

**Nathaniel Weah** et al., also of the City of Monrovia, Liberia APPELLANTS Versus  
**National Port authority**, by and thru its Managing Director, George E. Tubman of  
the City of Monrovia, Liberia APPELLEE

APPEAL. PETITION FOR JUDICIAL REVIEW

HEARD: NOVEMBER 5, 2008 DDECIDED: JANUARY 28, 2009

MR. JUSTICE KORKPOR DELIVERED THE OPINION OF THE COURT

This matter is before this Court for the second time. During the first time it was here, this Court, on September 15, 2005, made decision in favour of Nathaniel Weah et al., retirees who worked with the National Port Authority (NPA) at various times until they were retired by the NPA. In an opinion delivered by Mr. Justice Ishmael P. Campbell, this Court set aside the ruling of the National Labour Court and affirmed the ruling of the hearing officer, Ministry of Labour, awarding Nathaniel Weah et al. seventeen thousand, four hundred and forty United States dollars (US\$17,440.00) and one hundred and eighteen thousand, eight hundred and fifty-eight United States dollars (US\$118,858.00). This Court, at that time ordered the NPA to place the names of the retirees on the payroll so that they would regularly receive the forty percent (40%) United States dollar portion of their pension benefit.

On August 16, 2006, one of the lawyers for the retirees wrote a letter to the NPA which reads as follows:

*"August 16, 2006"*

*"Hon. Togba G. Ngangana Managing Director National Port Authority (NPA) Busbrod Island Monrovia, Liberia"*

*"Dear Sir: "*

*"We present to you our compliments and have the honour to once again inform you that on September 15, 2005, the Honourable Supreme Court of Liberia confirmed the judgment of the Ministry of Labour in favour of the thirty-five NPA retirees to the effect that the retirees are entitled to forty percent USD component of their monthly pension for which they are already on your payroll and receiving the Liberian Dollar portion. We congratulate you for the effort to settle the arrears up to the ruling on September 15, 2005."*

*"Meanwhile, it is our request that the forty percent USD component be added to their present*

*pension payroll since the Supreme Court of Liberia has determined that the thirty-five retirees are entitled to the USD component as a matter of right. See attached a list of the thirty-five NPA retirees for your ease of reference."*

*"In addition, we will also appreciate were you to direct the payment of the arrears that have accrued to the thirty-five retirees from October, 2005, to August 31, 2006. "*

*"Kind regards."*

*"Sincerely yours,"*

*"Yamie Quiqui Gbeisay, Sr.*

*COUNSELLOR-AT-LAW."*

When the NPA refused to pay the retirees as demanded by their lawyer, the retirees filed an action of unfair labor practices against the NPA at the Ministry of Labor. On December 21, 2007, the hearing office at the Ministry of Labor ruled in favor of the retirees, awarding them the amount of forty eight thousand, five hundred and forty United States dollars (USD 48,540.00) and five thousand, six hundred Liberian dollars (\$LD 5,600.00). On a petition for judicial review before the National Labor Court, the ruling of the hearing officer at the Ministry of Labor was reversed. The retirees have come to this Court on appeal from the ruling of the National Labor Court.

The main contention of the retirees in this case, as gathered from their complaint filed with the Ministry of Labor, is that although the management of the NPA partially carried out the mandate of the Supreme Court based on the opinion delivered on March 15, 2005 by paying Nathaniel Weah et al. their pension money which accrued prior to the filing of the labour action, the NPA has refused and failed to pay pension benefits to the retirees which accrued to them during the time the matter was pending in court, a period of fourteen (14) months from October 2005, to August 31, 2006. It is obvious that the amount in question, being pension money, should be or should have been paid to the retirees on a continuous basis, that is, at the end of each and every month. We note that during argument before us, the counsel for the NPA admitted that the retirees had already been placed on payroll for the USD forty percent (40%) component which they are currently receiving. So, we can not understand why NPA has refused to pay to the retirees, their pension money which accrued during the time the retirees and the NPA were in court.

Pension is defined as "a fixed sum paid regularly to a person or to the person's beneficiaries by an employer as a retirement benefit." Black's Law Dictionary, 8th Edition. The practice in this jurisdiction is that the amount is paid monthly to the

retired person or to that person's beneficiaries. We hold that since the amount is regularly paid on a continuous basis, the retirees are entitled to the accrued amount which was not paid during the period they were in court with their employer, the NPA.

The Counsel for the NPA had argued that under the doctrine of *res judicata*, the retirees are not entitled to any amount during the time the labour matter was in court. We do not agree. *Res judicata* is defined as: "A matter adjudged; a thing judicially acted upon and decided; a thing or matter settled by government. Rule that a final judgment rendered by the court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their priorities, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or course of action."

The three essential elements of *res judicata* are a) an earlier decision on the same issue; b) a final judgment on the merits and, c) the involvement of the same party, or parties in privity with the original parties. *Black's Law Dictionary*, 8th Edition.

The doctrine of *res judicata* presupposes that the matter involving the same party over the same subject matter had been decided and the matter is finalized; that the parties have discharged obligations one, to the other, if any, and there is nothing left to be done. When the three elements are present, the doctrine of *res judicata* will operate to bar the subsequent bringing of the same matter involving the same parties concerning the same subject matter. But the principle will not apply in the case before us because in actual sense the mandate of this Court, based on the September 15, 2005, opinion rendered to pay accrued pension benefit to the retirees was not fully executed. So long the portion of the retirees' pension money has not been paid for the time the case between them and their employer was in court, it cannot be said that this Court's decision of September 15, 2005, has been fully complied with. And the doctrine of *res judicata* will not operate to halt the full implementation of the Supreme Court's decision.

Moreover, this Court has held that a person relying upon the doctrine of *res judicata* as to a particular issue involved in the pending case bears the burden of introducing evidence to prove that such was involved and actually determined by prior action and that the matter as to which the rule of *res judicata* is involved as a bar was, in fact necessarily adjudicated in the former action. *Liberia Mining Company, Ltd. V. Lebbi*, 29 LLR, 237 (1981).

In the case before us, the claim or demand, though made by the same complainants against the same defendant, is not in the same amount as the claim made in the first suit between the parties. In other words, the subject matter of the first and second labour actions filed by the retirees against the NPA are not the same. The retirees' claim contained in their second suit against the NPA demanded payment of the arrears that accrued to the thirty-five retirees from October, 2005, to August 31, 2006 in the total amount of US\$48, 504.00 and L\$5, 600.00. In the first suit the claim was for the amount of US\$17, 440.00 and L\$ 118,858.00.

We hold, therefore, that the principle of *res judicata* relied upon by the appellee is not applicable to the facts and circumstance of this case.

WHEREFORE, the judgment of the National Labour Court is reversed and the ruling of the hearing officer, Ministry of Labour, is confirmed.

The Clerk of this Court is ordered to send a mandate to the National Labour Court to resume jurisdiction over this case and enforce the ruling of the hearing officer, Ministry of Labour. Costs are ruled against the NPA. It is so ordered.

COUNSELLORS YAMIE QUIQUI GBEISAY, SR. AND JOHN E. NENWON OF THE TIALA LAW ASSOCIATES, INC. APPEARED FOR THE APPELLANTS. COUNSELLOR COOPER W. KRUAH OF HENRIES LAW FIRM APPEARED FOR THE APPELLEE.