IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2023

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
BEFORE HIS HONOR: YAMIE QUIQUI GBEISAY, SR.…….….ASSOCIATE JUSTICE

Bea Mountain Mining Corporation of the City of Monrovia, Liberia…….Appellant	)
VERSUS	) APPEAL
Frederick Kamara et.al, former employees of International Engineering Company, also of the City of Monrovia, Liberia……...Appellees	)
GROWING OUT OF THE CASE:	)
Bea Mountain Mining Corporation of the City of Monrovia, Liberia……...Petitioner	)
VERSUS	) PETITION FOR JUDICIAL REVIEW
Philip G. Williams, Director and Hearing Officer and Frederick Kamara et.al., also of the City of Monrovia, Liberia……..…Respondents	)
GROWING OUT OF THE CASE:	)
Frederick Kamara et.al of the City of Monrovia, Liberia……Complainants	)
VERSUS	) WRONGFUL DISMISSAL/ UNFAIR LABOR PRACTICE
Bea Mountain Mining Corporation also of the City of Monrovia, Liberia…….Defendant	)

HEARD: March 29, 2023 DECIDED: August 11, 2023

MADAM CHIEF JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

This case has its origin in a contract executed between the appellant, Bea Mountain Mining Company (BMMC), and the International Construction & Engineering, Inc. (ICE) for the construction of a processing plant at the appellant's mining site in Grand Cape Mount County, named and styled the "New Liberty Gold Mines".

Following the execution of the contract between the appellant and the International Construction & Engineering, Inc. (ICE), the latter as a separate and distinct entity, proceeded to hire the appellees in these proceedings in order to perform its responsibilities under the contract with the appellant. The project commenced at the appellant's mining site, with all parties performing in compliance with the terms and conditions of the contract until the International Construction & Engineering, Inc. (ICE) breached certain provisions of the contract, prompting the appellant to terminate its services.

The records reveal that following the termination of the services of ICE by the appellant, the Chief Executive Officer of ICE fled the country without paying the salaries and benefits of the appellees, for which act, the appellees began assembling on the appellant's mining premises. The appellant, upon observing this and being cognizant of the threat posed both to its facilities and staff, informed the employees of ICE that it had severed the contractual relationship between it and ICE for failure of ICE to perform under the contract; that the aggrieved employees could pursue legal redress against their employer ICE; and that the appellant also demanded the aggrieved employees of ICE to vacate its premises, but they refused to comply with said demand.

We note that due to the appellees' failure to vacate the premises of the appellant, coupled with the appellant's quest to prevent disruption of its mining activities and/or damage to its facilities, the appellant through its General Manager, Mr. Debar Allen, notified and requested the intervention of the Labor Commissioner of Grand Cape Mount County, seeking to amicably resolve the matter. The Labor Commissioner intervened and held series of discussions with the appellant and the aggrieved employees of ICE; as a result of the discussions, two separate memoranda of understanding (MOU) were entered into by the parties on August 2, 2014, and August 5, 2014, respectively. The first memorandum of understanding of August 2, 2014, is quoted below, to wit:

> "August 2, 2014
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> Memorandum of Understanding
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> Following consultative meetings held under the supervision of the Labor Commissioner of Grand Cape Mount County, the workers of International Construction and Engineering, ICE, located at the New Liberty Project Site and the Management of Bea Mountain Mining Corporation have agreed that the workers of ICE shall return to work promptly and fully on August 4, 2014.

The parties have further agreed to allow a time period of two weeks as of today, for research and consultations to be held to determine a legal and prudent course of action relative to their relationship going forward. All this comes in the wake of the termination of ICE's contract with BMMC and the fact that there has been minimal or no direction from the principal(s) of ICE as to their employment status."

However, before the appellees could resume work on August 4, 2014 as per the memorandum of understanding of August 2, 2014, the Ebola Outbreak was declared a national emergency by the Government of Liberia, prompting the appellant to advise the appellees to vacate its premises due to the health hazard created by the Ebola epidemic as the appellant had similarly requested some of its employees and contractors to vacate its premises. Based on this event, another memorandum of understanding was executed by the parties on August 5, 2014 which states as follows:

"We the Management of Bea Mountain Mining Corporation (BMMC) and Employees of International Construction and Engineering Inc. (ICE) directly associated with the New Liberty Project, in an effort to determine a way forward, considering that the work at the above-mentioned project site is being suspended indefinitely due to the Ebola epidemic, have agreed as follows:

a. That *all the employees of ICE shall evacuate the premises of BMMC no later than 10:00 A.M. on Thursday, August 7, 2014; that employees of ICE that were hired from outside Grand Cape Mount County and reside in Monrovia will be provided Twenty-Five United States Dollars (US$25USD) per person as transportation to their final destination; that as a result of the request of the Employees (appellees), BMMC consents to provide a hardship assistance equivalent to one-month compensation to each employee paid on a monthly basis;*

b. *that this hardship allowance shall be provided within ten (10) days of the submission of the monthly payroll by the ICE HR team and its subsequent review and acceptance by the BMMC Management;*

c. *that because the parties, through an earlier MOU dated August 2, 2014, have agreed to seek all legal clarity as to whether or not BMMC has further obligations to the employees of ICE, the Parties do now further agree that in the event it is determined that BMMC does have severance obligation to them as employees of ICE, such obligation shall be reduced by an amount equivalent to the Hardship*

Assistance. However, in the event that it is the contrary, BMMC shall continue to consider this as hardship assistance and not seek reimbursement from the employees."

Thereafter, the Ebola epidemic finally subsided, and the appellant resumed mining operations at its facility. The appellant observed that some of its contractors had hired a number of the employees of ICE. Subsequently, the appellant received a citation from one of the regional offices of the Ministry of Labor in Grand Cape Mount County indicating that some of the employees of ICE, the appellees herein, had filed a complaint against it alleging unfair labor practices.

Upon receipt of the appellees' complaint of unfair labor practices, the appellant held discussions with the appellees, re-emphasizing that it had severed the contractual relationship that existed between it and ICE and that the appellees could pursue legal redress against their employer. When the appellant and the appellees could not reach an agreement aimed at resolving the conflict existing between them after several conferences, upon agreement by the parties, the matter was transferred to the Ministry of Labor in Monrovia to conduct an investigation. The case was assigned for hearing before Hearing Officer, Philip G. Williams, the Director of Regional Labor Affairs.

The hearing officer conducted investigation into the matter and rendered final decision, adjudging the appellant liable to the appellees on the basis that the appellant agreed to assume the liabilities of ICE through the various memoranda of understanding executed by the parties, and further ordered the appellant to pay the appellees severance in the amount of Two Hundred Fifty-Six Thousand Three Hundred Nine United States Dollars and Seventy-Five Cents (US$256,309.75). The appellant, being dissatisfied with the decision of the hearing officer, filed a petition for judicial review before the National Labor Court.

In its petition for judicial review, the appellant asserted that the hearing officer erred when he overlooked the testimony of the appellees' witness in person of Frederick Kamara, to the effect that none of the appellees ever signed employment contract with the appellant; that the appellees were all employed by the International Construction and Engineering Inc. (ICE); that the appellees' employment with ICE was never terminated; that the hearing officer proceeded contrary to law when he awarded severance to the appellees, the records having shown the absence of employer-employee relationship between the appellant and the appellees; and that the hearing officer erroneously ruled that the appellant voluntarily

assumed the liabilities of ICE when its General Manager agreed to pay "hardship allowance" to the appellees.

The National Labor Court, having examined the records and entertained oral arguments in the petition for judicial review, affirmed the decision of the Hearing Officer with modification that the compensation awarded be calculated on the basis of the two memoranda of understanding signed between the parties. We quote below excerpts from the ruling of the trial judge to form the basis of this Opinion:

> "Touching on the first issue which is whether or not there exists an employment contract between the petitioner and the respondent, this Court says no. At the initial stage of this case, and during the hearing at the Ministry of Labor, the respondents testified that they are Five Hundred Fifty-One (551) employees of the International Construction & Engineering, Inc.; that their employer ICE unceremoniously left the country without notice to them which was a clear indication that the petitioner Bea Mountain Mining Company had no privity of contract with ICE for which the Management of Bea Mountains Mining Company was not obligated to the respondents. However, it may have been a gratuity or good will on the part of the petitioner when it decided to pay each of the respondents a month's salary termed as "hardship allowance" However, to claim this amount, the General Manager of Bea Mountain Mining Company, Mr. Debar Allen, in keeping with the records before this Court, advised the respondents by way of a memorandum of understanding that if any employee of Bea Mountain Mining Company had problems with ICE, he or she should channel such grievance to the Bea Mountains Mining Company through him and that Bea Mountains Mining Company as the employer of ICE is willing to pay the respondents severance if it is determined and calculated by the Ministry of Labor…
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> In addressing issue number four (4), which is whether a principal who partially accepts the liabilities and obligations of its agent is liable to total acceptance of said liabilities and obligations, this Court says partially no, considering that the memorandum of understanding did not state that the petitioner Bea Mountains Mining Company would pay the respondents severance. It was orally stated that in the event that it is determined to the contrary, the petitioner shall continue to consider the amount as "hardship assistance" and not seek reimbursements from their employees…"

It is this ruling of the National Labor Court that the appellant is now challenging before this Court of last resort in a seven-count bill of exceptions, contending that the trial judge erred when she affirmed the final ruling of the hearing officer. We quote below verbatim, the first six (6) counts of the appellant's bill of exceptions which we deem dispositive of the case:

> 1. Appellant says that Your Honor erred when in your final ruling you held that though there exists no employment or privity of contract between the appellant and the appellees, the appellant is liable to pay the appellees severance on behalf of the appellees' employer International Construction and Engineering, Inc.
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> 2. Appellant says and avers that Your Honor erred when in your final ruling you inadvertently held that the two (2) memoranda of understanding signed between the appellant and the appellees constitute evidence that the appellant conferred liabilities on itself and should therefore pay the appellees severance.
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> 3. Appellant further says that Your Honor erred when Your Honor ruling inadvertently misconstrued the terms of the two (2) memoranda of understanding, pursuant to which the appellant, on a humanitarian basis and to prevent riot at its plant, agreed to pay one (1) month hardship allowance and cost of transportation to the appellees and held that the appellant conferred liabilities on itself.
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> 4. Appellant says and avers that Your Honor erred when in your Final Ruling Your Honor inadvertently considered the uncorroborated testimony of the appellees' lone witness Frederick Kamara who testified to the effect that the General Manager of the appellant Bea Mountains Mining Company told the appellees that "he was going to be responsible for their severance pay", based upon which understanding the General Manager of the appellant commenced the payment of previous arrears in salaries for June and July, 2014, with the payment of their regular salaries for August, 2014, which was referred to as "hardship allowance."
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> 5. Further to count four (4) herein above, appellant says the above testimony of the appellees' lone witness was refuted by the appellant when, on November 30, 2014, while on the witness stand, the witness was asked the following question: "Mr. witness, did Bea Mountains Mining Company promise to pay the complainants in these proceedings who are employees of ICE…", to which question the witness answered no. This important evidence presented by the appellant was never refuted; neither did the appellees attempt to bring other witnesses who were present when

the appellant's General Manager allegedly consented to assume the liabilities of ICE.

6. Appellant says and avers that Your Honor inadvertently ignoring the law relative to agency declared that the International Construction & Engineering Inc.(ICE), contracted to build the appellant's New Liberty Gold Plant, was or is the appellant's agent simply by virtue of the contract awarded, which construction contract between the appellant and the International Construction & Engineering Inc.(ICE), Your Honor requested and was presented to you and is now a part of the records in this proceeding."

We will now proceed to determine whether the trial judge erred when she ruled affirming with modification the final ruling of the hearing officer adjudging the appellant liable to the appellees for unfair labor practices in the amount of Two Hundred Fifty-Six Thousand Three Hundred Nine Dollars Seventy-Five Cents (US$256,309.75), on the basis that appellant through its then General Manager Mr. Debar Allen, in a memorandum of understanding dated August 2, 2014, agreed to pay salaries and arrears owed the appellees by ICE.

Counts 1, 2, 3, 4 and 5 of the appellant's bill of exceptions bearing strong relation to one another, we will address these counts simultaneously. In the said counts, the appellant has argued that the trial judge erred when she ruled adjudging it liable to pay severance to the appellees in the absence of an employer-employee relationship or privity of contract; that the trial judge further erred when she misconstrued the two (2) memoranda of understanding signed between the parties and inadvertently held that same constitutes evidence that the appellant conferred liabilities upon itself and should therefore pay the appellees severance; that the trial judge erred when she inadvertently considered the uncorroborated testimony of the appellees' lone witness Frederick Kamara who testified to the effect that the General Manager of the appellant Bea Mountains Mining Company told the appellees that he was going to be responsible for their severance pay; and that the payment of one (1) month's salary to each of the appellees in the form of hardship allowance further confirmed that the appellant intended to assume the liabilities of the International Construction and Engineering, Inc. to the appellees.

This Court takes judicial notice that the appellees have not alleged the existence of an employer-employee relationship between them and the appellant. However, the primary contention of the appellees is that the appellant through an oral representation made by its

then General Manager, Mr. Debar Allen, and in the memoranda of understanding dated August 2, 2014, consented to assume the liabilities of ICE as regards the appellees.

Both the hearing officer and the trial judge agreed with the above-stated contention of the appellees in their rulings. In fact, the trial judge in affirming the final ruling of the hearing officer stated that the then General Manager of Bea Mountains Mining Company, Mr. Debar Allen, advised the appellees in a memorandum of understanding that if any employees of ICE had problems, he or she should channel such grievance to the Bea Mountains Mining Company through him, and that Bea Mountains Mining Company as the employer of ICE would pay the respondents severance if it is determined and calculated by the Ministry of Labor. Interestingly, the trial judge took a sharp turn in the same ruling when she further stated that the memorandum of understanding did not state that the petitioner Bea Mountains Mining Company would pay the respondents severance and that the said statement was orally made by Mr. Debar Allen, the then General Manager of Bea Mountains Mining Company. Given this contradiction of the trial judge, we must now review the various memoranda of understanding to determine which of these conflicting positions of the trial judge is supported by the records of this case, and this Court's determination thereon.

The first memorandum of understanding signed between the appellant and the appellees on August 2, 2014 clearly states as follows: "*Following consultative meetings held between* ***the workers of the International Construction and Engineering Inc., located at the New Liberty Project Site and the Management of Bea Mountain Mining Corporation under the supervision of the Labor Commissioner of Grand Cape Mount County, the parties have agreed that the workers shall return to work promptly and fully on Monday, August 4, 2014, while allowing a time period of two weeks for research and consultations to determine a legal and prudent course of action relative to the relationship between the appellant and the appellees going forward..*** *[EMPHASIS OURS].*

The second memorandum of understanding dated August 4, 2014 provides the following in the first and third counts:

1. *That all employees of ICE shall evacuate the premises of BMMC no later than 10 A.M on Thursday, August 7, 2018.*

3. *That, as a result of the request of the employees, BMMC consents to provide a hardship assistance equivalent to one month compensation to each employee paid on a monthly basis. This hardship assistance shall be provided within 10 days of the submission of the monthly payroll by the ICE HR team and its subsequent review and acceptance by the BMMC Management.*

Our review of the above quoted memoranda establishes that no employer-employee relationship was created between the appellant and the appellees and/or any oral or written representation made by Mr. Debar Allen, the then General Manager of the appellant, assuming the liabilities of ICE to the appellees. Moreover, if the General Manager of the appellant agreed to assume the liabilities of ICE as alleged by the appellees, why did the parties in the memorandum of understanding of August 2, 2014 deem it necessary to provide for a two-week grace period to determine the legal relationship existing between them? Even assuming *arguendo* that the alleged oral representation was made by Mr. Debar Allen, the then Manager of the appellant, would that have amounted to an agreement between the parties for the purpose of the appellant assuming the liabilities of ICE to the appellees? We think not. Our rationale is based on the fact that the alleged oral representation was made before the signing of the August 2 and August 5, 2014 memoranda of understanding. It is the law that "when an agreement has been reduced to writing in the form of a document or series of documents, oral testimony cannot be used to defeat or explain the written instrument, especially when the written instrument is extant, clear and unambiguous." *Civil Procedure Law, Section 25.9*; *Vamply v Kandakai*, 22 LLR 241, 247 (1973); *Kpoto v Kpoto*, 34 LLR 371, 380 (1987);

Additionally, the Liberian Commercial Code, Rev. Code 7:1.9 provides that "no agreement or transaction having a value of more than Two Thousand United States Dollars (US$2000.00) or its equivalent in Liberian Dollars is enforceable unless evidenced in writing signed or acknowledged by the person against whom enforcement is sought." Hence, the value of the alleged oral representation being far more than Two Thousand United States Dollars (US$2,000.00) or its Liberian Dollars equivalent, only a written instrument signed or acknowledged by the appellant could suffice to prove the contention of the appellees, owing to the fact that subsequent written instruments were executed between the parties making no mention of the alleged oral representation.

A further review of the records reveals that the appellant did not voluntarily take the initiative of providing hardship assistance to the appellees but did so only upon the request

of the appellees as can be seen from the below quoted receipt of the hardship allowance given to the spokesperson of the appellees, Frederick Kamara, to wit:

> *"August 16, 2014*
>
> *"RECEIPT"*
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> *"I FREDERICK KAMARA, by acceptance and receipt of the amount of US$516.00, as HARDSHIP ALLOWANCE from Bea Mountain Corporation (the Company), agree to permanently vacate the Company's sites and* ***ONLY RETURN IF SOLICITED FOR EMPLOYMENT BY THE COMPANY OR ITS REPRESENTATIVE.*** *"* [EMPHASIS OURS].

This receipt was signed by each of the appellees, agreeing to permanently vacate the appellant's premises and return only when solicited for employment. Again, we observe that the wordings on this receipt in no way prove that the appellant had assumed or intended to assume the liabilities of ICE. In fact, the receipt includes the appellant's original request to the appellees to vacate its premises, which they had refused, prompting the appellant to call in the Ministry of Labor to avoid any disturbances on its premises as was done in the case mentioned *supra*: *Frederick Kromah et al v Bea Mountain Mining Company (BMMC)*, Supreme Court Opinion, March Term 2022

The other area of controversy in the memorandum of understanding dated August 5, 2014, is the last part which provides that:

> *"Because the parties, through an earlier MOU, have agreed to seek all legal clarity as to whether or not BMMC has further obligations to them as employees of ICE, the parties do now further agree that in the event it is determined that BMMC does have severance obligation to them as Employees of ICE, such obligation shall be reduced by an amount equivalent to the hardship assistance. However, in the event that it is determined to the contrary, BMMC shall continue to consider this hardship assistance and not seek reimbursement from the employees."*

Again, upon careful reading of this provision of the August 5, 2014, memorandum of understanding, it is clearly seen that at all times, the appellees are referred to as the employees of ICE, an indication that the appellant understood that the appellees were not

its employees. This Court says that it was a magnanimous gesture by the appellant to graciously heed the appellees' request and to gratuitously give the appellees the amounts as hardship allowances to take them to their various destinations during the EBOLA virus epidemic which killed and devastated the lives and livelihood of hundreds to Liberians and residents alike! This gesture is not and can never be construed as the appellant agreeing to assume the liabilities of ICE.

Further, the quoted provision of the August 5, 2014, memorandum of understanding, clearly states that the parties had through an earlier MOU agreed to seek all legal clarity as to whether or not the appellant has any further obligations to the appellees as **"EMPLOYEES OF ICE"** and in the event it is determined that the appellant has severance obligation to them (appellees) as **EMPLOYEES OF ICE,** such obligation shall be reduced by an amount equivalent to the hardship/assistance. [EMPHASIS OURS].

As already mentioned, all the memorandum of understanding signed between the parties continuously referred to the appellees as employees of ICE and there is no showing by any parity of reasoning that the appellant is the employer of the appellees or in any of the MOU signed intended to assume the liabilities of the appellees' employer.

The Decent Work Act of 2015 at Section 14.5 provides *inter alia* that *"an employer shall provide notice to the employee under section 14.6 and pay severance to an employee if the employee's employment is terminated because of economic reasons".* It is also the law that "severance wherever it is mentioned in our jurisdiction refers to an employer and an employee only." *Int'l Trust Co. v King; 37 LLR 227 (1993), USTC v Morris et al; 41 LLR 191 (2002), Johnson v LAMCO J.V. Operating Co. [1984] LRSC 5; 31 LLR 735 (1984) (9 February 1984).* From the foregoing provisions of the statute and case laws, it is undisputed that there must first exist an employer-employee relationship, and next, the termination of the employee's employment with the employer for economic reasons, before a claim of severance. Hence, we hold that in the absence of a formal commitment by the appellant to assume the liabilities of ICE to the appellees, and the existence of an employer-employee relation between the appellant and the appellee, the latter cannot claim severance pay from the appellant.

Lastly, in count 6 of the bill of exceptions, the appellant maintained that the trial judge was in error when she stated in her ruling that ICE is an agent of the appellant Bea Mountains

Mining Company and at such the appellant being the principal of ICE is liable for the acts of her agent. We are in agreement with the appellant.

It is the law that the relationship between an agent and a principal is a contractual one; hence, there must be a meeting of the minds for same to exist. The principal must intend that the agent performs some acts on his/her behalf, and the agent must accept the authority to act on behalf of the principal; and the intention of the parties must find expression either in words or conduct between them. *Benson v Sawyer*, Supreme Court Opinion, March Term, 2015; *Moniba v Kafel*, Supreme Court Opinion, March Term, 2007. Further, the Supreme Court has held that "where there is no meeting of the minds between the parties, there can be no agent-principal relationship." *Baky v. George*, 22 LLR 80, 84 (1973).

In the instant case, we find it difficult to conceive how the trial judge arrived at the existence of an agency relationship between the appellant and the International Construction and Engineering Inc. for the purpose of holding the appellant liable for the acts of the International Construction and Engineering Inc. First and foremost, the appellant did not issue any written instrument authorizing International Construction and Engineering Inc. to act on its behalf as an agent. Second, we have searched the records and there is no showing of any conduct on the part of the parties to suggest that they intended to act, one as a principal, and the other as an agent. Thus, there is no express or implied agency relationship between the parties, and we so hold.

WHEREFORE AND IN VIEW OF THE FORGOING, the ruling of the National Labor Court is reversed. The Clerk of this Court is ordered to send a mandate to the lower court commanding the judge presiding therein to resume jurisdiction over this case and give effect to the Judgment of this Opinion. Costs are ruled against the appellees. IT IS HEREBY SO ORDERED.

Reversed

When this case was called for hearing, Cllr. Kunkunyon Wleh Teh of the International Law Group appeared for the appellant. Cllrs. Kuku Y. Dorbor, Othello G. Kruah, Sr. and Prince M. Kruah of the Henries Law Firm appeared for the appellee.