

JOHN G. DENNIS, Appellant, v. THE
MANAGEMENT OF THE LIBERIA
ELECTRICITY CORPORATION, by and thru its
Managing Director, Appellee.

APPEAL FROM THE NATIONAL LABOUR COURT, MONTSERRADO COUNTY.

Heard: May 31, 1993. Decided: July 23, 1993.

1. A petition for judicial review can either be served on the party personally or his counsel where the party himself cannot be found or his address and whereabouts unknown. Service upon the counsel in such cases would be deemed to be service upon the party concerned.
2. When a defendant who is not served with process takes steps in an action or seeks such relief at the hands of the court as is consistent only in the proposition that the court has jurisdiction of the cause and his person, he thereby submits himself to the jurisdiction of the court and is bound by its action as fully as if he had been regularly served with process.
3. A party defendant is one who has been served with process commanding his appearance, or who having notice that process has been issued or ordered issued, voluntarily appears and submits to the jurisdiction of the court.
4. When a party appears in court to seek relief for enforcement of a ruling in his favour, he thereby submits to its jurisdiction.

On April 5, 1989, petitioner instituted an action of unfair labour practice against respondent for declaring him redundant. After three notices of assignment were served on respondent and he failed to appear, default judgment was rendered in favor of the petitioner. Respondent then filed a petition for judicial review, but service of the petition could not be made on petitioner because his whereabouts was unknown. On September 5, 1989, the petitioner then filed a petition with the National Labour Court to enforce the default judgment which the trial judge denied on grounds that it would be a miscarriage of justice to enforce the default judgment when the petition for judicial review had been filed within the ten days allowed by statute, although same was not served on the petitioner. The trial judge also ordered that a copy of the petition for judicial

review be served on the petitioner. Petitioner excepted to this ruling and appealed. The Supreme Court *affirmed* the ruling of the trial judge, holding that although the petition for judicial review was not served within ten days and the writ of re-summons was not ordered issued, the trial court assumed jurisdiction over the petitioner when he appeared in court to enforce the default judgment.

Koenig Law Office appeared for the appellant. *David A. B. Jallah* appeared for the appellee.

MR. JUSTICE HNE delivered the opinion of the Court.

The appellant John G. Dennis, filed a complaint before the Ministry of Labour on April 5, 1989 against the appellee, Liberia Electricity Corporation, for unfair labour practice/wrongful dismissal. The appellant alleged that he had worked for the appellee for 27 years and was declared redundant.

Three(3) notices of assignment were issued by the hearing officer for hearing of the case on June 12, 1989, June 23, 1989 and July 9, 1989, respectively. The appellee failed to appear for any of the scheduled hearings. Consequently, upon motion by the appellant for default judgment the hearing officer after hearing the appellant's side of the case entered a default judgment against the appellee on 17th of August, 1989.

When the appellee received notice of the default judgment, he filed a petition for judicial review on 25th August, 1989. Service thereof was effected on the hearing officer but the whereabouts of the appellant was unknown and service of the petition could not be made on him.

On September 5, 1989 the appellant, John G. Dennis, filed through his counsel, a petition to the National Labour Court to enforce the hearing officer's ruling. The petition was assigned for hearing on October 5, 1989.

When the case was called on the day assigned therefor, that is, October 5, 1989, the appellant, who could not be located prior to that time for service of the writ of summons, was present in court. The judge's attention was called to this fact,

whereupon counsel for appellee requested the court to have a copy of the petition for judicial review served on the appellant *nunc pro tunc*.

The judge, in disposing of the petition to enforce the hearing officer's ruling, denied the petition and ordered a copy of the petition for judicial review served on the appellant, John Dennis, since he was then available for service. The judge observed that since the appellee had filed a petition for judicial review within ten(10) days and served same upon the hearing officer, it could amount to a "miscarriage of justice" to grant the petition for enforcement without hearing the petition for judicial review.

The petitioner took exceptions to the ruling and announced an appeal to the Supreme Court. The appeal was duly perfected.

The bill of exceptions filed by the appellant contains six(6) counts, three of which viz: counts 3, 4 and 5 we deem important in determining this case.

In count 3 of the bill of exceptions, the appellant raised the issue of jurisdiction over his person because the writ of summons with a copy of the petition for judicial review was not served upon him.

In count 4 of the bill of exceptions, appellant contends that the judge committed a reversible error by ordering the writ of summons served on him 53 days after the hearing officer rendered his ruling. Appellant in count 5 further excepts to the order for service of the writ of summons upon him after the expiration of the ten (10) days for such service especially in the absence of the management of LEC's application for a writ of re-summons.

The real question to be resolved then is whether the lower court obtained jurisdiction over the person of the appellant ?

According to the records and the argument before us, the appellant could not be found for service of the writ of summons with a copy of the petition for judicial review. Yet after fifty three days he surfaced in court when application was made for the enforcement of the default judgment of the hearing officer.

The petition for judicial review was on the court's file when the judge called the motion for enforcement. When he was told that the appellant had not been served with summons because he could not be found, it was proper for the judge to order the summons with a copy of the petition for judicial review served upon the appellant and allow him ten(10) days from then to file his returns or answer. We view this act of the judge to accord with the procedure with which labour cases should be disposed of because such cases do not allow for technicalities. To hold otherwise would encourage respondents like John Dennis whose address or whereabouts is, for the most part unknown after their dismissal by their employers, to secret themselves to avoid the service of process upon them and then subsequently seek enforcement of a ruling or judgment in their favor on the ground that the court did not acquire jurisdiction over their persons, as apparently done in this case.

The judicial review of labour cases by the National Labour Court or debt court, as the case may be, is an appellate review. In order to promote a speedy hearing as the law contemplates, we feel that process for judicial review in labour cases on appeal from the hearing officer can be served either on the party or on his counsel where the party himself cannot be found or his address and whereabouts unknown. Service upon counsel in such cases would be deemed to be service upon the party concerned.

This procedure applies in cases appealed to the Supreme Court, when notice of completion of appeal is served. There is more reason why such a procedure should be followed in appeals to the National Labour Court or the Debt Court for judicial review, especially so when labour cases should be expeditiously disposed of, void of legal technicalities.

In the case *King v. Williams* decided by this Court in 1925, it was held that: "The general rule is that if a defendant, though not served with process, takes such a step in an action, or seeks such relief at the hands of the court as is consistent only with the proposition that the court has jurisdiction of the cause and of his person, he thereby submits himself to 'the jurisdiction of the court and is bound by its action as fully as if he had been

regularly served with process." *King v. Williams*, 2 LLR 523 525 (1925)

In the case *Gallina Blanca, S. A. v. Nestle Products, Ltd.*, this Court also held that:

"Party defendant is one who has been served with process commanding his appearance or who having notice that process has been issued or ordered issued, voluntarily appears and submits to the jurisdiction of the court." *Gallina Blanca, S. A. v. Nestle Products, Ltd.* 25 LLR 116, 120 (1976).

The records in this case tend towards notice on the part of the appellant that process had been issued for service on him for the judicial review sought by the appellee. In the appellee's returns (respondent's returns), to the appellant's petition for the enforcement of the hearing officer's ruling filed by the appellee on 7th September, 1989 the appellee had this to say in count (4) four of the said returns:

"4. Also Because counsel for respondent management corporation LEC says that while superintending the filing of his petition for judicial review, he happened to have encountered Counsellor Henrietta Koenig at the Ministry of Labour when he requested of her the whereabouts of Mr. John Dennis. She replied that she did not know his whereabouts and even if she knew his whereabouts, she would not have revealed the same."

We hold that when the appellant appeared in court to seek relief from the court for the enforcement of the ruling in his favor, he thereby submitted himself to the jurisdiction of the court.

The judge therefore was not remiss in ordering a copy of the petition for judicial review served on appellant *nunc pro tunc* and allowing him ten(10) days to file his answer. It is our view that under the principle pronounced in *King v. Williams*, and *Gallina Blanca, S.A. v. Nestle Products, Ltd.*, cited above, the court assumed jurisdiction over the appellant when he appeared in court to seek enforcement of the hearing officer's ruling.

We also reaffirm the position stated earlier in this opinion

that judicial review in labor matters is appellate in nature, process therefor may be served on the counsel where the party concerned cannot be found.

In view of what we have said hereinabove and the law relied upon, the judgment of the National Labour Court is affirmed and the case remanded for judicial review. The Clerk of this Court is instructed to send a mandate directing the trial judge to resume jurisdiction and give effect to this opinion. Costs to abide final determination of the case. And it is so ordered.

Affirmed with modification.