IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2022

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

The Management of Intercon Security Systems of the City of Monrovia, Liberia.....Appellant	)
Versus	)APPEAL
His Honor Richard S. Klah, Sr., Nathaniel Dickerson, Hearing Officer, Ministry of Labour and Willie D. Kerkula, et al of the City of Monrovia ..... Appellee	)
GROWING OUT OF THE CASE:	)
The Management of Inter Con Security Systems of the City of Monrovia, Liberia .....Petitioner	)
VERSUS	) PETITION FOR) JUDICIAL)REVIEW
Willie D. Kerkula et al, of the City of Monrovia, Liberia .....1ST Respondents	)
AND	)
His Honor Nathaniel S. Dickerson, Hearing Officer, Ministry of Labour.....2ND Respondent	)
GROWING OUT OF THE CASE:	)
Willie D. Kerkula et al, of the City of Monrovia, Liberia .....Complainants	)
VERSUS	) UNFAIR LABOUR)PRACTICE)WRONGFUL) DISMISSAL
The Management of Intercon Security Systems of the City of Monrovia, Liberia……Defendant	)

Heard: April 27, 2022 Decided: September 23, 2022

MADAM JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

This appeal is from the final ruling of the National Labor Court, the latter which confirmed the ruling of the hearing officer of the Ministry of Labor adjudging the

appellant, the Management of Intercon Security Systems liable for unfair labor practices and awarding the appellees, Willie D. Kerkula *et al.,* the amount of US$620,418.02 (Six Hundred Twenty Thousand Four Hundred Eighteen United States Dollars, Two cents) for wrongful dismissal.

We state here from the onset, that this Court is not bound to address every issue raised by the parties in their pleadings except those that are germane and relevant to the disposition of the matter at hand. *Scanship (Lib.) Inc. v. Flomo,* 41 LLR 181 (2002); *Knuckles v. TRADEVCO et al,* 40 LLR 511 (2001); *Rizzo et al v. Metzger et al,* 38 LLR 476 (1997). In the present case, both the appellant and the appellees have pursued the path of burdening the records with extensive explanations that do not prove or disprove the allegation of wrongful dismissal. An example is where the appellees went to great lengths to explain how they came from being 55 in number to 38 in number, alleging that this decrease was due to the appellant re-instating seventeen (17) of their fellow employees. Notwithstanding this allegation, the records are devoid of evidence to prove that the 17 persons who were allegedly reinstated had also been amongst the persons who were indicted and subsequently brought under the jurisdiction of the court as were the appellees.

Howbeit, the fact remains that the appellees are 38 in number, and the 17 who were allegedly reinstated are not parties to the case and they are not raising any contentions as to their absence or exclusion from the case. Hence, this information by the appellees is immaterial. The appellant on the other hand, also went to extreme lengths to deny this in numerous paragraphs of its brief. The Court does not see the relevance of these rambling explanations, when both parties are not in disagreement that the present appellees are 38 in number. There are many other instances in the records of this type of verbose narratives, for which this Court will not burden this Opinion.

We have reviewed the certified records and summarized the facts as follows, to wit: that the appellant is a security firm which provides private security guard services to businesses in Liberia; that the Embassy of the United States of America near Monrovia is one its customers; that the appellees were employed by the appellant and assigned at the said Embassy; that in 2004, the appellees participated in a demonstration outside of the Embassy's Compound which led to series of events, including accusations and counter accusations of what allegedly transpired

at the Embassy, and charges and indictments, which affected the status of the appellees' continued employment with the appellant; that on July 8, 2006, the appellees through their legal counsel filed a complaint with the Minister of Labor basically explaining what transpired at the Embassy and requesting payment in the amount of US$226,318.08 (Two Hundred Twenty Six Thousand, Three Hundred Eighteen United States Dollars, Eight cents, representing a two year period of what was termed as their "suspension" by the appellant; and that the appellees attached to their complaint, a four page document listing their names, ranks, dates of employment, their individual claims, those who worked more and less than ten years, etc.

The records further show that the investigation before the hearing officer at the Ministry of Labor, commenced almost six (6) years after the filing of the appellees' complaint, that is, from 2006 to 2011. We shall mention the acts contributing to the delays as we pass upon the facts and circumstances in this Opinion.

At the Commencement of the investigation on April 13, 2011, the appellees qualified three witnesses, the first of which was Edward B. Brown, who commenced his testimony on the self-same date; but the second witness, Samuel B. Sackie, did not commence his testimony until October 22, 2013, almost two years thereafter. The third witness, Thomas 0. Quiah, commenced his testimony the following year, on February 26, 2014, which lasted till January 6, 2015, due to unexcused absences by the appellant and its counsel, and on which date the appellees rested with evidence in *toto*. The appellees' witnesses all testified reiterating the averments contained in their complaint regarding the incident at the American Embassy, which they alleged led to what they described as their "suspension" by the appellant; and stating the amount requested in the complaint for the period of said suspension, that is, US$226,318.08 (Two Hundred Twenty-Six Thousand, Three Hundred Eighteen United States Dollars, Eight cents).

In early February 2015, the appellant's first witness, Col. James W. Parleh, testified that while on duty at the America Embassy on April 22, 2004, about 7:30 a.m., he heard the voice of John Allison on the Intercon Security radio network rallying his fellow guards to assemble before the Chancery and "fight for our rights;" a call to which the guards yielded to and abandoned their respective posts

and subsequently armed themselves with sticks and batons and became hostile and violent not only to him, witness Parleh, but also to some American Diplomats. On December 1, 2015, appellant's second witness, Horacio M. Hernandez, provided testimony similar to the account of the appellant's first witness and furthered that the arrest of the striking guards was requested by the Embassy. He also maintained that the guards abandoned work and were not dismissed, as alleged.

When the parties rested with their evidence in *toto,* the hearing officer on September 27, 2017, found for the appellees, and held the appellant, Intercon Security System, liable for unfair labor practice and ordered payment to the appellees in the amount of Six Hundred Twenty Thousand, Four Hundred Eighteen United States Dollars (US$620,418.02) and Two Cents as benefits. Not being satisfied with the findings of the hearing officer, the appellant, on October 31, 2017, filed before the National Labor Court a petition for judicial review. In substance the appellant alleged that the ruling was shrouded with prejudice, fraud and arbitrariness as the appellees were never dismissed nor suspended by the appellant; that the appellees were arrested and indicted for criminal offenses but not on the orders of the appellant; and more importantly, the amount awarded was arbitrary to the extent that the appellees did not provide any evidence to support their entitlement to that amount.

On August 31, 2018, the National Labor Court, presided over by His Honor Richard S. Klah, Sr., ruled and upheld the findings of the hearing officer of the Ministry of Labour. · Judge Klah held that the insistence by the appellant that the appellees produce police clearances and the appellant's subsequent refusal to reinstate all of the appellees, coupled with appellant's conduct by reinstating seventeen (17) of the fifty-five (55) affected employees, excluding the appellees, supports the theory of a constructive termination/dismissal. The appellant noted its exceptions to the ruling and announced an appeal to this Court en bane, thus the present appeal.

Having perused the certified records and listened to the arguments from the counsels representing the parties, there are two issues that present themselves for the determination of this case, which are as follows:

1. Whether or not the facts and circumstances presented in this case constitute wrongful dismissal?

2. Whether or not the amount of Six Hundred Twenty Thousand, Four Hundred Eighteen United States Dollars (US$620,418.02) and Two Cents awarded to the appellees is supported by the evidence adduced?

In addressing the first issue, we take recourse to the certified records which show that from April 22, 2004, the date of the eruption of normal working activities at their place of assignment, when the appellees claimed that they peacefully assembled on the premises of the United States Embassy near Monrovia, and up to and including the date of filing of their complaint, July 8, 2006, with the Ministry of Labor, the appellees did not resume work with the appellant. The records reveal that at that time, the United Nations Military Mission to Liberia (UNMIL) upon being alerted on the incident proceeded to the Embassy, arrested the appellees and subsequently placed them in the custody of the Liberia National Police. This phase of the matter is at the core of the dispute between the appellant and the appellees. *We* must state here, that whether or not there was a peaceful gathering, it is undisputed that there was an activity at the United States Embassy and that at the time of said action the appellees were employed with the appellant.

As stated above, the contentious area between the appellant and the appellees is found in both their naratives of the occurrence at the United States Embassy. The appellant and the appellees have resorted to extensive description of the incident in attempt to ascribe blame on each other as to the reason for non-resumption of work by the appellees. In the case of the appellant, its explanation is to establish that by the appellees' own act in participating in a strike action and failing to return to work during the period of their prosecution, the appellant was under no obligation to retain their services, as it is the appellant's policy that absence from work for more than three months, and 10 days absence from work without excuse is considered abandonment. The appellees on the other hand, are asserting that but for the appellant's decision to call in the UNMIL, their peaceful gathering to present a statement of their grievances to the United States Ambassador, the incident would not have spiraled out of control, and they would have returned to their respective assignments and would not have been arrested and criminal

prosecution commenced against them, but from which they were cleared; and this proved that it was the appellant's action that prevented them from returning to work.

At this conjuncture this Court says in noting the appellees' assertion that they have gathered peacefully to present their grievances to the U.S Embassy is unacceptable. Reason being that while the Constitutional rights to peacefully assembly under Article 17 of the Constitution of Liberia (1986) states: *"all persons, at all times, in an orderly and peaceable manner, shall have the right to assemble and consult upon the common good, to instruct their representatives, to petition the Government or other functionaries for the redress of grievances and to associate fully with others or refuse to associate in political parties, trade unions and other organizations";* this provision of the Constitution does not apply to the assembly of a group of employees, protesting against a labor related dissatisfaction allegedly perpetrated by their employer; and where the employees stage such protest on the premises of assignment, as in the instant case, said gathering/assembly no matter peaceful or quiet is outside of the Constitutional provision. The said Article 17 is clear and unambiguous that an assembly must be *to instruct their representatives, to petition the Government or other functionaries for the redress of grievances and to associate fully with others or refuse to associate in political parties, trade unions and other organizations"* which is not in the present case. Hence, the appellees' asserting peaceful gathering at the United States Embassy is not within the contemplation of the right to peaceful assembly provided for in the Constitution.

Moreover, this Court says that all diplomatic missions accredited to Liberia and having their embassies or consulates situated near Monrovia retain their country's sovereignty in their respective host countries and enjoy diplomatic immunities. As such, the Embassy of the United States of America, being a diplomatic mission, albeit the place of assignment of the appellees, should not have been used by the appellees as the venue for the hosting of strike or any other action, even if the appellees had genuine grievances.

Having stated the above, we return to traversing the first issue which is whether or not the appellees were wrongfully dismissed. Chapter 41 of the Decent Work Act

(2015) on strikes or lockouts and Chapters 43, and 44 of the Labor Practices Law (1961) on picketing or strikes (the law then in existence during the period of the investigation before the Ministry of Labor, but repealed and replaced by the Decent Work Act (2015), both prohibit certain strike, lockouts or picketing actions. In both Laws, strike or lockouts or picketing actions not referred to the Ministry of Labor are prohibited and unlawful.

In section 4301(a)(b), of the now redundant labor law, the Government made it a matter of policy of the Republic of Liberia that:

"sound and stable industrial peace and advancement of the general welfare, health, safety of the Republic and of the best interests of employers and employee can most satisfactorily be secured by the settlement of issues between employers and employees through peaceful processes and conferences between employers and employees and the representatives of their employees; ... "

The Law went further to empower the Ministry of Labor to "prevent any person, including labor organizations from engaging in any picketing, strike or conduct declared to be unlawful" ... and that the Ministry shall endeavor to have that person terminate the strike or picketing, etc. As can be clearly seen, even at that period of time, the action by the appellees was illegal, not having first referred their grievances to the Ministry of Labor. Hence, the April 22, 2004, strike action whether peaceful or otherwise, is unlawful.

Having held accordingly, how did the strike action affect the continued employment of the striking employees?

A strike action as the one conducted by the appellees, as has already been outlined in this Opinion, is prohibited and unlawful. Section 4503(6) of the defunct 1961 Labor Practices Law of Liberia under which this case was decided at the level of the hearing officer at the Ministry of Labor, state that: "It shall be unlawful for any person, ... to engage in, promote, or cooperate in a strike unless... (b) Except as otherwise provided in Chapter 43, at least seven days' written notice of the intention to strike has been sent to the employer or employers or their representatives or association of which such employers are members and to the

labor inspector, the Ministry of Labor or the Minister, and the period of such notice has expired, it shall be unlawful for any person, including any labor organization, to engage in, promote, or cooperate in a strike".

Our perusal of the certified records having established that the appellees did not comply with this mandatory provision of the law, their strike action was illegal; hence, their absences from work, being the outcome and direct result of their participation in an unlawful strike, by operation of law, the appellees terminated their own employment contracts with the appellant.

This brings us to the second and final issue, whether or not the amount of Six Hundred Twenty Thousand, Four Hundred Eighteen United States Dollars (US$620,418.02) and Two Cents awarded the appellees is supported by the evidence in this case? We say no. Our reason is premised on our determination that the appellees having engaged in unlawful strike, constituting a serious breach of their contracts, they are only entitled to unpaid wages and other benefits accruing to them before the strike action.

Moreover, we note that in their complaint to the Ministry of Labor, the appellees averred that they are entitled to the amount of Two Hundred Twenty-Two Thousand, Three Hundred Eighteen United States Dollars (US$222,318.08) and Eight Cents as compensation for the period of their suspension and attached thereto a three-page document to substantiate this assertion. The investigation, for its part, awarded to the appellees the amount of Six Hundred Twenty Thousand, Four Hundred Eighteen United States Dollars (US$620,418.02) and Two Cents and referred to this same three-page document as "self-explanatory" attached to his ruling as the basis for the award. This ruling was confirmed by the National Labor Court. We hold that the said "self-explanatory" document is self-serving and has no basis in law.

We cannot conclude this Opinion without noting our contempt for the manner in which this case was conducted at the Ministry of Labor. We observed that the investigation commenced 2006 but did not conclude until September 2017, thirteen (13) years, due to the lackadaisical attitude of the appellant's counsel, the Dunbar and Dunbar Law Firm, with what we have determined was with the acquiescence of the hearing officer. We say that the conduct exhibited by the counsel for the

appellant management as seen from the numerous absences and baseless excuses for a period of thirteen years, is vexing and portrays the miscarriage of justice exhibited in the present case. Notwithstanding the duty lawyers owe to the courts and their clients, the trial courts and administrative agencies exercising quasi-judicial authority also have a duty to ensure that cases that come before them are expeditiously adjudicated. This Court reiterates that judges, not lawyers or party litigants, are the masters of their courts, and as such, they should conduct their respective fora in accordance with the intent and spirit of the law, *viz.*, "... to promote the just, speedy, and inexpensive determination of every action." Civil Procedure Law, Rev. Code I:1.4

WHEREFORE AND IN VIEW OF THE FOREGOING, the final ruling of the National Labor Court is reversed and this case remanded to the said National Labor Court to instruct the Ministry of Labor to, within 30 days as of the receipt of the National Labor Court's instructions, determine, if any, unpaid wages and other benefits that may have accrued to the appellees before the unlawful strike action. The Clerk of this Court is ordered to send a Mandate to the National Labor Court, commanding the Judge presiding therein to resume jurisdiction over this case and give effect to the Judgment of this Opinion. Costs are ruled against the appellees. AND IT IS HEREBY SO ORDERED.

Ruling reversed; Case remanded

When this case was called for hearing, Counsellor Steven B. Dunbar, Jr. of the Dunbar and Dunbar Law Offices appeared for the appellant. Counsellors Idris Sheriff, D. Anthony Mason, and Prince M Kruah of the 1-lenries Law Firm appeared for the appellee.