Norwegian Refugee Council of the city of Monrovia, Liberia Appellant versus **Ernest F. B. Bana**, Hearing Officer, Ministry of Labor, **Richelieu T. Wollor** and **Emmanuel R. Fasu**, also of the city of Monrovia .... Respondents

APPEAL FROM THE NATIONAL LABOR COURT FOR MONTSERRADO COUNTY

Argued: November 24, 2008 Decided: December 18, 2008

MR. CHIEF JUSTICE LEWIS DELIVERED THE OPINION OF THE COURT.

Section 1503 of the Labor Law, on contract provisions, provides:

"1. Every contract shall contain all such particulars as necessary to define the rights and obligations of the parties and shall in all cases include:

"(a) The name of the employer or group of employers and the place of employment;

"(b) The name of the employee, the place of engagement and, where practicable, the place of origin of the employee and any other particulars necessary for his identification;

"(c) The nature of the employment and the position to be held;

"(d) The duration of the employment;

"(e) The appropriate period of notice to be given by the party wishing to terminate the contract;

"(f) The rates of remuneration and method of calculation thereof, the manner and periodicity of payment of wages and advances of wages, if any, and the manner of payment of any such advances;

"(g) The measures to be taken to provide for the welfare of the employee and any members of his family who may accompany him under the term of the contract;

"(h) The conditions of repatriation, where the contract is for employment outside the Republic of Liberia; and

"(i) Any special conditions of the contract.

"2. All employment contracts in writing involving Liberian citizens shall be presented for attestation to an officer of the Ministry of Labor.

"3. Before attesting any contract, the officer of the Ministry of Labor or as the case may be, shall-

"(a) Ascertain that the employee has freely consented to the contract and that his consent has not been obtained by coercion or undue influence or as the result of misrepresentation or mistake; and

"(b) Satisfy himself that-

"(i) *The contract is in due legal form;*

"(ii) The terms of the contract are in accordance with the requirements of this Article;

"(iii) The employee has fully understood the terms of the contract before signing it or otherwise indicating his assent;

"The employee declares himself not bound by any previous engagement; and

4. Any employment contract which an officer of Ministry of Labor has refused to attest as not satisfying the requirements of the immediately preceding subsection shall have no further validity.

"5. A contract which has not been presented to an officer of the Ministry of Labor for attestation shall not be enforceable except during the maximum period permissible for contracts not made in writing but each of the parties shall be entitled to have it presented for attestation at any time prior to the expiry of the period for which it was made.

"6. Four copies of every contract attested under the provisions of this title shall be attested along with the original. One copy shall be delivered to the employer, one copy to the employee, or in the case of a gang, to one of their members, one to the senior officer of the Ministry of Labor.

"7. The Ministry of Labor shall, subject to the approval of the President, issue regulations requiring all or any categories of employees to be medically examined as a prerequisite for being employed under a contract of employment in writing in any trade or industry. A medical certificate shall be issued in all cases where such examination is a requirement.

"8. A non-adult person whose apparent age is less than 16 years shall not be capable of entering into a contract in writing" (emphasis supplied).

Section 1501 of the Labor Law, on oral contracts, provides, *inter alia:*

"Any contract of employment which is made for an indefinite period or for a definite period of less than six months or a number of working days equivalent to less than six months, and is to be performed within the Republic of Liberia, shall be deemed an oral contract. Oral contracts need not be in writing."

On December 14, 2005, the Norwegian Refugee Council (NRC), appellant, entered into a one-year contract of employment with Richelieu T. Wollor, co-appellee, as National Program Manager, with duty station at Tubmanburg, Bomi County. The contract of employment, effective January 1, 2006 and ending December 31, 2006, provided:

"The NRC may, within good reason, decide to relocate the employee to another duty station based on its operational requirement and the employee hereby agrees to accept such change of duty station.

"Salary and allowances:

"Salary, category Al step 2	850 USD per month
"Medical allowance	5 USD per month
"Scratch card	50 USD per month

"Professional Secrecy

"I hereby commit to, both while working for an subsequent leaving the NRC, not to reveal any classified information obtained while working for the NRC to a third party of any kind. I am aware and I hereby agree that a breach of the professional secrecy might be reason for dismissal or termination of this contract.

"Other agreements

"I have read and understood the Terms and Conditions and confirm by signature that the employment terms stated therein are accepted. The contract substitutes any other contracts signed at any earlier date, and is only valid accompanied with a signed Code of Conduct.

"This agreement is issued in duplicates. Each party retains one copy."

On January 1, 2006, the appellant entered into a one-year contract of employment with Emmanuel R. Fasu, co-appellee, as Logistic Assistant, with duty station also at Tubmanburg, Bomi County. The contract of employment was effective January 1, 2006 and ending December 31, 2006. The salary and allowances in favor of the co-appellee were:

"Salary, category C1 step 2	400 USD per month
"Medical allowance	5 USD per month
"Scratch card	25 USD per month"

Except for the difference in salary and allowances, the two contracts of employment are identically worded. Both contracts, consistent with the requirements of section 1503 of the Labor Law, were attested to by an appropriate official of the Ministry of Labor.

In March 2006, the appellees were each given and required to sign a Norwegian Refugee Council "Terms and Conditions of Employment." This supplementary contract, which the appellant relies upon to justify the termination of the employment contracts of the appellees prior to the end of the definite period, was not presented and attested to by an appropriate official of the Ministry of Labor.

On May 19, 2006, the appellant addressed identically-worded letters of termination to co-appellees Wollor and Fasu. We quote the letters.

"Management hereby informs you of its decision to terminate your services, effective as of today, May 19, 2006, in keeping with section 5, subparagraph 2 of the Terms and Conditions of Employment.

"You will please turn over to the Administration all properties of the organization that are in your possession in order to receive your end of service compensation

which include net salary for the month of May, and one month salary in lieu of notice.

"We wish you all the best in your future endeavors."

Section 5 of the Norwegian Refugee Council "Terms and Conditions of Employment," referred to in the letters of termination, is titled Termination of Contract, and provides:

"Staff member wishing to resign should give a written notice to his/her immediate supervisor at least one calendar month in advance.

"NRC may terminate the contract before expiring date provided it gives the employee one (1) month notice or pays the employee one-month salary in lieu of notice.

"This contract may be terminated by NRC due to lack of funding for the relevant project/country program, security constraints and/or planned downscaling of NRC activities in Liberia. In such event, NRC will serve a one-month notice or pay one-month salary in lieu of notice."

On May 25, 2006, the appellants addressed the following complaint to the Minister of Labor, Samuel Kofi Woods:

"We write to extend to you our compliments and to file a formal complaint against the Management of Norwegian Refugee Council for illegally and abruptly terminating our [employment] contracts.

"We have served said organization for almost two and a half unbroken years without a verbal or written warning concerning our performance, even though the organization is operating under [the] laws of the Republic [of Liberia].

"Prior to our dismissals, we signed a one-year written employment contract in which we completed five months up to the termination. We have appropriately notified the organization of its obligation under the laws of our country and the need to address our concerns to avoid unnecessary litigation

"We are, therefore, seeking your intervention for the payment of the unexpired term of our contracts."

On May 26, 2006, Ernest F. B. Bana, Director of Labor Standards at the Ministry of Labor, addressed a letter to the Resident Representative of the Norwegian Refugee Council, transmitting a copy of the appellees' letter of complaint, and advising that the Minister of Labor, Samuel Kofi Woods, had directed him to investigate and determine the complaint in accordance with the Labor Law of Liberia. Mr. Bana cited the Resident Representative to a conference for Thursday, June 1, 2006, at 2:00 p.m. at the Ministry of Labor, aimed at an amicable resolution of the dispute between the parties. When there seemed no meeting of the minds between the appellant and the appellees over the legality of clause 5 of the "Terms and Conditions of Employment," an investigation commenced on June 19, 2006.

On May 8, 2007, Hearing Officer Bana rendered a ruling, in which he held, *inter alia:*

"Wherefore, in view of the foregoing, we resolve that management is liable for wrongful and illegal dismissal and is hereby ordered to make settlement of the remaining portion of the contracts with necessary deductions as provided by law, excluding the month of June as follows:

Mr. Richelieu T. Wollor A6 months x USD850 = USD5,100.00
Mr. Emmanuel R. Fasu A6 months x USD400 = USD2,400.00"

The appellant excepted to the ruling of Hearing Officer Bana, and announced an appeal to the National Labor Court for Montserrado County. On May 18, 2007, the appellant filed a fifteen-count petition for judicial review with the National Labor Court. On May 29, 2007, co-appellees Wollor and Fasu filed returns to the petition.

On June 7, 2007, the appellant filed a five-count motion to strike the returns of co-appellees Wollor and Fasu, on grounds that the returns were filed without statutory time. At the call of the motion to strike on July 31, 2007, counsel for co-appellees Wollor and Fasu applied to court to have their resistance to the motion to strike spread on the minutes of the court. The judge granted the request.

Following arguments, the judge granted the motion to strike, ruling, *inter alia:*

"Respondents having admitted to the late filing of their responsive pleading, this court is left with no alternative but to proceed according to law.

"Wherefore, and in view of the foregoing, respondents' returns filed out of statutory period is hereby stricken from the records of these proceedings, and respondents ruled to a bare denial, as if respondents had not filed any returns. It is so ordered."

Following a hearing of the petition for judicial review, with counsels for the appellant and co-appellees Wollor and Fasu participating, the National Labor Court affirmed, with modification, the ruling of Hearing Officer Bana:

"The ruling of the Hearing Officer is hereby confirmed and affirmed, with modification that the employees who were illegally dismissed in May before the expiration of their contracts be paid for the remaining portion of the contract which is seven (7) months instead of five (5) months, as stated in the hearing officer's ruling, that is from June through December, 2006.

"Wherefore, and in view of the foregoing facts and circumstances, coupled with the law quoted herein, management is liable to respondents Richelieu T. Wollor and Emmanuel R. Fasu for seven (7) months, beginning June to December, 2006 as follows:

"Richelieu T. Wollor, eight hundred fifty United States dollars (US$850.00) per month times seven (7) equals five thousand nine hundred fifty United States dollars (US$5,950.00).

"Emmanuel R. Fasu, four hundred United States dollars (US$400.00) per month times seven (7) equals two thousand eight hundred United States dollars (US$2,800.00)."

To this ruling of the National Labor Court, the appellant noted exceptions and announced an appeal to this Court.

The one issue determinative of this appeal is whether an employer, bound to an employee by a contract of employment for a definite period, may rely on § 1503 (e) of the Labor Law and dismiss the employee, *without cause,* prior to the end of the definite period?

Section 1508 of the Labor Law, on Dismissal of Employees, provides:

"1. No employer shall dismiss any employee with whom he is bound by a contract for a definite period before the end of that period unless it is shown that the employee

has been guilty of gross breach of duty or a total lack of capability to perform. Where this has not been proven, the dismissed employee shall be entitled to claim full remuneration for the unexpired portion of the contractual period.

"2. The following acts and violations shall be deemed to be gross breaches of duty (without limiting the generality of the term) within the meaning of section 1 of this Chapter and shall dispense the employer from payment of compensation for dismissal under the provisions of that section:

"(a) Any provoked assault by an employee upon the employer or his agents in the course of or arising out of employment;

"(b) Persistent disregard by any employee of the technical measures for safety of the staff of the undertakings; provided that the said measures have been in rules posted as required by law and the employer or his agent has ordered the employee in writing to comply with the said rules;

"(c) Disclosure by an employee of the working secrets of the employer's undertaking;

"(d) Absence of an employee for more than ten consecutive days (or more than 20 days over a period of six months) without good cause, in which case the employee shall be deemed to have terminated his contract. Save in such case of vis major, an employee shall be required to notify the employer or his agent of the reason for his absence."

The appellant has not asserted that the appellees were in breach of any of the acts or violations enumerated in section 1508 (2). The appellant contends, however, that under Article 25 of the Liberian Constitution (1986), and section 1503 (1) of the Labor Law, the termination of the contracts of employment was legal.

The contention of the appellant was raised in *Harris v. Mercy Corps/Liberia,* decided by this Court during its October Term, 2006.

Mercy Corps had entered into a one-year contract of employment with Magdalene G. Harris, effective October 31, 2002, and ending on October 30, 2003. On February 7, 2003, Mercy Corps, relying on section VII, clause 7.1.1 of its contract of employment with Ms. Harris, terminated her contract of employment, effective February 2003, seven months prior to the end of the definite period.

Section VII, clause 7.1 of the contract of employment, under Termination of Employment Relationship, provided:

"The parties agree that this contract of employment may be terminated prior to its expiry under the following terms and conditions:

"7.1.1. It may be terminated by either party hereto at any time, subject only to giving, by the party desiring to effect the termination, of a one-month written notice to the other party or in case of the employer, the employer may pay the employee one month's compensation in lieu of such notice."

This was the opinion of this Court on the issue.

"We hold that an employer, bound to an employee by a contract of employment for a definite period, may not dismiss that employee before the end of that period unless it is shown that the employee has been guilty of gross breach of duty or a total lack of capacity to perform. As this has not been shown in this case, Magdalene G. Harris, appellant, is entitled to full remuneration for the unexpired portion of the contractual period. *Bong Mining Company v. Kortuguwor and the Board of General Appeals,* 29 LLR 363, 368-369 (1981); *Liberia Port Storage Company v. Osabutey,* 33 LLR 506, 510-511 (1985); *The Liberian Bank for Development and Investment (LBDI) v. York and Brown,* 35 LLR 155, 166 (1988).

We affirm the holding in *Harris v. Mercy Corps/Liberia.*

From the certified record in this case, the unexpired portion of the contractual period for each co-appellee was seven months. We note, however, that each coappellee was paid salary for the month of June, 2006, in lieu of notice. The appellant will be credited these amounts. There is no indication, however, that allowances, under medical allowance and scratch card, were paid to the appellees for the month of June. Co-appellee Wollor is entitled to fifty United States dollars (US$50.00) under medical allowance and scratch card for June, 2006, and co-appellee Fasi entitled to thirty United States dollars (US$30.00) under medical allowance and scratch card for the same month.

At nine hundred five United States dollars (US$905.00) per month, (salary, medical allowance and scratch card), the full remuneration for the unexpired portion of the employment contract in favor of co-appellee Wollor is five thousand four hundred

eighty dollars (US$5,480.00). The additional fifty United States dollars (US$50.00) represents medical allowance and scratch card for the month of June, 2006.

At four hundred thirty United States dollars (US$430.00) per month, (salary, medical allowance and scratch card), the full remuneration for the unexpired portion of the contractual period in favor of co-appellee Fasu is two thousand six hundred ten United States dollars (US$2,610.00). The additional thirty United States dollars (US$50.00) represents medical allowance and scratch card for the month of June, 2006.

The appellant has relied on § 1503 (1) (d) & (e) of the Labor Law to justify its act in dismissing the appellees, *without cause,* before the end of the definite period stated in the contract of employment, and clause 5 of the "Terms and Conditions of Employment."

We hold that the inclusion of any clause, as clause 5 of the "Terms and Conditions of Employment," in any contract of employment for a definite period violates § 1508 (1) of the Labor Law, and such clause is void *ab initio.*

We hold, also, that the Norwegian Refugee Council "Terms and Conditions of Employment" is not binding on the appellees. Firstly, it was not attested to by the appropriate official of the Ministry of Labor, and secondly, the termination of the appellees' contract of employment was not based on section 1503 (5) of the Labor Law.

The appellant, in count 3.1 of its brief, has cited Article 25 of the Liberian Constitution (1986) which provides: "Obligation of contract shall be guaranteed by the Republic and *no laws* shall be passed which might impair this right" (emphasis supplied by counsel for the appellant). The appellant contends that clause 5 of the "Terms and Conditions of Employment" satisfies the requirements of § 1503 (1) (d) & (e), and section 1508 (1) (2) cannot serve to limit the freedom of contract as both Article 25 of the Liberian Constitution (1986) and section 1503 (1) of the Labor Law are mandatory and not discretionary.

We disagree.

We accept that the "obligation of contract shall be guaranteed by the Republic and no laws shall be passed which might impair this right." We hold, however, that the guarantee extends to lawful contracts, only. Any contract, therefore, which this Court

determines unlawful is not protected by Article 25 of the Liberian Constitution (1986).

The appellee has contended, also, that the contract of employment executed by and between the appellant and the appellees is an assent of two minds for either party to terminate said contract upon compliance with a certain condition precedent, i.e. the giving of 30 days notice to the other party or payment of one-month salary in lieu of notice if the terminating party is the employer. In advancing this argument, the appellee has relied on *Nagbe v. Sherman,* 34 LLR 126, 128 (1986), which held that "a contract is an assent of two or more minds to do or not to do a certain act which courts of justice do not make for parties, but enforce it."

In *Harris v. Mercy Corps/Liberia,* we affirmed the principle in *Nagbe,* but held that this Court will not enforce any provision in a contract of employment which is in violation of a provision of the Labor Law. We hold that section 5 of the Norwegian Refugee Council "Terms and Conditions of Employment" violates § 1508 (1) of the Labor Law.

The appellee has contended, lastly, that appellant being a voluntary party to the contract of employment, and having received consideration under said contract, cannot now seek the aid of the court in order to benefit from the alleged illegal contract. In making this argument, the appellee has relied on *Cooper-Daniels and Luke v. Buccimazza Industrial Works Corporation,* 33 LLR 557, 563 (1985) which held:

"Agreements are binding and one who is voluntarily a party thereto for consideration, however, small or violative of the law, cannot impeach his own deeds by raising issues as to its illegality after enjoying said consideration."

We affirm, as we did in *Harris v. Mercy Corps/Liberia,* the principle in *Cooper-Daniels and Luke,* but it is inapplicable in this case. The contract of employment executed by and between the appellant and the appellees is not illegal. It is only section 5 of the Norwegian Refugee Council "Terms and Conditions of Employment" which violates §§ 1508 (1) and 1503 (3) (b) & (5) of the Labor Law, and it is that section which is void *ab initio.*

"The rule with respect to agreements in violation of statute is that if any part of an agreement is valid, it will avail *pro tanto,* though another part of it may be prohibited by statute, provided the statute does not, either expressly or by necessary implication, render the whole void, and provided the sound part can be separated from the

unsound part and enforced without injustice to the defendant." 17A Am Jur 2d *Contracts,* § 329.

In view of the foregoing, the judgment of the National Labor Court is affirmed with modification that co-appellee Wollor is entitled to five thousand four hundred eighty United States dollars (US$5,480.00), and co-appellee Fasu to two thousand six hundred ten United States dollars (US$2,610.00).

The Clerk of this Court is hereby ordered to send a mandate to the National Labor Court commanding the judge to resume jurisdiction, and to give effect to this decision. Costs are ruled against the appellant. It is so ordered.
Judgment affirmed with modification.