IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA, SITTING IN ITS OCTOBER TERM, A.D. 2021

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 GN Bank Liberia Limited, represented by its General Manager, Mr. Joseph Anim, of the City of Monrovia, Liberia……Appellant	)	
Versus	)	APPEAL
Her Honor Comfort S. Natt, Judge National Labor Court, Temple of Justice, Monrovia, Liberia, Nathaniel Dickerson, Hearing Officer, Ministry of Labor and Archibald A. Tawalah of the City of Monrovia, Liberia…….. Appellees	)	
GROWING OUT OF THE CASE :	)	
The Management of GN Bank Liberia Limited, represented by its General Manager, Mr. Joseph Anim, of the City of Monrovia, Monrovia, Liberia……..Petitioner	)	
Versus	)	PETITION FOR JUDICIAL REVIEW
Nathaniel Dickerson, Hearing Officer, Ministry of Labor and Archibald A. Tawalah of the City of Monrovia, Liberia ……..……Respondents	)	
GROWING OUT OF THE CASE :	)	
Archibald A. Tawalah of the City of Monrovia, Liberia .....Complainant	)	
Versus	)	UNFAIR LABOR
The Management of GN Bank Liberia Limited, represented by its General Manager, Mr. Joseph Anim, of the City of Monrovia, Monrovia, Liberia…….Defendant	)	PRACTICE/ WRONGFUL DISMISSAL

Heard: December 14, 2021 Decided: February 1, 2022

MR. JUSTICE NAGBE DELIVERED THE OPINION OF THE COURT.

The appeal before this Court grows out of the October 22, 2020 final ruling of Her Honor Comfort S. Natt, Judge of the National Labor Court, Montserrado County, Republic of Liberia, who confirmed the January 15, 2020 final ruling of the Hearing Officer, Honorable Nathaniel S. Dickerson, Director of the Labor Standards Division of the Ministry of Labor, holding the appellant/GN Bank liable for wrongful dismissal and unfair labor practice meted out against the appellee, Archibald A. Tawalah, former employee of the appellant.

The facts in this case contained in the records transcribed to this Court, reveal that on February 5, 2019, the appellee, Archibald A. Tawalah, former employee of the appellant, GN Bank Liberia, Limited, filed a formal complaint before the Minister of Labor, Honorable Moses Y. Kollie, against his former employer, the appellant, alleging bad labor practice and wrongful dismissal. The appellee alleged among other things that he was initially employed with the appellant as Internal Auditor in 2016, but later reassigned to the Finance Department as Finance Manager on December 1, 2018 and later on December 13, 2018, was summarily dismissed by the appellant. The appellee averred in his complaint that on Friday, December 4, 2018, when he reported to work as usual, the Human Resource Manager summoned him to the office and served him a letter terminating his services with the appellant for "administrative reasons"; that he made efforts to ascertain what the administrative reasons were but to no avail; subsequently, his personal account with the bank was blocked which deprived him the right to access his account. He further alleged that he had paid his monthly installment for the staff loan he had taken from the bank and payment was not due. He also averred that to the best of

his knowledge, he was never accused of any act of impropriety, neither was he ever served a warning letter or suspended for any administrative reasons. Therefore, he complained to the Ministry of Labor seeking reinstatement and prayed that his account be ordered unblocked by the Ministry.

On February 19, 2019, the Ministry of Labor cited the parties to a conference scheduled for March 4, 2019, and they attended, but the conference ended without reaching a compromise. Hence, a full investigation into the complaint commenced.

The records further show that when the appellee rested with the production of both oral and documentary evidence, the appellant's first witness was qualified to testified and her testimony but owing to time factor, Hearing Officer adjourned hearing for that day of November 6, 2019. On December 5, 2019, the Hearing Officer issued a notice of assignment which was served on the parties and returned served for continuation of the hearing on December 11, 2019. At the call of the case on said date and time, the Hearing Officer observed the absence of the appellant's counsel without excuse. Predicated on the unexcused absence of the appellant's counsel, the counsel for the appellee made application for a default judgment to be entered in favor of the appellee and same was granted. Therefore, Hearing Officer held the appellant liable to the appellee for the act of wrongful dismissal and ordered the appellant to reinstate the appellee and pay him his monthly gross salary from the date; that is, December 13, 2018, when his services were wrongfully terminated or in lieu of reinstatement must be compensated in an amount not to exceed two years of remuneration computed on the basis of the average rate of the salary received six (6) months immediately preceding the dismissal; that if the management cannot reinstate the appellee, then he must be paid the

amount of One Hundred Twenty-Three Thousand, Seven Hundred Sixty-Nine United States Dollars (US$123,769.44) and Forty-Four Cents, that is, 24 months X US$5,106.00 which amounts to US$122,544.00 for wrongful dismissal, plus US$1,225.44 as refund of provident fund, constituting management and staff contribution.

On January 31, 2020, the appellant filed a seven-count motion to rescind the Hearing Officer's ruling of January 15, 2020. However, on February 12, 2020, the appellant withdrew its motion to rescind and gave notice that it was doing so to formally file its petition for judicial review with the National Labor Court. On February 14, 2020, the appellant filed with the National Labor Court its petition for judicial review and outlined, among others, the following: "That the Hearing Officer committed a reversible error when he granted a default judgment against the appellant contrary to law and is seeking judicial review so as to reverse the Hearing Officer who based his reliance on an application made by the appellee that the appellant failed to attend the hearing without excuse on April 2, 2019, September 12, 2019 and December 11, 2019 which were not consecutive; that the Hearing Officer deliberately neglected and refused to take judicial notice of the appellant's attendance on March 19, April 9, 2019, April 16, 2019, May 1, 2019, June 13, 2019, July 19, 2019, August 28, 2019, September 23, 2019, September 27, 2019, October 1, 2019, October 10, 2019, October 28, 2019, November 6, 2019 and November 18, 2019 which are indicators of good intention to attend the hearing".

The appellant further contended that "the Ministry of Labor is an administrative forum whose principal function is fact-finding and therefore should not concern itself with legal technicalities which tend to defeat the ends of justice; that the Hearing Officer ignored the fact that defendant's first witness, Bendu Jusufu Williams, who commenced

her testimony on November 6, 2019, could not continue on November 19, 2019, due to the absence of the clerk of the investigation for which defendant did not rest with its first witness; that the defendant's absence at the hearing on December 11, 2019, was a result of excusable neglect in that on the selfsame day, Attorney Lawrence Sua appeared before the Civil Law Court at 10:0'clock a.m., the same scheduled time for the hearing; that Counsellor Alexandra K. Zoe, one of counsels for the defendant, and Bendu Williams, the defendant's first witness were ill and seeking medical attention and that copies of the hospital documents and the notice of assignment for the Civil Law Court were attached".

Concluding its petition for judicial review, the defendant contended that "the calculation contained in the Hearing Officer's ruling was contrary to Section 14.10, paragraph 1 of the Decent Work Act which states that "if a reinstatement is ordered, the amount of compensation should not exceed an amount equal to the remuneration that the employee would have earned from the time that their employment was terminated up until the time of the order for reinstatement"; that the plaintiff worked for two years before dismissal and was paid his benefits; that from the date of dismissal December 13, 2018, up to and including January 15, 2020, is thirteen (13) months, therefore, the calculation should have been US$5,106.00 X 13 which will amount to Sixty-Six Thousand, Three Hundred Seventy-Eight United States (US$66,178.00) Dollars and not One Hundred Twenty-Two Thousand, Five Hundred Forty-Four United States (US$122,544.00); that the Hearing Officer's calculation was based on dismissal to avoid pension payment which is not the case because the complainant worked for only two years, he was not entitled to pension; hence, the Hearing

Officer's ruling was prejudicial and erroneous, therefore, it should be reversed".

On February 27, 2019, the appellee/respondent filed returns to the petition for judicial review and contended essentially "that the petitioner's insinuation of three consecutive absences before a judgment of default had is not supported by law; that the in the case: *Vijayaraman and Williams v. the Management of Xoanon Liberia, Ltd*., 42 LLR 41 (2004) the phrase "failed to appear, plead or proceed to trial" does not mean that once a defendant in a labor case has appeared, pleaded and proceeded to trial, default judgment cannot be granted against him at any subsequent stage of the trial;…that if a defendant fails to appear for resumption of trial upon notice of assignment, default judgment can lie against him;…that the matter of how many absences are allowed for a default judgment to be entered is left with the sound discretion of the court or administrative officer as the case may be". Therefore, the Hearing Officer was justified when he granted the default judgment; that petitioner's absence without excuse was the pattern it adopted in these proceedings, hence, it was a deliberate refusal and neglect to attend the hearing not due to schedule at the Civil Law Court or the witness' illness because there was no medical evidence showing that Counsellor Alexandra K. Zoe, one of counsels for the appellant/petitioner, was indeed ill on December 11, 2019, and therefore, their conduct amounts to abandonment".

Upon receipt of the petition for judicial review and the returns thereto, the National Labor Court assigned same for hearing, and when argument had *pro et con*, the Judge ruled and upheld the ruling of the Hearing Officer.

From the records certified to this Court, coupled with the arguments had by counsels representing the parties, the singular question that presents itself for the determination of this case is: whether or not in view of the facts and circumstances, default judgment will lie.

A review of the ruling of the National Labor Court reveals that the court premised its ruling principally on the principles of law as enunciated in the case: *Vijayaraman and Williams v. the Management of Xoanon Liberia, Ltd*., 42 LLR 41 (2004) which primarily equated unexcused absence of a defendant or his counsel at a duly announced hearing to an abandonment of the cause thus giving support to a default judgment as its punishment. However straight forward these principles may be as to respecting the sanctity of judicial tribunals or administrative agencies with quasi-judicial powers, and upholding the rule of law in this jurisdiction, this Court has also held over time that "it has expressed strong preference for deciding cases on their merits, the laws controlling and evidence adduced during the trial rather than on mere legal technicalities, which may frustrate the ends of justice and fairness", as in the instant case. (*Emphasis ours*). *The Management of Lonestar Cell/MTN v. Nathaniel Kevin*, Supreme Court Opinion, March Term 2019. The facts are not disputed of the unexcused absence of the defendant or its counsel at the hearing on December 11, 2019, upon a regular notice of assignment; however, the facts in the Vijayaraman case are not analogous to the case at bar. In the Vijayaraman case, the appellant was an Indian national brought into the country as a contractor, whose contractual agreement was terminated two weeks after the agreement had expired on November 5, 2001, and said termination was retroactive to July 31, 2001 and subjected to an audit as a condition precedent to the payment of his arrears. No sooner the appellant filed a complaint with the Labor Ministry and investigation

got underway, the appellee began absenting itself through numerous postponements until December 29, 2001 when the case was assigned for hearing. Again, on December 29, 2001, one of the counsels for the appellee requested a postponement which was granted and the matter assigned for January 31, 2002. All parties being present, the appellant, Vijayaraman, provided testimony in his own behalf. Thereafter, the case was assigned for February 4, 2002, at which time neither the appellee nor his counsel was present for the hearing; upon which failure to attend, the appellant's counsel applied for default judgment and was granted by the Hearing Officer but was overturned by the National Labor Court on review, stating that one absence should not be the basis for granting a default judgment. Given the sequence of postponements, coupled with the hardship the appellant was subjected to by the appellee's conduct, upon review by the Supreme Court, it reversed the National Labor Court and reasoned that "there is no statute or case law in this jurisdiction that defines or determines the number of absences that warrants the granting of default judgment…in such a manner it is left to the discretion of the court or the administrative officer, as the case may be". We must say further that the foundation for the decision is also founded on the fact that the appellant was a stranger from far away land with no support whatsoever and should not be treated in a manner so inhumane. The Supreme Court, narrating the appellant's ordeal through Mr. Justice Korkpor, Sr. said:

> "It must be noted that the appellant in these proceedings is a foreign national from India with no relatives in Liberia. He was recruited from his home country and transported to Liberia to work for the appellee for two (2) years. Under the contract of employment, appellee undertook to pay appellant a monthly salary of US$2,000.00 as well as to provide him an air ticket to facilitate his return to India at the end of the contract. The

> contract also provided that the appellant shall not accept employment in the logging industry in Liberia for a period of one year at the expiration of the contract. When the contract expired, the appellee owed the appellant for more than nine (9) months in salary arrears amounting to US$19,355.00. Moreover, when appellant's contract expired, the appellee unilaterally demanded that appellant submits to an audit as a condition precedent to the payment of his salary arrears. With no salaries being paid to facilitate maintenance and support, certainly appellant was deprived of his means of livelihood and subjected to hardship. As such, the instant case is not one of the regular maters where successive postponements may be granted, as to have done so in this case would have defeated the ends of justice. Aliens within our borders are equally protected under our laws and to abandon an alien worker as a public charge without any means of support is most unfair, to say the least. It must have been against this background that default judgment was rendered by the hearing officer at the Ministry of Labor". *Vijayaraman and Williams v. the Management of Xoanon Liberia, Ltd*., 42 LLR 41 (2004)

We take cognizance that the facts and circumstances obtained in the Vijayaraman and Williams v. the Management of Xoanon Liberia, Ltd. case and the present case involving the GN Bank and Archibald Tawalah are not analogous, but the controlling question in the two cases is whether or not the hearing officer and the trial judge breached their discretion when they granted default judgment after the failure of the counsels of the GN Bank and Vijayaraman and Williams v. the Management of Xoanon Liberia, Ltd. to appear for the hearing on after they received regular notices of assignment. The law extant does not make it mandatory for a hearing officer or a trial judge to adjourn a hearing for the failure of counsels of either party to appear for a hearing. The hearing officer may provide opportunity for a further hearing. However, we are of the opinion that since trial had begun in earnest; that is, the complainant and witnesses testified and rested leaving the defendant and its witnesses to testify, the hearing officer

should have exercised patience to allow the defendant to testify thereby bringing the case to a logical conclusion.

This Court further notes that the main issue that should claim our attention is the contention of the defendant bank in which it stated and contended that:

> "the calculation contained in the Hearing Officer's ruling was contrary to Section 14.10, paragraph 1 of the Decent Work Act which states that "if a reinstatement is ordered, the amount of compensation should not exceed an amount equal to the remuneration that the employee would have earned from the time that their employment was terminated up until the time of the order for reinstatement"; that the plaintiff worked for two years before dismissal and was paid his benefits; that from the date of dismissal December 13, 2018, up to and including January 15, 2020, is thirteen (13) months, therefore, the calculation should have been US$5,106.00 X 13 which will amount to Sixty-Six Thousand, Three Hundred Seventy-Eight United States (US$66,378.00) Dollars and not One Hundred Twenty-Two Thousand, Five Hundred Forty-Four United States (US$122,544.00); that the Hearing Officer's calculation was based on dismissal to avoid pension payment which is not the case because the complainant worked for only two years, he was not entitled to pension; hence, the Hearing Officer's ruling was prejudicial and erroneous, therefore, it should be reversed"

This court in granting award for wrongful dismissal takes into account the period the employee had worked with the employer before he was wrongfully dismissed. In this case, the undisputed fact is that the complainant worked for two years and the bank contended that it paid all his benefits in the amount of US$14,614.32 including a refund of his contribution to the provident fund. This contention by the defendant bank should have caught the attention of the hearing officer and the trial judge so as to establish the claim of the complainant against the assertion by the defendant bank that it had paid all his benefits. That not being the case, it leaves a doubt on the mind of this Court as to

who is saying the truth, which doubt can only be settled through the production of evidence by the parties.

From the certified records, it would suggest and we presume so that the hearing officer based his calculation only on the testimony and evidence adduced by the complainant since he granted default judgment against the defendant bank. But this Court cannot ignore the calculation of the defendant bank in the amount of Sixty-Six Thousand, Three Hundred Seventy-Eight United States (US$66,378.00) Dollars if its action in dismissing the complainant was wrongful. This can only be established by allowing the defendant bank to testify and give reason as to the dismissal of the complainant and the allegation that the bank had paid all his benefits under the law.

WHEREFORE, and in view of the foregoing, the final ruling of the National Labor Court confirming the ruling of the Hearing Officer at the Ministry of Labor, granting default judgment to the appellee against the appellant, is hereby reversed and the case remanded to be decided on its merits. 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 remand same to the Ministry of Labor to give effect to this Opinion. Costs to abide final determination. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellor Alexandra K. Zoe of the Zoe & Partners appeared for the appellant. Counsellor Lorpu Zawu of the Heritage Partners & Associates appeared for the appellee.