IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA,
SITTING IN ITS OCTOBER TERM, A. D. 2024.

BEFORE HER HONOR: SIE-A-NYENE G. YUOH ..... CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE ..... ASSOCIATE JUSTICE
BEFORE HIS HONOR : YUSSIF D. KABA ..... ASSOCIATE JUSTICE
BEFORE HIS HONOR : YAMIE QUIQUI GBEISAY, SR ..... ASSOCIATE JUSTICE
BEFORE HER HONOR: CEAINEH D. CLINTON-JOHNSON..... ASSOCIATE JUSTICE

The Management of German Technical Corporation (GTZ) of the City of Monrovia, Montserrado County, Republic of Liberia ..... Appellant	)	
Versus	)	Appeal
His Honor, Nathaniel Dixon, Hearing Officer, Ministry of Labor and Joe Gborie et al of the City of Monrovia, Liberia ..... Appellee	)	

GROWING OUT OF THE CASE

The Management of German Technical Corporation (GTZ) of the City of Monrovia, Montserrado County, Republic of Liberia ..... Appellant	)	
Versus	)	Judicial Review
His Honor, Nathaniel Dixon, Hearing Officer, Ministry of Labor and Joe Gborie et al of the City of Monrovia, Liberia ..... Appellee	)	

GROWING OUT OF THE CASE:

The aggrieved employees of GTZ, represented by Joe Gborie of the City of Monrovia, Republic of Liberia ..... Complainants	)	
Versus	)	Unfair Labor Practice
The Management of German Technical Corporation (GTZ) of the City of Monrovia, Montserrado County, Republic of Liberia ..... Defendant	)	

Heard: July 3, 2024 Decided: February 18, 2025

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT

This is the second time this Court has been called upon to decide this case on appeal from a determination made by the National Labor Court on a Petition for Judicial Review filed by the appellant from a ruling entered by the Hearing Officer of the Ministry of Labor. At the first time, this Court remanded this case with the instruction that the hearing officer of the Ministry of Labor proceed to determine: a) whether the appellees were employed under a contract of indefinite duration and are entitled to redundancy benefits; b) whether the appellees are entitled to overtime pay. In its ruling, this Court also gave the appellees an option to file an amended or a new complaint with the Ministry of Labor.

The records revealed that on remand, the appellees elected to file an amended complaint with the Ministry of Labor. In the amended complaint, they alleged that the appellant employed them between 1999 and 2005 and that they worked from 8:00 am to 5:00 pm daily, nine (9) hours per day instead of the eight hours per day as provided for by the law. The appellees, therefore, calculated the accumulated overtime pay for those employees during said period to be US$194,323.07 (One Hundred Ninety-Four Thousand Three Hundred Twenty-Three United States Dollars and Seven Cents). Appellees further alleged that their claim is supported by the appellant's June 29, 2005 memo, cutting off the Saturday work. The appellees attached to their amended complaint the daily attendance report marked as exhibit C/1; bulk documents containing: a) daily attendance sheets; b) monthly salary slip; c) listing containing 155 complainants with their names and positions and salary as exhibit C/2; and breakdown of overtime clams marked as exhibit C/3.

At the Investigation, the appellant moved that the Investigation dismisses the portion of the complaint claiming overtime for the period spanning 1999 up to and including July 23, 2000, consistent with Regulation No.4(1983), Section 3, and the Statute of Limitations. Regulation No. 4 (1983), among

other things, provided that labor actions must commence within seven (7) years as of the time the right to relief accrued; otherwise, such actions shall not be entertained by the Ministry of Labor". The appellant, therefore, argued that because the appellees filed their initial complaint with the Ministry of Labor on July 24, 2007, seven years after the right to relief accrues to them, they are barred from instituting action thereupon. The appellant, therefore, prays the court to deny the appellees' complaint.

In countering this application, the appellees averred, amongst other things, that the appellant suffered waiver in that the appellant's application to dismiss the portion of the appellees' complaint is belatedly interposed; that is to say, the appellant should have filed the said motion at the time the appellees interpose their initial complaint. The appellees further averred that they concede to the appellant's contention in its application and therefore adjusted their claim in compliance with this concession from the initial amount of United States one hundred and ninety-four thousand, three hundred and twenty-three dollars and seven cents (US$194,323.07) to the amount of United States one hundred and seventy-seven thousand, three hundred and eleven dollars and fifty cents (US$177,311.50).

The Investigation accepted the appellees' concession and dismissed all claims by the appellees that were allegedly accrued between 1999 and July 23, 2000. With that determination, the hearing officer commenced the Investigation.

The appellees produced two witnesses, Joe Sumo Gborlie and Sumo Supue. Witness Joe Gborlie testified that all the appellees worked from 8:00 am to 5:00 pm Mondays through Fridays and from 8:00 am to 12:00 pm on Saturdays. He further testified that they are entitled to one 1hr per day. Appellee's second witness, Mr. Sumo Supue, corroborated the testimony of witness Gborlie that they were supposed to work for eight 8hrs a day, that is, from 8:0am to 4:00 pm, but that they all worked from 8:00 am to 5:00 pm from Mondays to Fridays and from 8:00 am to 12:00noon on Saturdays. The appellees admitted into evidence the daily attendance report marked as exhibit C/1; bulk documents to containing: a) daily attendance sheets; b) monthly salary slip; c) listing containing 155

complainants with their names and positions and salary as exhibit C/2; and breakdown of overtime clams marked as exhibit C/3 testified to by the appellees' witnesses.

When the appellees rested with the production of evidence, the appellant took the witness stand and produced a lone witness in person of Mr. Nicholas Stoetzer. The witness testified that he is an employee of the appellant and served as Legal Counsel, GTZ Legal Department in Frankburg, Germany. He told the Investigation that when he reviewed the case file, he understood that the appellees were claiming overtime compensation, believing their working time with the appellant exceeded the maximum 48 hours allowed under the Liberian Labor Law. He confirmed that the appellees worked from Mondays to Fridays, 8 am to 5 pm, and on Saturdays from 8 am to 12 noon. He further testified that each appellee worked 46.5 hours weekly instead of 48 hours. He stated that all appellees who worked overtime received remuneration for the overtime as was required by the appellant's policy. The witness concluded his testimony by presenting several documents, including an overtime authorization form, payment forms bearing the signatures of some of the appellees in acknowledgment of receiving overtime payment, and a memo of June 2005 stating that there would be no more overtime as of that date.

After the production of evidence by the appellant, the appellees moved that the hearing officer strike the lone testimony of the appellant's witness on the ground that the testimony was hearsay evidence, which was not admissible under the Liberian laws. The appellant resisted the motion to strike, stating that the appellant/management was a continuity of the previous one. As such, in the absence of the previous manager, any successor in line can testify to issues of policy that existed in the company during his or her predecessor's time. The Hearing Officer denied the submission and ordered the case to proceed.

The parties rested with the production of evidence and submitted their respective sides of the case for the Hearing Officer's determination. In his determination, the Hearing Officer held the appellant liable to the appellees

and ordered that the appellant pay the One Hundred Fourteen (114) appellees US$134,260.40 (One Hundred Thirty-Four Thousand Two Hundred Sixty United States Dollars and Forty Cents), representing one hour of overtime pay for the period under review.

The appellant being dissatisfied with the Hearing Officer's ruling, excepted and filed a twenty-two counts Petition for Judicial Review with the National Labor Court averring substantially as follows: that the National Labor Court set aside the Hearing Officer's ruling because same is unsupported by the evidence on the record; that the overtime awarded the appellees was without any supporting evidence; that the appellees failed to produce their individual employment contract evidencing their tenure of service; that the appellees proffered into evidence a self-servicing time sheet which indicated facts completely contrary to their claims of one hour overtime daily for the period of their employment as the time sheet indicates that the appellees signed in at 8:30 am and leave at 7:00 pm which varies the appellees' one hour overtime claim; that appellees' claims are for different periods, but all of the claims do not exceed June 2005, and that some of the appellees proffered into evidence as proof of their salaries, copies of pay slips dated 2006, 2007, and while some did not even submit any proof of salaries; and that the Hearing Officer awarded overtime compensation to the appellees without showing how he calculated and derived the award.

To this Petition for Judicial Review, appellees filed eleven (11) counts returns praying the National Labor Court to deny and dismiss the appellant's petition on the ground that the Hearing Officer ruled in accordance with the law and committed no reversible error.

In determining the appellant's petition for Judicial Review, the judge of the National Labour Court upheld the ruling entered by the Hearing Officer, awarding the appellees US$134,260.40. The appellant, not satisfied with the final ruling of the National Labor Court, announced an appeal to this Court and filed a six-count bill of exceptions.

The appellant contends in its bill of exceptions that the trial judge erred when he overlooked the Opinion of the Supreme Court and proceeded to

affirm the ruling of the hearing officer on a self-serving list prepared by the complainants; that the trial judge erred when he failed to take recourse to the meaning of section 704 of the Labor Practices Law of Liberia in applying it to the testimony of the appellees; that the trial judge erred in confirming the ruling of the hearing officer without considering the evidence adduced during the trial and the method adopted by the hearing officer in arriving at the amount of the award; that the trial judge erred when he overlooked the appellant's evidence of its payment of overtime covering periods spanning the claim of the respondent.

Considering the appellant's contentions in its bill of exceptions, we shall now examine the records and evidence adduced during the hearing to determine whether the National Labor Court judge erred in determining the appellant's petition for Judicial Review.

The appellant contended in its bill of exceptions that the trial judge erred when he overlooked the Opinion of the Supreme Court and proceeded to affirm the ruling of the hearing officer on a self-serving list prepared by the complainants. The appellant argued that the list the appellees prepared was self-made and was not authentic. The list comprises names that the appellant did not employ during the period for which the appellees are claiming overtime. The appellant further argued that the Supreme Court Opinion of October Term 2019 declared the list now relied upon by the appellees to assert overtime claims as insufficient and self-serving and that the appellees cannot now rely thereupon to claim payment for overtime. In short, the appellant argues that the Supreme Court's Mandate to the hearing officer was improperly executed. The records show that the mandate sent to the hearing officer was instructive and direct. It states that the hearing officer must determine: a) whether the appellees were employed under contracts of indefinite duration and are entitled to redundancy benefits and b) whether the appellees are entitled to overtime pay. The appellees were also granted the option to file a new complaint or amend their original complaint against the appellant, whatever option they choose. In exercising their optional rights, the appellees elected to file an amended complaint. This Court says that entertaining the amended

complaint from the appellees, which is enshrined in the Mandate of this Court, was not a defiant of the Court's mandate.

The argument of the appellant that the Opinion of this Court in 2019 declared the evidence of the appellees insufficient was not a matter sent down to the lower court; as per the records, when the hearing officer assumed jurisdiction over this case, he conducted a new trial based on the amended complaint thereby setting aside the previous hearing and the evidence produced therein. This appeal grows out of a new trial consistent with this Court's mandate. (Citation) Had it been the case that the evidence relied upon by the appellees was inadmissible, the appellant would have objected to them. However, during the hearing, the appellees produced and testified to the instruments containing their salaries/wages, the hours of work, and the duration of each of the appellees' employment. The hearing officer admitted these instruments into evidence without objection from the appellant. Moreover, the appellant did not produce any evidence to challenge the authenticity of the evidence referred to by the appellant as self-serving. Therefore, the appellant's argument that the hearing officer entertains self-serving instruments is insufficient.

The appellant further averred in its bill of exceptions that it was an error on the trial judge's part to confirm the hearing officer's ruling without giving due consideration to the evidence adduced during the Investigation and the method adopted in calculating the amount awarded to each complainant. We observed that in the hearing officer's ruling, he provided a detailed analysis of how he derived the total amount awarded. In his ruling, the hearing officer provided a chart that contained the names of forty-four (44) appellees, with their tenure of service, monthly salary, hourly rate, overtime per month, and the total entitlement of each of the appellees. The certified records transmitted to this Court show that the very listing used by the hearing officer in arriving at the award was the very listing produced by the appellees during the Investigation of the case without objection, testified to, and admitted into evidence. The appellant's lone witness testimony did not deny that the appellees worked for the appellant. The only contentions gathered from that testimony is that the appellant does not owe the appellees overtime as the appellant has paid all overtime due to all its employees. Nowhere in the records of the Investigation before the hearing

officer was it denied that the appellees were not employees of the appellant. It is the law that what is not denied is deemed admitted. (**Citation**). During the hearing, the appellant had the opportunity to produce evidence to rebut the appellees' claim of overtime work they performed. Appellant's failure to produce evidence contrary to the appellees' testimonies of salaries/wages and tenure, the appellees' evidence is deemed admitted.

The appellant also contended that the trial judge failed to apply the meaning of section 701(2) of the Labor Practices Law to the appellees' testimony. We take recourse to section 701(2) of the Labor Practices Law as referenced by the appellant.

Section 701(2) of the Labor Practices Law states:

> "An employee, who on one or more working days of the week works fewer than eight hours MAY be required to work more than eight hours on the remaining working days of the week but in no case under the provisions of this Sub-section shall the daily limit of eight hours be exceeded by more than one hour, nor shall the weekly limit of forty-eight hours be exceeded.

The appellant alleged that the appellees were not entitled to overtime payment as long as they did not exceed the 48-hour weekly limit established by the Liberian Labor Practices Law. Section 701(2) expressly permits exceeding the typical 8-hour work day as long as the weekly limit of 48 hours is not exceeded. The contentious issue of the appellees is that they worked 9 hours a day from Mondays through Fridays instead of 8 hours and 4 hours on Saturdays; by calculation, the appellees worked 49 hours a week, which exceeded the 48-hour requirement under section 701. Did the appellant prove otherwise that the appellees did not work for 49 hours a week? We hereunder refer to the excerpt of the testimony of the appellant's lone witness:

"Q. Mr. Witness, the complainants, former employees of GTZ, have complained GTZ before the Ministry of Labor, alleging that the said complainants GTZ failed to compensate them for overtime they accrued while in the employ of GTZ. Can you say all that you know about this case, especially concerning the complainants' claims of overtime during their employment with GTZ?

A. A. Having reviewed the file, I understand that the complainants claim overtime compensation because they believe that their working time with GTZ acceded to the maximum 48 hours allowed under the Liberian Labour Law. First, I would like to confirm that the complainants worked from 8:00 am to 5:00 pm on Mondays to Fridays and from 8:00 am to 12:00 noon on Saturdays. In accordance with Section 704 of the Liberian Labour Law, the actual working time amounts to 46.5 hours per week; under the said provision, only half an hour of the total one-hour lunch granted to the complainants from Mondays to Friday shall be counted as working times..."

Firstly, before proceeding to address the issue of overtime, it is worth mentioning that the appellant's testimony acknowledged the appellees as former employees of the appellant; it did not deny that each of the appellees served the appellant for the period alleged in the table prepared by the court, and the monthly salaries/wages contained therein. The appellant contends that while it is true that the appellees worked for 9 hours from Monday to Friday, the appellees worked for four hours on Saturdays and took one hour each for lunch from Monday to Friday. Considering that the labor practices law grants unto the appellees a thirty-minute lunch break, and adding the total work period performed by the appellees in a week, which sum up to forty-nine hours less the additional thirty minutes enjoyed by the appellees during the lunchtime, the total weekly working hour of the appellees is 46.5 hours, less than one and half hour of the maximum legal working hours of 48 hours. The appellant, therefore, argued that the appellees' hourly work did not exceed the weekly 48 hours. Therefore, as per the language of section 704 of the Labor Practices Law, the appellees are not entitled to overtime payment.

Conversely, the appellees contend that they work nine hours daily from Monday to Friday and four hours on Saturday each week of their employment with the appellant. They denied ever being granted lunch breaks during their employment. The appellees are, therefore, demanding a one-hour overtime benefit for each day that they work for nine hours. Therefore, calculating the benefit according to the appellees will be five hours of overtime services per week during their employment with the appellant.

To do justice to the parties' respective contentions, the Court shall rely upon sections 701(2) and 704 of the Labour Practices Law, which governs in this regard.

Section 702 subparagraph one is unambiguous and leaves no room for further interpretation. Succinctly put, this section provides that an employee who works for fewer than eight hours a day may be required to work for more than eight hours on the remaining working days of the week, provided that no employee will be required to work for more than nine hours on any working day without overtime pay and that the forty-eight hours per week limit of working hours should never be exceeded. In the instant case, the evidence established that the appellees, who are employees for the indefinite period, worked for nine hours from Monday to Friday, which sum up to forty-five hours and four hours on Saturday, making a total of forty-nine hours per week. The appellant failed to produce evidence that the appellees enjoyed a one-work break per day, so the assumption is that the appellees worked for the entire nine hours as established by the evidence. Therefore, the overtime to which the appellees are entitled is one hour over the required forty-eight hours that the law requires the appellees to work during the week. Their entitlements, therefore, to overtime have been established by their averments as one hour per week.

Therefore, the mathematics to determine the appellees' overtime entitlement is the one hour per week overtime determined by their hourly rate multiplied by their overtime pay, multiplied by the fifty-two working weeks per year multiplied by the number of years that each of the appellees works in the employ of the appellant.

Applying this formula to the list of employees, we found that the amount determined by the hearing officer far exceeds the actual entitlement of each appellee. For example, we take appellee Ezekiel D. Caesea, whom the appellant employed for three years at a monthly salary of US$300. His daily wage, which is determined by dividing his monthly salary by the 26 working days per month, is equal to 11.5 per day, and the hourly rate is determined by dividing the daily rate of 11.5 by eight hours, which is equal to 1.4. This hourly rate is multiplied by the overtime rate of 1.5, giving the employee the

overtime benefit per week of 2.16. This amount, constituting the weekly overtime paid multiplied by the fifty-two weeks per year, entitles this co-appellee to 112.5 per year. This co-appellee overtime entitlement for the three (3) years that he worked for the appellant is his annual overtime due of United States one hundred and twelve dollars and fifty cents (US$112.50) multiplied by the three (3) years he worked for will be equivalent to United three hundred and thirty-seven dollars and fifty cents (US$337.50), rather than the United States five hundred and eighteen dollars and forty cents (US$518.40) as assessed by the hearing officer. We find similar disparities in the figures the hearing officer calculated in determining the appellees' entitlement. It is our finding that while we agree that the appellant due the appellees overtime pay, the trial judge was in error when he confirmed the hearing officer's calculation of the overtime pay due to the appellees, contrary to the law. This matter is, therefore, remanded to the trial judge with instructions to forward the same to the hearing officer to recalculate the entitlements of the appellees consistent with the formula embedded in this opinion.

WHEREFORE, AND IN VIEW OF THE FOREGOING, the ruling of the trial judge holding the appellant liable for overtime pay is affirmed, however, with the modification that this matter be remanded to the trial court with instruction that the same be forwarded to the hearing officer to proceed to calculate the overtime benefits of the appellees in keeping with the formula contained herein above. The Clerk of this Court is ordered to send a mandate to the judge presiding in the court below to resume jurisdiction and proceed in keeping with the judgment of this opinion. Costs are ruled against the appellant. AND IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING COUNSELLORS KADIJATU TALL NASER, J. AWEA VANKAN APPEARED FOR THE APPELLANT. COUNSELLORS KUKU Y. DORBOR, OTHELLO DRUAH AND PRINCE KRUAH APPEARED FOR THE APPELLEES.