The **Management of Inter-Con Security System** of the City of Monrovia, Liberia PETITIONER / APPELLANT Versus **Philip G. Williams** and **Paul S. Saide**, both of the City of Monrovia, Liberia RESPONDENTS/APPELLEES

PETITION FOR JUDICIAL REVIEW. JUDGMENT CONFIRMED.

LRSC 11

Heard: October 20, 2009 Decided: January 22, 2010

MRS. JUSTICE JOHNSON DELIVERED THE OPINION OF THE COURT

The appellee in this case was the complainant in a labor matter that was determined in his favor both at the Labor Ministry by the hearing officer and on review by the judge of the National Labor Court Her Honor, Comfort Natt. The complainant was an employee at Inter-Con Security systems, a private security agency in the City of Monrovia. After serving as a security guard from August 23, 1990 up to October 5, 2005 his employment was terminated by Inter-con Security Systems, which dismissal he said was wrongful.

Below is his letter of complaint addressed to the Minister of Labor through his labor consultant:

"January 4, 2006
Hon. Minister Ministry of Labor
Monrovia, Liberia

Dear Hon. Minister:
We are lawyers for Mr. Paul S. Saide, an employee of the Management of Inter-Con Security, presently operating at U. N. Drive, Mamba Point, Monrovia, Liberia.

Our client has informed us that he was employed on August 23, 1990 and after serving his former employer all these years faithfully and honestly, he was called upon and requested to sign a redundancy document for pay on October 5, 2005. And because he did not sign this document, he was denied to go to work by his employer.

We have considered the act meted against our client by his employer for failing and refusing to adhere to follow the condition laid down by regulation #8 of the Ministry of Labor for redundancy as a gross breach of workers right.

We would therefore be most grateful for you to cite said Management to appear before you to show reason(s) why this management should not be stopped to continue their illegal act against our client and to further penalize them as required by said regulation #8 Section 12 (PENALTY).

While we await your official reaction on this matter, we extend our warmest seasons' greetings.

Sincerely yours,
Barclay S. Wollie, Sr. Labor Consultant"

Upon receipt of the letter the Minister forwarded it on the same day and date, to the Division of Labor Standards for an investigation by the Hearing Officer. The Hearing Officer also on the same day, January 4, 2006 wrote the Management informing that a complaint had been made to the Ministry of Labor by one of its employees, Paul S. Saide and that management was invited to a conference at the Ministry of Labor on January 10, 2006 before the Hearing Officer. The letter of complaint was annexed to the citation. The conference was not had on that date because management failed to appear. Henceforth, several assignments were issued without hearings had because of management's excuses on some occasions and unexcused non-appearances on other occasions.

On March 29, 2006 complainant's spokesperson, the labor consultant, Barclay S. Wollie asked for permission to spread a submission on the minutes. The submission was as follows:

"At this stage, one of counsels for complainant request permission for the inspection of the case file in these proceedings so as to enable us make our request properly. And submit.

Investigation:
Request granted. The clerk is ordered to turn the case file to complaint's counsel for its inspection. AND BE IT SO ORDERED. Counsel for complainant says that having carefully inspected the case file turned over to us, we have observed the following, to wit:

1. That on January 4, 2006, a labor complaint was filed to the Honorable Minister of Labor by complainant's counsel on behalf of complainant. And as such, the Minister forwarded said complaint before the Labor Standards Division for an investigation.

The Labor Standards Division upon receiving said complaint, addressed a letter on January 4, 2006, to the Project Manager of Inter-Con Security System, citing said management to appear before Honorable Philip G. Williams for a conference to be held on Tuesday, January 10, 2006, at the hour of 2:00 p.m., and said letter was signed for and received by one Pvt. Stanley for the management. But the conference was not held due to the failure of the defendant/management to appear.

2. That, on January 11, 2006, the complainant's party requested for the execution of another written notice of assignment to have the defendant/management to appear for conference. Said request was granted. Hence, the written notice of assignment was executed. The returns show that this assignment was served and returned served on the parties to appear before Hon. Philip G. Williams on the 19 th day of January A. D. 2006, at the hour of 10:30 a.m. On that day, the defendant/management's counsel appeared and spread a submission on records in the case, requesting the Honorable Investigation for another date for conference for the legal counsel to peruse the relevant documents to determine the truthfulness of the complaint. Said request was granted. And the conference was again slated for hearing on January 30, 2006, at the hour of 10:30 a.m. again, on January 30, 2006, the said defendant/managements counsel requested for another continuance so as to meet and discuss with his client to see whether we can amicably resolve this matter and avoid further investigation. Said request was granted.

3. Again, this case was reassigned for hearing on February 9, 2006. But the defendant/management's counsel wrote an excuse for his inability to appear. The case was reassigned for March 9, 2006 by written notice of assignment. Again the said assignment when received by the legal counsel of the defendant/management, he again wrote another excuse for his inability to appear. And then, on March 21, 2006, another written notice of assignment was prayed for and granted. Said assignment was executed and served on the parties, for them to appear before Hon. Philip G. Williams/hearing officer. On today, March 29, 2006 at the hour of 10:30 a.m. As usual, the said legal counsel wrote again informing the investigation that he will not be able to appear for the hearing because of his engagement.

4. We request Your Honour to take judicial notice of all of these letters of excuse that the defendant/management has employed to frustrate the hearing and disposition of this matter which are not in the best interest of our client: (Three adjournments in sequence).

Wherefore and in view of the foregoing, we pray and request for the execution of

another written notice of assignment to have same served on the parties to appear before you for the hearing of our client' case on a date and time most convenient to Your Honour; we further pray and request that the copies of the minutes of today's hearing be attached on the notice of assignment that will leave the Ministry for the attention of the defendant/management and her legal counsel's attention. At the same time Your Honor should seriously warn said defendant/management's counsel to desist from such ugly practices he was employed to avoid future embarrassment. Because we feel hurt by the acts of management's legal counsel. As his procedure employed to frustrate the hearing of our client's case cannot be done in other courts within our jurisdiction. This we so pray. And submit.

Investigation's Response to the submission:

We seriously take note of complainant counsel's submission. We are also dismay over the attitude of the defendant/management's legal counsel attitude he has employed of sending series of letters of excuses that are on file as records before us. This investigation seriously warns said counsel to desist from such act and appear to court when duly cited. This investigation is ordered suspended pending the execution of another written notice of assignment. AND BE IT SO ORDERED.

SIGNED: Recording Clerk ."

Another notice of assignment was issued on April 3, 2006 for hearing on April 11, 2006 but when the case was called, there was again no representation for management even though the service was returned. The following submission was again made by the representative of the complainant:

"At this stage, counsel for complainant has carefully inspected the case file just turned to us and have observed from the records in this file as follows to wit:

1. That the last date for the hearing of this case was on March 29, 2006 at 11:00 a.m. And during this hearing counsel for complainant read series of the excuses, sent in by defendant/management's counsel. And as a result, the records/minutes during this hearing he seriously requested the Honorable Investigation to warn the defendant/management and her legal counsel to appear and have their day in court whenever they are duly cited. Because the next failure of the defendant's party to appear without any request for continuance, we will take advantage of the statutes controlling to proceed with the hearing of this case. We further requested your Honor to take judicial notice of the minutes of March 29, 2006 hearing.

2. That a prayer for the execution of another written notice of assignment was made and same was granted. Accordingly, on the 3rd day of April 2006, a written notice of assignment was duly executed and served on the parties to appear before Hon. Philip G. Williams/hearing officer on April 11, 2006 at the hour of 1:00 p.m. The official returns show that one Miss Teatema Yarsiah, personnel of the legal counsel signed for and received defendant/management's copy for the hearing of this case for today, April 11, 2006, at the hour of 1:00 p.m. With the time at 1:55p.m., the defendant/management and her legal counsel have refused and failed to appear to have their day in court without any request for continuance, an abandonment, for which a default judgment must be granted.

Wherefore and in view of the foregoing, we pray your Honour to take advantage of the case: Monrovia Tobacco Corporation vs. Sei Flomo and Henry B. Barnh found in 36LLR page 523 Syl. 3, and grant unto us a default judgment, an imperfect judgment to be made perfect upon hearing the oral and documentary evidence during trial by the complainant's party. Further, we request your Honor to further take advantage of the following legal authorities in support of our request:

1. 23LLR page 263 syl.
2. 17LLR page 105 syl.3.
3. INA Decree #21 Article 1 Section 8
4. 1LCLR page 214 Section 42.1 of our civil procedure law. And submit.

The Hearing Officer at this time also made the following record:

"This investigation says that all labor cases must be expeditiously disposed of with no exception of this case before us. Further, the records before us can completely attest that the defendant/management legal counsel does not intend to have this case disposed of, but we cannot do for parties what they legally must do for themselves. Now that a request for default has been requested by a moving party, this investigation is left with no other alternative but to grant the request for default judgment prayed for by the complainant's counsel. Same request is hereby granted. AND IT IS SO ORDERED."

The request for an impartial judgment for default, to be made perfect, having been granted, complainant took the witness stand and in his explanation Paul S. Saide, the complainant, said as follows: "I was employed by Inter-Con Security Systems since August 23, 1990. I continue to perform my assigned duties up to October 5, 2005,

when our pay for redundancy. But because I did not know the reason why my position should be declared redundant. I told my former employer to refer us to Labor Ministry for better explanation on what brought about our positions to be declared redundant. Because of this reason my former employer without writing me to show any other thing I have done, verbally terminated my employment and refused to pay my benefits for all of these years I have served them. Because I was not satisfied with the termination of my employment I was compelled to have retained the Trials law Associates, Inc. to represent my legal interest in this case to take same with the Ministry of Labor for redress. This is what brought me here for redress on my wrongful dismissal. I rest."

The complainant identified his documentary evidence which was marked by the hearing officer and formed a part of the minutes. The next witness for the complainant took the stand and testified that his name was Anthony Davis, a former employee of the defendant management and that the complainant was his former workmate. In his statement in chief he said the following:

"During the early part in the month of October 2005 some of us and including Paul S. Saide, complainant in this case were called by Inter-Con management to go and sign for and receive our pay for redundancy. Mr. Saide asked the management for the reasons our positions have been declared redundant for us to go and sign and receive our pay for redundancy? Mr. Saide went on to say that Inter-Con should address our plight or our redundancy issue with the Ministry of Labor so that we can know why we should sign for our pay for redundancy. This issue did not go well with the management. As such, when we went to work on October 13, 2005, Mr. Saide was stopped from working because he is fire from his job. For the rest of us who did not want to be fired from job went and signed and received our redundancy pay on the 21 st of October 2005 and left. This is all I know that happened between Mr. Paul S. Saide that brought this matter to Labor Ministry I end."

He identified and confirmed the pay slip that had been marked.

At the conclusion of the investigation, after complainant's representative had cited legal authorities in support of his client's case, and submitted the matter to be decided by the Hearing Officer, the Hearing Officer made the following ruling based on his findings of fact:

"After a careful examination of the records, testimonies of witnesses, facts and surrounding circumstances, it is our candid opinion that defendant Inter-Con reinstates

complainant and accord him those rights he was denied as if to say such wrongful action has never been perpetrated against him. Any act to the contrary, defendant/Inter-Con should stand in readiness to avail itself and comply with section 9(a) (i) of title 19-A of the Labor Law by awarding complainant twenty four (24) months of the aggregate of his basic earnings taking into consideration his tenure of service, a month's salary in lieu of notice plus his monthly salary for the month of October 2005, that is to say, in accordance with the below tabulations:

1. Twenty four (24) months in lieu of reinstatement x210.00 US$5040.00
2. One (1) month's salary in lieu of notice x210.00 US$ 210.00
3. One (1) month in arrear for October 2005x210.00 US$ 210.00

US$5,460.00 (United States Five Thousand Four Hundred Sixty Dollars only) AND IT IS HEREBY SO ORDERED.

GIVEN UNDER MY HAND SEAL OF THIS MINISTRY IN THE CITY OF MONROVIA ON THIS 4TH DAY OF MAY A.D. 2006 Hon. Philip G. Williams
Director for Labor Standard and Labor Relations Officer."

A copy of this ruling was served on management and receipt acknowledged. Below is the letter of acknowledgement of receipt of this ruling:

"Honourable Philip G. Williams
Director,
Labor Standards & Labor Relations Officer
Ministry of Labor Camp
Johnson Road Monrovia,
Liberia

Mr. Director:
For and on behalf of Inter-Con Security Systems Liberia Limited ("Inter-Con"), we have the honor to acknowledge receipt on May 5, 2006 of a document entitled default judgment to which is attached Minutes of an investigation held on April 11, 2006 in a case entitled Paul S. Saide versus Inter-Con, action of wrongful Dismissal. The document entitled Default judgment as well as the minutes of the investigation show that Inter-Con is represented by Kanie Wesso Legal Redress, Inc., by and through counsellor A, Kanie Wesso.

Pleased be informed of the following:

1. That on March 31, 2006, the legal services of Counsellor Wesso were terminated. As consequence, Counsellor A. Kanie Wesso ceased to represent the legal interest of Inter-Con in any matters pending at the Ministry of Labor or in the courts of Liberia.

2. On April 3, 2006, Counsellor Wesso acknowledged the termination of his legal services and delivered to Inter-Con the files in his possession.

3. Also on April 3, 2006 a formal notice of change of counsel, clearly reflecting Inter-Con's change of counsel from Counsellor A. Kanie Wesso to Dunbar & Dunbar Law Offices, was signed by Counsellor Wesso who assured Inter-Con that he would file said notice of change of counsel at the Ministry of Labor and at the courts of Liberia. Documents in substantiation of the foregoing are attached for your easy reference.

Appellant subsequently filed a motion to rescind judgment before the Hearing Officer and raised several issues very similar to those previously raised and decided in The management of Inter-Con Security System v. Edwin Walters decided by this court on July 24, 2009. Counsel for complainant/appellee filed his resistance to the motion. The judge heard arguments pro and con and denied the motion to rescind. Appellant thereafter filed a petition before the National Labor Court Judge Comfort Natt. The judge having heard arguments ruled in favor of the complainant thereby upholding and confirming the ruling of the Hearing Officer, from which ruling appellant announced an appeal and is before us on a 4 counts bill of exceptions consisting of four (4) full length type written sheets of paper and may subdivisions.

Some of the issues raised in this bill of exceptions were raised and decided in the cited case supra. We shall therefore treat those as references in determining this case that is very similar to the decided case.

In view of the foregoing, we shall decide this case on the following issues:

1) Whether the hearing officer erred and the National Labor Court Judge confirmed by granting the default judgment on April 11, 2006 in view of the fact that management was allegedly not aware of the assignment notice.

2) Whether or not complainant proved his allegation of wrongful dismissal to warrant the award granted by the hearing officer and confirmed on review by the Labor Court Judge.

3) Whether the failure of appellant or his representative to appear on April 11, 2009

for the hearing was due to the gross negligence of the dismissed counsel and as such, under the doctrine of excusable neglect, appellant should not be liable in this wrongful dismissal case on the basis of a default judgment.

We shall consider the issues in the order in which they are listed. Appellant argued that the Hearing Officer erred by granting the complainant's motion for default judgment on April 11, 2009 and that the Labor Court Judge also erred by confirming same because on the day the assignment was returned served, April 3, 2006, Counsellor A. Kanie Wesso, counsel for appellant at the time had received a letter of termination of legal services from his client, appellant herein, dated March 31, 2006. Appellant and his counsel were not informed about the notice of assignment. We quote below the letter of termination of legal services of Counsellor A. Kanie Wesso:

"From: Project Manager, Inter-Con Security Service
To: Counsellor kanie Wesso
Subj: TERMINATION OF SERVICES; DTD 03-31-06

Dear Cllr. Wesso

We hereby inform you that your legal services are no longer required.

We request that all materials, correspondence and or legal files pertaining to Inter-Con Security Services be turned over to us. We thank you for your services and wish you success in all your future endeavors. Respectfully, H. M Hernandez."

On April 3, 2006, counsel/or Wesso acknowledged receipt of the letter of termination which reads as quoted below:

"April 3, 2006
Col. H. M. Hernandez
General Manager
Inter-Con Security Mamba Point, Monrovia

Dear Sir:
REF: ACKNOWLEDGMENT:
We are in receipt and acknowledgment of your letter indicating that our legal services are no longer required.

We wish to thank you so much for the time you allowed us to serve as legal counsel for

your management, INTER-CON SECURITY SYSTEM.

However, please note that we did not breach the contract entered into with your management and hence, our doors are always open to assist you with the need arises

Kind regards,
Very truly yours,
KANIE, KOIWUE LEGAL REDRESS, INC.
A. Kanie Wesso COUNSELLOR-AT-LAW."

On the same April 3, 2006, the day he acknowledged receipt and accepted his termination an employee at Counsellor Wesso's office signed for a notice of assignment for a hearing of complainant's complaint on April 11, 2006.

But how was it possible that appellant was not aware of the notice of assignment especially in view of the following passage in appellants letter in acknowledgement of receipt of the Hearing Officer's ruling?

"(2) On April 3, 2006, Counsellor Wesso acknowledged the termination of his legal services and delivered to Inter-Con the files in his possession." (Our emphasis)

If the files were delivered to appellant on April 3, 2006 could it be that the notice of assignment was on file but that appellant failed to inspect the file, and if the notice of assignment was in the file that was delivered to the appellant how could it be Counsellor Wesso's fault that appellant was not aware of the notice of assignment? We hold that appellant by requesting or demanding for the case file and receiving same as early as April 3, 2006 had enough time from April 3-11 2009 to have appeared for the hearing, but only if he had looked in the file or had even asked Counsellor Wesso about the status of the case. Appellant's failure to inspect the files when he took delivery of them from Counsellor Wesso or his neglect to seek briefing from him about the case and its status were the factors that contributed to his lack of information or knowledge about the notice of assignment. There is a possibility that when the employee at Counsellor Wesso's office signed for the notice of assignment, she placed it on his desk for his attention. There is also the other possibility that Counsellor Wesso placed it in the case file and delivered the file to the appellant upon his demand. In any case, we will not support appellant's contention that the Hearing Officer erred when he granted the default judgment which was upheld by the Labor Court Judge. The Hearing Officer having issued the notice of assignment on April 3, 2006 for hearing on April 11, 2006, the non-appearance of appellant cannot be attributed to any fault of the Hearing

Officer.

Section 34.2 (8) of the Executive Law-Default Judgment states:

"If a defendant in a labor case fails to appear and plead or proceed to trial, or if the hearing officer... orders a default for any 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 summons and complaint and give proof of the facts constituting the claim, the default judgment..."

The hearing officer and the complainant deserve a medal for their patience and diligent efforts and determination to have the appellant appear and participate in the hearing but to no avail. The Proof of their good intentions to have the defendant participate in the hearings was the number of times hearings were postponed or continued because of counsel for management's excused and unexcused non-appearances. In the opinion of this Court the application for default judgment by complainant was very slow in coming. It should have been applied for sooner, than April 11, 2006. The provision of law cited supra did not state the number of times defendant must fail to appear upon notice before the law can be invoked and applied.

Appellant argued that the case was not abandoned, that it was the failure of the outgoing counsellor to file the change of counsel or inform appellant about the notice of assignment that led to the failure to attend. This contention raises two questions:

1. Who had the duty to file with the hearing officer the notice of change of counsel, the terminated legal counsel or appellant?

2. Why did appellant, after terminating the attorney-client relationship for cause, we suppose, even though not stated in the letter of termination, rely on said counsel's promise that he would go to the Labor Ministry and file his change of counsel.

The duty and responsibility lie with the one effecting the change to give notice to all concerned that he has changed his legal counsel, In this case, the counsel of record, Wesso, the Labor Court, the Hearing Officer, and the clerks of other courts where he might have matters pending in which the terminated counsel was his legal representative. Under the Civil Procedure Law it is provided that:

"An Attorney of record may be changed by court order, or unless the party is an infant or an incompetent person, by filing with the clerk of court a notice of change together

with a statement of consent to the change signed by the Attorney and the party. A copy of such change shall be served on the other parties." 1 LCLR Section 1.8.

This provision of the statute is so clear and cogent, it needs no construction. The duty rested on appellant in this case to have informed the Labor Ministry through the office of the hearing officer that its attorney of record had been changed. The requirement that said changed attorney should sign a statement of consent to the change does not in any way obligate the attorney after approving of his termination, to do the filing. Counsel for appellant in fact was quite aware that it was his client's duty to file the notice of change of counsel with the office of the hearing officer when he said in count one, last paragraph of page two of the bill of exceptions, that:

"Consequently, petitioner appellant not having been informed of the assignment of the case for April 11, 2006, and Counsellor A. Kanie Wesso who received and signed for the notice of assignment having assured petitioner/appellant that he (Counsellor Wesso) would file the notice of change of counsel at the Ministry of Labor and served copy on the respondents but failing to do so, the failure of petitioner to appear for the hearing on April 11, 2006 can neither be construed as abandonment nor can such failure be the basis for a default judgment."(Our emphasis)

So when, if we may ask, will any failure on part of a party who has notice for a hearing but failed to appear as many times and as often as happened in this case, be sufficient, in counsel for appellant's estimation, in order for a default judgment to lie? Counsel acknowledged that appellant or his new counsel should have filed the notice of change of counsel and yet appellant who had terminated the legal services with his former counsel, again relied on said terminated counsel to do him the favor of going to the Labor Ministry to tell the hearing officer that he had been fired and then proceed to distribute said notice among all the parties involved on behalf of the appellant. We do not believe that to be the intent of the statute, subjecting a dismissed legal counsel to promulgate his own dismissal, and failing to do which, he must now take the blame for the non-appearance of the appellant's new counsel at the hearing.

In our opinion, the attorney-client relationship that existed between Counsellor Wesso and appellant ended when he Counsellor Wesso approved his termination by signing appellant's change of counsel notice. Appellant provided no answer or reason why after firing Counsellor Wesso for whatever reason, he decided to entrust any other legal matter to his care without any follow up to make sure the notice of change of counsel was filed. It cannot really be said that appellant showed any interest in the complaint brought against appellant by this former employee. There was no inquiry or

involvement as far as the records show, from January 4, 2006 when the complaint was served on appellant up to May 4, 2004 when appellant acknowledged receipt of the ruling of the hearing officer. It was only then that appellant and the new counsel realized that there was a complaint in which appellant was involved and ruling against management had been made. When a counsel of record is dismissed and a new counsel takes over the case files, it is not only prudent, but a show of professionalism for the new counsel to seek briefing about the case(s) from the outgoing counsel, from the clerks of the various courts concerned from the client, and from even the opposing counsels. Obviously the new counsel for appellant was not privileged to any information or briefing. Had he consulted with counsellor Wesso he would have known that there was a notice of assignment for hearing on April 11, 2006, six days after he had severed relations with the appellant. It seems that since no questions were asked, no answers were provided. Also if appellant had exercised the due care required of him as an employer against whom a complaint had been filed, even though he had assigned it to his legal counsel, to have monitored the developments or the status of the complaint, he would have become aware of the notice of assignment. Had appellant shown that concern he would have known that Counsellor Wesso had not attended any of hearings but had only sent excuses upon excuses and in some instances he had just not attended and without any excuse even when he signed and received assignments. No client should be so dependent on his counsel to the extent that he/she neglects or shys away from showing any interest in his case, all just because the case has been assigned to his legal counsel. A client should show interest in the manner in which his legal counsel is handing his case because in the final analysis it is the client who bears the burden in case he loses the case. In view of all we have said regarding our first issue under discussion, we hold that the hearing officer committed no error when he granted the default judgment in the absence of a notice of change of counsel at the time the said Hearing Officer issued the notice of assignment on April 3, 2009 and had the hearing on April 11, 2009 as per the notice of assignment. The contention is therefore not sustained.

The second issue determinative of this case is whether the complainant proved his wrongful dismissal case as to entitle him to the award granted. We hold yes. Recourse to the letter of complaint and the testimonies adduced during the hearing have persuaded us to form the opinion that the complainant, appellee proved that he was wrongfully dismissed and that the hearing officer's finding was supported by the records produced. The complainant alleged in his complaint that he had served appellant faithfully and honestly from August 23, 1990 to October 25, 2005. He stated further that management for no reason at all called and put a redundancy document before him for his signature. He refused to sign on condition that the Labor Ministry

be first consulted for which refusal to sign he was told not to show up for work, by his employer, management/appellant. He said that he was verbally dismissed contrary to Labor Provisions controlling the dismissal of employee by employer. The statute provides that the dismissal be reduced into writing.

After the complainant's testimony in chief in which he testified in conformity with the facts alleged in his complaint, he produced one of his pay slips as proof of his monthly salary which was marked by the hearing officer. His second witness was a workmate who testified and said that he also, along with some other employees, was called and told to sign for his redundancy or else be dismissed. He said that for fear of been dismissed they signed and received their money and left the company. The complainant because of his refusal to sign the redundancy document was barred from entering the workplace. He confirmed that complainant told management that his redundancy had to be reviewed and approved by the ministry of Labor before he would agree to it. For that, he was locked out of the workplace. He identified the pay slip and confirmed that it was the pay slip of the employer. The pay slip the complainant proferted bearing his name carried on its face US$210.00 as his monthly pay. After resting evidence, and in the absence of appellant to take the stand and refute or discredit complainant's claims, the hearing office ruled in favor of the complainant. The hearing officer found sufficient evidence to support complaint's claim of wrongful dismissal and unpaid benefits and awarded him accordingly. We are therefore of the opinion that the evidence produced was commensurate with the judgment rendered. The National Labor Court judge committed no error by confirming said ruling.

The third issue is whether the failure of appellant or his newly retained counsel to appear for the hearing on April 11, 2006 was due to the gross negligence of Counsellor Wesso to file the notice of change of counsel and to inform appellant about the notice of assignment and as such, under the doctrine of excusable neglect appellant should not be liable on the basis of a default judgment. In disposing of issue number two we stated that Counsellor Wesso, after his termination by appellant, was under no legal obligation to do for appellant what he should have done for himself and that is, to inform the Hearing Officer that Counsellor Wesso was no longer his legal counsel. In order for the doctrine of excusable neglect, to operate in favor of the appellant he must show proof that he had an attorney-client relationship and therefore relied on that relationship but that the attorney failed to perform leading to his predicament. The relationship that existed was partially terminated by appellant on March 31, 2006 and concluded on April 3, 2006 by Counsellor Wesso's letter of acknowledgment and acceptance of his termination. The responsibility under the statute devolved on appellant to inform the Hearing Officer that Counsellor Wesso was no longer his legal

counsel. Notwithstanding his delegation of said responsibility he was still under a duty owned to himself to make certain that his dismissed counsel did fulfill his promise to deliver the change of counsel notice to the Hearing Officer. If at all Counsellor Wesso was requested by appellant to take the change of counsel notice to the Hearing Officer's office and he promised to do so, that promise created no legal duty. It created only a moral duty which under the law is unenforceable for lack of consideration. We hold that the fact the notice of change of counsel had not been filed before the Hearing Officer from the time of its execution by appellant and counsel, 8 days before the hearing was a result of appellant's own gross negligence and lack of interest in the former employee's complaint against him. He cannot now plead his own neglect as excusable neglect citing as reliance 1LCLR Section 41.7(2) (a) Relief From Judgment on the ground of excusable neglect.

In InterCon Security Systems v. Edwin Walters et al, this court held that "There is no procedure under the Labor Law for a Hearing Officer, after handing down a ruling, to rescind same and relieve the losing party on the basis of a post hearing motion. This remains the position of this court on the issue of motion to rescind judgment filed before the Labor Hearing Officer. We held then as we so hold now that Section 41.7 Relief From Judgment is intended to be employed in a judicial and not an administrative hearing. The only relief from a Hearing Officer's decision or ruling is a petition for judicial review venued before the National Labor Court Judge. The doctrine of excusable neglect is well pleaded under the judicial provision-Relief from Judgment which is not applicable or cognizable in administrative hearing such as this labor case.

In view of our thorough perusal of the records certified to this court and the arguments pro and con, we are of the opinion that the judgment of the Hearing Officer in favor of the complainant, upheld and confirmed by the reviewing Judge of the National Labor Court awarding the complainant the total sum of US$5,460.00 be, and the same is hereby confirmed.

The Clerk of this Court is hereby ordered to send a mandate to the judge of the court below to resume jurisdiction and expeditiously enforce this judgment, said case having lingered in litigation for the last five years. AND IT IS HEREBY SO ORDERED.
JUDGMENT CONFIRMED.

Counsellor John E. Nenwon and Yamie Q. Gbeisay of the Tiala Law Associates, Inc. appeared for the Appellee while Counsellor Stephen B. Dunbar, Jr. of the Dunbar & Dunbar Law Office appeared for the Appellant.