The **Management of Oxfam GB,** by and thru its Administrators and Officers APPELLANT Versus Her Honor **Comfort S. Natt,** Judge National Labor Court, His Honor, **Philip G. William** & **Joseph Nabieu**, of the City of Monrovia, Liberia.... RESPONDENTS

APPEAL. JUDGMENT AFFIRMED

HEARD: April 16, 2008 DECIDED: July 27, 2008

MR. JUSTICE JA'NEH delivered the opinion of the court.

Dispositive of these appeal proceedings are the following three issues:-

1. Was default judgment properly granted by the Hearing Officer?

2. Whether appellee perfected the default judgment as required by law? &

3. Was the Hearing Officer justified in dismissing appellant's motion for relief from judgment as well as the petition for judicial review?

The facts as gleaned from the certified records to this Court reveal that the appellee Joseph Tamba Nabieu was an employee of the Appellant Management, Oxfam GB.

On June 9, 2005, the appellee, thru its legal representatives, Tiala Law Associates, Inc. filed a complaint for wrongful dismissal against the appellant at the Ministry of Labour.

In its complaint, the appellee alleged that he was employed by the appellant as Health Promoter on July 27, 2004 and worked roughly 11 (eleven) months; that his services were terminated on May 27, 2005 based on a disciplinary committee hearing conducted on May 23, 2005 which held appellee responsible for misapplication of entrusted property; that having been accused of said misapplication, a crime under Liberian law, appellee was never prosecuted and convicted thereof as required by law.

The Hearing officer, Mr. Philip G. Williams cited the Appellant Management to a pre-trial conference at which appellant was represented by David A.B. Jallah Law Firm. The said conference into a possible out-of-court settlement failed to achieve the desired result. On August 11, 2005, a formal notice for full hearing into the complaint, scheduled on August 23, 2005, was served on the parties. Upon receipt of said notice of assignment, appellant wrote a letter to the Hearing Officer, the essential part of which states:

"By this letter we wish to advise that we have just retained the services of the Sherman & Sherman Inc. as our new legal Counsel, replacing and substituting the David A.B. Jallah Law Firm which had theretofore handled all our cases, including the above referenced.

In light of this, we wish to request and should be very pleased were you to grant a continuance of the trial of the said case to August 30, 2005, in order to enable our newly retained legal counsel, review the case record and adequately prepare itself to [represent] carry our interest."

On August 23, 2005 being the scheduled date of the hearing, Sherman & Sherman Inc. also wrote the Hearing Officer requesting continuance. Subsequently, another notice of assignment was served on the parties for hearing on August 30, 2005. On appellant's failure to be at the August 30th scheduled hearing, appellee's counsel made application for default judgment. Although said application was consistent with law, the Hearing Officer denied same and ordered the hearing to resume on September 2, 2005.

The records before us support the finding that one of counsels for appellant, Counsellor Payne Gibson of the Sherman & Sherman Inc. appeared at the close of the August 30 th formal sitting and was served with the minutes of the day's sitting notifying the parties accordingly.

The records further indicate that on the assigned date of hearing, same being August 30, 2005, Appellant Management wrote a second letter to the Hearing Officer, portion of which reads as follows:

"Further to our letter dated 17 August 2005 regarding Joseph Tamba Nabieu versus the Management of Oxfam GB, I would like to clarify that we have two law firms on

retainership. However, we have retained the David A. B. Jallah Law Firm in the matter of Joseph Tamba Nabieu versus the Management of Oxfam GB."

The above communication also expressed appellant's apologies for what it referred to as *"any inconvenience caused by earlier communications"*.

At appellant's failure again to appear on September 2, 2005, as scheduled, counsel for appellee applied for, and default judgment was granted by the Hearing Officer.

At the hearing, appellee's testimony, supported by documentary evidence, including letters of appointment and dismissal, recounted the allegations outlined in his complaint. He told the hearing that an investigation was conducted by Appellant Management into an allegation against him of ***"misapplication of entrusted property".*** Appellee averred further that his dismissal was based on the outcome of an investigation conducted by the same people who had accused him of misapplying appellant's property.

By a ruling dated September 27, 2005, the Hearing Officer determined that the dismissal was wrongful and awarded appellee the amount of US$4,732.00(United States Dollars four thousand seven hundred thirty two) representing accrued overtime and rest period, four months salary in lieu of reinstatement and one month salary in lieu of notice.

On November 1, 2005, appellant filed a motion for relief from judgment on the principal ground that it was not accorded its day in court. Said motion was resisted and on December 14, 2005, dismissed. The Hearing Officer in his ruling held that the trial tribunal had lost jurisdiction over the case.

Appellant then filed a 13 (thirteen)-count petition for Judicial Review before the National Labour Court for Montserrado County, to which appellee also filed a 7 (seven) count-resistance. Subsequently, appellant filed an 8 (eight) count reply, essentially restating the position detailed in its petition.

Her Honour, Comfort S. Natt of the National Labour Court, heard argument pro et con, and on October 24, 2007, dismissed appellant's petition and

affirmed the ruling of the Hearing Officer. Judge Natt in her ruling also cited the late filing of the petition for Judicial Review as proper ground for dismissing appellant's petition for judicial review.

Dissatisfied with Labour Court's final ruling, appellant has appealed and placed a 7 (seven)count bill of exceptions before the Supreme Court. Being germane to the final determination of this case, and for the benefit of this opinion, we have quoted counts 1 (one), 5 (five) and 6 (six) as follows:

1. "That Petitioner/Appellant was represented at the commencement of the investigation at the Ministry of Labour by the David A. B. Jallah Law Firm. Subsequently Petitioner/Appellant retained the services of Sherman & Sherman, Inc. and communicated same to the Hearing Officer at the Ministry of Labour; but notice of the retention of Sherman & Sherman, Inc. to represent Petitioner/Appellant in the self same case was not given to David A. B. Jallah Law Firm as is required by law. So, on August 30, 2005 the assigned date of the investigation, Petitioner/Appellant wrote the Hearing Officer informing him that the David A. B. Jallah Law Firm would single handedly represent Petitioner/Appellant's interest in the above -captioned case. Notwithstanding this, the Hearing Officer called the case with only Respondent's counsel being present. Thereupon, Respondent counsel requested the investigation to enter default judgment against Petitioner/Appellant. This request was denied by the Hearing Officer and the trial suspended pending the issuance of regular notice of assignment. However the Hearing Officer without the issuance of a regular notice of assignment as earlier ruled, made a notice of assignment on the minutes of the investigation for hearing of the case on September 2, 2005 at the hour of 10:30 A.M., and allegedly delivered copy to Cllr. P. Nyenawelie Gibson of Sherman & Sherman, Inc. who was no longer counsel in the case as per Petitioner/ Appellant's letter to the hearing Officer dated August 30, 2005."

2. "That also to count one (1) above, Petitioner/Appellant says that when the case was called for hearing on September 2, 2005, the David A. B. Jallah Law Firm was not present at the hearing and accordingly, Respondent's counsel prayed for default judgment against Petitioner/Appellant and same was granted by the Hearing Officer. Thereupon, Respondent's counsel proceeded to and perfected the default judgment. Subsequently, the case was suspended and final judgment entered thereupon on September 27, 2005."

3. "That the Petition for Judicial Review was heard and denied by the National Labour Court judge on grounds that the Petitioner/Appellant did not file a Petition for Judicial Review of the judgment for which relief was sought within statutory time therefore the case was not properly brought under the jurisdiction of the court. For this error of Your Honour, Petitioner/Appellant excepts."

4. "Petitioner/Appellant submits that under our law, a Motion for Relief from Judgment is another means by which litigants can be granted relief from an erroneous or unwarranted judgment; it is in the nature of a review, it is a separate proceedings from the action sought to be reviewed; it is a new action, not a further step in the former action. The review is said to be equivalent to a new trial after judgment. Accordingly, Your Honour erred when Your Honour refused, failed and neglected to pass on the issues raised in the Motion for Relief from Judgment but proceeded to deny the Motion for Relief from Judgment, out of which the Petition for Judicial Review grew.... For this error of Your Honour Petitioner/Appellant excepts."

5. "That the law provides that where the Legislature has chosen to accord to a party the right to file Petition for Judicial Review from the final judgment of a Hearing Officer and the right to file a Motion for Relief from Judgment, the court cannot impose a limitation of that by asserting that because a party did not file Petition for Judicial Review, the court cannot grant relief from the judgment to which Petition for Judicial Review was not filed. Hence, Your Honour erred when Your Honour refused, failed and neglected to pass on the issues raised in the Motion for Relief from Judgment but proceeded to deny the motion for relief from judgment on grounds or for reasons that the Petitioner/Appellant did not file Petition for Judicial Review from the Judgment for which Relief is being sought. And for this error of Your Honour, Petitioner/Appellant excepts."

Passing on the first question, ***whether default judgment was properly granted,*** we hold that the Hearing Officer's decision to grant the default judgment was proper.

Certified records before this Court show that when the appellee filed its complaint, a conference was held seeking to amicably resolve the labour dispute. Appellant was represented at the said conference by the David A.B. Jallah Law Firm. However, the parties did not reach an amicable settlement. As

a result, a full hearing was scheduled to commence on August 23, 2005 and notices of assignment were served on the parties.

On the scheduled date of the hearing, that is to say, August 23, 2005, appellant communicated with the Hearing Officer informing the investigation that appellant had just retained the services of the Sherman & Sherman Inc. as its new legal Counsel and was replacing the David A.B. Jallah Law Firm. Appellant also informed the hearing tribunal that the Sherman & Sherman Inc. thereafter will handle all their cases. The appellant further requested the investigation to adjourn to August 30, 2005, to enable their newly retained counsel, Sherman & Sherman to familiarize itself with the case records.

On the same date, August 23, 2005, the newly retained counsel, Sherman & Sherman Inc. also wrote the Hearing Officer requesting continuance. Based on these requests, the Hearing Officer ordered the issuance of another notice of assignment which was served on the parties for hearing on August 30, 2005. But on August 30, 2005, being the scheduled date of the hearing, neither the appellant nor his counsel appeared. Appellee's counsel made an application for default judgment. Notwithstanding its consistency with the law, said request was denied by the Hearing Officer and the hearing ordered continued to September 2, 2005.

At the close of the August 30, 2005 sitting, and while the record was being made on the minutes, one of counsels, Counsellor Payne N. Gibson of the Sherman & Sherman Inc. appeared and was served copy of the minutes of the day's sitting. The minutes notified the parties of the September 2, 2005 scheduled hearing.

The transcribed records further reveal that Appellant Management again wrote another letter dated August 30, 2005, informing the Hearing Officer that it had re-retained the David A. B. Jallah Law Firm to represent the Management of Oxfam GB in the self same matter and expressed its apologies for any inconveniences caused by its actions.

Digressing a bit, this Court desires to address a matter of mistaken belief that once a lawyer wrote a letter for excuse, the court automatically grants same.

Contrary to said belief, an excuse is granted only after the court or a hearing tribunal favourably acts upon the request.

In the case: Liberia Bank for Development and Investment versus Her Honor Comfort S. Natt and Baysamah E. Seville, decided October Term 2006, this apparent general belief by lawyers was addressed by this Court. Mr. Chief Justice Lewis speaking for this Court observed:

"....It appears that lawyers are under the (mistaken] belief that once a letter is written to a judge or the clerk of court, or a hearing officer, or the clerk of the investigation that a lawyer is unable to attend upon an assignment, that letter is sufficient, and the judge or the hearing officer is under a duty to grant the request. That is not true."

The court held: *"merely addressing a letter to a judge or filing a letter with the clerk of court, or addressing a letter to a hearing officer or filing a letter with the clerk of an investigation, in the case of the Ministry of Labour that counsel cannot attend upon an assignment is not ipso facto an excuse. Only after the judge or the hearing officer has acted upon the request, and granted the excuse, that it is an act binding on the judge or the hearing officer. In the absence of action by the judge or the hearing officer granting the request, the letter is not an excuse."*

When the case was called on September 2, 2005 as scheduled, appellant failed and neglected to appear. Default judgment was then granted by the Hearing Officer based on proper application made by appellee.

It is the law in this jurisdiction that: *"If a defendant has failed to appear, plead, or proceed to trial, or if the court orders a default for any other failure to proceed, the plaintiff may seek a default judgment against him." 1LCLR title I: 42.1*

Appellant's argument also that the Sherman & Sherman Inc. represented by Counsellor Gibson did not amount to proper service on appellant, is un-supported by the records. Appellant Management's letter of August 30, 2005 clearly shows that both the David A. B. Jallah Law Firm and the Sherman & Sherman Inc. were appellant's retained lawyers.

The relevant portion of said letter reads: ***"****Further to our letter dated 17 August 2005 regarding Joseph Tamba Nabieu versus the Management of Oxfam GB, I would like to clarify that we have* ***two*** *law firms on retainership;* and referred to David A. B. Jallah and Sherman & Sherman Inc. as the two firms

On the question "who may represent a party", Section 1.8 sub-section, **1 LCLR, Title I,** ,pulates as follows: *"A party, other than an infant or incompetent person, may prosecute or defend a civil action in person or by attorney or both..."* Further, Section 8.3 Sub Section 3 of the same Title provides under the caption, *"Upon an attorney": "Except as otherwise required by law or order of court, papers required to be served upon a party in a pending action shall be served upon his attorney"*

Addressing the issue of change of attorney, Mrs. Justice Brooks-Randolph, speaking for this Court in **Johnson versus Smith,** 26 LLR 331, 336 (1977) stated: "Our law and practice are definite as to the mandatory requirement for change of counsel should a party decide that he needs to employ the services of another lawyer to represent him. An attorney of record may be changed by order of the court, or by filing with the Clerk of court a notice of change signed by the attorney and the party with a copy served on the other parties."

There being no showing that the said mandatory procedure for change of counsel was observed by the appellant, it is the opinion of this Court that under the circumstances of this case, the service on Counsellor Gibson, as herein detailed, constitutes adequate service on the appellant. And we so hold.

On the final issue, we hold that the default judgment granted by the Hearing Officer was also perfected by the appellee in keeping with law.

When the case was called for hearing, appellee took the stand and established that he was an employee of the Appellant Management, identified and testified to an instrument over the signature of Josephine Hutton, Country Programme Manager of Oxfam GB, dated July 22, 2004. The said instrument shows that appellee was offered temporary contract of employment as a Health Promoter from July 27th to 26th August 2004 and provided for Appellee a monthly salary of US$500.00 subject to tax. Although this letter offered one month temporary employment, yet appellee's last pay slip was for December, 2004. Appellee also

introduced said salary slip for the month of December 2004 showing a net pay of US$453.00 following appropriate tax deductions. In general, appellee narrated the allegations as contained in his complaint backed by relevant instruments which also included his letter of dismissal. He concluded his testimonies by telling the hearing that an investigation was conducted by Appellant Management into an allegation against him of ***"misapplication of entrusted property",*** following which he was dismissed. He further testified that said administrative hearing was conducted by the very accusers who refused to prosecute him for the alleged crime in a court of law.

When appellee rested with production of oral and documentary evidence, the Hearing Officer determined that the dismissal was wrongful and awarded the him as follows:

1. Accrued overtime and rest period =2.5hrs. x 248 = 620hrs. x US$3.60 (time and a half) US$2,232.00

2. Four (4) months salary in lieu of reinstatement x US$500 = 2,000.00

3. One (1) month salary in lieu of notice x US$500 = 500.00

US$4,732.00

As already indicated, it is our opinion that the ruling of the Hearing Officer was consistent with law.

In **Tamba versus CITIBANK,** 31 LLR 291, 296-7(1983), Appellant Tamba was dismissed following accusation of his alleged complicity in the crime of embezzlement. Thereupon, Appellee CITIBANK wrote a letter dismissing the appellant and stated in the said letter that Appellant Tamba's behaviour had "compromised his reliability and usefulness to the Appellee." The Appelle Bank also accused the appellant of a conduct constituting a serious breach of his obligations irrespective of whether or not he was involved in the commission of the said crime.

To dispose of a similar question, the Supreme Court held that the dismissal of an employee is wrongful save where said employee was guilty of any of the

stipulated acts as provided under Section 1508 of the Labour Laws of Liberia. Ibid.

Similarly in the case at bar, the appellee was accused of misapplication of entrusted property and on the strength of said allegation dismissed by the appellant Management.

On review of all the relevant facts, the Hearing Officer determined that appellant's action to dismiss the appellee was wrongful. Clearly, this Court of last resort has not found any compelling evidence to the contrary in the records transmitted to us. In the absence of said evidence, we are unable to disturb the administrative finding of the Hearing Officer.

In **Johnson versus Lamco JV Operating Company,** 31 LLR 735, 745 (1984), Mr. Justice Smith speaking for this Court, held:

"Questions of fact involved in a proceeding before an administrative agency are to be determined, at least primarily, by the agency, rather than by a court; and in the absence of fraud, lack of jurisdiction, or arbitrary or capricious action, constituting a denial of the process of law, the agency's finding of fact, or decision of a question of fact, is to be accepted as final, binding, and conclusive, and may not be reviewed by a court except to the extent that a constitutional or statutory provision makes it reviewable."

We uphold the principle in the Johnson case, mentioned herein, and confirm the judgment of the National Labour Court, affirming the ruling of the Hearing Officer.

To pass on the final question whether the Hearing Officer properly dismissed the motion for relief from judgment, as well as the petition for judicial review for reason that same was not filed within statutory time, we travelled again to the records.

In its bill of exceptions, appellant says it was reversible error when its Petition for Judicial Review was heard and denied by the Judge of the National Labour Court on ground that Appellant did not file its Petition for Judicial Review within statutory time. Appellant further says that it was an error for the Judge

to hold that appellant's failure to file within the time allowed by statute, made the petition to be improperly brought under the jurisdiction of the court. It is also appellant's argument that the Legislature having accorded a party the right to file Petition for Judicial Review from the final judgment of a Hearing Officer and has also given a party the right to file a Motion for Relief from Judgment, a court of law cannot impose a limitation by asserting that because a party did not file Petition for Judicial Review, the court cannot grant relief from the judgment to which Petition for Judicial Review was sought. This Court disagrees.

The statutes controlling state:

"On *motion and upon such terms as are just, the Court may relieve a party or his legal representative from a final judgment for the following reasons:*

(a) Mistake, inadvertence, surprise, or excusable neglect;

(b) Newly discovered evidence which, if introduced at the trial, would probably have produced a different result and which by due diligence could not have been discovered in time to move for a new trial under the provisions of section 26.4 of this title;

(c) Fraud (whether intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party;

(d) Voidness of the judgment; or

(e) Satisfaction, release, or discharge of the judgment or reversal or vacating of a prior judgment or order on which it is based, or inequitableness in allowing prospective application to the judgment."

Time for Motion. *A motion under this section shall be made within a reasonable time after judgment is entered.* 1 LCLR Title 1, Section 41.7 (2)(3) pp 212 -3."

While the Interim National Assembly (INA) Decree No. 21 which amends the Judiciary Law establishing the National Labour Courts speaks to time limitation for taking an appeal as follows:

"Any party dissatisfied with the decision of a Hearing Officer may take an appeal by filing a petition for review with the Labour Court within 30 days after receipt of the Hearing Officer's decision. Copies of the petition shall be served promptly on the Hearing Officer who rendered the decision, and all parties on record. The decision of a Hearing Officer shall become final and conclusive upon the expiration of the thirty days after copies of his ruling had been received by the parties to the case."

The record is clear that the Hearing Officer made his final ruling on September 27, 2005. It is also crystal clear that the appellant filed a motion for relief from judgment on November 1, 2005, at least thirty-four days after the rendition of final ruling by the Hearing Officer.

This Court has observed that appellant having failed and neglected to comply with the statutory time limit of thirty days for filing a petition for judicial review at the National Labour Court, thereafter sought to circumvent the law by filing a motion for relief from judgment as an attempted and clever substitute for petition for judicial review. This Court frowns on such practice.

In **Brown Boveri Cie, AG versus Lewis and Tamba,** *26L LR 170,178-9,* Mr. Justice Henries speaking for this Court on this issue stated:

"Motion for relief from judgment, the Civil Procedure Law Rev. Code 1:41.7 which provides for such relief, was not intended as, and is not a substitute for a direct appeal from an erroneous judgment. It was not designed to be used as a means of subverting the appellate process by announcing appeal from judgment and then within appeal time moving trial court for relief. The motion which does not affect finality of judgment or suspends its operation, is addressed to the sound legal discretion of the court..".

To the mind of this Court, the Appellant was aware of being time barred to file a petition for judicial review, the normal appeal process available to a dissatisfied party in labour and debt cases. Appellant therefore sought to substitute regular appeal process by filing an unmeritorious motion for relief from judgment. Even more troubling was Appellant's failure to state any of the grounds statutorily required for proper filing of a motion for relief from judgment.

The records in this case having shown that appellant filed the petition for judicial review at the National Labour Court outside the time period allowed by statute, and yet sought to have this case reviewed through the office of motion for relief from judgment, we hold that the decision of the Hearing Officer denying same, was proper, final and conclusive. The judgment of the National Labour Court affirming the ruling of the Hearing Officer was therefore proper and legal.

WHEREFORE, AND IN VIEW OF THE FOREGOING facts and laws applicable in this case, it is the considered opinion of this Court that the ruling of the National Labour Court affirming the judgment of the Hearing Officer of the Ministry of Labour, dismissing the motion for relief from judgment, being sound in law, should not be disturbed and same is hereby affirmed.

The Clerk of this Court is ordered to send a mandate to the National Labour Court commanding the Judge presiding therein to resume jurisdiction and enforce this judgment. Costs are assessed against the appellant. And it is so ordered.