IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA, SITTING IN ITS OCTOBER TERM, A.D. 2016.

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.....CHIEF JUSTICE
BEFORE HIS HONOR: KABINEH M. JA'NEH .....ASSOCIATE JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: PHILIP A.Z. BANKS, III.....ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH.....ASSOCIATE JUSTICE

F.D.A WORKERS UNION BY AND THRU ITS PRESIDENT, MADAM EUNICE DAGBEH OF THE CITY OF MONROVIA, COUNTY OF MONTSERRADO, REPUBLIC OF LIBERIA .....MOVANT

VERSUS

THE MANAGEMENT OF THE FORESTRY DEVELOPMENT AUTHORITY (FDA), ALSO OF THE CITY OF MONROVIA, MONTSERRADO COUNTY, REPUBLIC OF LIBERIA.....RESPONDENT

) MOTION TO DISMISS APPEAL

GROWING OUT OF THE CASE:

F.D.A WORKERS UNION BY AND THRU ITS PRESIDENT, MADAM EUNICE DAGBEH OF THE CITY OF MONROVIA, COUNTY OF MONTSERRADO, REPUBLIC OF LIBERIA ----------COMPLAINANT

VERSUS

THE MANAGEMENT OF THE FORESTRY DEVELOPMENT AUTHORITY (FDA), ALSO OF THE CITY OF MONROVIA, MONTSERRADO COUNTY, REPUBLIC OF LIBERIA.....DEFENDANT

) UNFAIR LABOUR PRACTICES AND WRONGFUL DISMISSAL

HEARD: October 24, 2016 DECIDED: March 2, 2017

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

This is the third time this case is before the Supreme Court *en banc*. The records certified to this Court show that the first appeal emanated from a final ruling of the National Labour Court for Montserrado County, rendered on March 22, 1999, confirming a ruling of the Hearing Officer of the Ministry of Labour entered against the Forestry Development Authority (FDA), the respondent herein, and in favor of the F.D.A. Workers' Union, the movant herein.

The genesis of the case is that on October 7, 1998, the FDA Workers' Union filed a complaint before the Ministry of Labour on behalf of sixty eight members of the Union who are former employees of the Forestry Development Authority alleging unfair labour practices and illegal dismissal.

We hereunder reproduce the full listing of those affected former employees on whose behalf the movant filed the aforementioned letter of complaint:

1.	Gbuuvia K. Kolubah	19.	Amara Jah	37.	Francis Zubawully	55.	Ellen kpakolo
2.	Eunice Dagbeh	20.	Joseph Katakoa	38.	Brown Tarlue	56.	Dianetta James
3.	Beatrice Zinnah	21.	Robert Sunny	39.	Alfred Dahn	57.	Moses Reeves
4.	Cecilia Sampson	22.	Isaac Swengbe	40.	Kartina Lormah	58.	Ruth Pyne
5.	George Russell	23.	Mathias Nimely	41.	Abraham Slunteh	59.	Nelson Chinneh
6.	E. Hemans Yankey	24.	James Cole	42.	Norah Saydee	60.	Roseline Jarteh
7.	Francis Freeman	25.	Cooper Dennis	43.	James Gawoe	61	Washington Weaye
8.	John Mulbah	26.	Henry Freeman	44.	Orita Kennedy	62.	Avertus Sarrison
9.	William Doe	27.	Robert Bright	45.	Victoria Diayen	63.	Jartu Brown
10.	Jeremiah Lloyd	28.	Sylvester Srah	46.	Morris Komala	64.	Brima Zegbo
11.	Anthony David	29.	Filicia Reeves	47.	Yaya Kromah	65.	Margret Banney
12.	Edward Susay	30.	Zwannah Kamara	48.	Wilfred Johnson	66.	Kpana Watson
13.	Jackson Newe	31.	Varney Swaray	49.	Roosevelt Davis	67.	Angeline Togba
14.	Philip Wesseh	32.	Lydia Nurse	50.	Varney Sao	68.	Samuel Davis
15.	John Janda	33.	Patrick Sumoh	51.	Botoe Massaquoi		
16.	Sarah Richards	34.	Zelda Okai	52.	Daniel Bowen		
17.	Sophie Howe	35.	J. Oscar Smith	53.	Elijah Jolo		
18.	Yarpazuo Nowuoku	36.	Tarnue Wolobah	54.	Odel Roberts		

The movant's letter of complaint was assigned to Mr. Stephen C. Scott, Director of Trade Union Affairs at the Ministry of Labour. Following an investigation into the complaint, the hearing officer awarded the movants the sums of L$1,192,125.00 (One Million One Hundred Ninety-Two Thousand One Hundred Twenty-Five Liberian Dollars) as salary arrears, L$1,648,150.00 (One Million Six Hundred Forty-Eight Thousand One Hundred Fifty Liberian Dollars) as transportation benefits, and US$459,742.66 (Four Hundred fifty-Nine Thousand Seven Hundred Forty-Two Dollars and Sixty-Six Cents) for housing allowance.

The respondent excepted to the ruling and upon the filing of a petition for judicial review, the National Labour Court modified the award of the hearing officer to L$2,838,275.00 (Two Million Eight Hundred Thirty-Eight Thousand Two Hundred Seventy-Five Liberian Dollars).

The respondent also excepted to the ruling of the National Labour Court and announced an appeal to the Supreme Court. In perfecting its appeal, the respondent filed a bond in the amount of US$60,000.00 (Sixty Thousand United States Dollars); the bond was challenged by the movant through a motion to dismiss the appeal for reason that the appeal bond was insufficient, in that it was not one and one half times the amount of the final award. In resisting the motion, the respondent contended that the motion was belated in that it was not challenged before the trial court within three days after the notice of filing of the bond and that the appeal bond was sufficient to indemnify the movant in the event that the latter prevailed.

On December 16, 1999, this Court rendered its Opinion and sustained respondent's contention that the statutes and several opinions of the Court provide that where a party does not take exceptions to a bond within three days after the notice of filing of the bond, he waives all objections and the bond is allowed.

As to the sufficiency of the appeal bond, the Supreme Court held that there is no law that mandates or fixes the amount of an appeal bond to be one-and-one-half times the judgment amount; that the law merely requires that the appeal bond be sufficient to indemnify an appellee against costs and injury and assures the Supreme Court of compliance with its judgment in the case and that the US$60,000.00 appeal bond satisfied those requirements. And finally, that the Supreme Court would not dismiss appeals on technicality but prefers to hear appeals on their merits. The movant's motion to dismiss the respondent's appeal was therefore *denied* and the main case ordered assigned for hearing on the merits.

Thus, the second time the case was before this Court was on July 6, 2001, when called to be heard on its merits.

As earlier stated, the movant, on the behalf of sixty eight former employees of the Forestry Development Authority hereinabove lighted, had instituted a complaint of unfair labour practices in the Ministry of Labour against the respondent, alleging that its members had been denied their just and basic incentives, including housing allowance, increment in salary, transportation, and rice; and that they had been illegally transferred from their posts to lower posts and dismissed. The records showed that a notice of assignment was issued on the 6th day of November for the hearing of the case on November 11, 1998, at the hour of 10:00 a.m. The returns to the service of this notice of assignment indicated that it was served on one Marie G. Howard, one of the complainants. The respondent did not appear on the 11th of November, A. D. 1998 for hearing of the case. A second notice of assignment was issued and served on one P. Stewart, who was also found to be one of the complainants, for the hearing of the case on the 17th day of November, A. D. 1998, at the hour of 10:00 am. On both occasions, the respondent did not put in an appearance for the hearing of the case. Because of the non-appearance of the respondent, the movant prayed for the entry of a default judgment against the respondent appellant, which the hearing officer granted pursuant to decree No. 21, which states: "*if a defendant in a labor case failed to appear, plead or proceed to trial or if a hearing officer orders a default for any other failure to proceed the complainant may seek a default judgment against the defendant*"

On December 2, 1998, the hearing officer rendered his decision in favor of the movant and awarded its members L$1,192,125.00 as their total salary claim, L$1,646,150.00 as transportation allowance (totaling L$2,838,175.00), and US$459,742.66 as housing allowance.

The respondent, upon receipt of the hearing officer's ruling, excepted thereto and filed a motion for relief from judgment, praying the hearing officer to rescind his ruling on the grounds that the appellant was never served with a notice of assignment and a copy of the complaint. There is no showing that any action was taken on the motion for relief from judgment filed by the respondent.

However, the record shows that on December 11, 1998, the respondent filed a six-count petition for judicial review, basically contending that it did not have its day in court and that it was denied due process of law, in that no notice of assignment or any complaint was ever served on its management.

On December 21, 1998, the movant filed a 12-count returns to the petition and contended that the respondent was served with notices of assignment and a copy of the complaint, in that Marie G. Howard and P. Steward, who received and signed for the notices of assignment as executive secretary and special assistant to the managing director, respectively, were agents of the respondent. Thus, the movant argued that the respondent was duly served, that it had its day in court, and that it was not denied due process of law.

On March 22, 1999, the National Labour Court for Montserrado County rendered its final judgment confirming the ruling of the hearing officer, with the modification that the members of the movant be awarded the sum of one million one hundred ninety-two thousand one hundred and twenty Liberian dollars and fifty cents (L$l, l92, 120.50), representing transportation, salary arrears, and housing allowance, as well as one bag of rice monthly for each employee. The respondent excepted to the ruling and announced an appeal to this Court.

The Supreme Court held that the National Labour Court had erred in affirming the ruling of the hearing officer due to the irregular manner by which the notices of assignments were served on the respondent; that service upon a Liberian corporation must be made by reading and delivering a copy of the summons and other documents upon a corporate officer or agent duly authorized by statute or appointment to receive process on behalf of the corporation; that in the instant case, there was no evidence that the persons who received the assignments on behalf of the respondent, and who incidentally were also complainants in the case, had the authority or had been granted the authority, or were appointed by the managing director of the respondent corporation to receive process on behalf of the corporation, or that they informed the respondent of the preceipts; that in the absence of such evidence, the service could not be said to have been duly made, and accordingly the respondent was deemed not to have had its day in court, thus a denial of its right to due process of law. The Court therefore reversed the judgment of the National Labour Court and remanded the case to be investigated anew at the Ministry of Labour.

In obedience to this Court's mandate, on September 7, 2009, about eleven years following the filing of the original letter of complaint, the Ministry of Labour resumed jurisdiction over the case and this time, under the gavel of Mr. Nathaniel Dickerson. Thereafter, the movant produced three witnesses, all of whom testified to the averments in its letter of complaint to the effect that the respondent, the FDA

had committed illegal labour practices against them in that they were wrongfully transferred from their posts to various inferior positions and subsequently dismissed; that the respondent, the FDA refused and neglected to provide their allowances in salary, transportation, housing, as well as comprehensive medical insurance coverage as provided for in the 1998 fiscal budget of the FDA.

On November 8, 2010, following the production of oral and documentary evidence and arguments pro and con by both parties, the hearing officer ruled, holding the respondent, FDA liable for acts of unfair labour practices and illegal dismissal and awarded the movant L$1,197,600.00 (One Million One Hundred Ninety Seven Thousand Six Hundred Liberian Dollars) as compensation for salary arrears; L$326,800.00 (Three Hundred Twenty Six Thousand Eight Hundred Liberian Dollars) as compensation for transportation and US$23,386.80 (Twenty Three Thousand Three Hundred Eighty Six United States Dollars and eight cents) as compensation for housing allowance. According to the records before us, the respondent, FDA although present at the rendition of the ruling and represented by Atty. Benedict K. Sagbeh, did not except to this ruling, nor did it file a petition for judicial review before the National Labour Court to enable the said court to assume jurisdiction to review the hearing officer's ruling.

Thereafter, On October 11, 2011, again after almost one year the movant filed with the National Labour Court for Montserrado County a motion for the enforcement of the hearing officer's ruling of November 8, 2010. The records show that at the call of case on January 29, 2014, approximately three years and three months after the decision of the hearing officer, the respondent, FDA, did not object to the judgment amount but contended that the FDA is an autonomous agency wholly owned by the Liberian Government, and thus, enforcement of any money judgment against it must be done in accordance with section 44.29 of the Civil Procedure Law. The section outlines the process by which money judgment involving the Republic can be enforced. We quote the said section as follows:

> "None of the Procedures for the Enforcement of money judgments is applicable to a judgment against the Republic, its agencies, officers sued in their official capacities, or any authorities wholly owned by the Government. All procedures for the enforcement of money judgments against other judgment debtors are applicable to the Republic, its agencies, officers, authorities, and subdivisions as a garnishee, except where otherwise prescribed by law, and except that an order in such a procedure shall only provide for the payment of money not claimed by the Republic or any officer, agency or subdivision thereof, in such a procedure. If final judgment is entered against the Republic, the clerk of the court shall deliver to the plaintiff a certified copy thereof. When such copy of the judgment is presented to the President, he shall endorse thereon an order to the Secretary of the Treasury directing payment of the amount named thereon. Such payment shall be made forthwith." *Civil Procedure Law, Rev. Code 1:44.29*

The movant resisted the submission made by the respondent, the FDA, and contended that the above quoted provision of the Civil Procedure Law does not apply to the FDA because the FDA is an autonomous agency which can sue and be sued in its own name; that the FDA does not derive its finances from budgetary allocations under the national budget; and that employees of the FDA are not civil

servants. On March 11, 2014, following arguments by the opposing counsels, the judge of the National Labour Court ruled and denied the submission of the respondent FDA and upheld the resistance of the movant. The trial judge also ruled confirming the hearing officer's ruling of November 8, 2010 awarding the movant L$1,197,600.00 (One Million One Hundred Ninety Seven Thousand Six Hundred Liberian Dollars) as compensation for salary arrears; L$326,800.00 (Three Hundred Twenty Six Thousand Eight Hundred Liberian Dollars) as compensation for transportation and US$22,386.80 (Twenty Two Thousand Three Hundred Eighty Six United States Dollars and eight cents) as compensation for housing allowance.

From the ruling of the judge of the National Labour Court for Montserrado County denying the respondent, FDA's submission to apply section 44.29 of the Civil Procedure Law for the enforcement of the hearing officer's ruling against it, the respondent noted exceptions thereto, announced an appeal, filed a bill of exceptions and a valid appeal bond and filed a notice of completion of appeal all within the confines of the time provided by statute, thus bringing the case before this Court for the third time.

On December 3, 2014, during the pendency of the appeal before us, the FDA Workers' Union, the movant in these proceedings, filed a seven (7) count motion to dismiss this third appeal of the respondent, the FDA. The movant contended that although the respondent, FDA, had complied with and fulfilled all of the mandatory statutory steps required for the perfecting of an appeal to this Court, the FDA being the appellant did not superintend and cause the records to be transcribed and transmitted to the Honorable Supreme Court within ninety (90) days as prescribed by law. Thus, the respondent's appeal should be dismissed by this Court on the principle of abandonment.

We quote counts 4 & 6 of the movant's motion to dismiss as these counts present the entirety of the contentions therein contained:

> *" 4. Further to counts (1) through (3), movant avers and says that appellant/respondent excepted to the ruling of the judge of the National Labour Court and announced an appeal to the Supreme Court of Liberia. Thereafter, appellant/respondent filed its Bill of exceptions, Appeal Bond and Notice of Completion of Appeal within statutory time, but failed, neglected and flatly refused to superintend and cause the records to be transmitted to the Honorable Supreme Court of Liberia within Ninety (90) days prescribed by law to afford this Court the opportunity to hear the Appeal in accordance with the Revised Rules of the Supreme Court of Liberia section III, part (b), page 66 which provides that: "within ninety (90) days after the service of the completion of appeal, the appellant shall obtain or cause the issuance of a certificate by the Clerk of this Court that the records of the court below have been received by this Court." Please find attached a Clerk's Certificate indicating that appellant/respondent failed and neglected to superintend and have the records transmitted to the Honorable Supreme Court of Liberia marked as movant's exhibit m/3 to form a cogent part of this motion.*
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> *6. Further to court five (5), movant says that the Honorable Supreme Court of Liberia has also held in the case, National Housing and*

Saving Bank v. James D. Gordon, 35 LLR 323 (1988) syl (1) as follows: "an appeal may be dismissed where the appellant fails to have the records transmitted from the trial to the appellate court within ninety (90) days, such failure being tantamount to abandonment." It is now five (5) months since the notice of completion of the appeal was served and returned served. Syl (2) of the same case provides: "the failure to pay for the preparation of the records to be sent to the appellate court, motion to dismiss will be granted and the trial court instructed to enforce the judgment of the lower court." Additionally, the Supreme Court of Liberia had further held in the case, LAMCO J.V. Operating Company v. Riley Fleming, 33 LLR 171 (1985), that: "the appellant has a primary duty to superintend or oversee, the perfection of his appeal. More importantly, where a party has failed to complete his appeal within the prescribed time and it is not the fault of the clerk, it is proper for the successful party in the lower court to petition the appellate court for an order to enforce the judgment of the lower court." Thomas and Moore v. Dayrell-Mason, 11 LLR 98 predicated upon what we have said thus far as it related to appellant/respondent's failure to superintend and have the records transmitted to this Court and the clerk of the Supreme Court, movant most respectfully prays your Honours and this Honorable Court to dismiss appellant/respondent's appeal for failure on their part to do what is imposed upon them by law, and order to enforce the judgment of the lower court."

On October 22, 2016, the respondent, FDA's lawyer, Counsellor Viama A. Blama, filed a document before this Court captioned as "respondent's resistance." The Court was deeply disappointed and appalled at the manner and form in which Cllr. Blama, a member of this esteemed Supreme Court Bar structured the instrument he claimed to be 'respondent's resistance.' Cllr. Blama was fined the amount of US$100.00 for his dismal resistance and mandated to refile same to conform to the rules on such matters. It was unfortunate and even more disgusting to note that Cllr. Blama refilled self-same instrument for which he was previously fined. We shall however, say more on the act by Counsellor Blama later in this opinion.

The Court meticulously scanned through the pages of the 'resistance' and found that Cllr. Blama only responded to the issue raised in the motion to dismiss at page seven (7), of his 'resistance' as the preceding pages were all reproductions of communications exchanged between the parties and quotations of general legal reliances and citations. This is how Cllr. Blama framed his response:

"whether or not the motion to dismiss the appeal will lie given the facts and circumstances of this case? Respondent answered [answers] in the negative because, there are grounds provided for by statute for which if any is breached, serves as a ground for the dismissal of an appeal. Additionally, the ground stated by the movant is not a ground for which an appeal should be dismissed. That is under our law and practice a motion to dismiss an appeal is based on statutory ground. Accordingly, section 51.4 captioned requirements for the completion of an appeal states that the following acts shall be necessary for the completion of an appeal.

a. *Announcement of the taking of the appeal*
b. *Filing of the bill of exceptions*

c. *Filing of an appeal bond*
d. *Service and filing of notice of completion of appeal.*
Failure to comply with any of these requirements within the time allowed by the statute shall be ground for the dismissal of the appeal.

The motion to dismiss the FDA's appeal states appellant's failure to transmit the record as a ground for the dismissal of this appeal; said ground of movant has no basis in law in that the statute provides in section 51.11 of the Civil Procedure Law captioned record on an appeal that"

"the Clerk of the court from which the appeal is taken shall make up a record containing certified copies of all the writs, returns, notices, pledges, motions, applications, certificates, minutes, verdicts, decisions, orders, opinions, judgments, bill of exceptions and all other pleadings in the case. He shall transmit this record with a copy of the appeal bond to the appellate court within ninety days after rendition of judgment. The clerk of the appellate court shall docket the record forthwith and forward a receipt to the clerk who transmitted it."

In other words, the transmission of the records to the Supreme Court is the responsibility of the clerk and not the appellant especially where the appellant has superintended the transmission of the records."

On October 24, 2016, another two years following the filing of the motion to dismiss, the said motion was called; Counsellor Viama A. Blama appeared for the respondent but the movant failed to appear. Having noted the representation by the respondent and being cognizant that argument is for the Court, it was decided that in keeping with the requisite rule of the Supreme Court regarding such matters, the Court will proceed to enter upon the records for the determination of this cause. The central contention of the parties before us is whether the failure to have the records transmitted from a lower court to an appellate court constitutes ground for the dismissal of an appeal. The movant contends that the appellant is obligated under our law to transmit the records within 90 days after the service and filing of the notice of completion of appeal and that failure to so do is tantamount to an abandonment of the cause for which a motion to dismiss the appeal will lie. The respondent, the FDA, argued that it is the clerk, not the appellant, who carries the burden of transmitting records from a lower tribunal to an appellate court; that failure to transmit records is not a ground for the dismissal of an appeal and that a motion to dismiss an appeal can only be granted on statutory grounds.

We are therefore called to determine whether or not the failure of the appellant to superintend the transmission of the records from the trial court to the Supreme Court is tantamount to an abandonment for which a motion to dismiss an appeal may lie The movant relied on three cases decided by this Court, to wit: *National Housing and Savings Bank v. James D. Gordon*, 35 LLR 323(1988); *LAMCO J.V. Operating Company v. Riley Fleming*, 33 LLR 171 (1985) and *Thomas and Moore v. Dayrell-Mason*, 11 LLR 98(1952).

We begin with the *LAMCO J. V. case* note that the facts said case have no relevance to those in the present case before us as in that case the appeal bond and notice of completion of appeal were filed beyond the sixty days allowed by statute.

In the *National Housing Bank case*, the appellee filed a three count motion to dismiss the appellant's appeal contending, among other things, that following the rendition of final judgment, **the appellant had neither applied to the clerk of the trial court for transcription of the records nor paid the requisite statutory fees to the clerk of said court to ensure transmission of the records to the Supreme Court. [Our Emphasis]** In its returns the appellant did not deny the allegation contained in the motion to dismiss but contended that same was not a ground for the dismissal of an appeal. This Court granted the appellee's motion and dismissed the appeal by ruling thus:

> "An appeal may be dismissed where the appellant fails to have the records transmitted from the trial court to the appellate court within ninety (90) days, such failure being tantamount to abandonment"

The final case cited by the movant *Dayrell v. Thomas*, recorded in 11 LLR at page 98, was decided in the year 1952. In that case, the appellant neglected to pay for the transmission of the records from the trial court to the Supreme Court, even though it had performed the other requirements for perfecting the appeal. This Court held thus:

> "Failure to pay for preparation of the records to be sent to the appellate court, or failure to file said records, is tantamount to an abandonment of the appeal."

The *National Housing Bank* and *Dayrell v. Thomas* cases cited show that the appellants failed to superintend or pay the requisite fees to have the records of the lower court transmitted to the appellate court within a reasonable period of time for which this Court held that a motion to dismiss **may** lie due to abandonment. (Our emphasis) With regards to the use of the word 'may', this court in the case *Brewer v. Mathies et. al., 41LLR 229 (2002)*, opined that the word 'may' constitutes discretion as compared to the word 'shall' which is mandatory.

Also in the *Brewer case* the Court stated thus:

> "the duty of a judge is either mandatory or discretionary depending on the circumstances upon which the duty is imposed upon the judge, or it is depended upon the dictates of the statute which imposes the duty."

And also:

> "Judicial discretion is defined as a 'liberty or privilege' to decide and act in accordance with what is fair and equitable under the peculiar circumstances of the particular case, guided by the spirit and principles of law, and [that the] exercise of such discretion is reviewable only for abuse thereof."

The appellant has alleged that it paid for the transmission of the records to this Court albeit there is no receipt evidencing said payment to whatever source. The appellant failed to exhibit any evidence in the form of a clerk's certificate or payment receipt indicating that it made efforts to superintend or made payment for

the transmission of the records to this Court. Although statute provides that the records must be transmitted from the lower court to the appellate court within ninety (90) days after the rendition of judgment, we observed from the records that that to date, there is no evidence that the appellant superintended or caused the records to be transmitted to this Court, thus necessitating the movant's motion to dismiss the appeal filed on December 3, 2014, on ground of abandonment. What is even more perplexing is that the respondent took another five hundred seventy nine days (579) to file its purported 'respondent's resistance' referenced above without making any efforts to have the records transmitted to this Court. Thus the entire period from the date of the rendition of the judgment at the National Labour Court for Montserrado County to the date of the filing of its resistance, summed up to a total of about eight hundred eighty three (883) days, almost three years but the records remain with the lower court even up to the time of hearing of arguments before this Court.

We observe that as in the *National Housing Bank* and *Dayrell* cases cited herein, the lawyers in the present case have also taken the posture that since the failure to superintend the transmission of the records is not a statutory grounds for the dismissal of an appeal, they simply leave the records in the trial court while the appeal is before the appellate court. The Supreme Court does recognize that the intent of the Legislature in setting forth certain mandatory grounds for dismissing an appeal was to discourage the dismissal of appeals on technical grounds and to give the appellants an opportunity to have their cases heard on their merits. *Kerpai et al. v. Kpene [1977] LRSC 4,* 25 LLR 422 (1977); *Dennis and Dennis v. Holder et al.[1950] LRSC 4;* 10 LLR 301 (1950) However, due to the deliberate act by some lawyers practicing before our courts wherein they only complete the mandatory steps without making any efforts to have the records transmitted to this Court or to request a hearing thereon, actions as the one taken in the *National Housing Bank and Dayrell Cases* is necessary to deter what is commonly referred to in legal circles as 'leaving cases hanging,' a abuse to the construction of our Statutes regarding the promotion of the just, speedy and inexpensive determination of every action.

Thus, given the facts and that the respondent in the present case, the Forestry Development Authority (FDA) did not challenge the judgment of the National Labour Court and failed to pursue the appeal by superintending the transfer of the records to this Court; and as this case has remained undetermined before our administrative tribunal and courts for approximately twenty (20) years, justice demands that we apply the principles of law in the cases cited herein, that the acts by the appellant is tantamount to an abandonment of the appeal for which a motion to dismiss should lie and we so hold. Meanwhile, let us hasten to note that our holding herein, as was done in the cases cited, exclusively applies to this present case by virtue of its attendant facts and circumstances and should only be construed in light of similar situation.

Ordinarily at this juncture, the Court would order the case remanded to the trial court, mandating the judge presiding therein to resume jurisdiction and enforce this Court's Judgment. However, given the fact that this case has continued within our administrative and judicial systems since 1998, a period of almost twenty (20) years; that the respondent, the FDA never petitioned the National Labour Court, Montserrado County for a judicial review of the ruling of the hearing officer of the Ministry of Labour and that the only contention of the FDA is the method of

enforcement which it believes is subject to section 44.29 of the Civil Procedure Law, to remand the case to the trial court without addressing the issue surrounding the application of section 44.29, the parties would be placed in the exact same position of uncertainty as to the enforcement of the judgment. We would be derelict in our duty as the ultimate dispensers of justice were we to pursue such a course of action. Justice therefore demands that we bring finality to this long standing case given the authority of this Court to render the judgment that the trial court should have rendered.

Our observation from the contentions raised in both the motion to dismiss the appeal and the resistance thereto, show that the respondent, the FDA is not challenging the final monetary amounts awarded the movant by the hearing officer of the Ministry of Labour and which amounts were confirmed by the National Labour Court for Montserrado County, but is advancing the method to be employed or pursued by the movant in order to receive the compensations awarded.

Hence, the sole question to bring finality to this case that has been pending almost twenty (20) years is whether or not section 44.29 of the Civil Procedure Law which provides for the enforcement of money judgments against the Republic, its agencies, officers sued in their official capacities, or any authority wholly owned by the government, applies to the respondent, the FDA. Both parties have extensively addressed the above issue in the motion to dismiss the appeal and the resistance thereto, in their respective briefs and in argument before this Court.

As stated herein above, the FDA has not posed any challenge to the trial court's judgment which awarded the movant the amounts as follow:

L$1,197,600.00 (One Million One Hundred Ninety Seven Thousand Six Hundred Liberian Dollars) for salary arrears;
L$326,800.00 (Three Hundred Twenty Six Thousand Eight Hundred Liberian Dollars) for transportation and
US$23,386.80 (Twenty Three Thousand Three Hundred Eighty Six United States Dollars and eight cents) for housing allowances.

The FDA has argued that it is an autonomous agency, wholly owned by the Liberian Government, thus, enforcement of any money judgment against it must be in accordance with section 44.29 of the Civil Procedure Law, already quoted herein. The movant has argued that granted the FDA is an autonomous agency wholly owned by the Government, it can sue and be sued in its own name; that the FDA does not derive its finances from budgetary allocations under the national budget; and that employees of the FDA are not civil servants, thus section 44.29 of the Civil Procedure Law is inapplicable to the FDA.

The issue presented by the parties is not a novelty in our jurisdiction, where certain public corporations are distinguished from other public corporations or agencies wholly owned by Government. This Court has on numerous occasions addressed issues relating to rights and immunities of wholly owned government agencies vis-à-vis the sources of their salaries and the purposes of their establishment.

In the case, *Liberia Electricity Corporation v. Henry Jack et al.*, 37LLR 548,550-551, decided by this Court on September 22, 1994, the appellees Brown et. al., filed a motion to dismiss the appellant's, LEC appeal on grounds that the appeal

was completed sixty-one (61) days after the rendition of final judgment, outside the statutory period of sixty (60) days allowed for the completion of an appeal. This Court granted the motion and dismissed the appeal. The LEC filed a petition for re-argument contending that the Court failed to pass upon its averments in the resistance to the motion to dismiss the appeal, that being a corporation wholly owned by the government of the Republic of Liberia, it need not post a bond and that under the statute, it is excluded from posting bond since it is a municipal corporation.

This Court described the LEC as a wholly owned government public corporation established for the purpose of engaging in profit generation, as distinguished from government owned public corporations or municipal corporations established as an agency of the government to assist in the civil governance of the state and which derive their salaries and other emoluments from budgetary allocations in the national budget passed by the Legislature.

The Court held thus:

> "The petitioner says that as a public corporation, owned one hundred percent by the Republic of Liberia, it is not required to post a bond. Our Civil Procedure Law does not exclude a public corporation from posting a bond, unless the counsel is saying that the petitioner's total ownership by the Republic of Liberia makes it a domestic municipal corporation. This view is obviously misguided because the petitioner is a business corporation engaged in business for profit. Its one hundred percent ownership by the Republic of Liberia is what makes it a "public" corporation as distinguished from a "private" corporation. It is by no means a municipal corporation. A "municipal corporation" as a body politic and corporate constituted by the incorporation of the inhabitants of a city or town for purposes of local government thereof. It is the "body politic created by organizing the inhabitants of a prescribed area, under the authority of the legislature, into a corporation with all the usual attributes of a corporate entity, but endowed with a public character by virtue of having been invested by the legislature with subordinate legislative power to administer the local and internal affairs of the community, and established as a branch of the state government to assist in the civil government of the state."

This Court reaffirmed the above quoted principle of law regarding a public corporation established for the purpose of profit generation in a more recent case involving the self-same Liberia Electricity Corporation when it held:

> "It is therefore our interpretation that if the Government of Liberia incorporates and organizes a business entity which becomes a party to a civil matter, the rules and procedures for the completion of an appeal, as contained in the Civil Procedure Law, shall apply to it the same as they apply to any private business." *LEC v. Lloyd, 41LLR 348 352 (2003)*

Although the facts in the LEC case relate to immunity from filing an appeal bond and those in the present case relate to immunity from the payment of money judgment on its own, both are claiming such immunity on the basis that they are wholly owned by the government.

The principle in the LEC case is that a wholly owned government public corporation established for the purpose of engaging in commercial activities from which it derive its own source of revenue, whose employees are not civil servants with salaries fixed by the legislature through budgetary appropriation, is independent of the Republic notwithstanding its one hundred percent ownership by the government and thus does not benefit from the exemptions provided the Republic.

A review of the Act creating the Forestry Development Authority shows *inter alia* that the Forestry Development Authority is a public autonomous corporation engaged in commercial activities and that generates and manages its own income.

Section 4 of the Act creating the Forestry Development Authority, at the requisite subsections, states as follows:

> "in addition to the powers conferred upon an authority by the Public Authorities Law, the Authority (the FDA) shall have the following powers...
>
> i. To be responsible for the collection of all fees payable under the rules and regulations promulgated under the authorization of this section;
>
> k. To open and operate a main and subsidiary banking accounts, to receive and expend monies'
>
> m. To negotiate, raise and make loans
>
> o. The power to engage in commercial undertakings as a principle or in conjunction with others, to enter into contracts, to sue and be sued.
>
> p. As a principle or in conjunction with others to fell trees and prepare them for export or to have them processed locally, or both; to trade with such timber in the raw and or processed state and to engage in all other operations directly or indirectly connected with the trade in forest products."

Specifically, Section 9 of the said Act of the FDA reads thus:

> **"the Authority shall be responsible for the collection of its revenues, settlement of its financial obligations and all other matters connected with the collection and disbursement of funds of the authority."[Our Emphasis]**

As can be seen from the above quoted provisions of the Act creating the Forestry Development Authority, although wholly owned by the Republic of Liberia, it is substantially **a business corporation engaged in business for profit** by virtue of its powers to **engage in commercial undertakings as a principle or in conjunction with others, among other powers.**

The counsel for the respondent, the FDA seeks to impress upon the Court that the entity does not operate as specified in the Act which gave birth to it. We do not give credence to this claim and emphatically state that even if that was the case, the practical would not supersede or override the clear mandate of the statute which is of a superior character and which does not provide exceptions to the powers conferred or the obligations imposed therein.

In light of all we have found, it is clear that the Forestry Development Authority, the respondent herein although wholly owned by the government, was established as a business corporation for the purpose of engaging in commercial activities which generates and manages its own income and does not receive budgetary allocations from the government of Liberia for the payment of its employees' wages and salaries, and other expenditures hence, it cannot benefit from the exemptions provided the Republic with regards to the method for the enforcement of money judgments against the Republic or its agencies. Hence, section 44.29 of the Civil Procedure Law does not apply to the FDA and we so hold.

We now address the issue of Counsellor Blama's resistance. We observed numerous defects in the structure and content of the said document in that it fell short of mentioning the main case out of which the motion to dismiss grew; that instead of addressing the averments in the movant's motion on a count by count basis, Cllr. Blama copied and pasted several pieces of communications exchanged between the parties, and a full Opinion rendered by this Court. Cllr. Blama also cited several case titles, syllabi of Supreme Court Opinions, sections of the Civil Procedure Law, and some parts of the Executive Law and designated them as 'general reliance.'

Further, the pages of the 'resistance' filed by Cllr. Blama were un-numbered, predominantly repetitious and mostly presented issues which were frivolous and irrelevant to the contention raised in the motion to dismiss the appeal.

The Court informed Counsellor Blama that it viewed his filing of such a substandard document as an act of disrespect to this Honorable Court, and as earlier stated imposed upon him a fine of US100.00 and mandated him to re-submit his resistance. When the case was again called for arguments, the Court was taken aback when Counsellor Blama resubmitted the self-same style of pleading which was rejected. It is disconcerting to say the least that a Counsellor of the Supreme Court bar would exhibit such a high degree of ignorance of the basic principles for the preparation of pleading required of a member of the Supreme Court Bar.

The Civil Procedure Law provides that:

> "All averments of claim or defense shall be made in numbered paragraphs. Each paragraph shall be limited as far as practicable to a single set of circumstances. A paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense shall be separately stated and number whenever a separation facilitates the clear presentation of the matters set forth." *Civil Procedure Law, Rev. Code 1:9.3(3)*

Also, this Court has held that where pleadings are unnecessarily prolix, irrelevant, frivolous, and repetitious or are not structured in accordance with the rules governing the practice and procedure in this jurisdiction, it may be stricken from the records. *LAC v. Daniel Guregure, 35 LLR 423 438 (1988)*

Accordingly, Counsellor Viama A. Blama is hereby fined an additional amount of US$100.00 to be paid into Government revenue within 48 hours as of rendition of this Opinion and receipt of payment deposited with the Marshall of this Court. Counsellor Blama is also warned that a repetition hereof would lead to stricter penalty.

WHEREFORE and in view of the foregoing, the motion to dismiss the appeal is granted. The judgment of the National Labour Court denying the respondent's submission to apply 44.29 of the Civil Procedure Law is hereby confirmed and affirmed. The National Labour Court is hereby ordered to enforce the ruling of the hearing officer, that is, that the Forestry Development Authority pay forthwith to the movant the amount of L$1,197,600.00 (One Million One Hundred Ninety Seven Thousand Six Hundred Liberian Dollars) for salary; L$326,800.00 (Three Hundred Twenty Six Thousand Eight Hundred Liberian Dollars) for transportation and US$22,386.80 (Twenty Two Thousand Three Hundred Eighty Six United States Dollars and eight cents) for housing allowance. The Judge of the National Labour Court is further ordered to ensure that after the deduction of proven counsel fees, the sixty eight (68) complainants listed in this Opinion or their legal representatives, upon proper identification, receive their just compensations.

The Clerk of this Court is mandated to send a mandate to the National Labour Court informing the judge presiding therein to resume jurisdiction over this case and give effect to this Judgment. Costs are ruled against the respondent. IT IS SO ORDERED.

Motion granted

Judgment affirmed

When this case was called for hearing, Counsellor Viama A. Blama appeared for the respondent. No counsel appeared for the movant.