

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC OF
LIBERIA, SITTING IN ITS OCTOBER 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

The Management of Omega Insurance by and)
thru its Manager and all authorized Officers of)
the City of Monrovia, Liberia..... Appellant) Appeal
)
Versus)
)
Otis Gbala of the City of Monrovia, Montserrado)
County, Republic of Liberia Appellee)
)
GROWING OUT OF THE CASE:)
) Unfair Labor
Otis Gbala of the City of Monrovia, Montserrado) Practices and
County, Republic of Liberia Complainant) Wrongful Dismissal
)
Versus)
)
The Management of Omega Insurance by and)
thru its Manager and all authorized Officers of)
the City of Monrovia, Liberia..... Defendant)

Heard: November 7, 2023

Decided: February 7, 2024

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT

On July 27, 2018, the appellee, Mr. Otis S. Gbala, filed a complaint of Wrongful Dismissal with the Ministry of Labor alleging, among other things, that he was employed with the appellant, OMEGA Insurance Company on September 2, 2013 as IT Technician; that he served appellant with dedication and commitment with no record of warning or suspension and received awards, bonuses, promotion and salary increment for excellent performance in the capacity as IT Technician; that despite his proven commitment to appellant, Mr. Gajay Ananaba, Chief Operations Officer of appellant, constantly subjected him to harassment and intimidation that led to his dismissal; that on April 24, 2018, appellant complained him to the Liberia National Police Intelligence Unit for what it termed as an

“unauthorized recording of phone conversation”; that on April 25, 2018, a letter of suspension was issued to him, which immediately suspended him from job and withheld all benefits and salary due him and have accrued to him for the month of April, 2018 pending the completion of investigation and the issuance of police clearance by the Police Intelligence Unit in respect of the April 24, 2018 Complaint. The Liberia National Police issued a “Police Confirmation Clearance” on July 4, 2018, to clear the appellee of any wrongdoing after the completion of its investigation; that in total disregard to the appellant’s April 25, 2018 letter, which required that he returns to work upon receipt of Police Clearance, on July 16, 2018, appellant issued to appellee a Termination Letter for having an “unauthorized recorded voice of a former supervisor”; that the act of appellant to summarily terminate the services of the appellee without the appellee been in breach of any policy, regulation or law was not done in good faith as required of every contract; and same constitutes wrongful dismissal under the Decent Work Act (DWA) of 2015.

The records show that on September 30, 2020, the hearing officer, after conducting a full-scale investigation into the appellee’s complaint, held the appellant liable for Wrongful Dismissal and Unfair Labor Practice and further held that the appellant reinstate and pay appellee his monthly salary and other benefits from the time of his suspension up to the date of the ruling as though the appellee’s services were not terminated; or in lieu of reinstatement, appellant should pay Appellee twenty-four months amounting to US\$23,337.84 (Twenty-Three Thousand Three Hundred Thirty-Seven United States Dollars and Eighty-Four Cents).

The appellant, being aggrieved by the ruling of the hearing officer, filed with the National Labor Court a petition for judicial review on October 22, 2020, essentially contending that its action to terminate the appellee without internal investigation was judicially sound and within the pale of the law; hence, the Ministry of Labor erred in holding appellant liable for wrongful dismissal and unfair labor practices. The petition was duly heard, and the National Labor Court ruled, affirming the ruling of the Ministry of Labor.

The appellant, not being satisfied with the affirmation of the ruling of the hearing officer by the National Labor Court, registered its exceptions but failed to announce an appeal, file a bill of exceptions, and serve and file a notice of completion of appeal as provided for by the Civil Procedure Law, Rev. Code 1:15.4 to allow this Court to review the merit of the case. The appellant instead filed a petition for a Writ of Certiorari, praying the Chambers Justice to order issue the alternative writ against the trial court for the trial judge's refusal to sign the appellant's bill of exceptions, notwithstanding the failure of the appellant to announce an appeal. The Chamber Justice cited the parties for a conference on two separate occasions. The appellant failed to appear, and the Justice declined to issue the writ prayed for and instructed the trial court to resume jurisdiction over the case and to proceed in keeping with the law. Upon the trial court resumption of jurisdiction, the parties, on June 3, 2021, taxed the Bill of Cost for US\$26,605.14 (Twenty-Six Thousand Six Hundred Five United States Dollars and Fourteen Cents) plus LD\$1,000.00 (One Thousand Liberian Dollars) covering payment in lieu of reinstatement which was duly approved by the trial judge and served on all parties for execution. On June 23, 2021, twenty (20) days after the issuance and service of the Bill of Costs, a Payment Order was issued mandating the appellant to make immediate payment, failure to do which the appellant was held in contempt of court twice and later purge of the contempt. Instead of the appellant making payment under the court's payment order, the counsel for the appellant, Cllr. Benedict Sannoh filed a bill of information and a post-trial motion to compel disclosure in the enforcement of the ruling, fifty (50) days after the entry of the court's final ruling in the main suit and after the bill of cost had been taxed. It is essentially contended in these two instruments that the appellant had resolved to reinstate the appellee in lieu of satisfying the Bill of Cost; that appellant had credible information that the appellee was employed with Prevail Liberia and FHI 360 sometime after his dismissal and had been making income; that the National Labor Court should compel the appellee to disclose income earned with Prevail Liberia and FHI 360 for said incomes to be deducted from the payment to be made to appellee by the appellant; and that a Subpoena Duces Tecum and Ad-Testificandum be served on the appellee and the management of Prevail Liberia and the management of FHI 360 to come to the National Labor

Court to testify and produce evidence as to the appellee's employment status, his earnings, and how long he has been in their employment.

The appellee filed his resistance to both the appellant's post-trial motion to compel disclosure and its Bill of Information, praying that same should be denied and dismissed on grounds that a motion to compel disclosure is by law available to a judgment creditor and not a judgment debtor; that appellant filed the bill of information and the motion to compel disclosure in bad faith for the sole purpose of delaying the execution of the court's final judgment in the matter and to further challenge the authority of the trial court to enforce the Bill of Costs and payment order already approved and issued by the court for final execution; that appellant's motion and Bill of Information seek not only to have the court to open up the entire case for additional fact findings on issues which were not subject of contention during the investigation stage of the case or raised in appellant's petition for judicial review, but to further have Judge Joseph Kollie to modify and disturb the final judgment rendered by the Labor Ministry and affirmed by his predecessor, Judge Chan-Chan A. Paegar; and that the taxing of the Bill of costs by counsels for all parties and approving of same by the presiding judge in consequence of which a payment order was issued, directing appellant to pay the judgment sum is not only an acquiescence of what the final settlement should be but also settles what the judgment sum is and therefore renders moot and supersedes any and all options available to the parties for a judgment rendered in the subject case.

After entertaining arguments, on August 25, 2021, the trial judge rendered its final ruling denying the appellant's motion and bill of information. The trial judge in agreement with the appellee held, among other things, that the taxing and approval of the bill of costs showed that the parties accepted and agreed to comply with the bill of costs, that the appellant had sufficient time to decide whether to reinstate or pay the judgment amount before the signing of the bill of costs. The appellant's failure to have raised these issues before signing the bill of costs indicates that the appellant agreed to pay the amount taxed and, therefore, suffered waiver and lashes.; That the court, not having original jurisdiction over labor cases, it will be contrary to

law to issue a subpoena deuces-tecum and ad-testificandum to have documents brought and witnesses to testify for the first time.

The dissatisfied appellant entered an exception to the trial judge's ruling, filed a nine-count bill of exceptions and an appeal bond, and served and filed a notice of completion of the appeal. It is a settled principle in this jurisdiction that this Court is not bound to consider every issue raised in the bill of exceptions except those germane to the determination of the case. *Kwaplah International (Liberia) Inc., v The Management of Eco Bank Liberia Limited*, Supreme Court Opinion, October Term 2022; *CBL v. TRADEVCO*, Supreme Court Opinion October Term 2012; *Knuckles v. TRADEVCO*, 40 LLR 49, 53 (2000); *Vargas v. Morns*, 39 LLR 18 24(1998); *Rizzo et al v. Metzger et al*, 38 LLR 476 (1997). In light of this legal principle, and after carefully reading the appellant's entire bill of exceptions, we deem it necessary to consider for this decision counts 5, 7, and 8 of the appellant's bill of exactions as stated below:

“5. That your honor committed reversible error in applying what you described as the principle of law which provides that the National Labor Court does have original jurisdiction over labor cases and, in so doing overlooked salient facts, law and practice extant in this jurisdiction to the effect that the judgment in labor matters are enforced by the National Labor Court and not the Hearing Officer or the Ministry of Labour. If the courts contention is that it cannot take evidence for the first time, the proper procedure would be to mandate the hearing officer of the Ministry of Labour to take the evidence and forward its findings to the court to enable it comply with the provisions of Section 14.10 of the Decent Work Act. The application for the issuance of a subpoena could not have been made by movant to the Ministry of Labor since the Ministry has lost jurisdiction over the case and matter was now pending in the National Labor Court. Hence the court committed reversible error by denying the application for subpoena while it has jurisdiction over the subject matter. Your honor therefore erred in holding that it will be contrary to law to issue a subpoena Deces-tecum and Ad-testificandum to have documents brought and witnesses testified for the first time in the National Labor Court.

7. That your honor committed reversible error when you ruled that the taxing of the Bill of Cost by the parties showed that they have accepted the sum total and that the Movant has agreed to comply with said cost. There is a distinction between a Bill of Cost emanating from a final judgment in a labor matter and a bill of cost emanating in all other civil cases. In the former, that is a bill of cost emanating from

a judgment in a labor matter, the defendant against whom judgment is rendered has the option to satisfy the final judgment as taxed by the counsels or to reinstate the employee/plaintiff and pay him all salaries and benefits he would have earned had he not been dismissed. In the latter, that is where the Bill of Cost emanates from a judgment in all other civil cases, the defendant has no choice but to satisfy the Bill of Cost as taxed by the lawyers. It appears that Your Honor did not appreciate this fine distinction by holding that because defendants' counsels have taxed the Bill of Cost, defendant is bound to satisfy it. By so holding, your honor has set aside and disregarded the expressed provisions of the Decent Work Act, as approved by the legislature, which grants the defendant the option to pay the employee or to reinstate him. Under our law and practice, courts are bound by the Constitution and Statutory laws and have no authority to extrapolate beyond the mandatory language of the statute. Your Honor therefore committed reversible error in so holding that by taxing the bill of costs, movant is bound to satisfy it.

8. That your honor committed reversible error when you held that the failure of Movant to make his position known that he will reinstate the employee before signing the bill of cost indicates that the Movant has agreed to pay the amount taxed and therefore suffers stings and lashes. The taxing of the Bill of Cost is a function reserved to the lawyers of the parties and the approval of said Bill of Costs reserved to the Court. It is only when the Bill of Cost has been taxed and approved by the Court that it is served on the party litigants by the Ministerial Officer of the Court. The decision to satisfy the Bill of Cost or to reinstate the employee is made by the Party litigant and not the lawyer, and that decision is not triggered until the Bill of Cost is served upon the defendant by the Ministerial Officer of the Court. Hence, Your Honor holding that the option to reinstate the employee should have been communicated prior to the taxing of the Bill of Cost is a misrepresentation of the law and constitutes a reversible error."

Before considering the contentions of the appellant in its bill of exceptions, we must state that there is no dispute that the ruling entered by the Hearing Officer on the merit of this case and confirmed by the trial judge is not before this Court for appellate review as none of the parties entered exception to, and appeal from that decision. What is under review here is the National Labour Court ruling denying the motion and the bill of information filed by the appellant's counsel.

We shall now review the appellant's basic contentions gathered from reading its bill of exceptions. The appellant contends that the National Labour Court erred when it refused jurisdiction over the appellant's motion for disclosure and the bill of information on the ground that it did not have

original jurisdiction over labor case, although the appellant's motion and the bill of information raised enforcement issue and the National Labour Court has jurisdiction over the enforcement of judgment emanating from the Hearing Officer of the Ministry of Labor; that when the National Labor Court affirmed the final ruling entered by the hearing officer to which no exception was taken, bill of costs is prepared, and taxed by the parties and approved by the trial judge; and that the appellant's right of election to reinstate the appellee in lieu of satisfying the bill of cost is not extinguished thereby.

Considering the above and giving due consideration to the arguments advanced by the parties, we identify the following as issues dispositive of this appeal:

1. Whether after the entry of a final ruling by the National Labour Court giving the appellant the option to reinstate or pay in lieu thereof from which no appeal was perfected, the bill of costs taxed by the parties without reservation and approved by the judge, and payment order prepared and served on the appellant, the appellant may thereafter elect not to make payment but to reinstate the appellee?
2. Whether the National Labor Court erred when it refused jurisdiction to hear the appellant's motion for disclosure and bill of information to adjust the judgment amount.

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

Regarding the first issue, it is the argument of the appellant in the brief filed before this Court that signing the bill of costs is a legal requirement, which does not suggest that the appellant agreed with the figures contained therein. We disagree with the appellant's reasoning.

The law on the subject under view in this jurisdiction is unambiguous and does not require further interpretation. The law is that before signing a bill of costs prepared by the trial court clerk, the parties must be satisfied with all of the items included therein. If there is any disagreement, such disagreement must be settled by the trial judge before the approval of the bill of costs. When the bill of costs is taxed by the parties and approved by the trial judge, it means that the parties are in full agreement with the contents of the bill of costs. *Civil Procedure Law, Rev. Code 1:45.5*. We,

therefore, hold that section 45.5 does not impose a mandatory and commanding order on counsel for a party litigant to tax or sign a bill of costs that he is dissatisfied with. The law is, “after final judgment, the Clerk of court shall prepare a bill of costs which he shall transmit to the attorneys for all the parties. The judge shall approve the bill of costs agreed upon by the attorneys, or, if they cannot agree, he shall settle the disputed items and approve the bill of cost as settled”. *Civil Procedure Law, Rev. Code 1:45.5*.

The appellant further argued in its brief that the option given in a final ruling in a labor case that allows an election by the appellant to reinstate the appellee or pay him twenty-four months’ salary in lieu of reinstatement remains available to the appellant even after the parties signed the bill of costs and the judge approved the same. We disagree with the appellant’s argument. The bill of cost is the itemization of the costs that a losing party stands to pay in satisfaction of a judgment. The major component of that cost is clearly stated in the judgment to be ascertained by the party. The taxing of the bill of cost is to ensure that the parties are in agreement with the items included therein and not to aid the parties in making an election between options, as the appellant would have us believe. By affixing his signature to the bill of costs, the appellant is indicating his election to pay the award imposed by the hearing officer and affirmed by the National Labour Court. What is more intriguing in the instant case is that after the parties taxed the bill of costs, the court prepared the payment order, served the same on the appellant, held and fined the appellant in contempt, and after almost 50 days thereafter, the appellant filed a motion and a bill of information stating that, in fact, it intends to reinstate the appellee and that the court commission an inquiry to ascertain whether the appellee has had other employment, and if so, that the appellee benefit be reduced by any income he made from those sources. If we accept this argument of the appellant that after the signing and approval of the bill of costs, and the lapse of 56 days after the final ruling on the judicial review by the National Labour Court, the appellant still has the right to elections, will amount to giving the appellant perpetual time to decide which options to considered in a wrongful dismissal case that provide for reinstatement or payment in lieu of reinstatement. Then in cases like this, the enforcement of a judgment

would be impossible. Adopting the course of action as suggested by the appellant is tantamount to placing the court's final ruling in abeyance and at the will and caprices of the appellant and frustrating the rights of the appellee. This is not the spirit and intent of our procedural code. We, therefore, hold that when a bill of costs is prepared, and the amount that ought to be paid in lieu of reinstatement in a labor-related case is included, the parties affix their signatures thereto, and the trial judge approves the same without reservation, this action on the part of the appellant is considered an election to pay the award; hence, the right of reinstatement is no longer available to the appellant.

With respect to the second issue, this Court says that the National Labor Court did not err when it denied both the motion for disclosure and its accompanying bill of information. To begin with, we are in agreement with the appellee that a post-trial application for disclosure during the enforcement of a money judgment is available to the judgment creditor rather than the judgment debtor. Civil Procedure Law, Rev. Code 1:44.33.(1) provides that "at any time before a judgment is satisfied or vacated or expires, the judgment creditor may compel disclosure of all matter relevant to the satisfaction of the judgment by serving upon any person a subpoena conforming to the requirements of paragraph 2". In light of the foregoing, it is our opinion that the trial judge did not err when he refused jurisdiction over the application for disclosure and its accompanying bill of information filed by the counsel for the appellant.

More besides, considering the time interval from the final ruling of the trial judge to the time of the filing of the motion and the bill of information, which is about fifty-six (56) days, we cannot consider the time interval to be reasonable, assuming the appellant had the right to file the application. The delay in the filing of the motion would have certainly constituted a waiver and laches.

We cannot conclude this opinion without considering the unethical conduct of the lawyers for the appellant. This Court says that Cllr. Benedict F. Sannoh, by signing the bill of costs without any queries or objections, indicates that the appellant elects to pay the award. For Cllr. Sannoh, therefore, to file a motion for disclosure and a bill of information on behalf of

the appellant after the service of the payment order on the appellant and the holding of the appellant in contempt for failure to satisfy the payment order and after 56 days of the rendition of the court's final ruling, clearly demonstrate an intent to frustrate the satisfaction of the court's ruling and defeat and frustrate the end of justice. By filing unmeritorious applications, especially after a terminal determination and at a time the enforcement of the judgment is being carried out, the only conclusion that can be reached is that Cllr. Sannoh's sole intention is to undermine or impugn the authority, dignity, and integrity of the court, thereby hindering the effective administration of justice. Rule 1 of the Code for the Moral and Ethical Conduct of Lawyers provides that "It shall be unprofessional for any lawyer to advise, initiate or otherwise participate directly or indirectly in any act that tends to undermine or impugn the authority, dignity, and integrity of the courts or judges thereby hindering the effective administration of justice". For such unprofessional conduct, Cllr. Benedict F. Sannoh is hereby fined the amount of Five Hundred United States Dollars (US\$500.00), the same to be paid in Government revenue within seventy-two (72) hours as of the rendition of this Opinion.

We also note that upon Cllr. Sannoh's withdrawal from this matter after the trial judge denied his applications, Cllr. Jerome George Korkoya of the JG Korkoya Law Office, LLP, took over the case as retained counsel for the appellant and appeared before this Court to argue the appeal. This Court says further that it also sees this conduct of Cllr. Korkoya to be reprehensible and unprofessional. Rule 11 of the Code for the Moral and Ethical Conduct of Lawyers provides that "A lawyer should endeavor to obtain full knowledge of his client's cause before advising thereon, and he is bound to give a candid opinion on the merits and probable result of pending contemplated litigation. Whenever the controversy will not admit of fair judgment, the client should be advised to avoid or to end litigation, and it is unprofessional for a lawyer to advise the institution or continuation of an unmeritorious suit." We say that Counsellor Jerome George Korkoya of the JG Korkoya Law Office, LLP, and Counsellor Jargbe Roseline Nagbe Kowo were under a duty to have first obtain full knowledge of this cause and to appropriately advise their client. It is "unprofessional for a lawyer to

advice the institution or continuation of an unmeritorious suit". Counsellor Jerome George Korkoya of the JG Korkoya Law Office, LLP, and Counsellor Jargbe Roseline Nagbe Kowo are in violation of this rule and we hereby impose a fine of United States Dollars Three Hundred (US\$300.00) each on Counsellor Jerome George Korkoya and Counsellor Jargbe Roseline Nagbe Kowo for the continuing an unmeritorious suit before this Court. We caution all lawyers that this Court will not hesitate to discipline lawyers whose conducts tend to frustrate the judicial process.

WHEREFORE, and in view of the foregoing, the trial court's final ruling is affirmed. For the unethical conduct, Counselors Benedict F. Sannoh, Jerome G. Korkoya, and Jargb Roseline Nagbe Kowo are hereby fined US\$500, US\$300, and US\$300, respectively, to be paid in the National Cover within 72 hours as of the rendition of the Judgment of this Opinion. The Clerk of this Court is ordered to send a mandate to the court below commanding the judge presiding therein to resume jurisdiction over the case and enforce the Judgment of this Opinion. Costs are ruled against the appellant. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing, Lucia D.S. Gbala of the Heritage, Partner, and Associates appeared for the appellee. Counsellors Jerome G. Korkoya of JG Korkoya Law Office, LLP, and Jargbe Roseline Nagbe Kowo appeared for the appellant.