

Nyazeebuo v. NASSCORP LRSC 36 (2016)

Cllr. Samuel W. Nyazeebuo, of the City of Monrovia v. The Management
of National Social Security & Welfare Corporation (NASSCORP), also of
the City of Monrovia,
In the Honorable Supreme Court of the Republic of Liberia Sitting in its
October Term, A.D. 2016

MOTION TO DISMISS APPEAL

Heard: October 24, A.D. 2016 Delivered: December 16, A.D. 2016.

MR. JUSTICE JA'NEH DELIVERED THE OPINION OF THE COURT.

Movant/Appellee, Counsellor Samuel W. Nyazeebuo, on September 30, A.D. 2016, filed before this Court an eight count motion seeking to dismiss the appeal announced by appellant/respondent, the Management of National Social Security & Welfare Corporation (NASSCORP). Movant averred:

(a) that Honorable Sam K. Mayson, Senior Hearing Officer, Ministry of Labour, on October 17, A.D. 2011, entered a ruling at the conclusion of a hearing had on movant's complaint, thereby holding respondent liable for 'Unfair Labour Practice and Wrongful Dismissal'. The referenced ruling also directed respondent/appellant to pay movant/appellee USD33,156.25 (Thirty Three Thousand One Hundred Fifty Six United States Dollars Twenty Five Cents) representing the balance of accrued salaries and benefits for the period January 14, A.D. 2000 to November 30, A.D. 2005, in the total amount of USD46,211.25 (Forty Six Thousand Two Hundred Eleven United States Dollars Twenty Five Cents), out of which respondent/appellant paid USD13,055.00 (Thirteen Thousand Fifty Five United States Dollars);

(b) that acting on a petition for judicial review filed by movant/appellee, Her Honor Comfort S. Nattof the National Labour Court, by a Final Ruling dated January 19, 2016, modified the Hearing Officer's award rendered against respondent which had held the management of NASSCORP liable for Unfair Labour Practice/Wrongful Dismissal;

(c) that in the Labour Court's judgment dated January 19, A.D. 2016, respondent/appellant, Management of National Social Security & Welfare Corporation (NASSCORP), was directed to make the below listed payments to movant:

(1) sixty (60) month salaries for wrongful dismissal 'to avoid Pension for long tenure service';

(2) pension payment made under NASSCORP National Pension Scheme (NPS);

(3) payment of movant's claim of US\$33,156.25;

- (4) payment to movant of the total Provident Funds (both 8% Management Share and 5% Employee's Share);
- (5) payment of accrued Leave and payment in lieu of notice; and
- (6) payment of salary for the month of February, 2008.”

(d) that said Final Ruling of January 19, A.D. 2016 became conclusive on the parties by operation of law. Though the ruling was excepted to and an appeal announced therefrom to the Honorable Supreme Court of Liberia and a bill of exceptions was thereafter filed in fulfillment of one of the statutory requirements necessary for the perfection of an appeal in this jurisdiction, respondent/appellant, up to October 16, A.D. 2016, had not filed nor served the notice of completion of appeal in violation of the laws in vogue.

In regulating the procedure on perfection of an appeal, Rev. Code 1:51.4 (d) states thus:

- ‘(a) Announcement of the taking of the appeal,
- ‘(b) Filing of the bill of exception,
- ‘(c) Filling of an appeal bond,
- ‘(d) Service and filing of notice of completion of the appeal [emphasis supplied].’

That this Court of final arbiter is by law duty-bound to grant a motion to dismiss the appeal where, as in the instance, a respondent/appellant has desecrated the appeal statute thereby depriving the Supreme Court of jurisdiction to entertain the matter of appeal. Movant, in seeking to substantiate the averment that the respondent indeed failed to serve and file the Notice of Completion of Appeal, a mandatory requirement in this jurisdiction, annexed a Clerk's Certificate duly issued by the Clerk of the Honourable Supreme Court of Liberia.

Movant, in light of the foregoing, has prayed the Honorable Supreme Court to dismiss the respondent/appellant's appeal and affirm the January 19, A.D. 2016 judgment entered by Judge Natt of the National Labour Court for Montserrado County. It is movant's further prayers that the Respondent/Appellant Management, National Social Security & Welfare Corporation (NASSCORP), be directed forthwith to pay the movant/appellee the judgment awards directed by the National Labour Court in addition to all costs of these proceedings.

Movant/Appellee has also prayed the Supreme Court to grant it any and all further relief this Court would deem just, legal and equitable under the facts and circumstances of this case.

A snap inspection of the records certified to this Court clearly demonstrates that more than 240 (two hundred forty) days have elapsed since the respondent/appellant announced its appeal from the January 19, A.D. 2016 Final Judgment and the award therein entered by the National Labour Court. We see in

the transmitted records certified to this Court a “Clerk's Certificate” dated October 16, A.D. 2016, duly issued and bearing the signature of the Clerk of the Honourable Supreme Court of Liberia, Martha Bryant-Henries. Counting as of January 19, A.D. 2016, when the Final Ruling was rendered, to October 16, A.D. 2016, when the Clerk's Certificate in reference was executed, in excess of 240 (two hundred forty) days.

The ‘Clerk's Certificate expressly supports the conclusion that respondent/appellant neglected and failed to comply with the dictate of the statute and settled decisional laws controlling on this question. For the benefit of this Opinion, we herewith reproduce hereunder the substantial contents of the said Certificate to wit:

*“This is to certify that from a careful perusal of the records of this Honorable Court, it is observed that there is no appeal filed before this Court in the above captioned case up to the date of the issuance of this certificate.
Hence, this certificate.*

GIVEN UNDER MY HAND AND SEAL OF COURT, THIS 16TH DAY
OF OCTOBER, A.D. 2016.

[Signed]

Martha Bryant Henries

CLERK, SUPREME COURT, R.L.”

At the call of the case on Monday, October 26, A.D. 2016, the Supreme Court of Liberia observed the non-appearance of counsel for the party respondent/appellant. This prompted the Chief Justice, His Honour Francis S. Korkpor, Sr., to ascertain whether the notice of assignment was served on the respondent/appellant’s counsel and whether said counsel had filed any application praying the Court to grant him an excuse.

The Clerk informed the Bench that the notice of assignment for the day’s hearing was duly served on respondent’s counsel as evidenced by the returns of October 21, A.D. 2016, filed by the Marshall of the Supreme Court of Liberia. The returns read in open Court is hereunder quoted as follows:

*“On the 21st day of October A.D. 2016, the within notice of Assignment was served on Counsellor Joyce Reeves Woods by and thru her secretary and the Jones & Jones Law Firm, by and thru receptionist, Melvin T. Neowon.
Hence, this returns.*

Dated this 21st day of October A.D. 2016

[Signed] *B/Gen: Amos B.K. Dickson, Sr.*”

The Supreme Court noting that there was nothing before it warrant a continuance of the hearing, ruled as follows: “The Court will proceed to entertain argument from the counsel for the movant, considering the fact that the counsel for the respondent received copy of the notice of assignment for the hearing of this case, but chose to absent itself.” We here also note that the respondent/appellant’s counsel also failed further to file resistance to the motion to dismiss the appeal, a failure which constitutes grounds for the dismissal of the appeal. *Kennedy and General Petroleum Corporation v. Carlton Petroleum Incorporated*, 38 LLR 360, 364 (1997). In the cited case, this Court said: “...the failure of appellants’ counsel to file a resistance to the motion to dismiss its appeal and to appear for the hearing of said motion is a neglect of appellants’ legal interest and an abandonment of the cause, which are indeed grounds for the dismissal of appellants’ appeal...”

In the light of the facts in the instant case and the laws controlling, the Supreme Court directed counsel for the movant/appellee to argue its motion during which the Bench posed the following questions:

Ques: Did the respondent except to the ruling of the hearing officer at the Ministry of Labor?

Ans: No, Your Honors.

Ques: What was the duration of the movant’s employment with the respondent?

Ans: The Movant worked with the respondent for about 25 years.

Ques: What was the position held by the movant?

Ans: The movant was the legal counsel.

Ques: What mandatory statutory step(s) the respondent failed to follow that led to the filing of this motion to dismiss [the appeal]?

Ans: The respondent/appellant did not serve the notice of completion of appeal on the appellee within the statutory period.

Ques: Where there is provident funds available to employees, is there still a need for pension?

Ans: Yes, Your Honors.

Ques: Is the failure of service of the notice of completion of appeal on the opposing counsel a ground for dismissal of an appeal?

Ans: Yes, Your Honors.”

This Court hereby appropriately observes that the “Clerk’s Certificate”, quoted herein above, has not been controverted. Infact, as stated previously, the records before us are void of any returns filed by respondent to the motion to dismiss the appeal. Without doubt, the Clerk’s Certificate establishes that by October 16, A.D. 2016, more than 240 (two hundred forty) days following the rendition of the Final Ruling dated January 19, A.D. 2016, appellant’s Notice of Completion of Appeal had neither been served on the movant/appellee nor filed with the Honourable Supreme Court of Liberia. In other words, the mandatory requirement imposed on a party appellant to serve and to file the Notice of Completion of the Appeal, was recklessly disregarded. This is an incurable defect which effectively deprives this Court of jurisdiction to delve into review of a case on appeal. This Court has said, time without number, that it is the Notice of Completion of the Appeal which confers jurisdiction over the Supreme Court to review a matter on appeal; it is the service of the Notice of Completion of the Appeal which also brings the party appellee under the Court’s jurisdiction. This Court, in *Standard Motor Corporation v. Pratt*, 21 LLR 381, 383-4 (1972), held thus:

“as important as the other jurisdictional steps necessary to the completion of an appeal might be, service of the notice of completion of appeal is most important because without it the appellate court is without jurisdiction over one of the parties, and so would be unable to render judgment against him should the case be decided in favour of the other party.”

This settled principle of law is further articulated in the case, *Marsh v. Sinoe*, in which this Court held that the failure to file an approved appeal bond and service and filing of the notice of completion of the appeal, both of which are required for the conferral of jurisdiction over the Supreme Court, compel the dismissal of the appeal. 27 LLR 320, 321 (1978). Also see: *Kerker and Flomo v. The St. Peter Episcopal Church of Gbarnga City and Johnson*, 35 LLR 219, 227 (1988).

Notwithstanding the limited power of review imposed on this Court by the herein recounted facts and circumstances in this Opinion, we note that the Supreme Court of Liberia is the warden of the law in this jurisdiction. It is universally recognized in all civilized jurisdictions that meting out substantive justice is and remains the ultimate objective of the law. It is this principle which vests inherent authority in the Supreme Court as the Court of final arbiter to examine any ruling by a trial court or administrative tribunal which appears to be in conflict with substantive justice. This Court, in the case *Sibley v. Bility*, has noted that the law of the land vests the Supreme Court of Liberia with the authority to reverse, affirm or modify any judgment of the lower court, and to render such judgment as the lower court should have rendered, “if upon examination of the records it felt justified in doing so, in the best interest of law, justice and equity.” *Id.* 33 LLR 548, 549 (1985). Other cases as *Bong Mining Company (BMC) v. Bah*, 35 LLR 513, 522 (1988), *R.J. Reynolds International Export, Inc. v. The United Africa Company (Liberia) Ltd.*, 30 LLR 135, 143 (1982) and *Williams and Williams v. Tubman*, reported in 14 LLR 109, 114 (1960), lend support to this position.

In the case at bar, the National Labour Court for Montserrado County entered a Final Judgment concluding as follows:

“WHEREFORE AND IN VIEW OF THE FOREGOING FACTS AND CIRCUMSTANCES and looking at the legal citations quoted herein, this Court says that Petitioner has proven his case of Unfair Labor Practice/Wrongful Dismissal by the preponderance of the evidence, we are also of the considered opinion that Petitioner’s claim of US\$33,156.25, is just and therefore, it is the holding of the Court that Petitioner met the quantum of the evidence required to establish his aforesaid claim of the US\$33,156.25 against management.

We are also of the opinion that petitioner proved his case by the preponderance of evidence that his dismissal by management for “Gross breach of duty” was wrongful, as he truly viewed his dismissal as a scheme to deprive him of his employment-related entitlements for approximately twenty five (25) years tenure of service; to avoid his pension(s).

The ruling of the Hearing Officer is hereby reversed. Management is therefore liable for unfair labor practice/wrongful dismissal and is hereby ordered to pay petitioner the following:

- a) payment of sixty (60) months’ salary for wrongful dismissal ‘to avoid Pension for long tenure service’;
- b) payment of pension under NASSCORP National Pension Scheme (NPS);
- c) payment of appellee’s/petitioner’s claim of US\$33,156.25;
- d) payment of total Provident Funds (both 8% Management’s Share and 5% Employee’s Share);
- e) payment of accrued Leave and payment in lieu of notice; and
- f) payment of salary for the month of February, 2008.”

The Clerk of this Court is hereby ordered to prepare the necessary Bill of Cost and to have same placed in the hands of the Sheriff of this Honorable Court to be served on the lawyers concerned and for subsequent approval of this Honorable Court in satisfaction of this judgment. And it is hereby so ordered.

The conclusion contained in the Final Judgment reached by the National Labour Court does not appear to us to be in strict adherence to the laws controlling. Where the Labour Court has determined that a dismissal of an employee has been wrongful and the employer’s conduct has been in violation of the Labour Practices Law, as it appears to be the case in the instance, the court is authorized to order reinstatement, or in lieu thereof, payment of compensation. This option, to reinstate or pay compensation in lieu thereof, is an option decreed by law and made available to the employer. A court of law acts without the law if it removes and takes away this right of option. But in the ruling entered by the Labour Court, the employer, Appellee NASSCORP, was simply ordered to compensate movant/appellee employee. This is error of law.

A tribunal of justice shall direct reinstatement of the wrongfully dismissed employee, or in lieu thereof, payment of compensation. This is a matter of law. *In the case “National Port Authority Vs. Doupu et al.”*, the Supreme Court held:

“An employer against who an order has been made regarding the dismissal of an employee has the right of election to reinstate the dismissed employee or pay such compensation as determined by the Labour Court, in accordance with the Labour Practices Law.” 34 LLR 665, 673 (1988). See also: Inter-Con Security Systems, Inc. v. Phillips and Tarn, 41 LLR 42, 46-7 (2002).

As can be seen, the ruling of the Labour Court Judge is clearly in conflict with the dictate of the Law. So even in the face of compelling legal grounds authorizing the granting of the motion to dismiss the appeal, this Court must still confront the affront to the Law and correct same such that the option provided an employer, the respondent/appellant management in this case, is preserved.

Wherefore, the motion filed by the movant/appellee, Counsellor Samuel W. Nyazeegbuo, to dismiss the appeal, being sound in law and supported by the facts revealed by the records transmitted to this Court, is hereby granted and the appeal announced by respondent/appellant, Management of the National Social Security and Welfare Corporation (NASSCORP.), is ordered and same is hereby dismissed.

However, in proper exercise of our inherent power to administer transparent justice in the land, we herewith modify the Labour Court's Final Ruling and Judgment of January 19, A.D. 2016, thereby according the respondent/appellant the option to compensate or, in lieu thereof, reinstate the movant/appellee, as provided by the controlling Labour Practices Law of Liberia. This modification is in harmony with the many holdings of this Court that in the interest of transparent justice, the Supreme Court will enter such judgment as the lower court should have properly entered as herein modified. And for his failure to appear before us in keeping with the notice of assignment at the call of the case for hearing on October 24, A.D. 2016, counsel for respondent/appellant is hereby fined the amount of Two Hundred United States Dollars (USD200.00), said amount to be paid into Government revenue within seventy two (72) hours, as of the rendition of this Judgment.

Accordingly, the Clerk of this Court is directed to send a mandate to the National Labour Court ordering the judge therein presiding to resume jurisdiction over this case and, enforce its judgment. IT IS SO ORDERED.

Motion granted with modification.