. R. VIJAYARAMAN and PHILIP G. WILLIAMS, Hearing Officer, Ministry of Labour, Appellants, *v.* **THE MANAGEMENT OF XOANON LIBERIA (LTD**), by and thru its President and all Corporate Officers, Appellee.

APPEAL FROM THE NATIONAL LABOUR COURT, MONTSERRADO COUNTY.

Heard: April 1, 2004. Decided: August 13, 2004.

1. Default judgment, as a matter of law, may be granted if a defendant fails to appear upon notice of assignment issued for the hearing of the case.
2. It is not the province of the Supreme Court to add or subtract from legislation where the meaning is plain.
3. On application for default judgment, the applicant is required to provide proof that the summons and complaint were served, and further provide proof of the facts constituting the claim and the amount due.
4. The phrase "failed to appear, plead or proceed to trial" does not mean that once a defendant in a labour case has appeared, pleaded and proceeded to trial, default judgment cannot be granted against him at any subsequent stage of the trial.
5. Default judgment can be granted even after the defendant has taken the stand to testify.
6. If a defendant fails to appear for resumption of trial upon notice of assignment default judgment can lie against him.
7. The fact that a party has taken the stand and produced witnesses does not prevent the rendering of default judgment against him.
8. Once a case has not been completed, counsel of record is bound to honor all assignments issued and served on him until the case is finally decided, or he will be presumed to have abandoned the case.
9. All lawyers are required to be prompt and faithful in answering assignments for their clients and tardiness or absenteeism will not be accepted or encouraged on a bare face explanation of "unforeseen and unavoidable circumstances".
10. There is no statute or case law in the Liberian jurisdiction that defines or determines the number of absences that warrant the granting of default judgment.
11. The matter of how many absences is allowed for a default judgment to be entered is left to the sound discretion of the court or administrative officer as the case may be.
12. Aliens within the Liberian borders are equally protected under the laws of Liberia and to abandon an alien worker as a public charge without any means of support is unfair.
13. A lawyer's appearance in court should be deemed equivalent to an assertion on his honor that in his opinion his client's case is one proper for determination.

14. It is not proper for counsel, on the day a case is called for argument, to file notice of withdrawal of representation from the matter, especially in the absence of a showing of consent by the client.
15. The right of a lawyer to withdraw from employment once assumed arises not only from good cause, and the lawyer should not throw up the unfinished task to the detriment of his client, for neither the desire nor consent of the client is sufficient to countenance that.
16. An attorney may not compromise, abandon or withdraw from his representation of the client's case without the knowledge or consent of that client.
17. Findings made by an agency with respect to questions of fact shall be conclusive on the court.

The appellant, an Indian National was engaged by the appellee under a two year contract. Two weeks after the expiration of the employment contract, the appellee addressed a letter to the appellant terminating his services with the appellant retroactively to cover the several months that appellee had not compensated appellant for the period served and demanded that the appellant submits himself to an audit as a precondition to receiving the payment for service rendered the appellee. Growing out of this act of the appellee, the appellant filed an action of unfair labour practice with the Ministry of Labour.

After several failures at holding a pretrial conference due primarily to the absence or excuse of appellees counsel, the case was regularly assigned for hearing. Trial of the case was finally commenced with appellant taking the stand and testifying on his behalf. When, however, upon the further failure by the appellee and its counsel to appear for continuation of the case, counsel for appellant moved the Hearing for default judgment, which was granted and the appellant allowed to conclude presentation of evidence to perfect the judgment. Thereafter, the hearing officer ruled the appellee liable to the appellant, not only for arrears due the appellant but also for an additional twenty months which he said was for renewal of the contract.

On appeal to the National Labour Court, the judge reversed the ruling of the hearing officer and remanded the case for continuation of the testimonies of witnesses, holding that one absence from the case following the commencement of testimony was insufficient for default judgment to be rendered.

The Supreme Court disagreed and reversed the ruling of the National Labour Court, with modification. The Supreme Court also rejected the attempt by counsel for the appellee to withdraw from the case when it was called for hearing before it.

In reversing the ruling of the National Labour Court and reinstating that of the hearing officer, the Supreme Court opined that the entering of a default judgment was within the discretion of the lower court or hearing officer and was not dependent upon the number of times a party had been absent from the trial of the case. The Court noted that even one absence constituted a sufficient basis for the entry of default judgment upon application by a

party and a showing that the other party had been duly notified of the hearing, had been served with summons and the complaint, and the plaintiff had produced evidence to substantiate the claim and the amount due. Moreover, the Court said, default judgment could be entered even after trial had commenced and testimonies given, as in the instant case.

In upholding the ruling of the hearing officer, however, the Court stated that the hearing officer had awarded more than the appellant was entitled to. The Court noted that the contract between the appellant and the appellee was for a definite period of time, that it had already expired, and that there was no evidence that either party had renewed same. Hence, the Court said, the award for a renewal of the contract was unjustified as the appellee was only obligated to the appellant for the unpaid period of the expired contract, plus the costs of transporting him back to his home country, and not for any renewal. The award was therefore reduced from US$67,355.00 to US$19,355.00.

On the matter of withdrawal of counsel from representation of the appellee, the Court held that such act was unacceptable as to do so would bring great injustice to the client. The judgment of the Labour Court was therefore *reversed*, and the ruling of the hearing officer reinstated, with modification.

M. Kron Yangbe and *Samuel R. Clarke* of the Cooper & Togbah Law Firm appeared for the appellant. *James E. Pierre* of Pierre, Tweh & Associates appeared for the appellee.

MR. JUSTICE KORKPOR, SR., delivered the opinion of the Court.

This case is before us on appeal from the ruling of the National Labour Court Judge, Her Honour Comfort S. Natt, reversing the ruling of the hearing officer of the Ministry of Labour and remanding the case for hearing on its merits.

The records show that the appellant, Mr. K. R. Vijayaraman, an Indian National, entered into an employment contract with the appellee, the Management of Xoanon Liberia (Ltd). The duration of the contract was for a definite period of two years, commencing from 6th November, A. D. 1999, to 5th November, A. D. 2001. The contract provided that the appellee pays the appellant the amount of US$2,000.00, payable monthly not later than five days after the due date. The contract also provided that the appellant, who was recruited in India, be given an air ticket to return to his home country upon the expiration of the contract. Further, it was provided under the contract that the appellant shall not accept employment in Liberia in the logging industry for a period of one year after the expiration of the contract.

The records also reveal that two weeks after the employment contract between appellant and appellee expired on November 5, 2001, the appellee addressed a letter to the appellant terminating appellant's services retroactive to July 31, 2001, and demanded that appellant submits to an audit as a precondition for the payment of salary arrears due him. As at the

expiration of the contract, the appellee, Management of Xoanon Liberia (Ltd) owed the appellant more than nine months salary arrears totaling US$19,355.00.

The appellant instituted an action of unfair labour practice against appellee on December 11, 2001, by filing a complaint addressed to the Minister of Labour who assigned the matter to the hearing officer, Philip G. Williams. The hearing officer, prior to commencing a formal investigation, cited the parties to a pre-trial conference scheduled for Tuesday, December 18, 2001. The appellee's counsel wrote a letter requesting for two weeks adjournment to enable him to get in contact with the general manager of appellee, who according to appellee's counsel, had traveled out of Liberia on official matters. Though the hearing officer denied the request of appellee's counsel for two weeks adjournment, the matter was postponed and the pre-trial conference re-assigned for December 20, 2001. On December 20, 2001, the appellee's counsel again wrote another letter of excuse, whereupon the pre-trial conference was again reassigned for December 27, 2001. After numerous postponements, the case was regularly assigned for trial on December 29, 2001.

On December 29, 2001, one of appellee's counsels, Counsellor Scheaplor Dunbar, informed the hearing officer that his Law Firm, Pierre, Tweh & Associates, had assigned the handling of the matter exclusively to Counsellor Weah Wesseh, who had traveled to Buchanan on another matter for the Firm, taking with him the case file. Counselor Weah Wesseh believed that he would be back in time for the hearing of the case, but that up to the time the case was called, Counsellor Wesseh had not returned. Counsellor Dunbar therefore prayed for the continuance of the case. The request was granted and the matter was re-scheduled for January 31, 2002, at 10:00 a.m. All parties were present on January 31, 2002, and Appellant K. R. Vijayaraman took the witness stand and testified in his own behalf. Thereafter, the hearing of the case was re-assigned for February 4, 2002.

But when the case was called on February 4, 2002, appellee was not present, and neither was appellee's counsel present. Appellant's counsel then moved for default judgment against the appellee and the default judgment was granted. The imperfect judgment of default was made perfect through the production of two witnesses. Thereafter, the hearing officer entered a final ruling holding the appellee liable to appellant in the amount of US$67,355.00, plus a return ticket to India. Being dissatisfied with the said ruling, appellee filed a petition for judicial review with the National Labour Court on March 1, 2002. The petition for judicial review was heard, and the Judge of the National Labour Court made a ruling reversing and setting aside the ruling of the hearing officer and remanded the case to be heard anew on its merits.

The appellant announced an appeal from the ruling of the National Labour Court and filed a ten-count bill of exceptions. We consider counts 1, 2, 3, and 9 thereof to be pertinent to the determination of this matter.

In count 1, the appellant stated that although no statute or opinion of the Honorable Supreme Court has set any limitations on the number of absences that constitutes a failure to

proceed, for which a default judgment may be granted, yet the National Labour Court Judge proceeded to rule that the hearing officer committed error to have granted default judgment against the petitioner for its unexcused absence from the trial. Petitioner, however, was notified about the time and the place of the hearing, but for no justifiable and legal reasons stayed away.

In count 2, the appellant stated that in reversing the hearing officer's ruling the National Labour Court Judge ignored the fact that the respondent is a foreign contractual employee from India, brought into this country by the petitioner management who abandoned him. The petitioner management had left the bailiwick of the Republic without any known address thus leaving the respondent destitute in Liberia without any means of returning to his native land.

In count 3 of the bill of exceptions, the appellant maintained that the National Labour Court Judge overlooked the law that the determination by a court or administrative agency of what constitutes a "failure to proceed" in keeping with section 42 of the Civil Procedure Law is left to the sound discretion of the tribunal. The judge nevertheless prejudicially ruled that although the petitioner was notified about the resumption of trial, one day's unexcused absence was insufficient to constitute default, notwithstanding the fact that the records are bereft of any legal reason provided by the petitioner for its absence from the February 4, 2002 hearing of the case when the default judgment was granted.

And in count 9 of his bill of exceptions, the appellant contended that there is no statute or case law that defines or determines the number of absences required for a judicial tribunal to, upon proper invocation, grant default judgment in keeping with the provisions of section 42.1 of the Civil Procedure Law, as in the instant case. Yet the National Labor Court Judge prejudicially and erroneously ruled that one day is insufficient to constitute a default judgment, contrary to law.

At the call of the case for argument before this Court, one of the counsel for the appellee, Counsellor James E. Pierre brought to the attention of court that his Firm, Pierre, Tweh & Associates no longer represents the interest of Appellee Management of Xoanon Liberia (Ltd), as indicated by the notice of withdrawal filed by Pierre, Tweh & Associates on March 29, 2004. For reasons we will state later in this opinion, this Court refused to accept the notice of withdrawal filed by the appellee's counsel. Thereafter, argument was heard *pro et con*.

The appellant, through his counsels and in line with his bill of exceptions filed, argued essentially that the National Labour Court Judge grossly erred when she reversed the ruling of the hearing officer and remanded the case on grounds that one un-excused absence is not enough to warrant the granting of a default judgment. The appellant maintained that a default judgment should, as a matter of law, be granted if a defendant in a labor matter fails to appear in keeping with the notice of assignment for the hearing of the case. The appellant

further argued that there is no limitation on the number of absences that constitute a failure to appear for which default judgment may apply.

The appellee, on the other hand, argued that where a defendant has appeared, pleaded, and proceeded to trial as in the instant case, but is absent only once from a hearing, default judgment will not lie. The appellee contended that default judgment can only be granted against a defendant who has clearly waived his right to any defenses he may have by not appearing, pleading, or proceeding to trial. In order to justify the entry of a default judgment against a defendant, the defendant must show by his conduct or otherwise, that he has waived his defenses to the action. The appellee further contended that the practice and procedure at the Ministry of Labour respecting the entry of default judgment is that a defendant who has appeared and proceeded to trial must fail and neglect to appear for the continuation of the trial after the service of two (2) notices of assignment upon him before default can lie against such defendant.

Given the facts and circumstances of this case and the respective positions of the parties, the issue presented by this appeal is whether the National Labour Court Judge acted properly when she reversed the ruling of the hearing officer and remanded the case for a new trial on grounds that one unexcused absence was insufficient to warrant a default judgment.

To adequately address this issue, we must look at our statutes controlling default judgment. Section 42.1 of the Civil Procedure Law, Rev. Code 1, states:

> "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."

And section 42.6, Civil Procedure Law, Rev. Code 1, states:

> "On application for judgment by default, the applicant shall file proof of service of the summons and complaint, and give proof of the facts constituting the claim, the default, and the amount due."

Section 8 of INA Decree #21 (Default Judgment) states:

> "If a defendant in a labour case has failed to appear, plead or proceed to trial, or if the hearing officer or the Board of General Appeals orders a default for any other failure to pro-ceed, the complainant may seek a default judgment against the defendant. On application for a default judgment, the applicant shall file proof of service of the summons and complaint and give proof of the facts constituting the claim ..."

The above quoted statutory provisions are in harmony with respect to default judgment. Their plain meaning is that a default judgment, as a matter of law, may be granted if a defendant fails to appear upon notice of assignment issued for the hearing of a case. The rule has been laid down that it is not the province of this Court to add or subtract from a legislation where the meaning is so plain. *The International Trust Company of Liberia (ITC) v. Doumouyah et al.*, 36 LLR 358 (1989).

On application for default judgment, the applicant is required to provide proof that the summons and complaint were served, and further provide proof of the facts constituting the claim and the amount due. The records of this case show that the appellant met these requirements in that the summons and the complaint were duly served on the appellee, and the appellant produced witnesses at the hearing of the case and established the facts concerning the amount appellee owed the appellant.

The appellee contended that under INA Decree 21(8) where a defendant has appeared and proceeded to trial, a default judgment will not be granted against him unless it is shown that he has clearly waived the right he may have by not appearing, pleading or proceeding to trial. This Court says that the phrase "has failed to appear, plead or proceed to trial" does not mean that once a defendant in a labour case has appeared, pleaded and proceeded to trial, default judgment cannot be granted against him at any subsequent stage of the trial. Default judgment can be granted even after the defendant has taken the stand to testify. If he fails to appear for resumption of trial upon notice of assignment default judgment can lie against him. In the case *Inter-Con Security Systems, Inc. v. Biago Bormesahn et al.*, 37 LLR 689 (1994), this Court held that the question of whether the party against whom the default judgment is rendered has taken the stand and produced witnesses does not prevent the rendering of default judgment against him. This Court also held that once a case has not been completed, the counsel of record is bound to honor all assignments issued and served on him until the case is finally decided, or he will be presumed to have abandoned the case.

We are convinced, from a review of the records, that the appellee, through its counsel, received the notice of assignment, but failed to appear when the case was called for hearing. Appellee's reason for failing to appear was stated as being "due to some unforeseen and unavoidable circumstances." No explanation was made of the "unforeseen and unavoidable circumstances" that prevented appellee or its counsel from attending the hearing, for which notice was duly given. This Court says that if for good and tangible reasons the appellee or its counsels were unable to attend the hearing, it was incumbent upon the appellee to have stated such reasons or circumstances as a basis for his prayer to this Court to set aside the default judgment; but this was not done. All lawyers are required to be prompt and faithful in answering assignments for their clients and this Court will not accept nor encourage tardiness or absenteeism on a bare face explanation of "unforeseen and unavoidable circumstances", especially from a law firm comprising several lawyers.

The appellee also contended that the practice and procedure before the Ministry of Labour is that a defendant must fail and neglect to appear for the continuation of hearing after the service of two notices of assignment upon him before the entry of default judgment. This Court says it is not aware of such practice or procedure and even if such practice or procedure does exist at the Ministry of Labour, it is contrary to the positions taken by this Court, as reflected in the laws cited *supra* regarding the entry of default judgments. Hence, for the avoidance of any doubt, we hold that there is no statute or case

law in this jurisdiction that defines or determines the number of absences that warrants the granting of default judgment. Such a matter is left to the sound discretion of the Court or administrative officer, as the case may be. And in this case, we find no reason to rule that the hearing officer did not act soundly.

It must be noted that the appellant in these proceedings is a foreign national from India with no relatives in Liberia. He was recruited from his home country and transported to Liberia to work for the appellee for two (2) years. Under the contract of employment, appellee undertook to pay appellant a monthly salary of US$2,000.00, as well as to provide him an air ticket to facilitate his return to India at the end of the contract. The contract also provided that the appellant shall not accept employment in the logging industry in Liberia for a period of one year at the expiration of the contract. When the contract expired, the appellee owed the appellant for more than nine months in salary arrears amounting to US$19,355.00. Moreover, when appellant's contract expired, appellee unilaterally demanded that appellant submits to an audit as a condition precedent to the payment of his salary arrears. With no salaries being paid to facilitate maintenance and support, certainly appellant was deprived of his means of livelihood and subjected to hardship. As such, the instant case is not one of the regular matters where successive postponements may be granted, as to have done so in this case would have defeated the ends of justice. Aliens within our borders are equally protected under our laws and to abandon an alien worker as a public charge without any means of support is most unfair, to say the least. It must have been against this background that default judgment was rendered by the hearing officer at the Ministry of Labour. And we hold that the hearing officer acted properly.

The judge of the National Labour Court held that it is improper for a lawyer, without a valid excuse, to fail to appear on a date set for trial. She further held that a court of law cannot support or condone unexcused absences. But she went on to rule, however, that "for the sake of substantial justice default judgment will not lie." We wonder who needs substantial justice under the facts and circumstances narrated in this case. Is it not the alien worker who has been dismissed and is now stranded in a foreign land with no job?

We must now comment on the notice of withdrawal filed by the counsels for the appellee, Pierre, Tweh & Associates, on March 29, 2004. As stated earlier, this Court refused to accept the firm's withdrawal from this case. We refused because to do so would have prejudiced the position of the appellant. The Firm had participated all along in this case from the Ministry of Labour to this Court. It signed and filed all pleadings for the appellee. Our law provides that the signature of an attorney in verification of a complaint constitutes that to the best of his knowledge, information, and belief there is good ground to maintain the action and it is not interposed for delay. Civil Procedure Law, Rev. Code 1: 9.4(4). Moreover, under Rule 31, Code for the *Moral and Ethical Conduct of Lawyers, Rules for Procedure In Courts* (1999), a lawyer's appearance in court should be deemed equivalent to an assertion on his honor that in his opinion his client's case is one proper for determination.

We have quoted the foregoing laws to accentuate the point that if all along counsels for the appellee believed in the cause of their client, stood by the client, and shielded said client from the Ministry of Labour to the Supreme Court until the cause was assigned on March 29, 2004, it is not proper for the said counsels to, on the very day when the case was assigned for argument, file notice of withdrawal from the matter. When counsel for the appellee was asked during argument as to the whereabouts of his client, he said that he believed his client was out of the country. Under the circumstance, we are of the opinion that there would be great injustice done not only to the appellant, but also to the appellee, if Pierre, Tweh & Associates had been allowed to withdraw from this case because there is no showing that the said withdrawal met the consent of the appellee. Our law on withdrawal of a lawyer from a client's employment provides that, "the right of a lawyer to withdraw from employment once assumed, arises not only from good cause. Even the desire or consent of the client is not always sufficient. The lawyer should not throw up the unfinished task to the detriment of his client..." *Ibid.*, Rule 36. Further, it has been held by this Court that an attorney may not compromise, abandon or withdraw from his representation of the client's case without the knowledge or consent of that client. *Wuo v. Wardsworth*, 30 LLR 106 (1982), syl. 1.

Based on the above, we hold that the default judgment granted and the final ruling of the hearing officer are in keeping with law and as such, we do not find it necessary to disturb them. The Administrative Procedure Act provides that the Court shall enter a decree enforcing the final order of an administrative agency unless the court finds that such order was void or invalid for fraud or that compliance has occurred. Findings which are made by the agency with respect to questions of fact shall be conclusive on the court. The Administrative Procedure Act, Section 82.9(2). Because we have not found the ruling of the hearing officer to be void or invalid for fraud or that said ruling has been complied with, we must uphold same.

This Court notes, however, that the hearing officer awarded appellant the total amount of US$67,355.00. Of this amount, US$19,355.00 represents accrued salary arrears and annual leave. The hearing officer also awarded appellant payment for twenty months for what is termed as "unexpired period of renewed contract with the relevant benefits..." We do not see any basis or justification for this latter award. The appellant signed a definite contract for two years from November 6, 1999 to November 5, 2001, and there is no indication that his contract was renewed with the appellee at its expiration. We therefore hold that he is entitled to US$19,355.00, representing his unpaid salary arrears and annual leave, plus a plane ticket to his home in India, and no more.

Wherefore and in view of the foregoing, the ruling of the National Labour Court is hereby reversed and the ruling of the hearing officer confirmed and affirmed with the above indicated modifications. The Clerk of this Court is hereby ordered to send a mandate to the

National Labour Court to enforce the ruling of the hearing officer. Costs are ruled against the appellee. And it is hereby so ordered.

Ruling reversed.