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

His Honor H. Nyenswa Davis, Sr., Senior Hearing Officer, Division of Labour Standards, Ministry Of Labour and Wiefueh Sayeh, Monrovia, Liberia……Movant/appellees	)	Amended Motion to dismiss Appeal
Versus	)	
Liberia Telecommunications Authority (LTA), of the Township of Congo town, Monrovia, Montserrado County, Liberia…….Respondent/Appellant	)	
GROWING OUT OF THE CASE:	)	
Liberia Telecommunications Authority (LTA), of the Township of Congo town, Monrovia, Montserrado County, Liberia…….Petitioner	)	Petition for Judicial Review
Versus	)	
His Honor H. Nyenswa Davis, Sr., Senior Hearing Officer, Division of Labour Standards, Ministry Of Labour and Wiefueh Sayeh, Monrovia, Liberia…….Respondents	)	
GROWING OUT OF THE CASE:	)	
Wiefueh Sayeh……..Complainant	)	Unfair Labor Practice
Versus	)	
Liberia Telecommunications Authority (LTA) …….Defendant	)	

Heard: May 10, 2016 Decided: December 16, 2016

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

On October 10, 2007, Counsellor Wiefueh Sayeh, the movant/appellee herein, was offered a letter of employment by the Liberia Telecommunications Authority (LTA), the respondent/appellant herein, to serve as its Legal Counsel. The letter of employment took effect as of November 1, 2007, and required that the movant/appellee sign three separate documents. These documents included confidentiality, Code of Conduct, and Conflict of Interest.

We quote below the appellee's letter of employment:

> *"Ref: ANB/C-1/LTA/RL/020/07*
> *Cllr. Wiefeuh B. Sayeh*
> *Monrovia, Liberia*
>
> *October 10, 2007*
>
> *Dear Cllr. Sayeh:*
>
> *I am pleased to appoint you as Legal Counsel with the Liberia Telecommunications Authority. Your appointment becomes effective as of November 1, 2007.*
>
> *Please be advised that you will be on probation for the period of three (3) months, after which an appraisal of your performance will be conducted before you are considered as a bona fide employee. The full details of your job description and responsibilities will follow later. As part of your employment terms, you will be required to sign the following documents: confidentiality, code of conduct, and conflict of interest.*
>
> *I entertain no doubt that you will be resourceful, efficient and committed to your assigned duties so as to justify the confidence reposed in you as we look forward to having you join our team. Congratulations and welcome aboard!*
>
> *Kindest professional regards,*
>
> *Albert N. Bropleh*
> *Chairman and CEO"*

On September 17, 2012, the movant/appellee tendered a letter of complaint through a labor consultant to the Ministry of Labour alleging wrongful dismissal meted against the movant/appellee by the LTA, when it suspended and subsequently dismissed him without according him due process. The movant/appellee then demanded reinstatement or US$132,000.00 (One Hundred Thirty Two Thousand United States Dollars) in lieu thereof.

The movant/appellee's letter of complaint is also quoted below:

> *"Hon. VarblahGayflor*
> *Minister*
> *Ministry of Labor*
> *Monrovia, Liberia*
>
> *September 17, 2012*
>
> *Dear Hon. Minister:*
>
> *We are pleased to extend our compliments and to complain on behalf of our client, Cllr. Wiefueh A. Sayeh against the Management of the Liberia Telecommunications Authority (LTA) located on 12th Street,*

Sinkor, in the United Methodist Building for Unfair Labor Practices/Wrongful Dismissal.

Our client, Mad. Minister, will have us inform you that he has been in the employ of LTA for the past five years as legal counsel earning a salary of $5,500.00USD. He states further that, he has never been warned or suspended for any breach of duty. Surprisingly on July 31, 2012, a letter was addressed to him summarily terminating him for what they called "grievous breach of confidentiality and trust.." on account of "disclosing highly sensitive and confidential information to a non-board member..", relying on section 1508(2)(c). This reliance implies that our client was a definite contract which is not true; hence such reliance is misleading and misapplied for which it can't and or should not be given any credence. Even assuming without admitting that said reliance is misapplied, the Honourable Supreme Court in 1981 in the case U.L.R.C vs. Emmanuel McCaulley opined that "the correct interpretation of 1508.5 is that before an employee can be dismissed by his employer for having allegedly committed a gross breach of duty (as in the instant case), there must have been convened an investigation properly conducted at the place of business of the employer so as to establish the accused employee's guilt or innocence. A deviation from this procedure is legally unjustified.

Hon. Minister, in the instant case, no investigation was conducted to ascertain the facts in complete violation of our client's constitutional rights to due process of law. And furthermore, assuming without admitting, that he disclose confidential information, what injury or harm did it cause the LTA.

Hon. Minister, as you are aware, our labor laws categorize two distinct forms of employees on dismissal as those under definite or indefinite duration. In the case of our client, he was under indefinite or pensionable duration. As such LTA cannot use a law that is not applicable in this case, moreover, they failed to institute any investigation to establish the guilt or innocence of our client, hence it is our request that you kindly cite Management to show cause why they cannot be held liable for wrongful dismissal and order them to reinstate our client with all attending benefits as if he was never dismissed or pay him as aggregate of 24 months salaries in the amount of One Hundred and Thirty Two Thousand (132,000.00) United States Dollars in lieu of reinstatement in keeping with section 9 of the labor practices laws of Liberia, as well as his benefits such as ; (1) 100 gallons of gas per month (2) 150 United States Dollars scratch cards per month.

Thanks for your understanding in the premises.

Truly yours

Patrick W. Doe
Labour Consultant"

The basic contentions raised in the above quoted letter of complaint, including the testimony of the movant/appellee were that he served as Legal Counsel and Secretary to the Board of Commissioners of the respondent/appellant corporation, the LTA; that as per his terms of reference, his responsibilities included recording and documenting minutes of meetings of the Board, keeping records and providing attorney-client privileged legal advice to the Board; that sometimes in May of 2012, he, as secretary to the Board of Commissioners, participated in a meeting with representatives of the Cellcom Communications Corporation, one of the telecommunications service providers in Liberia; that at the said meeting, the Cellcom Communications Corporation had informed the members of the Board of LTA, that its competitor, LoneStar Communications was violating Liberia's Information Communication Technology (ICT) Policy and the attendant Cable Consortium Agreement of Liberia which require all telecommunications companies to use certain specified routes for their networks cables connections; that LoneStar had opted to bring internet to Liberia by way of its micro wave/back haul capabilities through the Republic of Cote D'voire instead of using the routes provided for by the agreement and requested the LTA to take immediate action to halt the course of LoneStar's cable connection; that at the end of the meeting, the Board of Commissioners reached a decision to institute legal action against LoneStar, and instructed the movant/appellee to file a writ of prohibition against the LoneStar.

The movant/appellee also alleged he informed the Board of the fact that he would collaborate with the department of strategy to aid him with the drafting of the petition for prohibition; that following the above mentioned meeting of the Board, he encountered one Mr. Koluba Zizi Howard, the Director of Strategy who at sundry times acted as secretary to the Board in the absence of the movant/appellee; that during this encounter, Mr. Howard allegedly probed him to confirm a newspaper article which indicated that the LTA was contemplating instituting legal action against LoneStar for the reasons stated herein above; that he responded by confirming the information that Mr. Howard had allegedly read in a newspaper article to the effect that the Board of the LTA had reached a decision to halt LoneStar's cable connection route through court action.

The movant/appellee further averred that thereafter, Mr. Howard, in his capacity as Director of strategy advised him that a court action was not necessary but he alternatively informed Mr. Howard to communicate his opinion to the chairperson of the Board. According to the movant/appellee Mr. Howard thereafter, did write the Board of Commissioners advising against the filing of the writ of Prohibition against LoneStar; that upon receipt of this communication, the Board suspended him for three months and subsequently, on July 27, 2012, dismissed him for what it termed as 'grievous breach of confidentiality for disclosing highly sensitive and confidential information to a non-board member without the expressed approval by the Board of Commissioners.'

We quote herein the respondent/appellee's dismissal letter to the movant/appellee, to wit:

> *"Ref: LTA/CHR-AEW/0121/12*
>
> *July 27, 2012*
>
> *Counsellor Wiefueh G. Sayeh*
> *General Counsel*

Liberia Telecommunications Authority
Leona Chesson Avenue
Monrovia, Liberia

Mr. Cllr. Sayeh:

It has been discovered that you have violated your trusted role as General Counsel and Secretary to the Board of Commissioners here at the LTA by disclosing highly sensitive and confidential information to a non-board member without the expressed approval of the Board of Commissioners.

This grievous breach of confidentiality and trust of your position has led to enormous exposure to the Board and has left us with no option but to dismiss [you] from active duty effective July 31, 2012 in accordance with Labor Law section 1508(2)(c).

You are requested return all LTA issued properties in your possession to Human Resources Officer.

Sincerely,

Angelique Weeks
Chairperson
Cc: Board of Commissioners
HR

Following regular notice of assignment, the investigation commenced on October 22, 2012, with all parties being represented; the movant/appellee was represented by Mr. Patrick W. Doe, a Labour Consultant at the Ministry of Labour, while the respondent/appellant, LTA was represented by Cllr. Amos P. Andrews, an in-house-counsel. The movant/appellee was the lone witness on his own behalf; he substantially testified as follows:

"to the best of my knowledge, in May of 2012, the LTA had a regulatory meeting with Cellcom Communications Corporation. During the meeting, Cellcom alleged that LoneStar Cell MTN was in violation of the ICT Policy of the Republic of Liberia and the agreement between the parties constituting the cable consortium of Liberia (CCL). Cellcom alleged that LoneStar was bringing in internet services by way of their Micro wave/ back haul capabilities through San pedro into Liberia, Cellcom believes that if LoneStar is allowed to complete this connection, it will be a violation of the CCL and a undermining of the Liberia Government's effort with the Africa Coast to Europe (ACE) undersea cable connection. Cellcom demanded that LTA take immediate action to halt the effort by LoneStar. After deliberations the Board decided to take action against LoneStar with the intention to halt LoneStar entire cable connection with Ivory Coast.

I advised that it would be better if we institute a prohibition against Lonestar. I also told them even though prohibition may not lie but we could procure the alternative writ to have Lonestar halt the process until the prohibition can be heard and disposed of. I was asked to draft the writ of prohibition which I did and as customary, I distributed same to the rest of the Board Members present for their

individual input. ***I told Commissioner Benson that since this issue was highly technical, I will be working closely with his department and his engineers in order to complete the writ of prohibition.*** *Up to today's date, October 22, 2012, only a single commissioner in person Benson returned his copy in early June, 2012 to me with the instruction that I should include his comments because the board needed to show the writ of prohibition to the President of the Republic of Liberia...*

…after the meeting with Cellcom., I as general counsel decided to file the [a] writ of prohibition… when I left the Board Room, I called the Director of Strategies of the LTA in person of Koluba Zizi Howard and he asked me [to confirm an information] that he heard that the LTA wants to file a suit against LoneStar? I said yes. He asked 'for LoneStar shutting down Comium?' …I said to him not for Comium but I was asked to prepare a writ of Prohibition against LoneStar for bringing cable to Liberia via San Pedro and ***since you are the liaison, I will need some assistance from you in preparing this writ of prohibition.[Our Emphasis]*** *Mr. Howard [then] decided to write an email to the Board, advising the Board against the pending action.The Board then decided to suspend me while I was away on vacation… I resumed work on June 6, 2012 and was denied privilege to execute my duties and was subsequently dismissed on July 31, 2012,…"*

When the movant/appellee rested with the production of oral and documentary evidence, Mr. Kolubah Zizi Howard, the Director of Strategy at the LTA took the stand on the latter's behalf. We observe that Mr. Howard was the self-same person alluded to and described in the Board's letter of dismissal as the 'non-board member' to whom the movant/appellee had allegedly divulged the proclaimed 'highly sensitive and confidential information' who was now appearing as the first witness for the respondent/appellant. The witness substantially confirmed the testimony of the movant/appellee to the effect that he solicited from the appellee, a confirmation of an information he read from the newspaper concerning the LTA's intention to institute legal action against the LoneStar; that he advised the movant/appellee that it was not appropriate to take legal action against LoneStar; that the movant/appellee asked him to discuss his concerns with the acting chairman of the Board; that he prepared a briefing note and emailed same to the Board members; that upon receipt of his email the members of the Board informed him that the movant/appellee had breached his duty of confidentiality by divulging such information to a non board member; that the Board warned him against his unsolicited advice; that he apologized to the Board for commenting on the issue but mentioned to the Board that as one who acted as secretary to the Board in the absence of Counsellor Sayeh and Director of Strategy, he was of the belief that he should have been privy to such an information and that following several exchanges of communications between the board and the movant/appellee, the latter services were terminated for breach of confidentiality.

On February 23, 2014, while the respondent/appellant's first witness was still on the stand, the investigation was postponed for reasons which the hearing officer termed as 'some emergency.'

Thereafter and following several notices of assignment, the investigation resumed two months later on May 16, 2014, but the respondent/appellant and its legal

counsel were absent and the records show no evidence of an excuse being tendered or leave of absence granted by the investigation.

This precipitated the prayer for default judgment by the movant/appellee as follow, to wit:

> *"at this stage one of counsels for complainant says at the call of the case at the precise hour of 1:00 P. M., we note the absence of defendant's counsel and after a careful inspection of the case file, it is also noted that there is no request for continuance for their inability of defendant/management or its counsel to proceed to trial. Counsel says a further review of the case file indicates that on previous occasions defendant's counsel requested for continuance unlike today's sitting. This behavior on the part of defendant/management is only construed as a deliberate delay tactics to frustrate the speedy disposition of this matter. The records further reveal similar instances of delay tactics being employed from the beginning of this hearing up to today. In order to curb or stop this delay tactics on the part of defendant/management is for the investigation to grant complainant's request for default judgment on account of abandonment. Your honor is respectfully requested to take judicial notice of the records in these proceedings with specific reference to the matter of absences caused by the defendant/management in the case file. In view of the above, we respectfully request that our request be granted based upon the facts stated in these proceedings, since in fact and indeed we have already submitted our evidence in toto."*

On the same date, May 16, 2014, the hearing officer granted the movant/appellee's request for default judgment and suspended the matter for final ruling. It is the law in vogue that 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." See INA Decree No. 21 § 8.*Vijayaraman et al., v Xoanon Liberia Ltd., 42 LLR 47,56 (2004);The Intestate Estate of the late Alihaji Massaquoi v. A.M.E Church, Supreme Court Opinion, October Term 2014; Tex Yadamah v. NPA, Supreme Court Opinion, March Term, 2015.*

Subsequently, a regular notice of assignment was issued and served on all the parties to appear for the final ruling of the hearing officer on July 25, 2014, and at which time the movant/appellee and the respondent/appellant were duly represented. The hearing officer ruled in favor of the movant/appellee and awarded the amount of US$144,000.00 (One Hundred Forty Four Thousand United States Dollars) representing twenty four months' salary for wrongful dismissal and accrued benefits including scratch card, transportation, gasoline and unused leave allowances.

We hereunder quote the relevant portions of the hearing officer's ruling commencing with the issues, to wit:

> *"Issues:*

1. *Did the complainant disclose the working secrets of his employer, the Liberia Telecommunications Authority (LTA) as they alleged for*

which they relied on section 1508(2)(c) when the information of LTA's anticipation to take action against LoneStar MTN was already published in a local Newspaper as stated by their own witness Kolubah Zizi Howard? The answer is No.

2. *Did defendant/Management conduct any investigation involving the complainant for the alleged so-called 'grievous breach of confidentiality and trust which led to the alleged enormous exposure to the board before the complainant's dismissal or did they mention the name of the alleged non-board member? The answer is No.*

3. *Is the alleged disclosure of the highly sensitive and confidential information to an alleged non-board member the working secrets of defendant/management LTA's undertaking for which they relied on section 1508(2)(c), which states: "disclosure by an employee if the working secrets of the employer's undertaking? The answer is No, because section 1508(2)(c) cannot hold in the instant case.*

4. *Defendant management failed to appear, plead and proceed on May 16, 2014 even though they received and signed for the notice of assignment as shown by the sheriff's returns in the case file.*

Rulings:

In the midst of all the above, coupled with the failure of defendant/management to appear, plead and proceed on May 16, 2014 for investigation is sufficient grounds for default judgment, an imperfect judgment to be made perfect, when so prayed for by the complainant, as in the instant case, hence, default judgment is hereby rendered against defendant/management, Liberia Telecommunications Authority (LTA). She (LTA) is therefore liable to reinstate the complainant as if he was never dismissed or pay him for unfair labour practice/wrongful dismissal for which he [is awarded] 24 months' salary plus other benefits as claimed by the complainant in lieu of reinstatement.

The investigation award the complainant twenty four (24) months of his gross salary plus [other benefits]:

Calculation

1. *Unfair Labour Practice/Wrongful Dismissal = 24 months' salary…US$132,000.00*
2. *100 gals. Of gasoline X 22 months (Aug-2012-2014)……US$2, 200 gals.*
3. *US$150 X 22 months for scratch card……US$3,300.00*
4. *US$350 X 22 months for transportation……US$7,700.00*
5. *Unused leave……US$1,000.00*

Total ……US$144,000.00

We have reviewed the transcribed records, to include the testimony of the movant/appellee and have seen no evidence for the basis of the hearing officer's total award. The movant/appellee in making the imperfect judgment perfect proffered no documents indicating the amount of his salary, albeit same was not disproved by the respondent /appellant . The movant/appellee also failed to prove by preponderance of evidence his averment of transportation allowances, the quantity of scratch cards and gasoline received or how frequently these were disbursed, or the method applied in computing the unused leave. In the absence of

these mandatory evidence, the award by the hearing officer cannot be justified, merely because the movant/appellee alleged same in his letter of complaint and his lone testimony. This Court has said that allegations in a complaint not supported by evidence cannot amount to proof. *Reynolds v. Garfuah, 41LLR 362 371(2003).* We shall say more on this issue later in this opinion.

On August 22, 2014, the respondent/appellant management filed a 10 count petition for judicial review before the National Labour Court for Montserrado County basically alleging that the hearing officer erred when he determined that a single non-appearance amounted to an abandonment and granted the movant/appellee's request for default judgment; that the movant/appellee failed to disprove that he did not breach his duty of confidentiality and that even if the movant/appellee was wrongfully dismissed, he was not entitled to other benefits.

We quote the respondent/appellant's entire 10 count petition for judicial review as follows:

"PETITIONER'S PETITION

Here comes Petitioner in the above entitled cause of action and prays Your Honour to review and reverse the Ruling of the Co-Respondent Hearing Officer, H. Nyenswa Davis, Sr., following legal and factual reasons showeth to wit:

1. *That Co-Respondent Wiefueh A. Sayeh was employed by the Petitioner in November 2007, and served in the position of General Counsel, for a period of Five (5) years, until his services were terminated on August 1, 2012, for breach of confidentiality. The conduct of Co-Respondent Sayeh which constituted breach of confidentiality is the Petitioner discovered that Co-Respondent Sayeh had revealed deliberations and decisions of the meeting of the Board of Commissioners to another employee of the Petitioner, who is a non-board member, contrary to Petitioner's policy regarding such meetings.*

2. *Further to court one (1) above, dissatisfied with his dismissal, Co-Respondent Sayeh field a Complaint before the Ministry of Labor alleging that his services had been wrongfully terminated and requesting the Ministry to conduct an investigation and hold the Petitioner liable in wrongful dismissal. Consistent with the practices at the Ministry of Labor, a conference was held between the parties and Petitioner maintained that it had genuine reasons to terminate Co-Respondent's services. The matter was thereupon ruled to a full scale investigation.*

3. *Investigation into the Complaint commenced on October 22, 2012, with the Co-Respondent Sayeh taking the witness stand producing evidence in his behalf. Co-Respondent Sayeh testified that as General Counsel he was the Secretary to the Board of Commissioners, whose duties consisted of recording minutes of meetings of the Board and keeping records. Co-Respondent Sayeh further testified to a regulatory meeting of the Board of*

Commissioners held with Cellcom Telecommunications Corporation in respect of a complaint against another telecommunications company; Lonestar Cell MTN. In his testimony he revealed amongst other things, that the Petitioner reached a decision to take legal action against the Lonestar Cell MTN. He further testified that subsequent to the referenced meeting, he was asked by the Director of Strategy, Koluba Zizi Howard, a non-board member, to confirm information which he (Howard) had heard to the effect that the Petitioner was contemplating taking legal action against Lonestar Cell MTN). His testimony is that he confirmed to Mr. Howard that the Board had decided to take legal action against Lonestar Cell MTN. He further testified that because of the information given to Mr. Howard, Mr. Howard sent an email to Members of the LTA Board of Commissioners advising the Petitioner against taking legal action against Lonestar Cell MTN. Responding to the unsolicited advice and or opinion from Mr. Howard, former Commissioner Lamini Waritay, replied and specifically asked Mr. Howard to disclose the source of his information. He answered in another email and unequivocally stated that it was the General Counsel, the Co-Respondent in this proceeding. When Co-Respondent was confronted by the Board of Commissioners through one of its Members former Commissioners Waritay, he admitted releasing the information to Mr. Howard. Mr. Waritay further asked Co-Respondent whether he was aware that the release of the information was in violation of the policy and terms and conditions of his letter of employment which he acknowledged on September 2, 2008. In his reply, Co-Respondent said he released the information to Mr. Howard because he has been working with the Cable Consortium of Liberia (CCL) and has knowledge of the CCL and the ICL policy of Government. Further to his response to Members of the Board, Co-Respondent said "I am extremely sorry and apologize to the BOC for answering a Co-worker's inquiry about what he heard about the BOC". Indeed the chain of emails authored by former Commissioner Waritay, Mr. Howard and Co-Respondent clearly points to the fact that the Co-Respondent was confronted by the Board of Commissioners, which is the highest decision body of the LTA, through former Commissioner Waritay, and therefore did conduct an investigation through such manner.

4. *Further to count three (3) above, following his direct testimony, Co-Respondent Sayeh was cross examined. On the cross-examination, Co-Respondent Sayeh testified that decisions of the Board of Commissioner are only made available to non-members when said decisions are made into policies of the Petitioner; (see pages 14 and 15 of the minutes of February 7, 2013 and March 9, 2013, respectively). Following the cross-examination of Co-Respondent Sayeh, the Complainant rested with the production of evidence and submitted its side of the case to argument.*

5. *On December 18, 2013 Petitioner commenced the production of evidence and produced its first witness in person of Mr. KolubaZizi Howard. Witness Howard testified that he had read in one of the local newspaper that the*

Petitioner was contemplating some actions against Lonestar Cell MTN and inquired from Co-Respondent Sayeh what actions the Board of Commissioners of the Petitioner was contemplating. Co-Respondent Sayeh informed him that the Board was contemplating taking court action against Lonestar Cell MTN. Witness Howard testified that he expressed his (Howard) disagreement with the Board's decision to Co-Respondent Sayeh who also informed him that he (Sayeh) too had advised the Board against taking such action (see sheet 22 of the minutes of December 18, 2013). Witness Howard continued with his direct testimony until February 23, 2014 and cross-examination commenced on the same day until the investigation was adjourned with the witness still on the stand.

6. *On the 30th day of April, 2014, a notice of assignment was issued for continuation of investigation on May 16, 2014. Due to other engagements of Petitioner's counsel and its inadvertence to inform the investigation, Petitioner's counsel could not show up for continuation of the investigation. Upon the request of the co-Respondent Complainant, the Hearing Officer proceeded to enter a Judgment by Default against the Petitioner and order the Complaint to proceed to argue his side of the case. On July 28, 2014, Petitioner received and sign for the final Ruling of the Co-Respondent Hearing Officer, in which he held the Petitioner liable for wrongful dismissal and ordered that the Co-Respondent Complainant be reinstated or pay the aggregate amount of US$144,000.00 (United States Dollars One Hundred Forty-Four Thousand) in lieu of reinstatement. Attached hereto and marked as Petitioner's Exhibit P/1, is a copy of the Hearing Officer ruling in substantiation of the averment contained herein.*

7. *Petitioner says that this Petition is filed due to the prejudicial and bias character of the Co-Respondent and Hearing Officer in entering a default judgment when the Petitioner's witness was still on the stand, and the erroneous nature of the final Ruling. Petitioner submits that hearings at the Ministry of Labor are administrative and Hearing Officers are expected to be as flexible as possible. Petitioner says further that with its witness on the stand how could the Hearing Officer determined that one (1) non-appearance amount to its abandonment of its defense; this can only mean that the Co-Respondent was prejudicial and bias to the Petitioner. And for this reason, Judicial Review will lie.*

8. *Further to count Seven (7) above, Petitioner says that the Ruling of the Co-Respondent Hearing Officer is erroneous and contrary to law. Petitioner submits that the award of twenty-four months to the Co-Respondent who has only worked for Five (5) years is excessive. The law governing such cases is that an award for wrongful dismissal must take into consideration the length of service and reasonable expectation of the employee. For the Co-Respondent Hearing Officer to award the Co-Respondent Sayeh the maximum amount for wrongful dismissal is indeed excessive and a proper ground for judicial Review. And this Petitioner so prays.*

9. *Further to counts Six (6), Seven (7) and Eight (8) above, Petitioner says that the Ruling of the Co-Respondent Hearing Officer is erroneous also because in addition to the award for wrongful dismissal, he also awards that Co-Respondent Sayeh benefits to which he was entitled by virtue of his employment. Petitioner says that it is the law that the only award for wrongful dismissal is a maximum of Twenty-Four (24) months' salary. The employee is not entitled to any benefits to which he was entitled during his employment. Petitioner therefore submits that the award for gasoline, scratch cards, transportation and leave is contrary to law and erroneous and a proper subject for review and reversal. And for this reason judicial Review will lie.*

10. *That further to the ruling of the Co-Respondent Hearing Officer, Petitioner says that the Co-Respondent Sayeh had an obligation to prove that he had not breached his duty and divulged confidential information as maintained by the Petitioner in the dismissal letter. All of the testimony of the Co-Respondent Sayeh and Petitioner's first witness clearly showed that the Co-Respondent Sayeh had indeed revealed to Mr. Howard decision of the Board and also the fact that he (Sayeh) had intimated to the Board that its course of action was inappropriate. Petitioner submits that under the law, the Complainant must prove wrongful dismissal, meaning he/she must prove that the grounds for the dismissal are not true. Petitioner submits that Co-Respondent Sayeh having failed to carry this burden of proof, he was not entitled to the award made by the Hearing Officer.*

WHEREOFRE and in view of the foregoing, Petitioner prays Your Honour to review and reverse the erroneous and prejudicial Ruling of Co-Respondent Hearing Officer, H. Nyenswa Davis, Sr., deny and dismiss the Complaint of the Co-Respondent Sayeh in its entirety, and grant unto Petitioner any other relief as Your Honour may deem just, legal and equitable in the premises."

The Judge of the National Labour Court for Montserrado County ordered the issuance of a writ of summons and same was accordingly issued commanding the movant/appellee to appear before the court or file formal returns thereto on or before September 2, 2014. The sheriff's returns show that this writ was received and signed for by Mr. Nathaniel Dickerson, Director of Labour Standards, Ministry of Labour, on behalf of the Hearing Officer but the movant/appellee was not served as he was out of the bailiwick of the Republic.

On August 28, 2014, a writ of resummons was issued commanding the movant/appellee to appear or file formal returns on September 10, 2014. Again, the sheriff's returns filed on September 5, 2014, showed that same was served on the clerk of the Labour Standard Division of the Ministry of Labour but the movant/appellee was not served as his whereabouts were unknown.

On September 16, 2014, the movant/appellee applied for and was issued a clerk's certificate indicating that the appellant had failed to make an

application for summons to be made by publication within statutory time as indicated by the date of the sheriff's returns on the writ of resummons.

On September 17, 2014, the movant/appellee filed a 22 count returns to the petition for judicial review. The returns basically restated the facts which cumulated into the filing of the action of unfair labour practices; maintained that the hearing officer's findings were not erroneous as they were supported by the evidence adduced at the investigation; and that the information divulged to Mr. Howard was not confidential as same was already within the knowledge of the public. The movant/appellee also filed a thirteen (13) count motion to dismiss the respondent/appellant's petition for judicial review along with his returns. The entire 13 counts motion raised only two issues, which were, that the National Labour Court for Montserrado County was without jurisdiction over the person of the movant/appellee since the writ of resummons was not served on him and the respondent/appellant failed to apply for summons by publication within statutory time and that the respondent/appellant's failure to attend the May 16, 2014, hearing out of which the default judgment grew, it lacked the capacity to maintain the petition for judicial review.

The movant/appellee subsequently withdrew his motion to dismiss and on September 25, 2014, re-filed an amended one. We will not burden this opinion with the amended motion to dismiss as the averments therein are only a recitation of the two points raised in the original motion as indicated *supra*.

On September 27, 2014, the appellant filed a 16 count returns to the motion to dismiss. The respondent/appellant substantially argued that the application for a clerk's certificate made by the movant/appellee on September 16, 2014, constituted a voluntary submission to the court as said date fell within the time required for the making of the application for summons by publication and thus the trial court acquired jurisdiction over the movant/appellee by virtue of said voluntary submission; and that although it did not appear for the May 16, 2016, out of which the default judgment grew, the petition for judicial review was rightfully filed within 30 days upon receipt of the hearing officer's ruling in accordance with law.

On November 3, 2014, following argument *pro en con*, the Judge of the National Labour Court entered a final ruling wherein she dismissed the LTA's petition for judicial review and ordered the enforcement of the hearing officer's ruling on grounds that the court had not acquired jurisdiction over the person of the movant/appellee.

We quote hereunder the relevant portion of the trial judge's ruling, to wit:

> *"Management failed to make application for service by publication within statutory time after the Returns of the writ of Re-summons indicated that Co-Movant Wiefueh A. Sayeh could not be found to be served the Writ of Re-Summons. How else could the Petition for Judicial Review be dismissed*

for improper service and the court's lack of jurisdiction of the Movant's if a motion to dismiss the Petition for reason stated herein was not filed? Only parties to the Petition for Judicial Review, in this case the Movant/Respondent, could move the court to dismiss the Petition and enforce the Hearing Officer's ruling.

A party who was not brought under the jurisdiction of the court because the petitioner failed to avail itself of the statute to bring such a party under the jurisdiction cannot be prevented from moving the court from dismissing the petition as in this case. The first action of the party who was not brought under the jurisdiction of the court due to the failure of the petitioner to properly and fully avail itself of all legal steps to bring the opposing party under the jurisdiction of the court is to request a clerk certificate certifying that said petitioner failed to avail itself of all the steps necessary to complete full service of the Writ of Summons.

The Petition for Judicial Review is an appeal and therefore all necessary steps to complete the appeal, including the service of the Writ of Summons, must be done in keeping with the ***statutory step and time*** *provided for by law. Failure to fully implement/complete those steps and abide by the time is grounds for the dismissal of the Petition for Judicial Review. Failure to apply for court order for service of the Summons, Complaint and Affidavit after the statutory period is ground for dismissal of the petition and that a motion for dismissal can be filed by Respondent and his action will not be construe as submitting to the jurisdiction of the court.*

Wherefore and in view of the foregoing facts and circumstances couple with Respondent's failure to serve its Writ of Summons as well as its Petition for Judicial Review on Movant/Respondent within statutory time to have the parties brought under the jurisdiction of this Court; and Respondent having admitted his failure to attend hearing with no excuse and/or Motion for Continuance. Respondent/Petitioner has also admitted in his testimony that he did not appear at the last hearing having been warned by investigation thus leading to the Default Judgment. With all of these reasons, this Court sees no reason why Movant's Motion to Dismiss should not be granted.

Furthermore, Petitioner's Petition having being filed out of statutory time, is hereby dismissed and the Ruling of the Hearing Officer granting Movant's Respondent a total sum of ($144,000.00) One Hundred Forty-Four Thousand United States Dollars is hereby granted in keeping with ***Article 11, Section 7,Time limitation*** *for taking an appeal,* ***page 185*** *of the Labor Law of Liberia which, reads:-*

"Any party dissatisfied with the decision of a Hearing Officer may take an appeal by filing a Petition for Review with the Labor Court within Thirty (30) days after receipt of the Hearing Officer's decision. Copies of the petition shall be served promptly on the Hearing Officer who rendered the decision, and all parties on record. The decision of the Hearing Officer shall become final and conclusive upon the expiration of the Thirty (30) days after copies of his ruling have been received by the parties to a case."

The Clerk of this Court is hereby ordered to prepare the necessary Bill of Costs and have same placed in the Hands of the Sheriff of this Court to be served on the lawyers, concerned for taxation; and thereafter for subsequent approval by this Honorable Court in satisfaction of this Judgment. Petitioner's Petition is hereby dismissed and Movant's granted. And it is hereby so ordered."

The respondent/appellant excepted to the above ruling, announced an appeal and filed a seven (7) count bill of exceptions with this Honorable Supreme Court. The basic errors as assigned by the respondent/appellant were that the Judge of the National Labour Court erred when she ruled that the court did not acquire jurisdiction over the movant/appellee since the writ of resummons was not served on his person and contended that the request for a clerk's certificate made by the movant/appellee constituted a voluntary submission to the jurisdiction of the National Labour Court since said request was made within the time allowed for a summons by publication; that the judge erred when she ruled that the respondent/appellant lacked capacity to maintain the petition for judicial review, it having been absent from the date of the final ruling at the Ministry of Labor; and that the hearing officer's ruling as confirmed by the Judge of the National Labour Court was not commensurate with the evidence adduced at the investigation.

We quote counts 3, 4, and 6 of the bill of exceptions as it is trite law that this Court is under no obligation to recite the entire counts contained in the appellant's bill of exceptions except those which are determinative of the issue in controversy.

"3. The your honor committed a reversible error when your honor rule that the voluntary conduct of the movant/appellee (complainant) in requesting a Clerk's certificate in a matter in which the court had not yet acquired jurisdiction over his person, does not amount to voluntary submission to the court's jurisdiction. And for this error of your honor, respondent/appellant excepts.

4. That your honor committed a reversible error when your honor ruled that respondent/appellant lacked the capacity to maintain the petition for judicial review because the appellant had admitted that it did not attend a scheduled hearing at the Ministry of Labor. And for this error of your honor, respondent/appellant excepts.

6. That your honor committed a reversible error when your honor proceeded to confirm and affirm the ruling of the hearing officer without any consideration as to whether or not said ruling was consistent with law and the evidence adduced at the trial. And for this error of your honor, respondent/appellant excepts."

The movant/appellee also filed a motion to dismiss the respondent/appellant's appeal with the Clerk of this Court. The movant/appellee's motion was on two grounds, that the bank statement presented by the respondent/appellant's insurer was void of any evidence that the insurance company was liquid enough to satisfy the judgment and other associated costs and that the filing and service of the notice

of completion of appeal were not done in keeping with law as same was filed and served at 6:30p.m. and 11:30p.m. respectively on the 60th day.

In its resistance, counsels for the respondent/appellant argued that the movant/appellee's objection to the bank statement was frivolous since at the rendition of the final judgment the said statement showed a balance which far exceeded the judgment sum and that inasmuch as the filing and service of the notice of completion of appeal were done within the sixty day period, the requirement of the statute has been met. The respondent/appellant also contended that assuming without admitting that the initial bank statement presented by its surety was not current, same would not still be a ground for the dismissal of the appeal as the law gives an appellant the right to justify its surety or secure additional surety to make an insufficient bond sufficient.

At the onset, let us state here that the Court, with the acquiescence of the parties, consolidated the motion to dismiss the appeal filed by the movant/appellee and the appeal from the petition for judicial review filed by the respondent/appellant.

In their arguments before the full bench, counsels for the respondent/appellant contended that the request for clerk's certificate made by the movant/appellee within the time during which the respondent/appellant would have issued a summons by publication constituted a voluntary submission to the court's jurisdiction, hence, the Judge of the National Labor court erred when she dismissed the petition for judicial review on jurisdictional grounds; that the petition for judicial review was properly filed as required by statute; and that the findings of the hearing officer which adjudged the respondent/appellant liable for wrongful dismissal was against the preponderance of evidence adduced at the investigation. The respondent/appellant then prayed this Court to uphold the appeal, set aside the ruling of the trial judge and grant unto it all other relief which the Court may deem necessary.

On the other the hand, the movant/appellee countered argued that the National Labor Court did not acquire jurisdiction over his person as the writ of summons, and resummons were not served on him; that the respondent/appellant failed to issue a summons by publication as required by statute; that he applied for the clerk's certificate after the sheriff's returns on the service of the writ of resummons, hence same cannot constitute voluntary submission to the court's jurisdiction; that the trial court properly determined that the respondent/appellant lacked capacity to maintain the petition for judicial review since it was not present at the hearing which resulted in the default judgment.

It is interesting to note however, that none of the parties argued their respective contentions presented in the motion to dismiss the appeal and the resistance thereto. Ordinarily, one may want to infer that by the conduct of the parties, especially the movant/appellee, in ignoring and voluntarily disregarding argument on the motion to dismiss the appeal constituted an admission that same was moot and presented no dispositive point of law.

However, the parties having filed their respective pleadings to the motion and the main suit, and this Court having acknowledged that arguments are solely within its discretion, and having attended to the facts and circumstances in this case, the Court has determined that there are four issues for the disposition of these proceedings. The issues are:

1. Whether or not under the facts and circumstances, the appeal is dismissible?

2. Whether or not the petition for judicial review was filed within the time as provided by statute?

3. Whether the National Labor Court acquired jurisdiction over the movant/appellee?

4. Whether movant/appellee breached any duty of confidentiality for which wrongful dismissal may lie? Or put differently, was the hearing officer's ruling contrary to the evidence adduced at the investigation?

We begin our discussion and analysis in the order of the issues presented for two reasons. First, a disposition of issue one& two would allow this Court to determine whether a petition for judicial review and appeal therefrom, were ever filed, and if the contrary is found, the succeeding issues shall be regarded as moot and the hearing officer's ruling will automatically become final and binding on the respondent/appellant. Second, since the first three issues present jurisdictional questions, which according to our laws, must be decided as a priority over other issues, this Court is aware that without a determination of same, it can in no way extend its appellate authority to the fourth issue which essentially begs the Court's attention to the merit of the case. Had these jurisdictional questions not been raised by the appellee, the sole issue which would have been determinative of this case would certainly be the fourth issue.

As to the first issue, whether or not the appeal is dismissible under the given facts and circumstances of this case, we shall examine the records and arguments of both parties.

The certified records show that the judge of the National Labor Court rendered her final ruling and dismissed the respondent/appellant's petition for judicial review on November 3, 2014; that the respondent/appellant being dissatisfied with the judge's ruling, excepted thereto, announced an appeal and perfected same within sixty days as required by statute; that in satisfaction of the requirements set by this Court in relation to the insurance company, the appellant initially attached a bank statement covering the period of August 1 thru 31, 2014, and subsequently attached another bank statement covering December 1-31, 2014, and that the respondent/appellant filed and served the Notice of Completion of appeal on the January 2, 2015, the 60th day provided for by statute.

Although the movant/appellee does not dispute the above stated facts and circumstances as culled from the records, it is his argument that they were contrary to law. According to the movant/appellee, the initial bank statement of August 1-31, presented by the respondent/appellant's surety was not current and hence was insufficient to justify the liquidity of the surety's financial capacity to satisfy the judgment; that the notice of completion of appeal could not be filed at 6:30pm,

because as he claimed, the court could not have been opened at such time and that the subsequent service on his counsel at about 11:30pm was contrary to law.

Our statutory and case laws are stringent in granting an appellee the right to except to an appeal bond, whether in the trial court or Supreme Court, if a single element of the defectiveness of said bond exists.

Statute provides *inter alia*:

> "a party may except to the sufficiency of a surety by written notice of exceptions served upon the adverse party within three days after receipt of the notice of filing of the bond…"*Civil Procedure Law, Rev. Code 1:63.5*

Such exception, according to this Court, can even be filed in the Supreme Court in situations where the bond is filed on the last day as was done in the present case. *Houseine v. Brumskine, Supreme Court Opinion, March Term, A. D. 2013; Mentor Initiative v. Fardoun, Supreme Court Opinion, October Term, A. D. 2013; Manhattan Trading Corp. v. World Bank, March Term, 2016.*

The judgment from which the respondent/appellant has appealed was rendered on November 3, 2014, while an initial account statement of its surety exhibited covered the period August 1st to 31st, 2014. Indeed, as argued by the movant/appellee, this account statement is outdated and does not satisfy the requirement of this Court regarding a surety bank statement being current. *Robertson et al., v. The Quiah Bros et al.,* Supreme Court Opinion, October Term 2011; *Mentor Initiative v. Fardon,* Supreme Court Opinion, October Term 2013.The rationale here is that a statement which predates the judgment for which it seeks to serve as surety, does not guarantee that the amount stipulated therein is current as same could be depleted before the date of the judgment. Thus, the movant/appellee's attack on the sufficiency of the bond predicated upon the above mentioned account statement is valid.

However, inasmuch as the statute gives an appellee the right to challenge an appeal bond and the court, the authority to dismiss an appeal due to the insufficiency of the bond, the statute similarly gives the appellant the opportunity to justify a bond upon receipt of exceptions thereto or to make an insufficient bond sufficient.

It states *inter alia*:

> "a failure to file a sufficient appeal bond within the specified time shall be a ground for dismissal of the appeal; provided, however, that an insufficient bond may be made sufficient at any time during the period before the trial court loses jurisdiction of the action."*ID 1:51.8*

We see from the records and probably based on the movant/appellee's exceptions to the appeal bond on account of the bank statement being current, that the respondent/appellant attached another statement of its surety which covered the period December 1-31, 2014. This statement not only post-dated the judgment of the National Labour Court of November 3, 2014 but also shows a bank balance of over US$1.3million as surety in satisfaction of the judgment amount of US$144,000.00 (One Hundred Forty Four Thousand United States Dollars), an amount far above the judgment which it seeks to indemnify. Thus, the

respondent/appellant has satisfied the requirement of the statute as it relates to the sufficiency of the bond, and we so hold.

A second contention of the movant/appellee for which he has asked us to dismiss the respondent/appellant's appeal is that although the respondent/appellant filed and served the notice of completion of appeal on January 2, 2015, the 60thand last day provided for by statute, the time of filing, that is 6:30p.m., and the service at 11:30p.m.is contrary to law. Unfortunately, the movant/appellee failed to cite any law which mandates a specified time for the filing and service of the notice of completion of appeal on the 60th and last day, as ground for the dismissal of an appeal. We hold therefore, that the motion to dismiss the appeal, not having presented any justiciable issue, is hereby denied.

This brings us to the second issue which is whether or not the petition for judicial review was filed within the time as allowed by statute. It is the contention of the respondent/appellant that it complied with the statute for filing its petition for judicial review on grounds that the hearing officer's ruling from which the petition grew was rendered on July 25, 2014, and the petition was filed with the National Labour Court on August 22, 2014, the 28th day following the hearing officer's ruling. The movant/appellee disagrees and has advanced the argument that the computation of the 30 day period provided for the filing of the petition for judicial review begins from May 16, 2016, the date of the granting of the motion for default judgment, thus the filing of the petition for judicial on August 22, 2016, was completely out of the time provided by law.

The parties are not in dispute with the trial court's reasoning that a petition for judicial review is similar in nature to an appeal and as such any person wishing to avail him/herself to same must strictly adhear to every jurisdictional step within the time limit provided by law. They all acknowledge that a party affected and dissatisfied with the decision of the hearing officer must take an appeal, file a petition for judicial review with the Labor Court within thirty (30) days and serve copies of said petition on the hearing officer and the adverse party. They are at variance however, as to the time from which the 30 day period begins to toll; the movant/appellee is of the belief that the 30 day period begins as of the time of the granting of the motion for default judgment notwithstanding the pendency of a final ruling from the hearing officer; on the contrary, the respondent/appellant argues that the 30 day period should be computed from the date it received a copy of the hearing officer's ruling.

In her ruling, the trial judge agreed with the movant/appellee and concluded that the respondent/appellant, having been absent on the date of the granting of the default judgment, the petition for judicial review filed on August 22, 2014, was out of statutory time. This is how the judge ruled:

> "Respondent having admitted [its] failure to attend hearing with no excuse and/or Motion for Continuance and [having] also admitted in his testimony that he did not appear at the last hearing having been warned by investigation thus leading to the Default Judgment; With all of these reasons, this Court sees no reason why Movant's Motion to Dismiss should not be granted. Furthermore, Petitioner's Petition having being filed out of statutory time, is hereby dismissed and the Ruling of the Hearing Officer granting Movant's Respondent a total sum of ($144,000.00) One Hundred Forty-Four Thousand United States Dollars is hereby granted."

We disagree with the trial court's conclusion and unquestionably disagree with the reasoning therefor that the absence of the respondent/appellant on the date of the granting of the default judgment summarily places its petition for judicial review out of statutory time thus entitling the movant/appellee to the amount of US$144,000.00 prayed for. To accept this line of reasoning would mean that every default judgment is perfect in itself and final on its face thereby defeating the historical precedents of this Court that a default judgment is an imperfect judgment which can only be made perfect by the preponderance of clear and convincing evidence or same will be set aside. *Interim National Assembly Decree # 21* section 8; *Knuckles v. the Liberian Trading & Development Bank* 40 LLR 511, 525 (2001); *In re Petition of Massaquoi & Gibson* 40 LLR 698, 704 (2001)**;** *The Management of the United States Trading Company v. Richards and Brown*, 41 LLR 205, 211 (2002); *LTC v. Former Managers of LTC* Supreme Court Opinion, October Term 2011. Also, accepting the above conclusion of the trial court and the movant/appellee, would frustrate the true intent of the statute relating to petition for judicial review from the ruling of the hearing officer.

The law is:

> "Any party dissatisfied with the decision of a Hearing Officer may take an appeal by filing **a Petition for Review with the Labor Court within Thirty (30) days after receipt of the Hearing Officer's decision**. Copies of the petition shall be served promptly on the Hearing Officer who rendered the decision, and all parties on record. **The decision of the Hearing Officer shall become final and conclusive upon the expiration of the Thirty (30) days after copies of his ruling have been received by the parties to a case.**" LCR, IV, 11:7 [***Our Emphasis***]

The law is clear that the petition for judicial review shall be filed within 30 days after receipt of the hearing officer's ruling and that a failure to file same upon the expiration of the said thirty (30) days after copies of the ruling has been received concludes the matter. We wonder how the trial judge would have concluded that the petition for judicial review is in the nature of an appeal but at the same time expected the respondent/appellant to have filed said petition from the granting of the default judgment that was yet to be made perfect, since an appeal can only be taken from a final decision, ruling or judgment.

We hold therefore that the petition for judicial review filed on August 22, 2014, 28 days after the rendition of the hearing officer's ruling, was filed within statutory time, hence the trial court erred when it dismissed the petition for judicial review on jurisdictional grounds.

As to the third issue which is whether the National Labor Court acquired jurisdiction over the movant/appellee, we again take recourse to the certified records and examine the writ of summons, resummons or summons by publication, if any. It is the law that a summons is an instrument used to commence a civil action or special proceedings and it is a means of acquiring jurisdiction over a party for the rendition of judgment without jurisdiction is a usurpation of power and makes the judgment itself *coram non judice* and *ipso facto* void. *Kyung v. Mathies, Supreme Court Opinion, March Term, 2006; Ministry of Labor v Natt, Supreme Court Opinion March Term, 2007.*

Service of the writ of summons is a mandatory requirement, not discretionary, in order for a court to acquire jurisdiction over the party. *Kesselly v. The Management of Sabena Brussels Airlines, Supreme Opinion, March Term, 2006.* This is true because the issuance and service of the writ of summons is synonymous to the granting of due process of law since it affords a party to have his day in court, a constitutional guarantee that "no person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the outcome of a hearing judgment consistent with due process of law." *Lib. Const. Art. 20(a) (1986)*

The essential elements of due process are notice and an opportunity to be heard and to defend in an orderly proceeding adopted to the nature of the case and that no one shall personally be bound to a judgment until he has had his day in court, by which is meant, **until he has been duly cited to appear, and has been afforded the opportunity to be heard**. *Broh v. House of Representatives, Supreme Court Opinion, October Term, 2013; Williams v. Tah et al. Supreme Court Opinion October Term 2011; Brown-Bull v. TRC, Supreme Court Opinion October Term, 2009; LTA v. West Africa Telecom, Supreme Court Opinion March Term, 2009; Morlu II v. House of Senate, Supreme Court Opinion March Term 2009; Snowe v. Some Members of the House of Representatives, Supreme Court Opinion Special Session, 2007; UMC v. Cooper et. al., 40LLR 449(2001); Express Printing House v. Reeves, 35LLR 455 464 (1988); Mulbah v. Dennis, 22LLR 46 49-50(1986); Wolo v. Wolo, 5LLR 423(1937).* [**Our emphasis**]

The records show that a writ of summons was issued out of the National Labour Court for Montserrado County on August 22, 2014, and was to be served on the movant/appellee requiring him to appear for the hearing of the petition for judicial review or to have him file his formal returns thereto on or before September 2, 2014. The sheriff's returns made on August 27, 2014, the 5th day following the issuance of the writ of summons, showed that the movant/appellee could not be served. On the next day, August 28, 2014, a writ of re-summons was issued to be served on the movant/appellee requiring him to appear or file his returns on or before the 10th day of September A.D. 2014. Because of the relevance of the writ of re-summons to the disposition of this issue, we quote same herein below:

> "WRIT OF RE-SUMMONS:
>
> REPUBLIC OF LIBER, TO: MAYOR HELENA N. WILLIAMS, SHERIFF OF THE NATIONAL LABOUR COURT FOR MONTSERRADO COUNTY, REPUBLIC OF LIBERIA, OR TO HER DEPUTY, GREETINGS:
>
> YOU ARE HEREBY COMMANDED AS YOU WERE BEFORE TO SUMMONS THE RESPONDENTS IN THE ABOVE ENTITLED CAUSE OF ACTION TO APPEAR BEFORE THE NATIONAL LABOUR COURT FOR MONTSERRADO COUNTY, REPUBLIC OF LIBERIA, TEMPLE OF JUSTICE BUILDING, MONROVIA, ON THE 10TH DAY OF SEPTEMBER, A.D 2014, AT THE PRECISE HOUR OF 10:00 0'CLOCK IN THE MORNING, TO ANSWER TO THE PETITIONER'S PETITION FOR JUDICIAL REVIEW, AND THAT UPON RESPONDENTS' FAILURE TO

APPEAR, JUDGMENT BY DEFAULT WILL BE RENDERED AGAINST THEM.

MEANWHILE, YOU WILL MAKE YOUR OFFICIAL RETURNS ENDORSED ON THE BACK OF THE ORIGINAL WRIT OF SUMMONS INDICATING FORM OF THE CLERK OF THIS COURT ON/OR BEFORE THE SAID 10TH DAY OF SEPTEMBER, A.D 2014.

AND FOR SO DOING, THIS SHALL CONSTITUTE YOUR LEGAL AND SUFFICIENT AUTHORITY"

On August 28, 2014, the above writ of re-summons was served on the hearing officer but the sheriff's returns made on the 5th of September, 2014, showed that again the movant/appellee could not be served. We also reproduce an excerpt of the sheriff's returns herein as follows:

"well, again, with all diligent rounds made in search of respondent from the date of the issuance, August 28th of this re-summons up to the date of this returns, September 5th, A.D. 2014, he could not be seen, as he is not in the country according to reliable information. But, notwithstanding, Mr. Karted, Clerk of the Labour Standards division, Ministry of Labour signed and received a copy of the re-summons for the hearing officer. Hence, I submit this document in the office of the clerk of the National Labour Court for Montserrado County as my official returns for this 5th day of September, A. D. 2014."

On September 16, 2014, the movant/appellee who had not been in the country to be served the writ of summons and re-summons, then returned and applied for a Clerk's Certificate to the effect that the respondent/appellant had failed to make application for summons by publication within ten (10) days after the sheriff's returns on the writ of re-summons, which certificate was issued the same day. Predicated upon this certificate, the trial judge granted the movant/appellee's motion and dismissed the petition for judicial review on grounds that the movant/appellee was not personally served.

As stated earlier, the respondent/appellant contends that the time computation for the making of application for the issuance of summons by publication should have commenced on the 11th day of September and ended on the 20th day of September 2014; that the request for clerk's certificate made by the movant/appellee on the 16th day of September was within the time during which the appellant would have applied for the issuance of a summons by publication and thus same constituted a voluntary submission to the court's jurisdiction, hence, the Judge of the National Labor court erred when she dismissed the petition for judicial review on jurisdictional grounds. The movant/appellee on the other hand, argued that an application for summons by publication is made immediately after the returns of the sheriff and the returns of the sheriff being made on the 5th of September 2014, said application for summons by publication should have begun on the 6th day of September and ended on the 16th day of September 2014.

We must at this point applaud the logical effulgence advanced by the counsels of both parties, for this Court has rarely been confronted with interpreting the phrase 'within ten days' vis-à-vis the effect of a sheriff's returns especially where said returns is filed before the expiration of the ten days period.

Meanwhile, our determination of these contentions would require us to explore the wordings of the statute relating to service of summons and the intent of the legislature on the time in which the sheriff is expected to make his/her returns.

Section 3.34 provides:

> *"…the written direction must request the clerk of the court to issue a writ of summons and direct it to the ministerial officer who is to serve it; must state the date by which the defendant must appear;* ***must state a date on or before which the sheriff must make his return, which date shall not be later than the date on which the defendant must make his appearance****…"[****Emphasis Ours****]*

Section 3.62, on time for appearance provides,

> *"An appearance shall be made within ten days after the service of the summons or re-summons"*

Section 3.40 on service by publication provides:

> *"If the return on the writ of re-summons shows that the defendant has not been served and if the plaintiff makes application not later that ten days after such return, the court shall order service of the summons to be made by publication."*

Section 3.42.1 of the Civil Procedure Law on returns provides:

> *"Personal service: the person serving the process personally shall make returns as to service thereof to the court promptly and in any event* ***within the time during which the person served must appear.****"[****Emphasis Ours****]*

Thus from the reading of the above quoted statutory provisions, it is our interpretation that a plaintiff has up to thirty days for the issuance of summons, resummons and summons by publication to have the defendant appear. That is, ten days for the writ of summons, ten days for writ of re-summons and another ten days for the making of an application for the issuance of summons by publication.

We therefore reject the argument of the movant/appellee that respondent/appellant was required to make an application for a writ of summons by publication immediately following the returns of the sheriff especially where such returns was made before the time required for the appearance of the movant/appellee. To

accept this line of reasoning would mean that the sheriff is at liberty to ignore the ten days period for appearance and make his returns at any given time thereby defeating the intent of the statute.

Let us present a hypothesis, why if a summons is issued to be served on a defendant to appear within ten (10) days beginning the 1st to the 10th of October 2016 and the sheriff made his returns on the 2nd day, October 2, 2016, indicating that the defendant could not be served; were we to consider the movant/appellee's argument, it would mean that a resummons must be issued on October 3, 2016 and if the sheriff makes his returns on October 4, 2016, to the effect that the defendant was not served, service by publication must be made on October 5, 2016. Thus the entire process of summons, resummons and summons by publication would simply be made within three (3) days. This was not the intent of the statute.

Also, given the same scenario *supra*, what if the sheriff makes his returns on the 4th day of service stating that the defendant had not filed an answer and the defendant is ruled to bare denial and on the 5th day, the defendant appears, would bare denial lie against him in the face of the remaining five statutory days he has to file his answer? We say an emphatic no!

We state here, that the legislative intent of the above quoted statute is that the returns of the sheriff must be made at the close of the 10th day required for the appearance of the defendant and the court's primary purpose is to effectuate the intent of the framers of the law and is obligated to give effect to the language of a law according to its meaning and what the framers must have understood it to mean when they enacted it.

Given the law cited and accompanying legal analysis, we shall now examine the writ of re-summons and the sheriff's returns thereto in order to determine the time during which the appellant was required to make an application for summons by publications.

The relevant part of the writ of re-summons reads as follows:

> "YOU ARE HEREBY COMMANDED AS YOU WERE BEFORE TO SUMMONS THE RESPONDENTS IN THE ABOVE ENTITLED CAUSE OF ACTION TO APPEAR BEFORE THE NATIONAL LABOUR COURT FOR MONTSERRADO COUNTY, REPUBLIC OF LIBERIA, TEMPLE OF JUSTICE BUILDING, MONROVIA, **ON THE 10TH DAY OF SEPTEMBER, A.D 2014,** AT THE PRECISE HOUR OF 10:00 0'CLOCK IN THE MORNING, TO ANSWER TO THE PETITIONER'S PETITION FOR JUDICIAL REVIEW… MEANWHILE, YOU WILL MAKE YOUR OFFICIAL RETURNS ENDORSED ON THE BACK OF THE ORIGINAL WRIT OF SUMMONS INDICATING FORM OF THE CLERK OF THIS COURT ON/OR BEFORE THE **SAID 10TH DAY OF SEPTEMBER, A.D 2014. [Emphasis Ours]**

By the above writ of re-summons, and given the laws and our analysis *supra*, the sheriff was required to make his official returns on the 10th day of September 2014. This means that the making of the application for a writ of summons by publication should have commenced on the 11th day of September 2014 and continued up to the 20th day of September 2014. Thus the appearance and

subsequent request for clerk's certificate made by the movant/appellee on the 16th day of September was within the time during which the respondent/appellant would have applied for the issuance of a summons by publication and as such same constituted appearance as anticipated by law.

The law is:

> *"An appearance of the defendant is equivalent to personal service of the summons upon him, unless an objection to jurisdiction of the person is asserted by motion under section (11.2)(b) or in the answer and is upheld by the court." Civil Procedure Law, Rev. Code 1:3.63*

Further, the movant/appellee having appeared within ten days after the time allowed for the service of the writ of re-summons, is estopped from raising the issue of personal service since, as referenced earlier, "an appearance shall be made within ten days after the service of the summons or resummons."

But assuming *arguendo,* that the movant/appellee was not served within the time allowed for personal service of process; that is, he was not served the writ of summons, resummons, and summons by publication, his subsequent appearance and request for a clerk certificate before the commencement of the trial at the National Labour Court automatically amounted to notice and a voluntary submission to the court's jurisdiction.

This Court has held that:

> "A party who submits himself to the jurisdiction of a tribunal by appearing before the tribunal and contesting issues cannot properly thereafter object to the jurisdiction of the tribunal over his person with respect to the issues so contested." *Doe et. al., v. Randolph, 35 LLR 724, 728 (1988).*

Also,

> "If a defendant, though not served with process, takes such a step in an action, or seeks such relief at the hands of the court as is consistent only when the proposition that the court has jurisdiction over the cause and of his person, he thereby submits himself to the jurisdiction of the court and is bound by its action as fully as if he had been regularly served with process." *Greaves v. Jantzen, 24 LLR 420, 425 (1975); 2 LLR 523, 525 (1925)*

In view of this, it would have been prudent on the part of the movant/appellee to make his formal appearance by filing his official returns rather than obtaining a Clerk's Certificate. We hold therefore, that the application for a clerk's certificate made by the movant/appellee within the time allowed for the making of the application for summons by publication constituted an appearance and voluntary submission to the court's jurisdiction. Hence the Judge of the National Labour

court erred when she dismissed the petition for judicial review on grounds that the appellee was not served.

The fourth and final issue is whether the movant/appellee breached any duty of confidentiality for which wrongful dismissal may lie? Or alternatively, was the hearing officer's ruling contrary to the evidence adduced at the investigation and as indicated *supra*, had the appellee not raised all those procedural technicalities addressed in the first three issues, this fourth one would have been the sole issue determinative of the case.

Our Constitution has recognized the independence of lawyer-client relationship and has prohibited any form of interference thereof when it states:

> "The right to counsel and the rights of counsel shall be inviolable. There shall be no interference with the lawyer-client relationship…" *Lib. Const. Art. 21(i), 1986*

Also,

> "there shall be absolute immunity from any government sanctions or interference in the performance of legal services as a Counsellor or advocate; lawyers' offices and homes shall not be searched or papers examined or taken save pursuant to a search warrant and court order; and no lawyer shall be prevented from or punished for providing legal services, regardless of the charges against or the guilt of his client. No lawyer shall be barred from practice for political reasons" *ibid*

These protections from any form of interference into a lawyer-client relationship are provided by the framers of our organic law not only because lawyers are expected to be noble by virtue of their birth and in their actions and dealings with the public especially their clients, but also because any such interference would defeat the confidence reposed in this noble fraternity by those who ought to serve, their clients. This Court has recognized the above constitutional guarantee of upholding a high standard of lawyer-client confidentiality when it promulgated the code for moral and ethical conduct of lawyers and inserted therein that:

> *"it is the duty of a lawyer to preserve his client's confidences. This duty outlasts the lawyer's employment and extends as well as to his employees, and neither or them should accept employment which involves or may involve the disclosure or use of these confidences, either for the private advantage of the lawyer or his employees or to the disadvantage of the client, without his knowledge and consent, and even though there are other available sources of such information. A lawyer should not continue employment when he discovers that his obligation prevents the performance of his full duty to his former or to his new client. If a lawyer is accused by his client, he is not precluded from disclosing the truth in respect to the accusation. The announced intention of a client to commit a crime is not included within the confidences which he is bound to respect. He may properly make such disclosures as may be necessary to prevent a criminal act, or protect those against whom it is threatened." Rule 35, Code for moral and ethical conduct of lawyers.*

We believe that the movant/appellee being a lawyer and a member of this bar was fully aware of these confidentiality requirements when he accepted employment with the respondent/appellant, the LTA as its legal counsel.

However, on the allegation of breach of confidentiality, we must resort to an examination of the movant/appellee's letter of employment, the testimonies of the parties and the argument of the lawyers appearing before us.

The pertinent portion of the letter of employment relating to confidentiality reads thus:

> "As part of your employment terms, you will be required to sign the following documents**: confidentiality**, code of conduct, and conflict of interest."

However, the respondent/appellant failed to attach the confidentiality documents alluded to in the letter of employment to the movant/appellee which could have given this Court the opportunity to examine the content of said document in order to determine the specific provision(s) thereof that was breached by the movant/appellee and the penalty therefor, if any. Similarly, the exhibition of such documents would have afforded the investigation to determine the limits or exceptions to the confidentiality statement signed by the movant/appellee which would have better placed the investigation to determine whether or not the information allegedly divulged by the movant/appellee fell within the scope of confidentiality as anticipated by the document alluded to by the movant/appellee. This is especially essential in the face of the movant/appellee's contention as culled from his response during cross examination as follows:

> Q. "Mr. witness, did you sign any document while in the employ of the LTA including a confidentiality document?"
>
> Ans. "During my tenure of service with the LTA I as general counsel signed tons of documents including the confidentiality statement. However [those] said documents did not prohibit me or any employee of the LTA from discussing LTA's work related issue with each other.

But assuming that the said confidentiality document was available and that we had the opportunity to review same, would the information divulged by the movant/appellee be considered confidential or would the recipient of said information be regarded as a nominal figure that should not have been privy to such information? We think not.

Confidentiality is "the state of having **the dissemination of certain information restricted;** the relation between lawyer and client or guardian and award, or between spouses, with regard to the trust that is placed in the one by the other." *Black's Law Dictionary, 9th edition.* [Our emphasis]

In order to determine how confidential or restricted the information involving the LTA and Lonestar MTN, subject of this dispute was, at the respondent/appellant's institution, we revert to the testimonies of the parties' witnesses:

A relevant excerpt of the appellee's testimony shows as follows:

"…after the meeting with Cellcom., I as general counsel decided to file [a] writ of prohibition… when I left the Board Room, I called the Director of Strategies of the LTA in person of Koluba Zizi Howard and he asked me [to confirm an information] that I [he] heard that the LTA wants to file a suit against LoneStar? I said yes. **He asked 'for LoneStar shutting down Comium?' …I said to him not for Comium but I was asked to prepare a writ of Prohibition against LoneStar for bringing cable to Liberia via San Pedro and since you are the liaison, I will need some assistance from you in preparing this writ of prohibition. Unknown to me, Mr. Howard decided to write an email to the Board, advising the Board against the pending action.**.the Board then decided to suspend me while I was away on vacation… I resumed work on June 6, 2012 and was denied the privilege to execute my duties and was subsequently dismissed on July 31, 2012.." [**Our Emphasis]**

Similarly, the appellant's lone witness, Mr. Kolubah Zizi T. Howard, the Director of Strategy at the appellant's entity testified as follows:

"Lonestar MTN had completed a cross border terrestrial micro wave connection with the West African Cable System known as WACES in the Ivory Coast owned by Lonestar MTN Cote D'voire. The Board of Commissioners expressed concerns in a newspaper interview about the establishment of Lonestar about this link without the expressed approval of the LTA and the report indicated that the Board of Commissioners was contemplating some actions against Lonestar MTN. **In this connection, I met Cllr. Sayeh explained to him that I read the report in the Newspaper that the Board of Commissioners was contemplating some actions against Lonestar MTN and I asked him what he thought the disposition of the Board was. Cllr. Sayeh indicated that the Board was contemplating some court action.**I indicated to Cllr. Sayeh that I was of the opinion that might [not] be a prudent course of action. Cllr. Sayeh indicated to me that he had also cautioned the Board of Commissioners against such action. He suggested that perhaps I should speak to Commissioner Henry T. Yuah who was, I believe, acting Chairman of LTA at the time. I responded that I will do some research and prepare a document advising the Board of Commissioners on the legal implications such course of action may have. He advised that it will be better to speak to Commissioner Yuah, however, I was of the opinion as Director of Strategy, that it will be preferable to prepare a briefing document for the consideration of the Board of Commissioners. In this connection, I prepared a document based on my research of the Telecommunications Act of 2007, the National ICT/Telecommunications policy, regulations, rules and orders of the LTA indicating while court action was not a prudent course of action. I submitted my document to the five (5) members of the Board of Commissioners and copied Cllr. Sayeh by email. **To my surprise, I received an email from Commissioner LaminiWaritay in which he stated that my unsolicited advice set a bad precedent by putting the Board of Commissioners on records on the issue on which I**

> **had not been consulted which he felt was a bad omen for the Commissioners. And in my email I had indicated that after having spoken to Cllr. Sayeh, I felt it necessary to provide the Board with my input. Commissioner Waritay also accused Cllr. Sayeh of a breach of confidence for exposing to me information not authorized by the Board of Commissioners. I responded to Commissioner Waritay and explained to him that my concern had been raised by the News Paper Article I had read indicating that the Board of Commissioners was contemplating taking action against Lonestar MTN for their cross boarder connections with the West African Cable System in Cote D'voire. It was in regards, that I asked Cllr. Sayeh what the disposition of the Board of Commissioners was regarding the Lonestar MTN connection. I indicated to Commissioner Waritay that apparently my assumption that as Director of Strategy and Acting Secretary to the Board at the time in Cllr. Sayeh's absence provided me with the opportunity to provide strategic advice for the consideration of the LTA. And in this regard, I apologized for my error.** This led to a series of email exchanges between Commissioner Waritay and Cllr. Sayeh which subsequently ended in his termination with the LTA. That is what I know regarding the termination of Cllr. Sayeh. [**Our Emphasis]**

The above testimonies show that there is no way that the information of the appellant, LTA **contemplating taking action against Lonestar MTN for their cross boarder connections with the West African Cable System in Cote D'voire**' could be classified as being confidential. First, the appellee's testimony that the said information was available to the public even before the LTA had reached its decision of a court's action against Lonestar was never rebutted by the appellant; second by the respondent/appellant's lone witness, Mr. Kolubah Zizi T. Howard, who is the Director of Strategy at the LTA, confirmed the appellee's testimony that the said information was a matter of public knowledge by stating that he had read same from a Newspaper article and had only approached the movant/appellee for confirmation. Moreover, according to the respondent/appellant's lone witness, Mr. Howard, even if he had not read such information in the Newspaper, he would have still been privy to same because he always acted as secretary to the Board of Commissioners in the absence of Counsellor Sayeh, which the respondent/appellant did not dispute.

It is our opinion therefore that the respondent/appellant, having dismissed the movant/appellee for what it termed as 'grievous breach of confidentiality', was obligated to have produced evidence to prove the 'grievous breach of confidentiality, by a formal document/policy outlining or defining those matters or instances of breach of confidentiality. Merely naming such documents in an employment letter without actual showing of the contents of same can never be accepted as proof. Our law provides that "mere assertion does not constitute proof, but must be supported by evidence so as to warrant a court or jury accepting it as true and that evidence alone enables the court to pronounce with certainty concerning the matter in dispute. *Pentee v. Tulay 40LLR, 207 215 (2000); Jogensen v. knowland, 1LLR 266 267(1895).* Also, it is the law that "he who alleges the existence of a fact must prove it and must do so by the best available

evidence." Civil Procedure Law, Rev. Code 1:25.5 and 25.6, *Teah v. Andrews, et., al, 39LLR 493 501(1999); Harouni v. Mathies, 38LLR, 27 35(1995).*

We hold therefore that the respondent/appellant having failed to prove the grievous breach of confidentiality for which the movant/appellee was dismissed; the movant/appellee's dismissal was illegal.

We now make a determination whether the award of 24 months' salary and 22 months compensation for each category of benefit, including, scratch card, gasoline, transportation and unused leave, made by the hearing officer and confirmed by the National Labour Court was justified.

It is the law that:

> "where wrongful dismissal is alleged, the [Labour Court] shall have power to order reinstatement, **but may order payment of reasonable compensation to the aggrieved employee in lieu of reinstatement.** The party against whom the order is made shall have the right of election to reinstate or pay such compensation. In assessing the amount of such compensation, the [Labour Court] shall have regard to:
>
> (a)(i) reasonable expectations in the case of dismissal in a contract of indefinite duration;
>
> (ii) Length of service; but in no case shall the amount awarded be more than the aggregate of two years' salary or wages of the employee computed on the basis of the average rate of salary received 6 months immediately preceding the dismissal…"*1LCLR, VI, title 18.9* [**Our Emphasis**]

We note that the hearing officer applied the maximum liability in computing the award of 24 months salary. However this Court in applying the provisions of the labour statute above quoted has said that where wrongful dismissal is established the court shall have the power to order reinstatement or order reasonable compensation to the aggrieved employee in lieu of reinstatement. Hence, given the facts and circumstances of this case that the respondent/appellant did not deny the fact that the movant/appellee earned salary of US$5,000.00, we have determined that 15 months of the net salary of the movant/appellee is reasonable compensation for his wrongful dismissal, and we so hold.

As regards to the award of gasoline, scratch cards and transportation we note and as earlier stated the movant/appellee proffered no documentary evidence to substantiate the averment in his complaint and his oral testimony to the effect that he received 100 gallons of gasoline per month, US$150.00 (One Hundred Fifty United States Dollars) scratch card monthly, US$350.00 (Three Hundred Fifty United States Dollars) monthly as transportation allowance; neither did he establish by documentary evidence like the LTA leave schedule that he was entitled to an unused leave in an amount of US$1000.00 (One Thousand United States Dollars). The movant/appellee also failed to disprove the respondent/appellant's averment that his is not entitled to said benefits. It is the law that "on application for judgment by default, the applicant shall give proof of the facts constituting the claim, the default and the amount due and that "mere

assertion does not constitute proof, but must be supported by evidence so as to warrant a court or jury accepting it as true and that evidence alone enables the court to pronounce with certainty concerning the matter in dispute. Civil Procedure Law Rev. Code 1:42.6; *Reynolds v. Garfuah, 362 371(2003); Pentee v. Tulay 40LLR, 207 215 (2000); Jogensen v. knowland, 1LLR 266 267(1895).* Also, it is the law that "he who alleges the existence of a fact must prove it and must do so by the best available evidence." Civil Procedure Law, Rev. Code 1:25.5 and 25.6, *Teah v. Andrews, et., al, 39LLR 493 501(1999);Harouni v. Mathies, 38LLR, 27 35(1995).*

The requisite proof in this instance, especially coming from the testimony of the appellee as a lone witness, should have been in the nature of an exhibit of receipts evidencing gallons of gasoline, scratch cards, transportation and unused leave, or to subpoena the relevant documents pertaining thereto if same were with the employer. This Court has repeatedly upheld the provision of the Statute which states that "the best evidence which the case admits of must always be produced; that is, no evidence is sufficient which supposes the existence of better evidence." Civil Procedure Law, Rev. Code 25.5, Burden of Proof; Massaquoi *et al. v. Dennis 40LLR 698 704(2001).*

The award of 22 months of gasoline, scratch card and transportation made by the hearing officer and confirmed by the National Labour Court for Montserrado County is therefore denied and we so hold.

WHEREFORE AND IN VIEW OF THE FOREGOING laws and facts articulated herein, the ruling of the National Labor Court, Montserrado County is affirmed but with the modification that the 24 months award is reduced to an award of 15 months net salary.

The Clerk of this Court is ordered to send a mandate to the National Labor Court, Montserrado County, commanding the judge presiding therein to resume jurisdiction over this case and give effect to this Judgment. Costs are ruled against the respondent/appellant. AND IT IS SO ORDERED.

When this case was called for hearing, Counsellors, Amos P Andrews and Osborne K. Diggs appeared for the respondent/appellant. Counsellor G. Wiefueh Alfred Sayeh of the Law Offices of Sayeh and Sayeh Inc., appeared *prose.*