

The **Management of Monrovia Breweries, Inc. (MBI)**, by and thru Its General Manager, Kurt Callseen, of the City of Monrovia, Liberia APPELLANT VERSUS **Stephen G. Scott**, Hearing Officer, Ministry of Labour, Moses Cha and **Breweries Workers' Union** also of the City of Monrovia, Liberia APPELLEES

APPEAL. CASE REMANDED

HEARD: APRIL 19, 2005 DECIDED: SEPTEMBER 15, 2005

MR. JUSTICE KORKPOR DELIVERED THE OPINION OF THE COURT

Co-Appellee Moses Chea was employed by the Appellant, Monrovia Breweries, Inc., in the capacity of security officer for a period of nineteen (19) years. On August 3, 1998, the Appellant dismissed the Co-Appellee for "sleeping on the job".

On August 5 1998the Monrovia Breweries, Inc. Workers' Union filed a complaint against the Appellant with the Ministry of Labour on the ground that the dismissal of Co-Appellee, Moses Chea was in violation of Article 14 Section 3(a) of the Union-Management Agreement.

At the call of the case before the Hearing Officer of the Ministry of Labour, the Appellant filed a Motion to Dismiss the Complaint on the grounds as follows: a) that the act complained of did not fall under Article 14 of the Union-Management Agreement; b) that the act complained of falls instead under Article 13(3) (a) of the Agreement; c) that under the section of -the agreement dealing with Major Offenses, Management is only required to conduct an investigation at which the Union should be present; d) that this Provision of the Agreement was satisfied as an investigation was conducted at which the Union was present prior to the dismissal of Co-Appellee Moses Chea; and e) that the Action be dismissed to afford Co-Appellee Moses Chea the opportunity to sue in his own name without the Workers' Union serving as Co-Complainant.

The Hearing Officer handed down his ruling on September 7, 1998, denying the Motion to Dismiss and ordered that the matter be proceeded with on its merits.

The Counsel for Appellant excepted to the ruling of the Hearing Officer and filed a

Petition for Summary Proceedings with the National Labour Court on September 9, 1998. The National Labour Court, after listening to arguments, denied the Petition for Summary Proceedings. The Judge held that "final ruling was never made by the Hearing Officer." She also ruled that "the rights-of the parties have not been decided upon, therefore, no final judgment has been rendered in the case, and therefore filing Petition for Summary Proceedings is premature."

From this ruling the Petitioner announced an appeal and filed a five-count Bill of Exceptions which read as follows:

"1. Appellant says that your Honor erred when in your Final Judgment/Ruling you held that Appellant's Petition for Summary Proceedings will not lie because Final Ruling was never made by Hearing Officer, Co-Respondent/Appellee Stephen G. Scott. Therefore, Petitioner excepted

2. Appellant says and avers that Your Honour erred when in your Final Judgment/Ruling you failed and refused to address , the substance of Appellant's Petition, together with Appellant's prayer that Your Honour reverse and correct the erroneous Ruling of Co Respondent/Appellee Stephen G. Scott, which erroneous Ruling denied Defendant Management's Motion to Dismiss and ordered the matter proceeded with on the merits.

3. Appellant further says that your Honour erred when Your; Ho ruled that 'the rights of the parties have not been decided upon therefore no final judgment has been rendered in the case and therefore filing a Petition for Summary Proceedings is premature . To this erroneous Ruling, Petitioner excepted.

4. Appellant says and avers that Your Honour erred when in Your Final Ruling/Judgment, Your Honour inadvertently did not give recognition to the Act creating The National Labour Court and the appellate jurisdiction reserved to said court, viz the "Labour Court and Judges thereof shall have the exclusive jurisdiction, power and authority to issue or cause the issuance of Writs of Execution, Attachment, Garnishment, Ne Exeat Republica and Summons' in Summary Proceedings addressed to Hearing Officers or Labour Commissioners under their jurisdiction for the enforcement of judgments or orders and in exercise of the appellate jurisdiction herein vested in each Labour Court ... " (Emphasis

ours).

5. Appellant says and avers that your Honour inadvertently ignoring the law relative to the appellate jurisdiction of the Labour Court and Judges to conduct summary proceedings, and the purpose of' soul summary proceedings, refused and neglected to address the substantive issues raised in Appellant's Petition for Summary Proceedings, because in your Honour's mistaken view and opinion, final judgment not having been rendered by the Hearing Officer, the Petition for Summary Proceedings was premature."

The facts and circumstances of this case present only one issue for us to decide, and that issue is:

Whether or not a Petition for Summary Proceedings will lie before the National Labour Court to correct an alleged erroneous ruling of a Hearing Officer even though final ruling has not been made in the case by the said Hearing Officer?

The Appellees' contention is that Summary Proceedings will not lie before the National Labour Court because the ruling of the Hearing Officer to which the Appellant excepted and subsequently filed Summary Proceedings before the National Labour Court is not a final ruling, but rather an interlocutory ruling from which no appeal should have been taken. In line with this contention, the Appellee's Counsel argued before this Court that the proper thing was for the Appellant's Counsel to have excepted to the Hearing Officer's Ruling on the Motion to Dismiss and allowed the main suit to be proceeded with. The Appellee's Counsel therefore maintained that the National Labor Court Judge did not err by denying the Appellant's Petition for Summary Proceedings

The Act creating the National Labour Court spells out the power of that Court. Section 23.3 of An Act Amending The Labour Practices Law With respect to Administration And To Amend Decree No. 21 Of The Interim National Assembly states that: " The Labour Court and Judges thereof shall have the exclusive jurisdiction, power and authority to issue or cause the issuance of Writs of Execution, Attachment, Garnishment, Ne Exeat Republica and Summons in Summary Proceedings addressed to Hearing Officers or Labour Commissioners under their jurisdiction for the enforcement of judgments or orders and in

exercise of the appellate jurisdiction herein vested in each Labour Court" (Emphasis ours).

Clearly as we see it, the Appellate Jurisdiction of the National Labour Court is invoked in basically two ways, namely appeals and petition for summary proceedings. The former requires the rendition of final judgment while the latter affords a party the opportunity to have the National Labour Court to review the records to correct errors that will work prejudice to his/her interest. We therefore hold that a Petition for Summary Proceedings will lie before the National Labour Court to review and correct an alleged erroneous ruling of a Hearing Officer even though a final ruling in the case has not been made before the said Hearing Officer.

In the case before us, we see that the subject matter which forms the basis for Appellant's Petition for Summary Proceedings was never addressed by the National Labour Court. The question the Court should have addressed is: Whether or not the act of dismissal executed by Defendant Management of Monrovia Breweries and complained of to the Ministry of Labour, falls under Article 13 (3) (a) or Article 14 of the February 1, 1998 Agreement concluded by and between the Monrovia Breweries Inc. and Monrovia Breweries Inc. Workers' Union.

The Appellant contended that "if the act complained of falls under Article 13(3) (a) of the Union-Management Agreement, the dismissed employee can neither be represented by the Workers' Union nor can the Union be Co-Complainant to the suit". The Appellant further contended that on the other hand, if the act complained of falls under Article 14, it would immediately qualify as a grievance and the Defendant Management would have to exhaust steps (a) through (e) of the February 1, 1998 Agreement." We are in agreement with these contentions of the Appellant because in our view, the disposition of this matter requires a thorough review of the Union-Management Agreement, particularly Articles 13 and 14 thereof. In our opinion, it is essential for the National Labour Court to make a determination of the issues raised by the Appellant. And we hold that the failure of the Court to have done so is a reversible error.

On the other hand, this Supreme Court cannot pass upon the merit of the Summary Proceeding at this time, because for this Court to pass on pleadings,

issues and evidence, they must have first been passed upon by the Trial Court. And "where the Trial Court has not rendered any ruling on the issue, the most the Supreme Court can do is to remand the case and instruct the Trial Court on what to do...." Baaklini and Metropolitan Bank, s.a.l. vs. Henries, Younis et al., 39 LLR 303 (1999).

We must therefore send this case back to the National Labour Court to cite the parties; hear arguments on the Petition for Summary. Proceedings and the Returns thereto and decide the substantive issues raised in the Summary Proceedings filed against the Appellees. In doing so, the National Labour Court may, if it deems necessary to do so, correct error(s) if any, committed by the hearing officer, remand the case to the Hearing Officer and even give him specific instructions as to how to proceed with the matter. The Clerk of this Court is hereby ordered to send a mandate to the National Labour Court to resume jurisdiction in this case and give effect to this Ruling. Cost to abide final determination. AND IT IS HEREBY SO ORDERED.

COUNSELLOR J. JOHNNY MOMOH OF THE SHERMAN & SHERMAN, INC.
APPEARED FOR THE APPELLANT.

COUNSELLOR SNONSIO E. N1GBA OF THE LEGAL SERVICES, INC. APPEARED FOR
THE APPELLEE.