

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS OCTOBER TERM, A.D. 2022

BEFORE HER HONOR: SIE-A-NYENE G. YUOH.....CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE....ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA.....ASSOCIATE JUSTICE

The Management of LEE Group Enterprise, Inc.)
of Salala District, Bong County, Republic of)
.....Appellant) APPEAL
) PETITION FOR JUDICIAL
Versus) REVIEW
)
His Honour J. Boima Kontoe, Assigned Debt)
Court, National Labour Court Judge, His Honour)
Jackson Quigbian, Labour Commissioner, Bong)
County, and Michael Fortune of Salala District)
Bong County, Liberia.....Appellees)
)
GROWING OUT OF THE CASE:)
)
Michael Fortune of Salala District Bong County, Republic)
of Liberia.....Plaintiff)
) UNFAIR LABOUR PRACTICE
Versus)
)
The Management of LEE Group Enterprise, Inc. of)
Salala District, Bong County, Republic of Liberia)
.....Defendant)

Heard: April 27, 2022

Decided: December 15, 2022

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT

This is the second time this case is coming before the Supreme Court for a review on appeal. On the first occasion, the appeal emanated from the final ruling of the Debt Court for Bong County. This Court reversed that final ruling on the grounds that the Debt Court lacks jurisdiction to entertain labor matters after the coming into force of the Decent Work Act (2015) and subsequently dismissed the action without prejudice to the appellant to refile before the appropriate tribunal. After the reading of this Court’s Mandate by the Debt Court of Bong Court, the appellant herein, the Management of Lee Group Enterprise, Inc. filed its petition for judicial review before the Ninth Judicial Circuit for Bong County on September 9, 2019.

The petition substantially averred, *inter alia*, that the petitioner accused the respondent, Michael Fortune of the commission of payroll padding, suspended him on September 1, 2015 and turned him over to the police for investigation; that on September 12, 2015, the Liberia National Police charged the respondent with the crimes of forgery and theft of property after an investigation; that the respondent being fully aware that he was being investigated and without receiving any police clearance wrote the petitioner through his counsel on March 3, 2016, demanding that the petitioner pay the respondent the amount of US\$3,430.00 (Three Thousand Four Hundred Thirty United States Dollars) representing accrued salaries and benefits during the period of his suspension; that on March 23, 2016, the Ministry of Justice addressed a letter to the counsel of the petitioner acknowledging the petitioner's letter of objection of December 28, 2015 and informing the petitioner of the instruction from the Attorney General to conduct an investigation; that on April 13, 2016 the respondent proceeded to file a complaint of illegal and wrongful dismissal in the office of the Labor Commissioner of Bong County against the petitioner in the absence of any clearance from the Ministry of Justice and praying for an award of US\$3,920.00 (Three Thousand Nine Hundred Twenty United States Dollars) representing accrued salaries and benefits; that the petitioner, through his counsel, informed the Labor Commissioner that the matter, the subject of the respondent's complaint, was reported to the Liberia National Police and that the respondent had made a voluntary statement denying the allegations during the investigation; that despite the pendency of this matter before the National Police for investigation, the Labor Commissioner elected to proceed with the conduct of a full investigation into the respondent's complaint of unfair labor practice; that the Labor Commissioner after the investigation ruled that the action taken by the petitioner to suspend the respondent for time indefinite was tantamount to illegal dismissal under the Decent Work Act and therefore arbitrarily awarded the respondent the amount of US\$25,250.00 (Twenty Five Thousand Two Hundred Fifty United States Dollars) as accrued salaries and benefits and US\$8,400.00 (Eight Thousand Four Hundred United States Dollars) as compensation for twenty-four months; and that the ruling of the hearing officer is contrary to the law that provides that it is the outcome of a criminal investigation in the case of an employee suspended for the commission of a crime that should determine whether or not an employer should reinstate or dismiss the suspended employee. The petitioner therefore prayed that the hearing officer's ruling be reversed.

The appellee filed his returns and contended, *inter alia*, that the entire petition is dismissible because the petitioner failed to perfect its appeal within the statutory period

of thirty days as provided for by law; that the Labor Commissioner handed down his ruling in 2016, but that the petitioner venue its appeal before the Debt Court for Bong County that affirmed the decision of the Labor Commission, but that on August 5, 2019, the Supreme Court reversed the final ruling of the Debt Court for lack of subject matter jurisdiction and dismissed the case without prejudice; that the petitioner ought to have filed its petition on or before September 5, 2019, thirty days after the rendition of the Supreme Court Judgment rather than on September 9, 2019; that as to the contention of the petitioner that a criminal investigation was pending before the police which barred the Labor Commissioner from proceeding to entertain a complaint of wrongful dismissal, the respondent submits that the petitioner did not cooperate with the prosecution in having this matter heard and determined by a court of competent jurisdiction; that the law extant is that where the employer charges his employee with fraud, the said employer will be obliged to first successfully prosecute the employee before dismissing him; that the petitioner's letter which was communicated to the Ministry Justice was intended to baffle and delay the case because petitioner persistently refused to attend the call of the Ministry of Justice for the conduct of an investigation; and that the ruling of the Labor Commissioner awarding accrued salaries and benefits in addition to twenty-four months salaries in lieu of reinstatement was justified because the petitioner failed to successfully prosecute the charges levied against the respondent. For reasons stated, the respondent prayed for the circuit court to uphold the ruling of the Labor Commissioner.

A review of the certified records shows that the appellee also filed what is captioned a motion to dismiss appeal in which the appellee challenged the jurisdiction of the court over the petition on the ground that the petition was filed outside of statutory time. Subsequently however the appellee, by a notice, withdrew the said motion thereby conceding all of challenges raised in the returns to the jurisdiction of the court to entertain the petition.

On June 29, 2020, the trial court having regularly heard the petition and the returns thereto, affirmed, with modification, the ruling of the Labor Commissioner. Because of the importance of the final ruling of the trial court to the determination of this matter, we quote the said final ruling herein:

“The Ninth Judicial Circuit Court of Bong County is inclined to confirm and affirm the Ruling of His Honor Jackson P. Quigbain, Labour Commissioner, Bong County, who held the Petitioner/Defendant liable for

Unfair Labour Practice; and awarded the complainant, Michael Fortune, the amount of USD\$25,250.00 (Twenty Five Thousand Two Hundred Fifty Unity Sates Dollars) as Accrued Salary and Benefits, Plus USD8,400.00 (Eight Thousand Four Hundred United States Dollars), as Salary covering 24 (Twenty Four) months in lieu of Reinstatement; with the Modification that the complainant, Michael Fortune, be paid the total amount of US\$28,350.00 (Twenty Eight Thousand Three Hundred Fifty Unite States Dollars); representing accrued salary covering Fifty-Seven months, Plus 24 (Twenty Four) months' salary in lieu of Reinstatement at the rate of US\$350.00 (Three Hundred Fifty United States Dollars per month).

Further, the Records revealed the Complainant's Salary for four (4) years, nine months as at June 29, 2020, representing Fifty Seven (57) Months multiplied by US\$350.00 (Three Hundred Fifty United States Dollars) equals to the amount of US\$19,950.00 (Nineteen Thousand Nine Hundred Fifty United States Dollars) equals to US\$8,400.00 (Eight Thousand Four Hundred United States Dollars); thereby making a Grand Total of US\$28,350.00 (Twenty Eight Thousand Three Hundred Fifty United States Dollars).

In conclusion, the US\$28,350.00 (Twenty Eight Thousand Three Hundred Fifty United States Dollars) excludes all other Employment Benefits that the Complainant was entitled to, while on active duty. "A bonus or incentive, in the context of a Labour matter, is paid only to the employee and is not a gift or gratuity, but qualifies as compensation for services rendered or being rendered by an employee..." Please see 33 LLR, page 480, Syl. `1 and 2, text at pages 484-485. "Every person arrested or detained shall be formally charged and presented before a court of competent jurisdiction within forty-eight hours..." Article 21 (F), 1986 Constitution. "No person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in this Constitution and in accordance with due process of Law.." Article 20 (A). IBID.

The Management of Lee Group Enterprises, Inc. failed, refused and neglected to establish and prove beyond a reasonable doubt its allegation

of alleged Payroll Padding against the Complainant Vis-à-vis alleged Forgery and Theft of Property laced against Complainant Michael Fortune. The burden of proof rests on the party who alleges a fact... PLEASE SEE 1LCLR, SECTION 25.5(1), Page 198.

Finally, our Labour Practice Law provides that an employee accused of an alleged criminal offense at the place of work must firstly be subject to an internal investigation at the same place of work before an external investigation and/or court proceedings.

WHEREFORE AND IN VIEW OF THE FOREGOING, and the laws controlling, the court affirmed and confirmed the Ruling of the Labour Commissioner of Bong County with the Modification that the complainant be awarded the total amount of US\$28,350.00 (Twenty Eight Thousand Three Hundred Fifty United States Dollars), representing a total of Eighty-One (81) Months.

The Petitioner/Defendant is hereby adjudged liable to the complainant and is hereby ordered to pay the said amount to the complainant, without any further delay. The costs of these proceedings are ruled against the Petitioner/Defendant.

The Clerk of Court is hereby ordered to issue a Bill of Costs in these Proceedings for taxation by the Parties or their counsels. And it is so ordered. Matter suspended.”

This matter is now before us based upon a five-count bill of exceptions filed by the appellant/petitioner. The appellant principally contends therein that the final ruling of the trial judge holding the appellant liable to the appellee in the amount of US\$28,350.00 representing 81 months salaries was an error for the following reasons:

That the said award has no legal basis; that the trial judge ignored the law within this jurisdiction regarding wrongful dismissal; that the award ordered by the trial judge violates this Court’s holding in the case *Liberia Electricity Corporation v. FoloKollie Varpilah*, 37 LLR page 664 , test at 674-675; that the trial judge ignored Section 14.10, subsection (b)(ii)(2) of the Decent Work Act in determining the award for wrongful dismissal; that the 81 months of salaries awarded by the trial judge has no basis in law.

Succinctly, the bill of exceptions is challenging the final ruling of the trial judge on two basic fundamental grounds as follows: that the trial judge ignored the law on wrongful dismissal; and that the trial judge ignored the law on determining the compensation and measurement of award for wrongful dismissal. Considering these two contentions, the issues that present themselves for resolution by this Court are as follows:

- (1) Whether or not from the facts and circumstances of this case, the appellee was wrongfully dismissed by the appellant?
- (2) Whether or not the trial judge ignored the law on determining the compensation and measurement of award for wrongful dismissal?

We shall proceed to address these issues in the order in which they are presented.

Relative to the first issue, it is the contention of the appellant that the trial judge ignored the legal implication of the letter of complaint of the appellee, dated April 13, 2016, and addressed to the Labor Commissioner of Bong County over the signature of one of his counsels, in which the said counsel averred in paragraph two thereof that his client was wrongfully dismissed. The appellant, in count 1.4 of his brief noted that this communication to the Labor Commissioner did not aver that the appellee obtained or exhibit a clearance from the Ministry of Justice or Liberia National Police indicating that the appellee was cleared of the charges levied against him by the appellant. The appellant argues that it is the law that an employee who is suspended on allegation of the commission of a criminal offense cannot be ordered reinstated in the absence of an acquittal or exoneration by a court of competent jurisdiction, and that this is evidence by a clearance issued by the relevant authority. The appellee, on the other hand, while agreeing with the appellant, argued that an employer who suspends an employee on allegation of the commission of a criminal offense is under a duty to pursue and avail himself for the investigation of the allegation constituting the basis of the accusation to the police and to subsequently cooperate with the prosecution for the prosecution of the accused employee. That however, in the instant case the appellant after having suspended the appellee on the accusation of the commission of a criminal offense and forwarded the said matter to the police, failed to follow up with the police and to cooperate with the Ministry of Justice in spite of a request to do so. That this act of the appellant constitutes a dismissal of the appellee and therefore, the appellee may be considered as being wrongfully dismissed. The trial judge in passing upon this issue held

that “our Labor Practice Law provides that an employee accused of alleged criminal offense at the place of work must firstly be subjected to the internal investigation at the same place of work, before an external investigation and/or court proceeding.”

It is the law in this jurisdiction that for an employer to dismiss an employee for the commission of a criminal offense, the employer is duty-bound to accord the employee his due process right. The “termination of the services of an employee for reason of the commission of a criminal offense, without establishing the guilt of the employee for that criminal offense, is an infringement on the constitutional rights of the employee.” *LOIC v Williams 42 LLR 275 (2004)* Our criminal law provides that an accused in a criminal matter is presumed to be innocent until and unless his guilt is proved beyond a reasonable doubt before a court of competent jurisdiction. *Criminal Procedure Law Revised Code: 2:2.1.*

In the case under review, the appellant herein, after preliminarily determining that the appellee was involved in a criminal enterprise, correctly suspended his services and forwarded him to the police for criminal investigation. However, according to the records before us, the appellant did not pursue the matter any further. As a matter of fact, the records show that when the Ministry of Justice invited the appellant to come forward for the investigation in order to determine whether to proceed with the prosecution of the appellee, the appellant failed and refused to cooperate. We note that in the appellant’s brief it is argued that the appellee failed to obtain a clearance from the police exonerating the appellee from the charges levied by the appellant against the appellee. Normally, this is the trend that ought to have been adopted by the appellee. However, considering that the appellee was suspended for a period of eight months without the appellant acting to have him prosecuted for the alleged crime he was accused of, and further considering that the appellant failed to give deference to the communication from the Ministry of Justice to the appellant requesting the appellant to cooperate with the Ministry’s investigation so as to determine whether to proceed with the prosecution of the appellee; these actions by the appellant taking together clearly demonstrate that the appellee was accorded due process in spite of his alienation from his employment. We are left to wonder as to how the police could investigate and the Ministry of Justice prosecute the appellee in the absence of cooperation from the appellant, his accuser? How could the appellee exonerate himself from the charges in the absence of an investigation and/or prosecution? In fact, the records show that the only investigation that was conducted in this matter was on the day of the suspension of the appellee when the appellee was confronted by police at his workplace, the letter of suspension read by them and the

appellee was asked to give a statement. Eight months thereafter, the appellee was neither contacted by the police, nor was he charged by court and prosecuted. Considering that the appellee was under suspension in the face of the above conditions, the only conclusion that we can reach is that the appellant constructively dismissed the appellee.

On the second issue the appellant, in its bill of exceptions, challenged the trial court's award of 81 months to the appellee for wrongful dismissal. In its brief, the appellant argued principally that in the instance of an employee for indefinite period who is wrongfully dismissed, the entitlement to an award should not exceed twenty-four months of his monthly salaries to be determined by the average of his salary for the last six months prior to his illegal dismissal. The appellee disagreed with the appellant's contention and claimed that the award should include the period from his suspension up to and including the date of the final determination of the proceeding. According to the appellee, while he was at work on September 1, 2015, he was approached by individuals in police uniform who read the letter of suspension addressed to him by the appellant and subsequently had him to write a statement of his reaction to the said complaint. He further averred that the officers subsequently informed him that they will be getting back to him. Since that time, neither has he been contacted nor invited to the police for any investigation. He therefore considered the period of his suspension up to and including the period of the determination of his complaint by the court to constitute the period for which he is entitled to accrued salary and benefits.

The law on the computation of salary and benefits to be awarded to an employee of indefinite employment who is adjudged to have been wrongfully dismissed is clear under our law. To begin with, the law provides that an employee who is suspended by his employer on accusation of committing an alleged criminal offense and is later acquitted by the court is not entitled to accrued salary and benefits for the period during the criminal proceedings. *Firestone Plantation Company v. Behye*, 40 LLR 243 (2000). The question that begs for an answer now is whether this law is also applicable in the instance of an employee under similar situation who is accused of a criminal offense, suspended, and not prosecuted due to the failure and refusal of the employer to cooperate with the investigation and prosecution? In our opinion where an employee is so suspended and the employer willfully failed and refused to appear for the investigation and cooperate with the prosecution, accrued salary and benefits for the period of such suspension up to the institution of the action of wrongful dismissal ought not to be disallowed. But the period after the institution of the action cannot be legally allowed.

It is therefore our holding that the salary and benefit of the appellee during the eight-month period of his suspension constitutes accrued salary that ought to be considered in determining the award to be granted to the appellee for his wrongful dismissal.

We agree with the appellant that when it is determined that an employee has been wrongfully dismissed, he is entitled to compensation therefor not to exceed twenty-four months' pay at the rate to be determined from the average of the salaries he received six months prior to his illegal dismissal. In the instant case, it having been determined that six months preceding his suspension, the appellant was paid the amount of US\$350.00 (Three Hundred Fifty United States Dollars) per month and the records having established that the appellee was employed by the appellant six years prior to his suspension, we hereby hold that the appellee be paid US\$2,800.00 as accrued salaries and reinstated, or paid US\$7,000.00 for accrued salary and wrongful dismissal in lieu of reinstatement.

WHEREFORE and in view of the foregoing, the final ruling of the trial court adjudging the appellant liable for wrongful dismissal is affirmed; however, with modification that the appellant shall pay the appellee the amount of US\$7,000.00 (Seven Thousand United States Dollars) representing a total of twenty (20) months for accrued salaries and benefits and compensation in lieu of reinstatement. The Clerk of this Court is ordered to send a mandate to the court below to resume jurisdiction over this case and enforce the Judgment of this Opinion. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellor Necular Y. Edwards of the Mesurado Law Office appeared for the appellant. Counsellor Jimmy Saah Bombo of the Central Law Office appeared for the appellee.