

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2020

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NENE G. YUOH.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA.....ASSOCIATE JUSTICE

The Management of Liberia Bank for
Development and Investment, of the City
of Monrovia, LiberiaAppellant

Versus

Her Honor Comfort S. Natt, Judge of the
National Labor and Mr. Thomas S. Barcon,
Complainant, of the City of Monrovia,
Liberia.....Appellees

GROWING OUT OF THE CASE:

The Management of Liberia Bank for
Development and Investment, of the City
of Monrovia, Liberia.....Movant

Versus

Her Honor Comfort S. Natt, Judge of the
National Labor Court, of the City of Monrovia,
Liberia..... 1st Respondent

AND

Mr. Nathaniel S. Dickerson, Hearing Officer,
Division of Labor Standards, Ministry of Labor,
and Mr. Thomas S. Barcon, Complainant, of
the City of Monrovia, Liberia.....
.....2nd respondents

GROWING OUT OF THE CASE:

The Management of Liberia Bank for
Development and Investment, of the City
of Monrovia, Liberia.....Petitioner

Versus

Mr. Nathaniel S. Dickerson, Hearing Officer,
Division of Labor Standards, Ministry of Labor,
and Mr. Thomas S. Barcon, Complainant,
of the City of Monrovia.....Respondents

GROWING OUT OF THE CASE:

Thomas S. Barcon, of the City of Monrovia

APPEAL

AMENDED MOTION FOR
RELIEF FROM JUDGMENT
AND MOTION TO MODIFY
MONETARY JUDGMENT

PETITION FOR JUDICIAL
REVIEW

Liberia.....Complainant	)	
	)	
Versus	)	
	)	UNFAIR LABOR
The Management of Liberia Bank for	)	PRACTICE
Development and Investment, of the City of	)	
Monrovia, Liberia.....Defendant	)	

HEARD: June 25, 2019

DECIDED: August 3, 2020

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

The certified records reveal that on September 27, 2012, Mr. Thomas B. Barcon, appellee herein, addressed a letter of complaint to the Ministry of Labor accusing the Liberia Bank for Development and Investment (LBDI), appellant herein, of unfair labor practices and failure to surrender settlement claims and benefits for the twenty years during which he was within the employ of the appellant. The letter of complaint specifically stated that he, Thomas B. Barcon, appellee, had resigned after the appellant, LBDI, had refused to grant him early retirement for health reason; that upon resigning, the bank had failed to pay him settlement claims and benefits in the amount of US\$41,093.47 (United States Dollars Forty One Thousand Ninety Three Dollars and Forty Seven Cents) of which US\$40,773.47 (United States Dollars Forty Thousand Seven Hundred Seventy Three Dollars and Forty Seven Cents) represent Staff Investment Fund Account (SIFA), unsettled accrued interest for twenty years of work, and US\$320.00 (United States Dollars Three Hundred Twenty Dollars) for leave payment for the period January 1, 2011 to April 30, 2011.

Hearing Officer Nathaniel Dickerson of the Ministry of Labor cited the parties to a conference for the purpose of amicably resolving the dispute. At that conference, the appellant conceded to the appellee's claim for leave pay but disagreed as to the claim of the appellee for payment of accrued interest on his SIFA benefit. The SIFA claim was therefore submitted to an investigative hearing.

When the hearing commenced on December 13, 2012, Counsellor Samuel K. Kortimai of the Cooper and Togba Law Office appeared to represent the appellant bank in the matter. The appellee filed a motion for summary judgment on the aspect of his claim relating to leave payment since during the pretrial conference the appellant interposed no objection to that claim.

The Hearing Officer granted the motion and the appellant having verified and agreed that it was liable to the appellee for leave pay from January 1, 2011 to April 30, 2011, made payment, submitting the other claim to the hearing.

At the call of the case on January 4, 2013, despite notices of assignment served on the parties, the appellant's counsel failed to appear without an excuse from the Hearing Officer. The Hearing Officer suspended the hearing and ordered another notice of assignment issued to afford the appellant an opportunity to appear. At the commencement of the hearing on January 24, 2013, the appellee, Thomas Barcon, was qualified and began giving testimony in support of his claims against the Appellant LBDI. After eight months, the hearing reconvened on September 25, 2013, with service of assignments made on all parties. Again, the appellant's counsel was absent from the hearing without giving any valid excuse. The appellee prayed for default judgment but same was denied by the Hearing Officer who reasoned that the appellant had to be afforded its day in court. The Hearing Officer however warned that the failure of the appellant to appear at the next hearing without an excuse would lead to the application of the law controlling on default judgment.

On September 27, 2013, the hearing continued with both counsels present and the appellee continued with his testimony. The hearing was again suspended to be continued on October 1, 2013, and notice of assignment was served on both counsels for the hearing, but again the appellant's counsel failed to appear on this date. The appellee then prayed for default judgment in keeping with INA Decree #21, Section 8 which states, "If a defendant in a labor case has failed to appear, plead or proceed to trial, or if the Hearing Officer orders a default for any other failure to proceed, the complainant may seek a default judgment against the defendant." The Hearing Officer granted the default judgment and in keeping with our Civil Procedure Law, Section 42.6, the appellee proceeded to give proof of the facts constituting his claims. When the appellee rested with evidence, the Hearing Officer rendered his final ruling on February 25, 2014, adjudging the appellant liable for unfair labor practices and awarding the appellee the amounts of US\$103,204.90 (United States Dollars One Hundred and Three Thousand Two Hundred Four Dollars, Ninety Cents) and L\$181,989.67 (Liberian Dollars One Hundred and Eighty One Thousand Nine Hundred Eighty Nine Dollars, Sixty Seven Cents) representing SIFA, Early Retirement Benefit, and Unpaid Educational Allowance plus interest. We note that the Hearing Officer's award far exceeded the amount prayed for by the appellee in his complaint to the Ministry of Labor.

The Hearing Officer's ruling was delivered to the counsel for the appellant who noted exceptions thereto and sought judicial review of the ruling before the National Labor Court by filing a twenty-seven count petition which challenged the correctness of the ruling.

In its petition for judicial review, the appellant contended that the Hearing Officer erroneously entered default judgment in favor of the appellee; that the appellee's claim that he was seeking early retirement because he was suffering from a life-threatening illness is false as the appellee was in fact taking up employment with another bank, and that the appellee subsequently introduced new claims that he did not mention in his letter of complaint to the Ministry of Labor and during the pre-trial conference held at the Ministry.

The National Labor Court had a hearing into the petition for judicial review and the returns filed thereto, and on April 6, 2016, entered final judgment confirming and affirming the ruling made by the Hearing Officer of the Ministry of Labor. The Appellant LBDI excepted to the judgment entered by the National Labor Court and announced an appeal to the Supreme Court.

The records reveal, and it is not disputed, that the appellant filed its bill of exceptions on April 18, 2016, twelve days after it announced an appeal from the National Labor Court's judgment.

On April 20, 2016, the appellee requested the clerk of the National Labor Court to issue a clerk certificate to the effect that the appellant had failed to file its bill of exceptions within the ten-day period as prescribed by Section 51.7 of the Civil Procedure Law (1974); the clerk issued the certificate on April 21, 2016, confirming that the appellant filed its bill of exceptions after the statutory period of ten days. Thereupon, on May 10, 2016, the appellee, Thomas S. Barcon, filed a motion to dismiss the appellant's appeal for failure to proceed as per the Civil Procedure Law, Rev Code 1: 51.16.

The appellant filed its resistance to the motion to dismiss the appeal, arguing that the National Labor Court lacked jurisdiction to hear the motion because the Judge of that court had already affixed her signature of approval to the bill of exceptions and that said approval removed the case from the court's jurisdiction. The appellant further argued that its bill of exceptions was filed within the time prescribed by law because the intervening period from the time it excepted to the National Labor Court's final judgment on April 6, 2016, to the expiration of the ten day statutory period on April 16, 2016, contained a legal holiday and a Sunday (April 8

and April 10, 2016); hence, these days should have been excluded from the computation of the time for the filing of its bill of exceptions. The appellant therefore contended that it acted within the pale of the law when it filed its bill of exceptions on April 18, 2016, two days after April 16, 2016.

The Court notes that the appellant does not deny that in fact the bill of exceptions was filed two days after the statutory period had elapsed, rather, it argues that the intervening period from the time it excepted to the National Labor Court's judgment on April 6, 2016, to the expiration of the ten days statutory period on April 16, 2016, contained a legal holiday and a Sunday (April 8 and April 10, 2016) and that both days should have been excluded from the computation of the time for the filing of the bill of exceptions. In support of this contention, the appellant relied on Section 1.7 of the Civil Procedure Law. This Section states that, "in computing any period of time prescribed or allowed by statute, by order or rule of court, by rule or regulation, or by executive order, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a legal holiday. When the period of time prescribed or allowed is less than ten days, intermediate Sundays and holidays shall be excluded from the computation."

We are at a loss as to how counsel for the appellant failed to grasp the meaning of a language so plain and ordinary as that used in Section 1.7 of the Civil Procedure Law. The final ruling of the National Labor Court having been made on April 6, 2016, and the statute provides that the bill of exceptions be filed within ten days, the intermediate holiday and Sunday were not excluded as the appellant contended since the tenth and last day neither fell on a holiday or a Sunday, and the appeal period was not less than ten days. The appellant therefore should have filed the bill of exceptions on or before April 16, 2016. Its failure to meet this statutory deadline rendered the appeal dismissible.

The appellant's further contention that the National Labor Court Judge had affixed her signature to the bill of exceptions and therefore the appellee's motion to dismiss was moot as the filing of the bill of exceptions had removed the case from the court's jurisdiction is also untenable as this Court has held in several Opinions that the lower court maintains jurisdiction of matters arising from the appeal process during the sixty day period allowed by statute, except where the notice of completion of the appeal is filed prior

to the expiration of the sixty days, and in which case the matter is removed from the jurisdiction of the lower court. *Kronyahn et al. v. Chico et al*, Supreme Court Opinion, October Term 2015; *Manhattan Trading Corp. v. World Bank*, Supreme Court Opinion, March Term 2016; *Taye v. Kiawu et al.*, Supreme Court Opinion, October Term 2014; *Hussenni v. Brumskine*, Supreme Court Opinion, March Term 2013

In the instant case, the National Labor Court Judge having ascertained from the hearing of the motion to dismiss that the appellant had filed the bill of exceptions outside the statutory period, and had made no application to the court stating grounds for extension of the period set by statute, rightly ruled, despite having approved the bill of exceptions, dismissing the appeal in line with Section 51.4 of the Civil Procedure Law and numerous Opinions of this Court that the lower court has jurisdiction to dismiss an appeal where the appellant fails to file his bill of exceptions within the time prescribed by statute: Civil Procedure Law, Rev Code 1:51.16; *A.D.C. Airlines v. Sannoh*, 39 LLR 431,439 (1999); *Kanneh v. Manley et al.* 41 LLR 25, 32 (2002); *F.M.T. Construction Company v. Afriland First Bank*, Supreme Court Opinion, March Term 2016.

We observe from the records in the case that while the motion to dismiss the appellant's appeal was pending undetermined before the National Labor Court, the appellant proceeded with the other steps of the appeal process. Appellant presented its appeal bond and notice of completion of appeal to the Labor Court Judge, seeking her approval of the bond. Upon the refusal of the Judge to sign the bond, the appellant filed a petition for a writ of mandamus before the Justice Presiding in Chambers, praying the said Justice to issue the peremptory writ of mandamus to compel the Judge to sign its appeal bond.

Former Associate Justice, Phillip A.Z. Banks, III, who presided in Chambers then cited the parties to a conference but declined to issue the alternative writ of mandamus. The Judge of the National Labor Court therefore resumed jurisdiction of the case and proceeded to hear the appellant's motion to dismiss and granted same. The Judge held that the court had jurisdiction to entertain the motion to dismiss since the signing of the bill of exceptions by her did not divest the court of jurisdiction to hear matters arising from the appeal process which was still pending before the court, and that the failure of the appellant to have filed its bill of exceptions on or before April 16, 2016, rendered the appeal dismissible by the National Labor Court.

On June 9, 2016, counsels for both the appellee and appellant signed the bill of costs prepared by the clerk of the National Labor Court containing the judgment amount and court costs arising out of the proceedings. The bill of costs was thereafter approved by the Judge of the National Labor Court. We notice that the appellant's Counsel, Counsellor Samuel T. K. Kortimai taxed the bill of costs on behalf of the appellant and raised no objection to the amount stated therein.

Thereafter, the appellant brought Counsellor G. Weifueh Alfred Sayeh as additional counsel and he filed a motion for relief from judgment and subsequently a motion to modify monetary judgment, stating that the National Labor Court had inadvertently confirmed the ruling of the Hearing Officer, and that the benefits of the appellee were wrongly awarded.

The motions were resisted by the appellee who argued that the motions were untimely filed as the appellant had already acquiesced to pay and settle the judgment by its taxing of the bill of costs and same being approved by the Labor Court Judge. The appellee further averred that the appellant having forfeited its right to appeal, it suffered lashes and could therefore not reopen the case.

After a consolidated hearing of the motions, on October 3, 2016, the Judge denied the motions on grounds that the issues raised in them were issues that the appellant should have raised and argued at the Ministry of Labor.

This appeal before us is the appellant's exceptions to the ruling of the National Labor Court denying the appellant's motions. It seeks the Supreme Court to review and modify the award made to the appellee. Appellant's three-count bill of exceptions reads as follows:

"AND NOW COMES APPELLANT/MOVANT/PETITIONER in the above cause of action and most respectfully submits this Bill of Exceptions for Your Honor's approval so as to enable Movant/Petitioner perfect its appeal to the Honorable Supreme Court of Liberia, and sheweth the following reasons, to wit:-

1. Because Your Honor failed, refused, and neglected to pass upon movant/petitioner's reason/position for the request of relief from judgment; that is, that the amount awarded by the Hearing Officer and confirmed by the National Labor Court was awarded based on fraud (whether intrinsic or extrinsic), misrepresentation, or other misconduct of co-respondent, Thomas Barcon.
2. Because Your Honor's issue raised for the determination of the amended motion for Relief from Judgment and the motion for

Monetary Judgment was erroneous in that it did not consider the issue of fraud, misrepresentation or other misconduct of the Co-Respondent Thomas Barcon as raised in the Amended Motion for relief from judgment and the motion to modify monetary judgment.

3. Because Your Honor's final ruling ignored the issues raised in the Movant/Petitioner's Amended Motion for Relief from Judgment and the Motion for Monetary Judgment.

WHEREFORE, and in view of the foregoing and for all of the above reasons and legal errors and blunders as well as the others which may not have been specifically raised, mentioned included and contained in this bill of exceptions, appellant/movant/petitioner prays that Your Honor will be most gracious enough to approve this bill of exceptions thereby enabling appellant/movant/petitioner to perfect its appeal and have the Honorable Supreme Court review Your Honor's illegal and erroneous ruling denying the appellant/movant/petitioner Amended Motion for Relief from Judgment and Motion to Modify Monetary Judgment and make a determination therein, AND RESPECTFULLY SO PRAYS AND SUBMITS."

The appellant's bill of exceptions alleged that the amount awarded by the Hearing Officer and confirmed by the National Labor Court was based on fraud, misrepresentation or other misconduct of the appellee and that the National Labor Court Judge ruling totally ignored the issues raised in its motions.

Given the peculiar nature of this case, a succinct recap of its crucial facts is necessary for proper guidance to ensure that the end of justice is not defeated. As narrated above, the appellee filed a complaint on September 27, 2012 before the Ministry of Labor, alleging unfair labor practices. The appellee claimed that the LBDI had refused to surrender his settlement claims and benefits of US\$41,093.47, representing his SIFA benefit pay and Leave Pay after he had resigned from the Appellant Bank. At a conference called by the Hearing Officer at the Ministry of Labor, the parties reached a settlement regarding the appellee's claim of leave pay and the appellant paid to the appellee US\$360 and L\$1,200 as his leave pay; the outstanding amount of US\$40,773.47 claimed by the appellee as the outstanding accrued interest on his SIFA benefit was submitted for investigation and a determination thereof.

As the hearing progressed, the counsel for the appellant was derelict in attending assigned hearings and the Hearing Officer at various times had the hearing suspended because of the appellant's counsel's absence. Having severally warned the appellant's counsel of the consequences of his unexcused absence from assigned hearings, the Hearing Officer was

constrained to grant the appellee's prayer for a default judgment when the counsel for the appellant failed to show up without an excuse for the third time and the appellee was allowed to proceed and present evidence in support of his claim. After the appellee's lone testimony, the Hearing Officer ruled the appellant liable to the appellee in an amount of US\$103,204.90 (United States Dollars One Hundred and Three Thousand Two Hundred Four Dollars, Ninety Cents) and L\$181,989.67 (Liberian Dollars One Hundred and Eighty One Thousand Nine Hundred Eighty Nine Dollars, Sixty Seven Cents) representing SIFA, Early Retirement Benefit, and Unpaid Educational Allowance plus interest.

The appellant excepted and appealed the Hearing Officer's ruling to the National Labor Court, filing its petition for judicial review. Upon a hearing thereon, the court confirmed the Hearing Officer's ruling. The appellant again excepted to the Labor Court's ruling and announced an appeal to the Supreme Court, but failed and neglected to file a bill of exceptions within the statutory period of ten days thereby forfeiting its right of appeal. Thereafter, appellant's counsel taxed and signed the bill of costs, and appellant's president upon been cited for contempt prayed the Labor Court to grant it some time to make payment of the judgment amount. This request was granted by the court. It was the day on which the appellant was to make payment that Counsellor Sayeh who had just enter the case filed the motion for relief from judgment and a motion to modify monetary judgment.

We note that the appellant counsel's conduct of absenting himself from assigned hearings at the Ministry of Labor without any valid excuse, including his failure to file a bill of exceptions to the National Labor Court's ruling of April 6, 2016, within the time prescribed by law, was littered with gross negligence that the National Labor Court affording the appellant the relief from judgment would have offended settled principles of law. This Court has stated that one of the fundamental principles upon which relief from judgment will be permitted is freedom from fault. *Stubblefield v. Nassah*, 25 LLR 152, 166 (1976). To entitle itself to the relief offered by a motion for relief from judgment, the appellant must have shown a sufficient reason why it did not assert and enforce its right at the proper time and in the regular manner, and must exonerate itself from all imputation of negligence or laches, for the judgment will not be disturbed if it appears to have been entered as a result of appellant's own heedlessness, sloth, or lack of diligence in protecting its interests. *Stubblefield v. Nassah*, 25 LLR 152, 166 (1976); *Sesay v. Badio et al.* 37 LLR 359, 364 (1994). More besides, the

motions were not filed within a reasonable time following the rendition of judgment by the National labor Court.

Ordinarily, under the facts and circumstances of this case, the appellant having failed to diligently pursue its contestation of the appellee's claims at the Ministry of Labor, and pursue its appeal from the National Labor Court, satisfaction of the judgment amounts was the only thing remaining in the finalization of the case.

However, as argued by Counsellor Sayeh before this Court, we are perplexed as to how the Hearing Officer arrived at the award, granting the appellee payment of US\$103,204.90 (One Hundred Three Thousand Two Hundred Four Dollars and Ninety Cents) and L\$181,989.67 (One Hundred Eighty One Thousand Nine Hundred Eighty Nine Dollars, Sixty Seven Cents), representing:

- a. Total SIFA Benefit..... L\$95,598.67 + US\$50,169.90
- b. Early requirement claim..... L\$86,400.00 + US\$25930.00
- c. Education allowance unpaid.....US27,115.00 (claim including interest)

The records show that the appellee's complaint to the Ministry of Labor on September 27, 2012, specifically put forth his claims. His letter reads as follows:

"September 27, 2012

Madam Varbah Gayflor
Minister of Labor
Ministry of Labor
UN Drive, Monrovia
Liberia

Dear Madam Minister,

I write to extend my sincere complements and also to bring to your attention matters relating to claims and benefits as well as unfair labor practice instituted against me by the Liberian Bank for Development & Investment (LBDI) on 9th Street, Sinkor, Monrovia after serving for twenty (20) unbroken years in various capacities at the bank.

Madam Minister, prior to this complaint, I have written letters to the bank on three (3) occasions (copies of letters hereto attached) but I have not gotten any official reply to date. The issue is bordering around the bank's refusal to surrender to me settlement claims and benefits of **US\$41,093.47** in which **US\$40,773.47** is attributable to SIFA or Staff Investment Fund Account's unsettled accrued interest for the past 20 years of work and a leave payment of US\$320.00 for period January 1, 2011 to April 30, 2011, when I was constrained to tender my letter of resignation to the bank after their refusal to grant me early retirement

(for health reasons which could not medically allow me to continue on the job and the desire to seek further medical attention) having set earlier precedence. The basis for the claims and benefits are outlined on the documents hereto attached for easy reference.

In this regard, Honorable Minister, I am seeking redress from the Ministry of Labor as regards my complaint against the Liberian Bank for Development & Investment (LBDI) since they continue to pay deaf ear to my grievances so as to arrive at an amicable resolution and settlement.

Best wishes

Sincerely yours,

Thomas B. Barcon
Former Employee of the LBDI
Barnesville Township, Monrovia
Cell No. 0886 - 721490"

The appellee attached to his complaint the below chart outlining the interest claimed on his SIFA account.

7.5% TIME DEPOSIT OPTION					
	Service YRS	SIFA ANNUALIZED	UNPAID INTEREST	ACCM. TOTAL	SIFA GROSS
	Yr. 1990 -2011	24000/20	7.50%	CUMULATIVE	PRINCIPAL ANNUALIZED
1	1990	\$ 1,200.00	\$ 90.00	\$ 1,290.00	\$ 1,200.00
2	1991	\$ 1,200.00	\$ 186.75	\$ 2,676.75	\$ 2,400.00
3	1992	\$ 1,200.00	\$ 290.76	\$ 4,176.51	\$ 3,600.00
4	1993	\$ 1,200.00	\$ 402.56	\$ 5,770.07	\$ 4,800.00
5	1994	\$ 1,200.00	\$ 522.76	\$ 7,492.82	\$ 6,000.00
6	1995	\$ 1,200.00	\$ 651.96	\$ 9,344.79	\$ 7,200.00
7	1996	\$ 1,200.00	\$ 790.86	\$ 11,355.65	\$ 8,400.00
8	1997	\$ 1,200.00	\$ 940.17	\$ 13,475.82	\$ 9,600.00
9	1998	\$ 1,200.00	\$ 1,100.69	\$ 15,776.50	\$ 10,800.00
10	1999	\$ 1,200.00	\$ 1,273.24	\$ 18,249.74	\$ 12,000.00
11	2000	\$ 1,200.00	\$ 1,458.73	\$ 20,908.47	\$ 13,200.00
12	2001	\$ 1,200.00	\$ 1,658.14	\$ 23,766.61	\$ 14,400.00
13	2002	\$ 1,200.00	\$ 1,872.50	\$ 26,839.10	\$ 15,600.00
14	2003	\$ 1,200.00	\$ 2,102.93	\$ 30,142.04	\$ 16,800.00
15	2004	\$ 1,200.00	\$ 2,350.65	\$ 33,692.69	\$ 18,000.00
16	2005	\$ 1,200.00	\$ 2,616.95	\$ 37,509.64	\$ 19,200.00
17	2006	\$ 1,200.00	\$ 2,903.22	\$ 41,612.87	\$ 20,400.00
18	2007	\$ 1,200.00	\$ 3,210.96	\$ 46,023.83	\$ 21,600.00
19	2008	\$ 1,200.00	\$ 3,541.79	\$ 50,765.62	\$ 22,800.00

20	2009	\$ 1,200.00	\$ 3,897.42	\$ 55,863.04	\$ 24,000.00
21	2010	\$ 1,200.00	\$ 4,279.73	\$ 61,342.77	\$ 25,200.00
22	2011	\$ 400.00	\$ 4,630.71	\$ 66,373.47	\$ 25,600.00
		\$ 25,600.00	\$ 40,773.47		

1/3 of the year 2011

Pro-rata of leave pay accrued but not paid to Mr. Barcon		
960.00	\$ 320.00	Pro-rata up From Jan. 11 to April 30, 2011

BENEFIT - SIFA INTEREST ACCRUED & DUE	\$ 40,773.47
BENEFIT - LEAVE PAY ACCRUED & DUE	\$ <u>320.00</u>
GRAND CASH CLAIMS	\$ 41,093.41"

The appellant bank having settled with the appellee his leave pay, the only disputed claim which was submitted to the hearing was the interest of US\$40,773.47 alleged by the appellee to have accrued on his SIFA benefit, and which defense the appellant abandoned when it failed to appear at the hearing at the Ministry of Labor. To the contrary, the appellee in his testimony at the Ministry of Labor introduced claims and benefits which were not stated in his letter of complaint, and which the appellant was not aware and had no notice of, and which the appellant challenged at the National Labor Court.

This Court observes from the records, especially from the appellee's letter of complaint to the Ministry of Labor, that the claims made by the appellee against the appellant was that the said appellant owed him interest accrued on his Staff Investment Fund Account (SIFA) over the period of twenty years during which he worked with the appellant bank, and leave payment for the period January 1, 2011 to April 30, 2011. The appellee attached to his letter of complaint a table detailing the interest accrued on his SIFA account from 1990 to 2011, totaling the amount of US\$40,773. 47.

It is worth noting that the appellee sought the intervention of the Ministry of Labor to recover from the appellant his interest accrued on his SIFA account and his leave pay for a stated period (January 1 to April 30, 2011). The appellant paid to the appellee his leave payment since that component of the appellee's claims was not in dispute after the pretrial conference between the parties. Therefore, at the Hearing had at the Ministry of Labor, the appellant bank was aware that it was required solely to furnish evidence in support of its assertion that it did not owe the appellee accrued interest on

the appellee's SIFA Account as claimed by him. The introduction of claims other than those specifically stated in the appellee's letter of complaint, especially in the appellant's absence denied the appellant notice which is untenable in law. This was all the more grievous given that the award made was based on a default judgment.

Our Civil Procedure Law, Section 42.6 "*Proof*" states that, "On an application for judgment by default, the applicant shall file proof of service of the summons and complaint, and give proof of the facts constituting the claim, the default and the amount due."

The Supreme Court has held that when rulings obtained by default judgments are brought up on judicial review, the Labor Court Judge is obliged to review all documents as well as the oral evidence introduced at the investigation at the Ministry of Labor, take note of the Labor Statute, and determine whether the evidence and calculations support the Hearing Officer's award. *Hsiao G. M. Trading Company v. Natt et al.*, Supreme Court Opinion, March Term 2015.

In the instant case, the Labor Court Judge should have reviewed the evidence presented by the appellee during the hearing with the view of substantiating the claims stated in his letter of complaint to the Ministry of labor. She should have found that all other claims brought up during the hearing were not legally tenable under the legal doctrine of "NOTICE", and should have disallowed all other awards made on claims other than that stated in the appellee's letter of complaint. Upholding awards for claims not made in the appellee's complaint to the Ministry of labor was fatally erroneous, and the Supreme Court being authorized under the law to render whatever judgment the court below should have rendered, and which in its opinion will best serve the end of justice and equity is bound to act in this regard. *Williams and Williams v. Tubman*, 14 LLR 109, 114 (1960); *Reynolds Int'l Export Inc. v. United Africa Co. Ltd.*, 30 LLR 135, 143 (1982); *Sandolo v. LACE*, Supreme Court Opinion, March Term 2007; *Sibley v. Bility*, 33 LLR 548, 555-556 (1985).

We believe that if this Court was to shut its eyes to the obvious facts as contained in the records, and affirm the award made by the Hearing Officer and affirmed by the National Labor Court, it would amount to an egregious travesty of Justice, especially given that this Court is under an obligation to ensure that the ends of substantial justice are achieved.

This Court, in the interest of justice and fair play, and being under a legal obligation to do what the lower court failed to do, hereby modifies the ruling

of the Hearing Officer as affirmed by the National Labor Court, so that the appellant bank pays to the appellee the amount of US\$40,773.47(United States Dollars Forty Thousand Seven Hundred Seventy Three Dollars and Forty Seven Cents) claimed by the appellee in his letter of complaint to the Ministry of Labor and which the appellant had notice of but failed to defend when it abandoned the hearing at the Ministry of Labor. Any and all further claims that the appellee may have against the appellant bank that were not stated in his letter of complaint of September 27, 2012, may be brought by the appellee by his filing of a new complaint and thereby give the bank adequate notice of the claims made against it.

WHEREFORE AND IN VIEW OF THE FOREGOING, the Clerk of this Court is ordered to send a mandate to the Judge of the National Labor Court to resume jurisdiction and give effect to the Judgment of this Opinion. Costs are ruled against the appellant. AND IT IS HEREBY SO ORDERED.

WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLOR G. WEIFUEH ALFRED SAYEH OF THE SAYEH AND SAYEH LAW OFFICES APPEARED FOR THE APPELLANT. COUNSELLORS T. NEGBALEE WARNER AND LUCIA D. SONII-GBALA OF THE HERITAGE PARTNERS AND ASSOCIATES APPEARED FOR THE APPELLEE.