The **Management of Power Tech**, of the city of Monrovia, Liberia Appellant/Respondent versus APPEAL **Friday Sayouah**, et al. also of the City of Monrovia, Liberia Appellees/Petitioners

APPEAL. JUDGMENT REVERSED CASE REMANDED

Heard: March 29, 2006 Decided: August 18, 2006

MRS. JUSTICE JOHNSON DELIVERED THE OPINION OF COURT.

On April 14, 2004, three dismissed employees of Power Tech addressed a letter of complaint to the Ministry of Labor alleging that the management of Power Tech had wrongfully dismissed them. They alleged in their letter that Power Tech was formerly LITCO, and that when LITCO became Power Tech, two of the employees, Friday Sayouch and Ben Siver, had not been paid certain benefits, e.g. severance pay, accrued leave and other labor-related benefits. They alleged further that management laid them off without any letter of termination or payment of benefits due them for injuries sustained while in the employ of management. The letter of complaint for wrongful dismissal was signed by three dismissed employees: Friday Sayouah, Ben Silver, a carpenter, and Moses Landlah, a mechanic.

On May 3, 2004, the Director of Labor Standards, Ministry of Labor, forwarded the letter of complaint with a covering letter to the management of Power Tech citing the management to a conference for May 7, 2004 at 10:30 a.m.

Upon receipt of the letter, the management of Power Tech appeared with the company's lawyers from the David A. B. Jallah Law Firm, while the complainants were represented by TIALA Law Associates, Inc. At the end of the conference, counsels for complainants withdrew their letter, with reservation to re-file.

On June 4, 2004, TIALA Law Associates, Inc. filed an amended complaint. On June 7, 2004, the Assistant Minister of Labour for Labour Standards ordered the issuance of a notice of assignment, along with complainants' amended complaint on the parties for a conference/investigation to be held on June 10, 2004. The assignment was served and returned served on management, by and through Lionel A. Keller, Sr., for the defendant/appellant, but not on the counsels of record for the defendant/appellant.

At the call of the hearing, management did not appear but counsel for complainants appeared and asked for another assignment, which was issued for appearance on June 17, 2004. Once again, the assignment was served on Lionel Keller, Sr. for management, but not on management's counsels, and on Wollie Barclay, Sr., for the complainants. When the hearing convened on June 17, 2004, defendant/management was absent. Counsel for complainants there and then made a motion for an imperfect judgment of default; same was granted and the hearing was held with the complainants testifying in their own behalf. At the end of the hearing, judgment was rendered on August 18, 2004 in favor of the complainants. There being no representation for defendant/management, no exception was taken nor appeal announced from the ruling. On August 23, 2004, a copy of the ruling was served on defendant/management's Project Manager, Lionel Keller, Sr., but not on counsels, the David A. B. Jallah Law Finn.

According to the law and practice hoary with age in our jurisdiction, a losing party in a labor hearing has ten days within which to file a petition for judicial review with the Clerk of the National Labor Court. Up to September 7, 2004 when the Clerk of the National Labor Count issued a certificate to that effect, no petition for judicial review had been filed.

On September 20, 2004, counsels for complainants filed a petition in the National Labor Court for enforcement of the Labor Officer's ruling. The Judge of the National Labor Court, Her Honor Comfort S. Natt, on the same day issued the following order addressed to the Clerk of the National Labor Court:

"Upon receipt of these our orders together with the accompanying documents consisting of petitioners' petition, affidavit and other documents thereto, and upon the payment of the necessary legal fees appertaining thereto, you will please issue a writ of summons directed to the Sheriff of the National Labor Court for Montserrado County, ordering her to summons the respondents herein to appear before the National labor Court on or before the 1 day of October A.D. 2004, at the hour of 10:00 a.m. to respond to petitioners' petition.

"You are also ordered to insert a clause in the writ of summons requiring the respondent to file its returns and/or appearance in your office on or before the 1 day of October, A.D. 2004, same being ten (10) days from the date of service of these precepts, and that upon the failure of the respondent to do so, judgment by default will be rendered against it.

"You will also command the Sheriff to make and file her Official Returns endorsed on the back of the writ of summons as to the manner of its service on or before the day of October, 2004.

"And for so doing, this shall constitute your legal and sufficient authority."

Pursuant to the Judge's order, a writ of summons was issued, and below is the Sheriff's Returns to the summons dated September 24, 2004:

SHERIFF'S RETURNS

On the 22'd day of September A. D. 2004, Court's bailiff Anthony K. Swen duly served this summons on Mr. Baclay Wollie, legal consultant; he signed and received a copy.

Now, this constitutes my official Returns to the Clerk of this Honorable Court, this 24 th day of September A. D. 2004

Signed: Anthony K. Swen
Bailiff, National Labour
Court, Mont. R. L."

The Sheriff's Returns show that the summons was served on the representative of the complainants, rather then on the defendant/management who was supposed to be summoned to appear and respond to the complainants' petition to enforce the judgment of the Labor Hearing Officer as the Judge's order had directed.

On October 20, 2004, counsel for complainants applied for and received a certificate from the Clerk of the National Labor Court to the effect that defendant/management had failed or refused again to respond to yet another order of the court; as a consequence of that failure, counsel for complainants requested for enforcement of the petition.

Without reacting to counsel for [illegible] the judge of the National Labor Court, Her Honor Comfort S. Natt, addresses, a letter to the management of Power Tech, copied to TIALA Law Associates, Inc., inviting the parties to a conference, at her office, on November 25, 2004 at 12:00 noon.

In response to the Judge's letter, the management of Power Tech appeared along with its counsel, the David A. B. Jallah Law Firm. After the conference with the

National Labor Court Judge, the David A. D. Jallah Law Firm filed returns to the petition to enforce judgment consisting of eight Counts. The TIALA Law Associates, Inc. filed a document entitled "Legal Memorandum" in which they raised several factual and legal issues.

The Judge of the National Labor Court handed down a ruling in which she confirmed the ruling of the Labor Hearing Officer, to which ruling the defendant/management excepted, and perfected an appeal to this Court.

Counsel for defendant/management, Power Tech, has come before this Court on a bill of exceptions containing three counts:

BILL OF EXCEPTIONS

1. That respondent submits and says that Your Honour committed a reversible error when you upheld the Hearing Officer's, at the Ministry of Labour, ruling granting the default judgment against the defendant/respondent that was not given its day in court consistent with our statute, which provides that in a case in which the defendant/respondent herein retains the services of legal counsel and is represented by said counsel as of record in a proceedings as is clear from the Court's records in this case, the notice of assignment should have been served on the counsel and not the party who is not familiar with court proceedings.

2. That the respondent further says and avers that Your Honor at, committed a reversible error when you upheld the Hearing Officer's ruling that defendant/respondent was properly served when the Hearing Officer knowing that the David A. B. Jallah Law Firm, the counsel on record, conspicuously located on the corner of Broad and Johnson Streets which should have been served with the amended complaint, but the Hearing Officer deliberately elected to serve the amended complaint on the party other than the said firm which is already the counsel on record representing the defendant herein.

3. That the defendant/respondent says and contends further that Your Honour also committed a reversible error when you affirmed and upheld the Hearing Officer's ruling that Power Tech, a separate and distinct corporate entity from LITCO, be held liable for the alleged obligation of LITCO, because according to Your Honour, LITCO and Power Tech are one and the same entity and that the only different is the changed name.

Counsels for both sides filed briefs in which they raised and argued several issues of law. There is, however, one issue that we consider determinative of this case and that is whether the defendant/management was properly served with the notice of assignment? A careful perusal of the summons, Judge's order, and notices of assignments issued by the Hearing Officer and the National Labor Court reveal the following:

1. That when the first letter of complaint was filed and served on the defendant/management Power Tech for a hearing on May 7, 2004 at 1:30 A.M., the defendant/management appeared with its legal counsel, the David A. B. Jallah Law Firm, while the complainants appeared with their counsel, TIALA Law Associates, Inc. After the conference with the Hearing Officer, the complainants, through their counsel, gave notice of their intent to withdraw and re-file their complaint, which they did.

2. The Hearing Officer sent out assignments which were served and returned served on counsel for complainants, but on defendant/management and not on the counsel of record, the David A. B. Jallah Law Firm. The record shows that there was no representation for defendant/management.

3. Another assignment was issued and again served on counsels for complainants, and served on defendant/management, but not on its counsel.

4. A default judgment was requested for and granted against the defendant/management and copy of the ruling served on the defendant/management, but not on its counsel.

5. On the defendant/management's failure to petition for judicial review within statutory time, counsel for complainants filed a petition for enforcement of the ruling of the Labor Officer. The Judge of the Labor Court issued an order detailing the steps for service of process which was issued and served not on the defendant/management or its legal counsel, but surprisingly on the Labor Consultant of TIALA Law Associates, Inc., one of the representatives of the complainants. As a result the defendant/management did not file returns to the Petition.

Our Civil Procedure Law, 1 LCL Rev., section 8.3(4), on Service of papers, provides clearly: "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 by one of the following methods: . . . If a party has not appeared by attorney or his attorney

cannot be served, service shall be upon the party himself by one of the following methods: (a) [b]y delivering the paper to the party personally. . . .

A careful perusal of the records in this case has not revealed that counsel for the defendant/management, the David A. B. Jallah Law Firm, could not be served and that therefore process had to be served always on the party, the defendant/management.

It has been held over and again that proper service of process is the only way notice can be given to the parties and their counsel as to the time and purpose for the assignment. It is the only way the court can have jurisdiction over their person. It has also been said that a counsel who applies for issuance and service of process must superintend the proper service thereof. "It [is] the duty of counsel in an action in which the defendant did not appear as per assignment to inspect the writ and the Sheriff's returns thereon, make application for writ of re-summons or summons by publication as the case may be, and exhaust all other procedural aspects before making application for judgment by default." *City Plumbing and Construction Services, Inc. v. Pupo and Blackwood Hodge,* 31 LLR 431, 433 (1983).

It is strange that counsels for complainants repeatedly were served assignments, but said counsels failed to notice from the several Sheriff's Returns that counsels for the defendant/management, the David A. B. Jallah Law Firm, was never served from the day they first appeared and announced legal representation for the defendant/management. It is even more surprising that neither the said counselors nor the Judge of the National Labor Court noticed that the second summons and Apellees' own amended complaint were neither served on the defendant/management nor on his legal representative, the David A. B. Jallah Law Firm, but that said summons was served on the TIALA Law Associates, Inc., the legal representatives of the complainants.

The Supreme Court has held that "[n]o hearing should be heard unless the notice of assignment has been issued and served on the party or his counsel." *Victoria Johnson-Maxwell v. Edgar Mitchell,* **35 LLR 609, 614 (1988).**

Although we do not have the answer as to why the defendant/management, now appellant, signed several assignments but failed to appear or forward the assignments to its legal counsels, we are however, bound to uphold the law as it is provided for in the Civil Procedure Law, 1 LCL Rev. section 8.3 (3 & 4) (197 3) on how proper service of process should be made. It is regrettable that defendant/management

signed for and received the notices of assignment and did nothing thereafter, besides selecting or deciding which of the assignments or letters to forward to his counsels, and which one to ignore. We consider this behavior to be a demonstration of bad faith and disrespect to the issuing administrative agency and the Judiciary. It is the hope of this Court that lawyers will advise their clients to desist from acts that delay and impede the administration of justice.

It has been held that "ordinarily the returns of the Sheriff as to service of process are presumed to be correct and courts take jurisdiction over the parties where the returns show that service was duly made. However, the presumption is reputable and not necessarily decisive." *Badio and El Nasr Export and Import Corporation v. The Liberia Industrial Development Corporation,* 35 LLR 229, 237 (1988). That being the case, judges or administrative hearing officers should proceed with caution, and verify returns made to service of process, summons and notices of assignment, before granting a motion for default judgment. Failure to exercise caution, and to proceed on the basis of misleading or incorrect Sheriff's Returns have quite often resulted in violating a party's right to due process of law by not having notice and an opportunity to defend or respond to the issues, legal or factual, raised in the pleading and the delay in the adjudication process. The Sheriff's Returns in the case at bar were faulty and out of line with the law in such cases made and provided.

It is our holding therefore that because the notice of assignment was not served on the counsel of record for the defendant/management, the ruling of the Labor Hearing Officer cannot bind and obligate the defendant/management. We also hold that the ruling of the Judge of the National Labor Court is equally non-binding.

In view of the foregoing, the Judgment of the National Labor Court is hereby reversed, and the case remanded to the National Labor Court who shall remand same to the Minister of Labor for hearing anew, after all parties have been served with notice of assignment for hearing. Cost to abide final determination. AND IT IS HEREBY SO ORDERED.

Judgment reversed; case remanded.