrative operation of the government and to involve the courts of justice in acts tending to make the settlement of industrial disputes ineffectual"*. [emphasis ours] Ibid. 33LLR, 132,142 (1985).

This Court therefore holds that consistent with the applicable laws herein quoted, the Ministry of Labour is the appropriate administrative forum vested with 'original jurisdiction to entertain the subject matter of this controversy. We also hold, consistent with law, that the National Labour Court also properly exercised its appellate jurisdiction over the subject matter of this case. It is the non-payment of these pension benefits which have resulted to arrears currently accruing to

co-appellee. Having specifically grown from appellant's pension scheme, these arrears were correctly determined by the Hearing Officer as well as the National Labour Court to be labour related over which both tribunals, may properly exercise jurisdiction.

Chapter 26, Section 2501 of our Labour Statute also provides: *"An employee within the application of this chapter is entitled to receive from his employer retirement pension on retirement from an undertaking at the age of 60 and if such employee has completed at least 15 years of continuous service, or he may retire at any age after he has completed 25 years of continuous service in such an undertaking..."*

In the contemplation of the Statute, payment of pension benefits is clearly a labour matter and in the instant case, same is not recoverable through an action of debt as was strongly contended by appellant. Hence, appellant's contention that the Ministry of Labour lacks subject matter jurisdiction in the case at bar is simply unmeritorious. Said contention is therefore Overruled and dismissed.

As to the second issue, which is: *Whether or not the judgment of the trial court was manifestly against the weight of evidence*, we once again revert to the case file.

Appellant has argued that during the entire investigation, that co-appellee did not produce a single pay slip to substantiate his claim of contributing 4% monthly salary to the Providence Fund. Appellant maintained that said claim was also never substantiated during judicial review at the National Labour Court. It is appellant's argument that in the absence of such evidence, the trial judge committed reversible error by awarding the appellee the amount of US\$16,536.00. Appellant has therefore prayed this Court to reverse said ruling as same is grossly against the weight of

We were moved by appellant's argument and therefore delved into a painstaking review of the entire records in this case. Recourse to the records shows that during the hearing at the Ministry of Labour, two witnesses, including co-appellee, testified in support of the complaint: Infact, co-appelle second witness was appellant's former employee who was directly responsible for the 4% monthly salary deductions as contribution to the pension fund.

The complainant/co-appellee testified in chief that *the Lutheran Church of Liberia owes him 13 (Thirteen) years pension benefits thru the pension funds of the Church. He also testified that he has not received any pension payment for the period 1981 to 1994. He explained further that he joined the Provident Fund as of January 1965 to 1994, during which period he contributed to same*

for 29 years. He further said that on "February 6, the Bishop of the Lutheran Church, Rev. Randall J Diggs, wrote me that as of December 31, 1994, all salary payment of employees will end. This was the very first time the Lutheran Church of Liberia wrote me about my contribution suspension to the Providence Funds. I have [a letter to] that effect. April 19, 1995, at the convention held at the St. Peter's Lutheran Church, the skeleton staff was found and I was appointed as one of the members to work [with the] NGO that will [do] renovation project at LTI. 1997, January, I was reassigned by the Lutheran Church in Liberia at LTI at this time for food for work and not salary. Co-appellee also testified indicating that on "April 18, 1997, the Lutheran Church retired me offering me 16 (Sixteen) years retirement benefit out of the 29 (twenty-nine) years without any explanation for the remaining 13 (thirteen) years. Immediately after receiving retirement letter, I wrote the Treasurer, Mrs. Annie Moleyeaz [on] June 26, 1997, that I was not satisfied with my Provident Funds payment and there was no response to that letter. That was the very first time the Lutheran Church place hold on my pension benefits. December 8, 1999, I wrote the Pension Board Chairman expressing my grievance for the 13 (thirteen) years from 1981 to 1994. Yet and still, they have agreed to pay me for only 16 years ..."

This general testimony of co-appellee was corroborated by appellee's second witness, Mr. George Temeh. This second witness was the former Business Manager/Treasurer and the person responsible for payroll/deductions which included the 4% contribution to the Provident Fund. We hereunder quote relevant portion of questions and answers put to him on the cross examination.

"Ques. Mr. Witness, did I understand you to say that you served LTI as Business Manager/Treasurer from 1974 to 1983? "

"Ans. Yes from 1974, up to 1983 July."

"Ques. You have told this investigation that while you have served Business Manager/Treasurer, you deducted certain amount of money from the complainant salary as complainant pension contribution. Tell us if you know how much you deducted every month from Complainant's salary and how much the complainant was earning during the period you served as Business Manager/Treasurer?"

"Ans. He [complainant] was earning between \$250.00 and \$350.00 at the time. I cannot remember the exact amount deducted from his salary."

"Ques. Tell us the mode by which the complainant was paid, was it thru check or what?"

"Ans. The employee was paid by physical cash and not by check and all deductions including the Provident Fund were deducted on the pay envelop."

Further, two former Business Managers/Treasurers, one of whom testified during the hearing at the Ministry of Labour, also wrote separate letters to the Pension Board. These instruments were subsequently admitted into evidence, affirming co-appellee's contributions to the pension fund. These testimonies were not rebutted by appellant especially in light of the evidence that employees including co-appellee, received their salary payments in cash.

The records also reveal that defending against the complaint, appellant produced two witnesses including Mr. John T. Tarpeh who served appellant in the capacity of Secretary/Cashier. Mr. Tarpeh was also appellant's material witness during investigation at the Labour Ministry. On cross examination, appellant's witness was asked this question:

"Q. Mr. witness, in your general evidence, you admitted and confirmed that the complainant paid his Provident Fund from 1965 to 1980 August. In answering question on the direct on page 26, you indicated that the ledger sheet on Mr. Gbangbolor indicated the year of payment starting from 1967 to 1980; please state the difference between the ledger of 1965 to 1980 and 1967 to 1980; which [one] was done respectively."

Answering this question, appellant's witness said: "A. The year 1965 mentioned in my previous statement was an oversight. The actual payment period started in 1967.

"Q. Please say what do you mean when you said it was oversight, does that mean you did, the oversight, if not who"?

"A. The question asked is repetitious to me. I said that my previous statement referenced to 1965 was an oversight."

But this Court has observed from the case file and has taken due note of a communication from Annie **D.** Moleyeaze, Treasurer, Lutheran Church in Liberia, dated April 18, 1997 and addressed to co-appellee, Mr. Gbangbolor.

Paragraph two of said communication reads:

"Our pension ledger revealed that you joined the Provident Fund January 1, 1965 and contributed for sixteen years (16) (1965-1980)."

In another communication addressed to co-appellee by Mother Susannah B. Telewoda, and approved by Rev. Korboi M. Weegie, Secretary and Chairman, respectively of the Board of Pension, Lutheran Church in Liberia, dated March 24, 2003, paragraph three thereof informed co-appellee again as follows:

"Records from the Pension Funds showed that you had contributed to the fund from 1965-1980, 16 years and not from 1965-1994, 29 years."

But appellant's letter to co-appellee dated March 24, 2003 gives conflicting information as to the number of years co-appellee contributed to the pension fund:

"In view of the testimonies given by your witnesses, the Board concludes that it has to keep to the records where you contributed to the pension fund from 1965 — 1980 (15 years) for which you are now receiving pension benefits.

All the testimonies offered in favour of appellant, to say the least, were clouded by sharp contradictory accounts. This is clearly seen between the testimony of appellant's witness at the Labour Ministry vis-a-vis information contained in appellant's communications, quoted immediately above, and addressed to co-appellee. While appellant's witness on the stand said that "actual payment period [of the Provident Fund] started in 1967" appellant's two letters aforementioned, in contrast say: "Records from the Pension Funds showed that you [Mr. Rennie Gbangbolor] had contributed to the [Provident] Fund from 1965-1980..." Also appellant's letter of March 24, 2003 addressed co-appellee says that co-appellee contributed to the pension fund for 15(fifteen) years; whereas appellant's second letter dated April 18, 1997 to co-appellee indicates that his contributions to the pension fund was for 16 (sixteen) years.

To the mind of this Court, it is clear that all the pertinent payment records of the pension fund are and ought to be within the control and custody of the appellant. This un-refuted fact shifts the burden of proof to appellant because the negative averment lies peculiarly within the appellant's knowledge.

Civil Procedure Law, Rev. Code 1 :25.5 (1), under the caption, *BURDEN OF PROOF*, provides:

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

This Court has said that "The preponderance of the evidence required to establish the proof of an allegation does not depend on the number of witnesses produced." It is also defined as "greater weight of evidence, or evidence which is more credible and convincing to the mind..." American Life Insurance Company versus Sandy 32 LLR 338,349-350(1984)

Also in the case: The Management of the Forestry Development Authority (FDA), Vs. Walters & The Board of General Appeals, 34LLR, 777, 785, (1988), this Court speaking through Mr. Justice Junius, held that:

"One having the burden of proof must establish the facts alleged by evidence at the trial, sufficient to destroy the equilibrium and over balance any weight of the evidence to be produced by the other party. On the other hand, preponderance of the evidence is not dependent upon the number of witnesses testifying on either side, but rather upon the credibility which, in the light of all the evidence the case, the trier of facts attributes to their testimony and the effect of that testimony in inducing beliefs in its truth."

We have therefore been unable to neither accede nor sustain appellant's argument that the evidence does not support the conclusion made by the trial judge. We hereby dismiss said argument as totally unmeritorious.

This Court has repeatedly stated that: "A court reviewing an administrative determination will not disturb the finding of facts by the agency because the finding and determination of fact questions, is conclusive within the province of the administrative agency and therefore, such finding is final and binding except under certain situation." The Management of Liberia Katopas Fishing Company versus Meyers and Orellana 37LLR 850, 854-5(1995). Those situations have been identified by this Court as fraud, lack of jurisdiction, or arbitrary or capricious action constituting a denial of due process of law. Ibid. 854

It is our opinion that the case at bar does not present a situation of capricious action taken by the hearing officer nor denial of appellant of his right to due process of law.

IN VIEW OF all that we have said, it is our unanimous holding that the judgment entered by the National Labour Court modifying the ruling of the Hearing Officer

and adjudging appellant liable to appellee in the amount of US\$16,536.00, (sixteen thousand five hundred thirty six United States Dollars), being supported by the facts and the laws applicable, be and same is hereby affirmed.

We also unanimously declare as wrongful the "HOLD" placed by appellant on payment of pension benefit to co-appellee. Accordingly, in the absence of clear showing that appellant complied with this Court's mandate issued at the hearing of this case on April 3, 2007 to immediately lift said HOLD, appellant is also ordered to pay US 1000.00 (one thousand United States Dollars) to co-appellee for said wrongful withholding.

The Clerk of this Court is hereby ordered to send a mandate to the court below commanding the judge presiding therein to resume jurisdiction and give full effect to this judgment. Costs are ruled against appellant. AND IT IS HEREBY SO ORDERED.