The **Management of Regional Guard Services Agency (REGSA)** by and thru its General Manager, and et. al its authorized officers also of the City of Monrovia, Liberia APPELLANTS VERSUS **Nenneh Polo** of the City of Monrovia, Republic of Liberia APPELLEE

LRSC 33

APPEAL

HEARD: April 13, 2010 DECIDED: August 30, 2010

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

This matter emanates from a letter dated January 11, 2005, written by Mr. Barclay S. Wollie, Sr., Labour Consultant. The letter reads:

"Dear Honorable Minister:
We have been retained by Mr. Nenneh Polo, former employee of the Management of Regional Guard Services Agency (REGSA) to represent his legal interest.

Our client has informed us that he was employed on July 10, 1993 and served his employer for eleven (11) unbroken years. And that on October 9, 2004, his services were wrongfully terminated.

Our client further informed us that during his tenure of services, his employer denied and refused to pay him the following legal entitlements: payment for overtime excessively worked, payment for salary arrears, annual leave, rest period, pay for work on day-off and national holidays and illegal deduction of wages, etc.

We would be most grateful were you to cite said defendant/management to appear before you and show cause why (if any) they cannot be liable for the unfair labour practices meted against our client and to reinstate or pay him an award for wrongfully dismissing our client as is required by Title 19A, § 9 of the Labor Laws of Liberia."

The appeal now before us stems from the appellee's petition for enforcement of the Labor Ministry's final ruling made on this complaint above in favor of the appellee. The records show that when this matter was brought to the Ministry's attention, it initiated an attempt to amicably settle the matter between the parties, but this failed to materialize. A formal investigation therefore began August 4, 2005. Thereafter, the complainant took the stand and began to explain the facts and circumstances of his

complaint. His testimony progressed up to and including September 1, 2005, with the defendant lawyer participating in the investigation. Thereafter, the defense and its counsel persistently failed to appear and proceed with the matter despite service of assignments for hearing on September 12, 16, and 22, 2005. What broke "the camel's back" was the appellant counsel response to the September 22, 2005 assignment. When this assignment for September 22, was sent out for continuation of the hearing, the appellant's counsel wrote the Ministry that he had another assignment in the National Labor Court on the 21st of September at 11:a.m., and therefore could not be present at the Ministry for the hearing as assigned, when in fact the assignment was slated September 22, the next day. When the case was called as assigned, the appellant and his counsel were absent. The counsel for the appellee prayed for the entering of a default judgment which was granted. Thereafter, the appellee and his witness took the stand and testified. The witness, a former employee of appellant, practically confirmed the appellee's testimony that appellee worked for the appellant for eleven years. From 1993 to 2000, he earned a monthly salary of US$75.00. Thereafter, because the UN Office where he was assigned was "broken down" the appellant explained to him that he had to "swallow the bitter pills." His salary was therefore reduced to US$50.00 monthly. However, in 2004, the appellee said the appellant without any reason, orally dismissed him.

Outlining the summary of fees outstanding and due him, the appellee explained that all employees were made to make a compulsory saving of US$5.00 monthly which was deducted from their salary but was not refunded to him when he was dismissed. Another US$100.00 for transport by the company vehicle which was never provided, US$10.00 for an alleged insurance, and other amounts deducted for military boots, company's uniform as well as other deductions. He calculated these deductions to amount to US$705.00. Additionally, the complainant allege that during the course of his employment , he was denied annual leave, rest period, four months salary in arrears, as well as reimbursement of US$25.00 deducted from his salary since January 2000 up to an including October 2004.

The Hearing Officer makes mention in his ruling of appellee's C/1 which outlines deductions claimed by the appellee. Unfortunately, we have not been able to review this document because a search both in the Labor Court and at the Ministry of Labor proved futile. However, the Hearing Officer ruled that these deductions were in violation of Section 1511(8), Subsections (b) and (c) of the Labor Law of Liberia and which appellant is under a legal obligation to restitute. Touching on the issue of the appellee allegation of he been verbally dismissed, the Hearing Officer said the Labor Law prohibits the verbal dismissal of an employee as this has the tendency for

employees to contend that no dismissal action was ever taken against a concerned aggrieved employee. He made reference to the Labor Law, Chapter 1 Subsection (c) (1984). The conclusion of the final ruling states:

Predicated upon these facts and surrounding circumstances, we hold the view that defendant/REGSA is liable to pay complainant all of his accrued benefits to include annual leave, rest period, over time, public holidays which are legitimate benefits that he was denied during the course of the employment relationship that existed between them to also include his four months' salary in arrear. For so doing, it is our candid and considered opinion that defendant/REGSA having wrongfully dismissed the within named subject is under obligation to settle these arrears in the amount of Twelve Thousand, Nine Hundred Thirty-five 80/100 (US$12,935.80) United States Dollars and Cents representing those benefits that have accrued, and be accorded the benefit of his reinstatement without any precondition. Any act to the contrary, defendant/REGSA should stand in readiness to comply with § 9 (a) (i) and (a) (ii) of Title 19 — A of the Labour Practices Law by awarding him in addition to the amount herein stated, the aggregate of eighteen (18) months of his basic earnings in lieu of such reinstatement plus a month's salary in lieu of notice and four months' salary in arrear making a sum certain of United States Dollars Fourteen Thousand, Three Hundred Sixty 80/100 (US$14,360.80). That is to say, in accordance with the below tabulations:

[Please see pdf file for details]

(Fourteen Thousand, Three Hundred Sixty 80/100 U.S Dollars)
AND IT IS HEREBY SO ORDERED"

This final ruling of the Ministry having been made December 8, 2005, appellee alleges that an attempt was made to serve it on appellant counsel, but he refused to receive it and therefore the ministerial officer had the ruling served on the appellant's management on December 14, 2005. Later over a year, on January 10, 2007, the appellee obtained a Clerk's Certificate from the National Labor Court to the effect that appellant had not filed a petition for judicial review, contrary to our law that a party wishing to appeal a hearing officer's ruling must file a petition for judicial review to the National Labor Court within 30 days after receipt of the Hearing Officer's final ruling.

The appellee petitioned for enforcement of the ruling by the National Labor Court and the court sent out a writ of summons and a Judge's Order, along with appellee's petition for enforcement of the Ministry's judgment, instructing the appellant to make

its formal appearance and file its returns within ten days, that is, April 6, 2007. The Sheriff of the Labor Court returns states the precepts were served on the appellant. Again the appellant failed to file its returns as commanded by the Court.

The matter was assigned for hearing in the National Labor Court on May 28, 2008, and this time the counsel for appellant appeared in court requesting for enlargement of time to file his returns, stating that the Summons and Judge's Orders from the Labor Court were not served on him or the appellant. Reference made to the Sheriffs returns showed that indeed the court's precepts had been served on the appellant thru its secretary. The Judge denied the appellant's counsel's application and thereafter heard arguments on the petition for enforcement of judgment. She ruled that an apellate tribunal can amend, affirm or reverse decisions or judgments, and enter a judgment that should have been rendered, but it cannot disturb a judgment from which no appeal was taken", She cited the case Vamply of Liberia, Inc. vs. Isaac Bob et. al, 27 LLR, 358, 363 (1978). She therefore ruled confirming and affirming the ruling of the Hearing Officer.

The appellant excepted to the ruling of the Judge and announced an appeal to this Honorable Court. Appellant's Bill of Exceptions basically complains that the Hearing Officer's final judgment was served on the appellant's radio operator contrary to service contemplated under our law and this was the root cause for the appellant's failure to except to the final ruling and to file a petition for judicial review. In addition, the appellant says that the Labor Court confirmation of the award was erroneous as the award given by the Hearing Officer was contrary to the weight of the evidence adduced at trial; the appellee had failed to perfect his default judgment.

Interestingly, the appellant's counsel on appeal does not deny that the appellant was served notices of assignment for hearing on September 12, 16, and 22, 2005, and appellant failed to appear. Its argument is that when the final ruling on default was taken to appellant's office, it was served on the radio operator. Considering that the judgment was improperly served, it was not an issue before the National Labor Court since the appellant failed to make an appearance when it was served the writ of summons and Judge's Orders, requiring it to appear and file its returns to the petition for enforcement of the Hearing Officer's Judgment, on or before April 6, 2007. The appellant upon receipt of the Judge's Orders and Summons from the National Labor Court should have filed its returns, making an application as it did when it finally appeared before the National Labor Court to file its petition for judicial review nunc pro tunc because of the allegation that the final ruling of the Hearing Officer was served irregularly. Having failed to file its returns, there was no issue to be considered

by the court below. This Court has said that a party cannot in the appellate court urge a ground for relief which was not presented to the court below. James W. Hunter vs. Hunter, 22 LLR 87, 101 (1973).

The appellant contends that the appellee failed to perfect his default judgment, and the Labor Court confirmation of the award was erroneous as the award given by the Hearing Officer was contrary to the weight of the evidence adduced at trial. Appellant argues further that, at the hearing when he was last present, the appellee requested for a supeona duces tecum to be issued against appellant to produce its payroll for the purpose of showing the alleged illegal deductions for boots, watch, uniform, and a bus as transportation made against the appelle's salary. Was the supeona duces tecum issued? We do not know since all efforts to locate the records of the hearing at the Ministry of Labor both at the Ministry of Labor and The National Labor Court have proven futile, and the Hearing Officer who presided over the matter is no longer with the Ministry.

Section 203 of the Labor Laws says the findings of the Ministry as to the facts shall be conclusive if supported by sufficient evidence on the record considered as a whole. All such proceedings shall be heard and determined by the Labor or Circuit Court, and if an appeal is taken, by the Supreme Court, as expeditiously as possible. It also provides that either party may move the court to remit the case to the Ministry in order to adduce additional specified and material evidence and seek findings thereon provided he shows reasonable grounds for the failure to adduce such evidence before the Ministry. (emphasis ours).

As stated above, the appellant has not shown us reasonable grounds for failure to adhere to the citation from the Ministry and to produce material evidence for the Hearing Officer consideration in this matter, and for failing to appear and file his returns to the petition for enforcement of the Judgment. We can only review issues properly raised, argued, and ruled upon in the lower courts. The appellant's application for enlargement of time was rightly denied by the court because it is clear that the appellant wantonly neglected this matter. In fact, where this Court has reversed an appeal because of service of a court precept on an employee who had no authority to receive court's precept on behalf of the employer, its ruling was based on the fact that the employer had no notice of the service since the person on whom the precept was served either neglected to timely bring such service to the attention of the employer or failed to bring it to the employer's knowledge. In this case, the appellant alleges that the ruling of the Labor Ministry was served on its radio operator but it does not deny having received the ruling. When the Judge's Order, Writ of Summons and a copy of the Hearing Officer Ruling were served by the Sheriff of the National Labor Court on

appellant, appellant lost its opportunity to have challenged the service of the final judgment of the Labor Ministry, when it failed to filed its returns. The law is that formal defects and irregularities in process of service thereof must be challenged at the first opportunity and before any further step in the cause is taken, otherwise they are waived. Cooper vs. CFAO(Liberia) Ltd., 35LLR 490,494 (1988); 62B Am. Jur., §313 Failure to object (2005).

We must emphatically state here that a citation from the Labor Ministry requesting parties to a complaint to appear before it is just as important as a summons or assignment from our courts requiring parties to appear. Our Labor Law, Chapter 3. §202 and 203 empowers the Ministry of Labor to hold hearings, subpoena witnesses, compel their attendance, administer oath, take the testimony of any person under oath and in connection therewith, require the production of examination of any books or papers or evidence relating to any matter under investigation in question before the Ministry in violation of Title 18 of the Labor Law of Liberia.

Disheartenly, this Court has observed the trend of our lawyers, who mostly represent employers, to deliberately disregard citations from the National Labor Ministry calling parties to appear for administrative hearings. Non appearance by these lawyers often leads to a default judgments against their clients. After default judgments have been rendered against their clients, these lawyers go up for judicial review to the Court, complaining that the award is against the evidence produced by the complainant. These lawyers fail to realize that our Labor Law also provides that any respondent aggrieved by an order of the Ministry may appeal therefrom to the Labor or Circuit Court of the county in which the Ministry held its hearing, but where no objection has been urged before the Ministry, it shall not be considered by the Court unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. Ibid. §203.

In this case, the appellant has not shown such extraordinary circumstances. The appellant's counsel does not deny that appellant made an appearance and was involved in the hearing but later neglected to show up for three hearings after receiving notices of assignment. This Supreme Court also has held that default judgment will lie against a defendant who participated in a trial at its commencement but failed to appear for the continuation thereof. LBDI vs. York and Brown, 35LLR 155, 166 (1988).

We say, it would be wholly unfair to remand this matter, which began more than five years ago, for further substantiation of the appellee's claim, when this Court has said, "A failure to file motion for continuance or to appear for trial after returns by the

Sheriff shows that service of a written assignment was carried out, shall be sufficient indication of the party's abandonment of a defense in the said case, and in which case, the court may proceed to hear plaintiffs side of the case and decide thereon." Nigeria Port Authority vs. L. His Honor Judge Brathwaite, 26LLR 338, 347 ((1977). The fact that the appellant does not deny receiving citations for hearings on September 12, 16, and 22, 2005, and the appellant having subsequently received from the National Labor Court the Judge's Order, writ of summons and a copy of the petition for enforcement of judgment but did not file a returns, is a clear indication of the appellant and its counsel's lack of respect for the rule of law and the court, and this Court will not grant aid to such behavior.

However, this Court says, it has reviewed the award of the Hearing Officer and fails to see how the Labor Officer derived at his calculation of eighteen months salary in lieu of reinstatement at US$75.00 when in his own ruling he stated that the appellee was employed and initial assigned to the Meridien Bank for a salary of US$75.00 monthly. Unfortunately, when the bank closed down, he was transferred to work elsewhere, to a place we understand was less lucrative, and was told that he would have to swallow the bitter pills by being paid now a monthly salary of US$50.00. Appellee agreed to this reduction in his salary and worked for this amount of US$50.00 for four (4) years before his alleged wrongful dismissal. Calculation of the eighteen months should have been tabulated at 18 months @ US$50.00 instead of 18 months @ US$75.00 since the correct interpretation of §9(a) (i) (ii) of the Labor Practices Law of Liberia is that a wrongfully dismissed employee shall be entitled to either reinstatement by the employer or payment of reasonable compensation in lieu thereof. The reasonable compensation under the reasonable expectations and length of service doctrine shall not exceed two years' salary or wages of the employee based on the last salary earned six months immediately preceding his alleged wrongful dismissal. Wilson vs. Firestone Plantation Company and Board of General appeals, 34LLR 134, 156 (1986). The total calculation for eighteen months, therefore, should have been US900.00 to be paid in lieu of reinstatement instead of the US$1,350.00 awarded. Again, we fail to see on what basis was a calculation made for deduction of US$2,500 @ 58 months? How could one who made, at most, US$75.00 have had, from our calculation, US43.00 deducted from his salary for five years and for what purpose? This Court has said a hearing officer is required to calculate the amount of damages awarded with certainty and specificity. Charles F. Taylor, Jr vs. DENCO Shipping Lines, 37 LLR 66, 75 (1992). In this case, the award is vague and unspecified.

As this Court has the authority to affirm or modify an award in matters brought up on appeal before it, we say, a deduction of US$1,900.00 from the amount awarded the

appellee entitles the appellee to an award of US$12,460.00.

WHEREFORE AND IN VIEW OF THE FOREGOING, this Court says that appellant's contention, that the final judgment was served on its Radio Operator who had no authority to accept rulings on behalf of the appellant, does not negate the appellant and/or his counsellor's general neglect of this matter.

This Court therefore affirms the ruling of the Labor Court with the modification as stated above. Costs against the appellant. And it is hereby so ordered.

COUNSELOR OTHELLO S. PAYMAN OF THE KEMPAND ASSOCIATES REPRESENTED THE APPELLANTS. COUNSELORS YAMIE QUIQUI GBEISAY, SR. AND JOHN E. NENWON OF THE TIALA LAW ASSOCIATES, INC. REPRESENTED THE APPELLEE.