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

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

Fredrick Kromah et al., of the City of Monrovia, Republic of Liberia …….. Appellants

Versus

Bea Mountain Mining Company, of the City of Monrovia, Liberia……. Appellee

) APPEAL

GROWING OUT OF THE CASE:

Bea Mountain Mining Company, of the City of Monrovia, Liberia……... Petitioner

Versus

Nathaniel S. Dikerson, Director/Senior hearing Officer, Division of Labor Standards, Ministry of Labor, and Fredrick Kromah et al., of the City of Monrovia Republic of Liberia…… Respondents

) PETITION FOR JUDICIAL REVIEW

GROWING OUT OF THE CASE:

Fredrick Kromah et al., of the City of Monrovia, Republic of Liberia…… Complainants

Versus

Bea Mountain Mining Company, of the City of Monrovia, Liberia……..... Defendant)

) UNFAIR LABOR PACTICE/ UNLAWFUL DISMISSAL

Heard: May 10, 2022 Decided: January 26, 2023

MADAM CHIEF JUSTICE YUOH DELIVERED THE OPINION OF THE COURT

This appeal emanates from a final ruling of the National Labor Court on a petition for judicial review, reversing the decision of the hearing officer of the Ministry of Labor, which held the appellee Messrs. Bea Mountain Mining Company liable for wrongful dismissal of the appellants, Mr. Fredrick Kromah and eighteen (18) other workers.

The records show that the appellants were initially employed by MonuRent (Liberia) Limited, a company engaged in providing mining services, by utilizing and operating its equipment fleet at the New Liberty Gold Mine in Grand Cape Mount County. Subsequently, the mining services contract entered into between the appellee and MonuRent was novated to Atmaca Services (Liberia) Inc. (ASLI); furthermore, MonuRent's employees, to include the appellants, were transferred to ASLI under the same contractual arrangements the appellants had with MonuRent. Due to the fact that the MonuRent agreement is relied upon by the parties as its terms and conditions are incorporated and utilized by ASLI and the appellee in their agreements with the appellants, we quote said agreement signed with one of the present appellants, which is similar in content to those signed by all the appellants, except as to the amount of salary.

"Fredrick Kromah
Kinjor, New Liberty

September1, 2015

Dear Fredrick

RE: EMPLOYMENT CONTRACT

MonuRent (Liberia) Limited (the **"Company")** with registered office at UN Starbase Compound, Bushrod Island, Freeport, Monrovia 1000, Liberia is pleased to confirm its employment of you on the basis of the terms and conditions set out in this letter and schedules I and 2 of this letter (together the "**Agreement")**

Job Description:

Your job description outlining your responsibilities is set out in "schedule 2" attached.

Official Working Hours:

The Labour Law of Liberia sets official working hours at 8 hours/day for 6 days a week (Monday to Saturday which totals 48 hours) with an entitlement of 1 hour for lunch break. However, you may be required to work beyond this limit based on company's demand for high production.

Overtime Entitlement:

You will be entitled to overtime in respect of any hours worked in excess of 8 hours per day or 48 hours per week, and for any work performed on Sundays and public holidays; for which you shall be compensated based on the provisions of Chapters 703 and 803 respectively of the Labour Law of Liberia, in accordance to your monthly net salary.

Official Duty Roster:

You may be required to work a roster cycle, in which case details of the roster will be set out in "schedule I" attached.

Monthly Compensation:

Your monthly Basic Salary will be US$305 United States Dollars which will be paid in arrears at the end of each month. This payment (including any compensation for overtime/holiday and roster payment as set up in schedule I) shall be subject to the

mandatory payroll deduction of income tax, Social Security contribution (NASSCORP) and any other tax which may be levied by the Government of Liberia. The Company is required, by law, to promptly remit all such deductions to the Ministry of Finance and the National Social Security and Welfare Corporation (NASSCORP).

Annual Leave

Your annual leave entitlement is as set out below, based on the Labor Law of Liberia:

- after 12 months' continuous employment — 1 week (5 working days)
- after 24 months' continuous employment — 2 weeks (10 working days)
- after 36 months' continuous employment — 3 weeks (15 working days)
- after 60 months' continuous employment — 4 weeks (20 working days)

Sincerely,

For and on behalf of MonuRent (Liberia) Limited

Acceptance of Employment

I accept the offer set out in this letter, which shall constitute my contract of employment and I agree to be bound by the terms of this letter during the course of (and beyond, where appropriate) my employment. I confirm that I have read this contract of employment carefully and have had it explained to me and that I understand in full all of the above terms. I further confirm that I have not withheld any information, including pre-existing medical and accident conditions that may materially affect the decision to employ me.

Frederick Kromah"

Thereafter, the appellee Messrs. Bea Mountain Mining Company **(BMMC)** entered a corporate acquisition agreement with ASLI for the latter's assets and all its rights under the mining services contract, thereby terminating ASLI's mining services contract. As in the case with ASLI's takeover from MonuRent, the employees of ASLI, to include the appellants, were also absorbed into the appellee's workforce. This time around, the appellee issued a generic communication to each employee, inclusive of the appellants, stating therein, and *inter alia*, the employee's salaries; that the said communication was executed by a representative of ASLI, the appellee, and the employee to whom the communication was directed, respectively. We again also quote below one of said communications issued to Co-appellant Ferderick Kromah, to wit:

"Date: 14 March 2017

Dear Frederick Kromah

This will serve to inform you that, effective on December 6, 2016, Bea Mountain Mining Corporation ("BMMC") acquired the fleet of machines and equipment of Atmaca Services (Liberia) Inc. ("ASLI") operating at the New Liberty Gold Mine site. Negotiations and arrangements have also been concluded for BMMC to incorporate in and employ those employees of ASLI engaged at or in connection with ASLI's work at the New Liberty Gold Mine site under the same terms and conditions of their respective employment contracts with ASLI. Accordingly, your employment with ASLI will be inherited by BMMC and will be considered a continuation of your employment with ASLI; except that henceforth, BMMC shall assume the rights and liabilities of ASLI as your Employer, while you shall be considered an employee of BMMC, answerable to BMMC.

Employment Status as of 31 January 2017

Start date	US$ Salary p.m. (Basic+Roster)	**Accrued leave days**
Aug 2015	568.94	**22**

Both ASLI and the BMMC are owned by the MNG Gold Group and as such have a strong common interest to ensure the long term success of the New Liberty Gold Mine Project.

This transition between BMMC and ASLI further strengthens the financial standing of the New Liberty Gold Mine Project thereby improving the prospects for all stakeholders, including yourselves. We continue to count on your cooperation in ensuring the Project's success.

Kind regards.

Very truly yours

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Atmaca Services (Liberia) Inc. Bea Mountain Mining Corporation

Please indicate your acceptance by signing on the line below:

Accepted: Frederick Kromah"

The records further show that the appellants worked for the appellee for nine (9) months without any issues regarding their remuneration. Subsequent to the nine (9) months of working relationship between the appellee and the appellants, the appellee ceased the payment of overtime allowance to the appellants for the month of December, 2017 and upon inquiry as to the reason for said action, the appellants were informed that the appellee had mistakenly overpaid them for the past months in comparison to what they had been paid by MonuRent and ASLI; that as a result of the appellee's decision to cease overtime payment, the appellants demanded that the appellee pay them their outstanding overtime

allowance for the month of December, 2017, in addition to unpaid overtime allowances that had accrued from their time of employment with MonuRent, and which liability the appellants alleged that the appellee knew of and had assumed as a result of the corporate acquisition of MonuRent's Heavy Machinery Equipment (HME) Department along with its staff, to include the appellants; that several meetings were held between the parties in an attempt to resolve the dispute regarding the issue of overtime arrears, but to no avail; that ensuing from the unsettled dispute regarding the alleged overtime arrears, the appellants staged a strike action in demand of the payments due them beginning from their time of employment with MonuRent to their time of worked with the present appellee.

Given that the several meetings between the appellants and the appellee yielded no amicable resolution of the dispute, the appellee notified the Ministry of Labor and requested its intervention. The records show that a delegation from the said Ministry visited the appellee's site and conducted its investigation into the dispute and thereafter rendered a report to the effect that the action by the employees to stage the strike was in contravention of chapter 41.2 of the Decent Work Act, and as such, the appellee reserved the right to institute disciplinary actions against the employees involved in the strike; that the appellee did not owe overtime allowances to those employees who had been transferred from MonuRent, except for extra work done on Sundays and holidays; that the appellee had the right to retrieve overpayments made to its employees as a result of miscalculation of the employees' overtime allowances.

On February 7, 2018, following the report from the investigative committee of the Ministry of Labor, the appellee proceeded to dismiss the appellants for their participation in what it termed as an "illegal strike" action on the premises of the appellee.

On February 15, 2018, predicated on their dismissal by the appellee, the appellants, through their legal counsel, filed a formal complaint against the appellee alleging wrongful dismissal and unfair labor practice as the basis thereof, but subsequently withdrew same and filed an amended complaint on February 19, 2018, with the Minister of Labor to include the findings of the investigative committee. The appellants further alleged that during the course of the investigation, only two of the dismissed workers were present; that prior to the conclusion of the investigation, the said employees were excused from the meeting, leaving only the management and the investigators.

In response to the appellants' complaint, the Minister of Labor informed the appellee, through a letter dated April 12, 2018, that the opinion of the investigative committee from fiie Ministry of Labor was void and did not constitute the opinion of the Ministry. Hence, the appellee was advised to reinstate the dismissed employees. We quote below the April 12, 2018 letter from the Minister of Labor, to wit:

> "April 12, 2018
>
> Mr. Ozkah Umurhan
> The General Manager
> New Liberty Gold Mines
> Bea Mountains, King George
> Grand Cape Mount County, Liberia
>
> Dear Mr. Umurhan:
>
> I present my compliments and with regrets inform you that the *"Opinion of the Investigative Committee from the ministry of Labor" dated January 29, 2018*

delivered at your site in Grand Cape Mount County was not a valid opinion of the Ministry at the time it was issued.

One consequence of this is that it cannot be cited as a basis for a subsequent action including most importantly the decision to dismiss 19 of your employees. (One said dismissal letter is attached). As a result, you are asked to return to *status quo ante*, including withdrawing the dismissal of these employees, who are to return to work within not more than one month.

In the instant case, the team or investigative committee went beyond its power in giving an opinion without first reducing the incident into writing as required by sections 9.2(f) and 9.3(a) of the Decent Work Act. Moreover, the ruling was done without the knowledge of the Acting Minister as required by the Decent Work Act or the Transitional Team introduced by Executive Order# 91 which was in effect at the time the decision was made. As you may be aware, the transitional provisions put in place at the margins between this government and its predecessor were not merely intended to prevent pilfering of public assets but also abuse of institutional authority.

Please note that this withdrawal does not constitute any decision on the merit or demerits of any complaints or claims either party may have vis-a-vis the other and all avenues of seeking legal redress remain open in keeping with law.

Going forward, we expect this mandate to guide your interaction and expect the management and workforce to contribute expected to the full functioning of the national economy.

Kind regards,

Moses Kollie
Minister"

Notwithstanding the letter from the Minister of Labor to the appellee, disavowing the action of the investigative committee from the said Ministry, and recommending the reinstatement of the appellants, the appellee did not comply with said recommendation, thereby necessitating a formal investigation by the Ministry presided over by the Director of Labor Standards, Mr. Nathaniel S. Dickerson.

On December 18, 2018, following a formal hearing at the Ministry of Labor, the hearing officer ruled in favor of the appellants, holding the appellee liable for the wrongful dismissal of the appellants and ordering that the said appellants be reinstated and their accrued benefits, as of the date of their dismissal, be paid them; or, in lieu of reinstatement, the appellants be paid twenty-four (24) months' salary and all over time arrears claimed by the employees.

The appellee noted exceptions to the final ruling of the hearing officer, and on January 10, 2019, filed a forty-six (46) count petition for judicial review before the National Labor Court, Montserrado County. In its petition, the appellee alleged, *inter alia*, that the appellants were employed by MonuRent with a basic salary of Three Hundred Five United States Dollars (US$305.00), but were entitled to overtime pay for any work done in excess of eight (8) hours per day or forty-eight (48) hours per week, and for work on Sundays and public holidays; that the appellants routinely worked eight (8) regular hours and four (4) hours of overtime daily; that the terms of the appellants' contract with MonuRent are the same terms applicable to the appellants' contract with the appellee; that although the

appellee sought to introduce into evidence the appellants' contract with MonuRent, given that the said contract forms the basis of the appellants' claim, the hearing officer denied the admission of said contract into evidence; that upon assimilating the appellants into its work force, the appellee erroneously calculated the appellants' combined salary (basic salary plus overtime compensation) in the amount of Five Hundred Eighty-Six & Ninety-Four Cents United States Dollars (US$586.94) as appellants' basic salary, and on that basis, overpaid appellants four (4) hours overtime compensation in addition to the US$586.94; that upon recognizing its error, the appellee corrected same and began paying the appellants their basic salary plus four (4) hours of overtime compensation instead of eight (8) hours as was previously done; that it was on this basis that the appellants began their illegal strike action; that during the said illegal strike action, the appellants engaged in conduct that amounted to criminal offences, in violation of the Decent Work Act and the Collective Bargaining Agreement (CBA) entered into between the appellee and its workers union; that the illegal actions of the appellants were reported to the Ministry of Labor, following which an investigation was conducted by the said entity and a report issued therefrom; that predicated on the outcome of the report, the appellee constituted a committee to investigate the illegal strike to determine the principle parties involved, and based on the findings of the committee, the appellants were dismissed; that it was erroneous for the hearing officer to rule that the opinion of the investigative committee was invalid, hence appellee's action to dismiss the appellants amounted to wrongful dismissal and unfair labor practice.

On January 24, 2019, the appellants filed their returns to the petition for judicial review, asserting *inter alia*, that the hearing officer's ruling was legally justified and constituted no error for which said ruling should be disturbed; that because the appellee presented no compelling testimony regarding the appellants' contract with MonoRent which would have warranted the admission of said contract into evidence, the hearing officer denial of said contract into evidence was within the pale of the law, hence, the appellee attempt to have them introduced into the records for judicial review was untenable and same should be stricken from the records; that the appellee failed to present evidence to prove its claim that the salaries paid by MonuRent to the appellants constituted their basic salary and overtime pay; that the dismissal of the appellants was in contravention of the very CBA the appellee alluded to; that the CBA provided "...management shall not dismiss any worker involved in an industrial dispute unless he/she commits criminal offence in accordance with the laws of Liberia" hence, the hearing officer did not err when he ruled that the dismissal of the appellants by the appellee was contrary to the terms of the CBA.

On September 3, 2019, following a hearing on the petition for judicial review by the National Labor Court, Montserrado County, Her Honor Comfort S. Natt, reversed the ruling of the hearing officer which found the appellee liable for wrongful dismissal of the appellants, and ordered their reinstatement or in lieu thereof, twenty-four (24) months? saiary, and all overtime claims. The appellants noted their exceptions to the final ruling of the trial court, and announced this appeal to the Supreme Court.

Having reviewed the certified records, and considered the alleged errors imputed to the trial judge, as presented in the appellants' thirteen (13) count bill of exceptions, we have determined that this case hinges on two issues for our consideration, consistent with the settled principle of law in this jurisdiction that the Supreme Court is not bound to consider every issue raised in the bill of exceptions except those that are germane to the determination of the case. *CBL v.. TRADEVCO*, Supreme Court Opinion October Term

2012; Knuckles *v. TRADEVCO, 40* LLR 49, 53 (2000); *Vargas v. Morns,* 39LLR 18 24(1998); *Rizzo et al v. Metzger et al,* 38 LLR 476 (1997).

Therefore, we shall consider the following issues in determining this appeal:

1. Whether the appellee' s basis for dismissing the appellants was wrongful and an unfair labor practice.

2. Whether the appellee is liable to the appellants for unpaid overtime wages as determined by the hearing officer.

We shall begin our analysis and discussion with the second issue.

It is undisputed that the appellants were assimilated into the appellee's workforce through the corporate acquisition of the appellants' former employers, MonuRent and ASLI; that the appellants became employees of the appellee, pursuant to the transfer document which the appellants are signatories to, one of which is quoted *supra.*

The appellants alleged that at the time of their transfer from ASLI to the appellee, they were informed by the latter that it would settle all the outstanding liabilities of ASLI including outstanding overtime wages; that although the settlement of unpaid overtime wages was never done, the appellants continued to work for the appellee in their respective capacities without any issue or complaint; that the dispute arose when the appellee unilaterally halted the payment of their overtime wages and reduced their overtime working hours to four (4) instead of eight (8) hours as was the course of dealing between the appellants and the appellee; that notwithstanding the appellee's unilateral decision to halt the payment of the appellants' overtime wages, the latter did not engage in a strike, but rather engaged in a "go-slow action"; that the appellee's unilateral decision to halt the payment of their overtime wages was an unfair labor practice in keeping with the Decent Work Act, hence, their subsequent dismissal was wrongful.

The appellants further argued that during the investigation at the Ministry of Labor, the appellee failed and refused to produce the subpoenaed documents relative to the outstanding liabilities of MonuRent that were transferred to ASLI and then to the appellee; that said documents were intended to substantiate that MonuRent was indebted to the appellants, and that said debt obligation was transferred to ASLI and then subsequently to the appellee by virtue of its corporate acquisition of ASLI.

The appellee on the other hand have argued that its employment of the appellants was based on the latter's employment contract with MonuRent, which contract had been assigned to ASLI; that the said contract illustrated the appellants' salary and all benefits that they were entitled to and did receive from MonuRent, and subsequently ASLI; that the notice of transfer of employment, which the appellants acknowledged by signing same, also indicated the appellants' respective aggregate salaries (basic salary plus overtime); that the hearing officer's denial of the appellee's request to enter the MonuRent contract into evidence on ground that it was immaterial and irrelevant was a reversible en-or.

The appellee further averred that notwithstanding the relevance of the MonuRent employment contract to the determination of the issue of outstanding overtime pay, which the hearing officer denied admission into evidence, the appellants at no point in time made any claims for outstanding compensation for overtime, which they claimed had accumulated from the time of their employment with MonuRent and up until they were assimilated into the workforce of the appellee.

It is worth stating that the core of the labor dispute, which eventually culminated into the dismissal of the appellants by the appellee, is premised on the terms and conditions of the appellants' employment contract with MonuRent, which the appellants do not dispute. Although the document notifying the appellants of their transfer from ASLI to the appellee indicates the appellants' respective salaries, it was imperative to revert to the employment contract from which said instrument originated, that is the MonuRent contract.

However, the records show that the appellees counsel attempted to have said contract introduced into evidence during the investigation at the Ministry of Labor, but same was denied by the hearing officer on grounds that said document was immaterial and irrelevant. Even from a long shot, we find it inconceivable that the contract which contained the evidence to substantiate the claims and counter-claims of both the appellee and the appellants would be irrelevant or immaterial to the investigation of said dispute.

Not only is the basis of the hearing officer's denial of the request to admit this vital and determinative instrument into evidence inexcusable, especially given the fact that said instrument was the most, if not the only, indispensable evidence in determining the veracity of both the appellee's and appellants' contentions regarding compensation due the appellants. Seemingly, had the said instrument been admitted into evidence, it would have been more in the interest of the appellants, who were then the complainants, and who had argued that the amount the appellee claimed was a combination of their basic salary and overtime pay was actually just their basic salary which was paid via direct deposit to the appellants' respective bank accounts.

The Supreme Court has consistently held that the Ministry of Labor and all other administrative agencies that are clad with quasi-judicial authority are and should be fact finding fora where legal technicalities are dispensed with, given that the findings or rulings from these administrative agencies are reviewable, through the process of judicial review before a competent court having jurisdiction, but only on allegations of errors as to the application of the law and not on issues of facts. *Revised Rules and Regulation of the National Labour Court*, Rule 5; *Edith Gongloe-Weh v. National Elections Commission (NEC)*, Supreme Court Opinion, March Term, 2021; *Charles Walker Brumskine et al v. National Elections Commission*, Supreme Court Opinion, October Term, A.D. 2017.

Notwithstanding the failure of the hearing officer to allow the appellee to enter the aforementioned MonuRent contract into evidence, which would have made same to form part of the certified records, the records show that the appellee cited as error, the hearing officer's denial of the admission of the said contract into evidence, and attached same to its petition for judicial review; and, the Judge of the National Labor Court did entertain and rely on said contract in rendering her final ruling on the Petition for Judicial Review, hence our authority for quoting same *supra*.

Judicial review is synonymous to an appeal, wherein the petitioner brings the final ruling of an administrative agency before a court of competent jurisdiction for review on misapplication of the law. In the instant case, the misapplication of the law cited by the appellee is the hearing officer's classification of a germane document as irrelevant and immaterial, and as such denying the admission of said document into evidence. We therefore hold that the trial judge was not in error for taking judicial cognizance of the MonuRent employment contracts of the appellants, as same was a key determinant of the terms and conditions governing the employment relationship between the appellee and the appellants.

We further observed that in the appellants' compliant before the hearing officer, they alleged that that the appellee was indebted to them for outstanding overtime pay, which they claimed had accumulated from their days of employment with MonuRent; and that the appellee knew or had reason to know of this debt obligation because they had assumed the liabilities of MonuRent and later ASLI, upon the corporate acquisition of said entities, and the assimilation of their workforce into that of the appellee's. Howbeit, the records are devoid of any evidence to indicate that the appellee was obligated to the appellants for any outstanding overtime pay from the appellants' previous employers, MonuRent and ASLI, as they strenuously contended, or that the appellee had made any commitment to settle any such obligation. It is the law that mere allegation is not proof; that a party who alleges a fact or set forth a claim has the burden of proving or substantiating the allegations by a preponderance of the evidence. *Universal Printing Press v. Blue Cross Insurance Company*, Supreme Court Opinion, March Term, 2015; *Kamara et al. v. The Heirs of Essel*, Supreme Court Opinion, March Term, 2012; *Pentee v. Tulay*, 40 LLR 207 (2000). As such, this contention, although averred by the appellants before the Ministry of Labor and also the National Labor Court, remains but a mere allegation in the eyes of the law.

Instead of substantiating their claim for outstanding overtime pay by preponderance of evidence, the appellants evoked the principle of negative averment in an attempt to shift the burden of proof to the appellee. In that regards, the appellants requested the issuance of a *subpoena duces tecum* and ad *testificandum* to be served upon the appellee to produce the attendance record of the appellants and the number of hours they had worked, including their overtime.

The records show that the appellee did testify to the appellants' overtime payment records which showed that the appellants received their overtime compensation from the appellee; this evidence was not objected to or rebutted by the appellants' lawyer, thereby giving the inference that same was true. Hence, we are persuaded by the appellee' s argument that it did not owe the appellants. Further, if the appellants were still of the view that the appellee was indebted to them, the burden of proof rested with them to prove same by a preponderance of the evidence pursuant to section 25.5 of the Civil Procedure Law, and not to rely on the appellee to establish same. Besides, the appellants were privy to their employment contracts with MonuRent, as well as the documents notifying the appellants of the transition of their employments from MonuRent to ASLI, and from ASLI to the appellee respectively, and should have been in possession of same; had they presented said evidence to show that their salaries, inclusive of overtime allowances, as stated therein varied from what the appellee was paying them, their claim that the appellee had arbitrarily halted the payment of their overtime compensations and reduced the allotted hours for their overtime work, would have been substantiated by such evidence.

But more interestingly, the appellants' second witness, co-appellant Frederick Kromah, testified to the document which we quoted *supra* regarding the transition of the appellants from MonuRent to ASLI and then subsequently to the appellee, and admitted that his salary as stated on the said document is Five Hundred Sixty-Eight & Ninety-Four Cents United States Dollars (US$568.94), but that same constituted his basic salary. We disagree that the amount testified to by the co-apppellant Kromah was his basic salary because even the document that he relied on as his supporting evidence says otherwise, *viz.* that the amount of Five Hundred Sixty-Eight & Nine-Four Cents United States Dollars (US$568.94) was the aggregate of basic salary and overtime compensation.

Notwithstanding the admission of the appellants' witness as to the amount that constitute his salary and the documentary evidence authenticating same, albeit with the modification that the said amount constituted both basic salary and overtime allowance, the hearing officer relied on a subsequent document which was exclusively prepared by the appellants, wherein they stated amounts allegedly owed them by the appellee, in making his determination that the appellee was indebted to the appellants.

This Court says that the document relied on by the hearing officer is self-serving, and cannot vitiate the employment contract which governs the employment relationship of the parties. We therefore hold that the appellant having failed to prove, by a preponderance of the evidence, that the appellee was indebted to them for unpaid overtime wages, it was erroneous for the hearing officer to have concluded as such.

As to the first issue, whether the appellee's basis for dismissing the appellants was wrongful and an unfair labor practice, we first revert to the Decent Work Act (DWA) to determine what constitutes wrongful dismissal and unfair labor practice, and thereafter juxtapose same against the appellee's basis for the appellants' dismissal. Section 14.8 of the DWA states thus:

> "Prohibited grounds of termination
>
> a) An employer shall not terminate an employee's employment because the employee:
>
> i) is or was entitled to the benefit of a right under this Act; or
>
> ii) exercised or sought to exercise such a right.
>
> b) An employer shall not terminate an employee's employment by reason of temporary absence from work due to illness or injury.
>
> e) Without limiting the operation of the preceding provision, of an employee's absence from work due to illness or injury will be taken to be temporary if the employee is exercising a right to paid sick leave under this Act or a collective agreement..."

The records show that the principal basis of the appellee's dismissal of the appellants is the strike action staged by the appellants, which action the appellee claimed hampered its operations, caused damage to its properties, and put other employees in danger. The appellee further alleged that the appellants' failure to comply with the DWA provision for engaging in a strike or lockout rendered their strike action illegal; that given the grave nature of the said illegal strike action, the appropriate sanction the appellee could resort to was termination of the appellants' employment.

The appellants on the other hand claimed that they did not engage in any strike action, but rather a "go-slow action; that the appellants' decision to engage in a go-slow action was predicated on the appellee's refusal to pay the former their overtime compensation, which they claim had accrued from the time of their employment service with MonuRent and ASLI; that in an attempt to avoid the payment of the overtime compensation due they the appellants, the appellee elected to terminate their employment services under the guise that the appellants had engaged in an illegal strike action. The appellants further argued that their demand for their overtime payments being a lawful exercise of their rights; their dismissal by the appellee was in contravention of the CBA and the DWA.

The records clearly evince that the appellants' dismissal was predicated on their undisputed staging of a strike action, which they classified as "Go Slow", for alleged accrued overtime pay from their previous employers, MonuRent, and which they claim had been inherited by the appellee by virtue of its acquisition of the said MonuRent, as well as the appellee's abrupt halting of overtime payment.

In fact, the records show that following a breakdown in negotiations between the appellants and the appellee, the latter engaged the Ministry of Labor to mediate between the parties in an attempt to resolve the dispute; that a four (4) member investigative team from the Ministry of Labor, comprising of Fred G. Gonkartee, Thomas Kollie, Dominic J. Wreh, and Edward Wehyee, Director of Trade Union/Social Dialogue, Director of Regional Labor Affairs, Assistant Director of Trade Union/Social Dialogue, and Labor Commissioner for Grand Cape Mount County, respectively, visited the work site of the appellee, conducted an investigation, and subsequently issued a formal report stating *inter alia* that the strike action by the appellants was in contravention of section 41.2 of the Decent Work Act, and as such, the appellee reserved the right to institute disciplinary action against the appellants.

In its final ruling, the trial court held that the appellee's termination of the appellants' employment was in accordance with the DWA and the CBA, relying on section 14.3 of the DWA which states, *inter alia*, that "*... an employer may immediately terminate an employee's employment for grave misconduct which makes it impossible to continue or to resume the necessary relationship of mutual trust and confidence between the employer and employee, or the employee and other employees of the employer ...*" The trial court further interpreted the gross misconduct of the appellants to be cognizable under sub-section (d) (iv) and (v) of the same law which states thus:

> "Without limiting the scope of the preceding provision, the following are examples of actions which may constitute grave misconduct for the purposes of this section:
>
> iv) an employee has attacked, battered, threatened, or intimidated his or her co-workers or the employer:
>
> (1) in the working environment; or
>
> (2) in circumstances which have a sufficient connection to the working relationship;
>
> v) an employee has either carelessly or intentionally destroyed or let property of the employer be destroyed, leading to significant losses to the enterprise"

The trial judge reasoned that the above quoted provisions of the DWA sanctioned the appellee's decision to terminate the services of the appellants because the report of the investigative team from the Ministry of Labor headed by Mr. Fred Gonkartee, and the appellee's internal investigation found that the appellants' conduct posed threats to their co-workers and the appellee, and also caused misappropriation and destruction of the appellee's property; that Article 27 of the CBA also provides ground for summary dismissal of an employee to include absence from work without good cause for more than ten (10) consecutive working days, misappropriation of company's property or fund, conviction of a criminal act against the corporation, gross negligence, willful damage of the corporation's property, etc.

This Court says that the decision of the trial court is squarely within the pale of the law especially given the fact that the appellants' strike action was not only illegal, but the very basis for which they conducted said illegal strike action was untenable. The records prove

that the appellee had mistakenly paid the appellants double for their overtime work from the time of latter's transfer from ASLI to the appellee; that after the appellee discovered the error in its payroll, it immediately halted the double payment. It is this action of the appellee that the appellants claim constitutes unfair labor practice. We disagree.

By virtue of the appellants' admissions that they did engage in a "go-slow" action, which is tantamount to a strike, their failure and neglect to pursue the procedure established by law for conducting a strike action rendered their strike action illegal; hence, the appellee's dismissal of the appellants does not constitute unfair labor practice or wrongful dismissal.

Moreover, pursuant to section 16.5 (d) of the Decent Work Act which states that *"an employer who has overpaid an employee may recover the amount of that overpayment from any remuneration subsequently payable to that employee ..."*, and the records having established that the appellee mistakenly made over payments to the appellants, the appellee was legally entitled to recover the difference between the overpayments received by the appellants and what they were entitled to. However, the appellee chose not to carry out any salary deduction for said purpose, but to rather correct the error in their payroll and pay the appellants according to the terms of their employment contract. This was a magnanimous act on the part of the appellee, and in no way affected any right of the appellants which could be considered as unfair labor practice. We therefore hold that the trial court was not in error for reversing the final ruling of the hearing officer, as the records prove that appellee's decision to terminate the employment services of the appellants was in accordance with law.

WHEREFORE AND IN VIEW OF THE FOREGOING, the final ruling of the National Labor Court is affirmed and the appellants appeal denied. The clerk of this Court is hereby 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 the Judgment of this Opinion. Costs are ruled against the appellants. AND IT IS HEREBY SO ORDERED.

Appeal denied

When this case was called for hearing, Counsellor Sunifu S. Sherif of the JUST Legal Services, Inc. appeared for the appellant. Counsellor Kunkunyon Wleh, of the International Law Group (ILG) appeared for the appellee.