LIBERIA OPERATING INC., by and thru its President, MICHAEL L. DESQUESNES, Appellant, *v.* SAMUEL ZEAN and THE BOARD OF GENERAL APPEALS, represented by its Chairman, RUSHU A. KARNGA, Ministry of Labour, Youth and Sports, Appellees.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: May 13, 1981. Decided: July 30, 1981.

1. It is not an error to admit documentary evidence of the outcome of a criminal trial into a civil trial.
2. The admission of a record of discharge from criminal liability in a civil suit, does not render the hearing a criminal proceeding.
3. A party is not required by law to withhold judicial remedy for injuries sustained until the outcome of a criminal prosecution is obtained.
4. Once a cause of action accrues, the statute of limitations may apply to it.
5. The discharge of a defendant on dismissal of a suit quashes all process against him then existing.
6. A judgment or certificate of acquittal from criminal liability, when issued by the court that determined the case, is not hearsay evidence. It is a judgment and an official record that may be properly admitted into evidence.
7. In labour trials, the aggrieved party may furnish additional relevant and material evidence if the Board of General Appeals determines the materiality and relevancy of the evidence desired to be produced, and if it determines that appellant was not given full opportunity to defend or prosecute his cause.
8. A party who wilfully and negligently fails to take advantage of the law, cannot complain that his contentions were not determined.
9. Judicial review of a labour ruling is confined to the records of the labour trial.
10. A Circuit court hearing of a labour matter is an appellate review and must be strictly confined to the record of the labour hearing from which the appeal is taken.
11. A bill of exceptions that relates to no issue or objection raised at the trial is an empty record, and has no legal effect for consideration by the Supreme Court.
12. Where a party absents himself from a labour trial, he waives his rights to object to any issues occurring in his absence.

Co-appellee Samuel Zean, a tenured employee of appellant, was dismissed on a charge of theft of property. Co-appellee Zean was tried on the criminal charge and was acquitted. Subsequently, he was issued a certificate of acquittal and dismissal by the magisterial court that tried him. Thereafter, Co- appellee

reported to appellant for reinstatement or payment in lieu of dismissal but appellant declined to do so. Hence Co-appellee Zean filed a complaint with the labor inspector. From a ruling in favor of appellee, appellant appealed to the Board of General Appeals, which confirmed the ruling of the Labour Inspector. Thereafter, appellant petitioned the Civil Law Court for judicial review. From the ruling of the Civil Law Court affirming the ruling of the Board of General Appeals, appellant appealed to the Supreme Court.

Appellant contended that the Civil Law Court committed reversible error, when it affirmed the ruling of the Board of General Appeals in that the said Board of General Appeals had admitted into evidence a judgment of the magisterial court; that the said judgment admitted into evidence, constituted hearsay; that it was incumbent upon the hearing officer and the Board of General Appeals to have investigated and determined whether probable cause existed for appellant to have dismissed Co-appellee; and that by the admission of the judgment of a criminal case into evidence in a civil trial, the trial at the Labour Ministry and the circuit court became criminal trials, contrary to law.

The Supreme Court, among other things, held that while it is error to admit evidence of the merits of a pending criminal case, to establish facts in a civil suit, the case in point is inapposite, in that the evidence submitted to the hearing officer is a documentary evidence of the outcome of a criminal trial and not evidence of the pendency of a criminal proceeding. With respect to the nature of the trials in the Ministry of Labour, the Supreme Court held that they were exclusively civil in nature and procedure and that the admission of the judgment discharging appellee from criminal liability, did not render the hearing a criminal proceeding. The Supreme Court also held that the judgment of the magisterial court is not hearsay; that the trial court did not err in passing upon issues raised in the pleadings, but not supported by the records, in that judicial review is confined to the records of the labour trial, and that the issues raised by appellant were not raised by him at the labour hearing. Accordingly the Supreme Court *affirmed* the judgement.

Roland Barnes and *Daniel Draper* of the Brumskine Law

Firm appeared for the appellant. *M. Fahnbulleh Jones* appeared for the appellees.

MR. JUSTICE MABANDE delivered the opinion of the Court.

Co-appellee, Samuel Zean, was an employee of appellant, Liberia Operating Inc. During the many years of his employment, Co-appellee was assigned to several positions of trust until on May 9th, A. D. 1979, when appellant wrote a letter dismissing him on a charge of theft of property.

After the hearing of the criminal charge, the magisterial court of the Municipality of Buchanan, Grand Bassa County, acquitted co-appellee and dismissed the criminal suit. Co-appellee was given a certificate of acquittal and dismissal of the criminal charge.

Co-appellee reported to his former employer, appellant, for reinstatement or payment in lieu of notice of dismissal now that he had been acquitted, but appellant declined to do so. Being aggrieved by this act of appellant, co-appellee lodged a complaint against appellant with the local labour inspector who notified appellant of the pendency of the labour controversy. Appellant attended the hearing and filed his defense of pendency in the magisterial court of a criminal charge of theft of property against co-appellee.

At the labour trial before the labour inspector, co-appellee produced the letter of his dismissal, the certificate of his acquittal and the ruling of the criminal suit in his favor.

Appellant appealed to the Board of General Appeals which cited both parties to its hearing of the appeal. Appellant declined to attend. Hearing was held and the Board affirmed the ruling of the labour inspector against appellant.

Appellant again appealed to the People's Circuit Court for the Sixth Judicial Circuit for judicial review. The circuit court, presided over by His Honour E. S. Koroma, regularly heard the petition, and affirmed the ruling of the Board of General Appeals. The appeal to this Court of last resort was taken from that judgment.

At the opening of the oral arguments, appellant's counsel

stated that the outcome of this case would be decisive for the economy of this country and all alien investors. Counsel for co-appellee, for his part, contended that the determination of this controversy should weigh upon duly balancing the protection of the rights of all persons, employees and employers alike, with the constitutionally guaranteed right to life, liberty and property.

Life, liberty and property are so dear to the people of this land that they conserved rights to them in their organic law. To shield and protect these rights from infringement and denial, the right to public, fair and impartial trial was inscribed in our laws. Without this medium of due process of law, no right can be forfeited.

One of the most challenging events of the people of Africa and the world is the contest over the rights of labour and management. Every right, claimed to have been violated, is in the eye of the law, no trifling matter. We consider management as equally important to labour as labour is to management.

Appellant's counsel argued in counts 1, 2 and 3 of their brief that His Honour E. S. Koroma committed reversible error by affirming the ruling of the Board of General Appeals and the hearing officer because they admitted into evidence the judgment of the magisterial court. Continuing their argument, they contended that the findings of the hearing officer should have been reviewed by the Board of General Appeals. They also extensively argued, that the trial by the hearing officer (labour inspector), the Board of General Appeals and the circuit court were criminal trials in nature and procedure, because of the admission of a judgment of a criminal case into evidence; and therefore, the ruling and judgment are contrary to law.

The procedure required by law for the hearing of cases by the court should be strictly adhered to. In the instant case, only the records before this Court can ascertain what procedures were adopted at the trials.

According to the records, before the trial commenced, the labour inspector referred the complaint to appellant, which he defended by alleging (1) that the dismissal was based on justifiable cause and (2) that co-appellee committed a criminal act; hence, it was justified in dismissing him.

At the trial, co-appellee introduced into evidence the letter of

his dismissal and a judgment of his acquittal from the criminal charge. The trial records do not reveal appellant's production of or denial of his right to produce any evidence of his choice whether documentary or oral.

The case could not have reasonably been heard without prejudice to either party, or serious breach of duty on the part of the court without resort to the letter of dismissal which gave the reason for dismissal and the clearance on which appellant's defenses were based, especially as the apparent pendency of the criminal cause before court could have put a stop to all proceedings if it had been proved.

In *Gould v. Gould,* 1 LLR 389,391(1903), the Court held that it is error to admit evidence of the merits of a pending criminal case to establish facts in a civil suit. However, in the case before us, the evidence submitted to the hearing officer and supported by the ruling of the Board of General Appeals and the court's judgment, is a documentary evidence of the outcome of a criminal trial. There was no pendency of a criminal proceeding against co-appellee at the time, or at any stage of this cause.

The trials at the Ministry of Labour and before His Honour E. S. Koroma were exclusively civil in nature and procedure. The admission of the record of discharge from criminal liability in a civil suit does not render a hearing a criminal proceeding. A party is not required by law to withhold judicial remedy for injuries sustained until the outcome of a criminal prosecution is obtained. Once a cause of action accrues, the statute of limitations may apply to it. *Doe v. Tarplah and Wonkar* , 15 LLR 410 (1963).

In count 4 of his brief, appellant's counsels argued that His Honour E. S. Koroma committed reversible error by affirming the ruling of the Board of General Appeals, which appellant claimed was based on a documentary evidence of the acquittal of appellee from criminal liability and that such a record is a hearsay evidence.

In the case, *Harmon v. Woodin & Company, Ltd.*, 2 LLR 334 (1919), this Court held that "discharge of a defendant or dismissal of a suit quashes all process against him then existing." Co-appellee was no longer an accused after his acquittal, hence, no criminal suit was pending against him.

Appellant's counsel relied on the case *Yancy and Delaney v. Republic*, 5 LLR 182 (1936), in support of his contention that the records of the magisterial court is a hearsay evidence. In that case the Court held that "a statement otherwise objectionable as hearsay does not become competent by being reduced to writing." A judgment or certificate of acquittal from criminal liability when issued by the court that determined the case is not hearsay evidence. It is a judgment and an official record that may be properly admitted into evidence. Civil Procedure Law, Rev. Code 1:25.11; and *Clay v. Freeman*, 3 LLR 376 (1933).

In counts 5 and 6 of their brief, appellant's counsel argued that His Honour E. S. Koroma committed reversible error by affirming the rulings of the hearing officer and the Board of General Appeals, in that according to appellant it was established that Co-appellee Zean did commit the offense. Continuing their argument in their brief, appellant's counsel wrote that "it was the duty of the hearing officer as well as the Board of General Appeals to have investigated and determined whether probable cause existed for appellant to have summarily dismissed co-appellee."

Appellant's counsel, in counts one and two of their brief, and in their oral argument in support thereof, blamed and charged Judge Kromah and the officials of the Ministry of Labour for illegally conducting a criminal trial; while in count 5 of their brief, they blamed and charged them for failing to hold investigation into the said criminal charge in order to have established, whether or not probable cause existed for criminal liability. The striking contradictions in their brief as well as their oral arguments impress this Court that appellant's counsel have no serious issues to present for consideration.

Under the Labour Practices Law, Lib. Code, 18-A:54 (1)(2), an inspector may receive complaints, investigate and require compliance with his findings by correction of the wrongful labour practices. This, the labour inspector correctly did when co-appellee filed his complaint against appellant. A party dissatisfied with the findings is allowed by law to appeal to the Board of General Appeals. The Board reviews the ruling of the hearing officer based upon records. To this Board, appellant appealed.

According to the statute, the aggrieved party may furnish additional relevant and material evidence if, the Board determines the materiality and relevancy of the evidence desired to be produced, and if it determines that appellant was not given full opportunity to defend or prosecute his cause.

We shall now delve into the entire procedure at the trials in order to determine whether appellant was in any way deprived of due process of law, or whether evidence produced at the trial did not support the rulings and judgment. Appellant, according to the records, never attended the Board of General Appeals' hearing and therefore he could not have requested for permission to produce evidence. Appellant does not complain that it was not given sufficient and full opportunity at the trials to produce any evidence in its favour. His conduct in this regard is a waiver of any objection to the procedure before the labour inspector and the Board, which did not deviate from the required due process of law. According to the records, his right to produce evidence at any stage of the hearing before the hearing officer or the Board was never tampered with. *Horton v. Horton,* 14 LLR 57 (1960).

Appellant does not complain that he had no notice to have attended the hearings at the Ministry of Labour in order to have raised his objections. A party who wilfully and negligently fails to take advantage of the law cannot complain that his contentions were not determined. A party who appeals to this Court, without showing any evidence to either defend and protect any cause or right, or to establish any principle of law, but merely to attempt to stealthily test the wisdom of the court, or to delay and suppress the legitimate rights of a party, as appellant's counsel attempted to do in this case, should not hereafter go without severe punishment.

Had appellant not been duly notified of the pendency of the case resulting in its failure to attend, or with notice attended the hearings and its rights were violated by the courts, this Court would definitely declare his rights according to due process of law.

In count 7 of their brief, appellant's counsel finally argued that His Honour E. S. Koroma committed reversible error by his failure to pass on all issues raised in the pleading. Appellees counsel contended that under labor law, no new issue should be

raised in a pleading before a circuit court. We hold that the judicial review of labour rulings is confined to the records of the labour trial. "A proceeding under this chapter shall be conducted by the court without a jury and shall be confined to the record" (emphasis ours). Labour Practices Law, Lib. Code 18A:8.

Since the labour statute, in unambiguous language, has commanded that a procedure for the hearing of a petition for judicial review shall be "confined to the record", a circuit court's hearing of such a petition is an appellate review. Hence, it must strictly confine itself to the records of the labour hearings from which the appeal is taken. Not one of the five counts of appellant's lengthy bill of exceptions relates directly or indirectly to any issue raised or objected to by appellant at any of the labour hearings. We hold that a bill of exceptions that relates to no issue or objection raised at the trial is an empty record and has no legal effect for consideration by this court.

As appellant conserved no issue either of law or fact at the labour trials, his contention that the trial court failed to rule on all issues of law for judicial review is unsupported by law or fact. Appellant, by its absences from the labour trials, waived its rights to have objected to any issue. *Kobina et al. v. Abraham*, 15 LLR 502 (1964); Civil Procedure Law, Rev. Code 1:51.15 (1).

After reviewing the entire record of this case and duly considering the contentions raised by counsels of the litigants, we have been unable to find any legal reason for which the judgment should be disturbed. We therefore affirm the judgment with costs against appellant. And the Clerk of this Court is hereby ordered to send a mandate to the trial court to resume jurisdiction over this case and enforce its judgment. And it is hereby so ordered.

Judgment affirmed.