

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS MARCH TERM, A.D. 2023

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
BEFORE HIS HONOR: YAMIE QUIQUI GBEISAY, SR.ASSOCIATE JUSTICE

The Management of G. N. Bank (Liberia) Limited)
by and thru its Managing Director, Joseph Anim)
of the City of Monrovia, Montserrado County,)
Republic of Liberia.....Appellant)
Versus) APPEAL

Mr. Morris N. Barsi-Giah, Jr. of the City of)
Monrovia, Montserrado County, Republic of)
Liberia.....Appellee)

GROWING OUT OF THE CASE:)

The Management of G. N. Bank (Liberia) Limited)
by and thru its Managing Director, Joseph Anim)
of the City of Monrovia, Montserrado County,)
Republic of Liberia.....Petitioner)
Versus) PETITION FOR JUDICIAL
REVEAL

Mr. Bokai A. Sheriff, Hearing Officer, Division of)
Labor Standards, Ministry of Labour and r. Morris)
N. Barsi-Giah, Jr. of the City of Monrovia,)
Montserrado County, Republic of Liberia.....)
.....Respondents)

GROWING OUT OF THE CASE:)

Mr. Morris N. Barsi-Giah, Jr. of the City of)
Monrovia, Montserrado County, Republic of)
Liberia.....Complainant)
Versus) UNFAIR LABOR
PRACTICE/WRONGFUL

The Management of G. N. Bank (Liberia) Limited) DISMISSAL
by and thru its Managing Director, Joseph Anim)
of the City of Monrovia, Montserrado County,)
Republic of Liberia.....Defendant)

Heard: May 10, 2022

Decided: July 5, 2023

MR. JUSTICE KABA DELIVERED THE OPINION OF THE COURT

On May 2, 2017, Mr. Morris Barsi-Giah, appellee, by and thru his legal counsel filed a complaint of unfair labor practice and wrongful dismissal with the Ministry of Labour against the Management of G. N. Bank (Liberia) Limited, appellant herein. The complaint alleged that the appellee was first employed with the F.I. Bank on August 26, 2013 as an audit officer, and later absorbed or acquired by the appellant on June 6, 2016; that the appellee was appointed on a committee to investigate alleged fraud perpetrated by certain employees of the appellant bank which investigation report did not implicate the appellee in any wrong doing; that as a result of the investigation conducted by the appellee's committee, the names of five persons were forwarded to the police for criminal investigation; that on December 29, 2016, the appellant suspended the appellee without pay pending the outcome of an investigation into the appellee's alleged complicity in the alleged fraud; that while that criminal investigation was ongoing, the appellant dismissed the appellee from its employ on April 17, 2017; that the appellant's conduct complained of is in violation of the Decent Work Act (2015); and that in addition to his wrongful dismissal, the appellant was in the constant habit of not according employees annual leave, weekly rest and maximum hours of work also in violation of the aforementioned statute. The appellee attached to his complaint the letters of appointment, suspension, dismissal and the investigative report of the alleged fraud perpetrated by certain employees of the appellant in substantiation of the allegations as contained in the complaint.

The records show that after a conference held with the parties by the division of labor standard of the Ministry of Labour which could not resolve the dispute, the Division commenced a formal investigation of the appellee's complaint. The appellee produced the following two witnesses; the appellee himself and a subpoenaed witness in person of Archibald Tarwallah, the audit manager of the appellant bank. Essentially, the oral and documentary evidence produced by the appellee tend to establish that fraud was detected by the finance department of the appellant bank involving three employees assigned with the account or operation department and two customers. After an internal investigation conducted by the appellee and another senior employee of the appellant bank, the names of the suspects were submitted to the police for criminal investigation and possible prosecution. However, the five suspects conceded the allegation and

agreed to repay the amount involved in the fraud by a stipulation; that following the signing of the stipulation by the accused five individuals and the appellant, the appellant suspended the services of the appellee on December 29, 2016. The appellee's evidence tends to also show that while his suspension was pending without pay, he received a letter of termination on April 17, 2017 without due process. At the close of appellee's evidence, the hearing officer admitted the letters of suspension and dismissal and the report of the internal investigation and FIBank statements containing the names of the fraudsters and other bank details. The preliminary or internal investigation report submitted by the appellee show the followings:

“FINDINGS:

Please see below our findings from the preliminary investigation:

1. The teller's packages covering the period June 6 to October 8, 2016 (GN Bank's operating period) were reviewed and six (6) withdrawals slips and print outs relating to the fraudulent transactions were physically identified and verified with the customers statements and traced to the general ledgers (3 expenses and 1 liability) accounts (see attached)
2. The two customers' accounts (ie, Madeleine Gamys and Justine K. Smith) are saving accounts which by their nature should only accept cash deposits or withdrawals using deposit or withdrawal slips as well as an account-to-account transfer form duly authorized and signed by both account holders. (see appendix 1a & 1b attached)
3. Our investigation established that Madeleine Gamys account (00-211-013188-01) was opened on June 27, 2013 and had been dormant (ie, to deposit or withdrawal) until August 8, 2016 at which time, the account was reactivated with [an] US\$10.00 reactivation fee deposited into said account. (see appendix 1b attached)
4. That Madeleine Gamys (suspect) is the daughter of Niami Y Freeman Sondah and she also has an intimate relationship with Winston Prowd (suspect); while Justin K. Smith (suspect) is the brother-in-law of Niami Y. Freeman Sondah. (see appendix 6b & 6d attached).

5. We noticed [an] US\$2,750.00 transaction value dated for April 1, 2015 was credited to Madeleine Gamys account (00-211-013188-01) while the debit leg of the transaction was traced to the Repairs and Maintenance-Computer Accessories Expense account (#90-3402-00158-00) with a value date of January 13, 2016. However, the actual posting date of the transaction was September 2, 2016 at 18:08PM (see appendices 1b, 2b & 3b attached).
6. The US\$2,750.00 amount was criminally withdrawn from the account by Madeleine Gamys (the account holder) on September 3, 2016 at 11:49 a.m. at the Sinkor Branch (see appendix 5b attached).
7. We noticed that 4 entries totaling US\$16,228[.00] (ie, US\$5,500+US\$5,500+US\$3,500.00+US\$1728 credited to Junstine K. Smith (A/c#00-211-017068-01) were done on August 31, September 12, September 27, October 7 and , 2016; while the debit legs affected 4 general ledgers as follows: other payables (A/c#90-3130-0070-00), telephone/internet expenses (A/c#90-3402-00135-00), repairs and maintenance vehicle (A/c #90-3402-00150-00). However, these transactions were criminally value dated for May 5 and September 16, 2015 and January 18 and April 5, 2016, respectively (see appendix 2a & 3a attached).
8. The total amount of US\$16,100.00 was criminally withdrawn by the account holder Justine K. Smith (00-211-0170068-01) on September 1st , 14th , 16th 28th and October 8th 2016, respectively. The five (5) withdrawals done by Justine K. Smith are US\$1,700.00, US\$3,400.00, US\$100.00, US\$5,400.00 and US\$5,500.00, respectively. Confirmed information gathered and backed by documentary evidence showed that Niami Freeman Sondah physically collected the US\$3,400.00 from the teller (Solomon Gee) at the Main Branch (see appendix 5a attached).
9. The account holders, Madeleine Gamys (A/c #00-211-013188-01) and Justine K. Smith (A/c#00-211-017068-01) did not make any deposit of the amounts that they withdrew from their respective accounts.

10. All of the six (6) transactions were posted using the profile of Niami Y. Freeman Sondah of the Finance Department (see appendices 3a & 3b attached).
11. Madeleine Gamys and Justin K. Smith in their respective statements admitted illegally withdrawing US\$2,750.00 and US\$16,100.00 respectively from their accounts after being called by Winston Prowd to do so (see appendices 6a & 6b attached).
12. The call log obtained from LoneStar Cell/MTN office revealed that Winston Prowd (cell#0886-522799) and Justin K. Smith (cell# 0886-887908) communicated on September 14, 2016, the same day that the US\$3,400.00 was withdrawn by Justin K. Smith at our Main Branch (see appendices 5a & 7 attached)
13. That the GN Bank staffs (Niami Y Freeman Sondah, Winston Prowd, and Merlyne Dalamey David along with two customers (Madeleine Gamys and Justine K Smith) colluded and connived to defraud the bank of US\$18,978.00. Merlyne Dalamey David admitted to receiving US\$100.00 bribe from Winston Prowd & Niami Freeman Sondah.
14. That Merlyne Dalamey David be held liable for gross negligence after admitting to [breaching] the bank's internal control policy (Circular #DMD-OPS-2016/01). See appendices 8 & 9.
15. We still await the Liberia National Police's report for onward submission to Management."

The appellant commenced production of evidence with the testimony of Mrs. Jenifu Williams, employed with the appellant bank as an accountant assigned in the finance department. She explained that the three accused employee namely Niami Freeman Sondah, Winston Prowd and Merlyne Dalamy David made several unauthorized and unsupported posting to the credit of two customers, Madeleine Gamys and Justine K. Smith. She explained that one of the employees, Merlyn Dalamy told a certain Rudolph Hightower that an unknown staff participant in the fraud had agreed to make settlement of the amount fraudulently withdrawn from the bank through her. The appellant's first subpoenaed witness, Mrs. Niami Freeman Sondah, testified that she was employed with

appellant bank as an account officer assigned in the account department; that on October 17, 2016, she, Winston Prowd and Merlyne Dalamey were summoned in the office of the appellant's managing director who turned them over to the police; that at the police station they, including the two customers, Justine Smith and Madeleine Gamys conceded the accusation of unauthorized credits and withdrawals in favor of the two customers' accounts and agreed to repay the appellant based on a stipulation; that the two customers made first payment at the police station through the appellant's counsel, Attorney Samuel Zonoe, and that the second payments were made through their counsel, Mr. Randolph Hightower. The records further show that the witness identified the stipulation document which the hearing officer ordered marked "D/1" in bulk. Thereafter, the appellant prayed the hearing officer for separate writs of subpoena *ad testificandum* for the appearance of Mrs. Merlyne Dalamey David, Winston Prowd and Randolph Hightower. The records show that although Mrs. Merlyne Dalamey David was reported to have been employed with the Liberia Bank for Development and Investment (LBDI), and that Winston Prowd was employed with the Omega Insurance Company who had terminated his services, they could not be located by the sheriff for the service of the writ of subpoena *ad testificandum*. However, Mr. Randolph Hightower appeared on August 9, 2018 in obedience to the subpoena. During direction examination, the following interactions took place between the appellant's counsel and the witness:

"Question: Mr. Witness, a complaint of wrong labour practice/unfair [labour] practice was brought against the defendant/management by Mr. Morris Barsi-Giah, the complainant. You are here to testify on behalf of defendant/management. My question to you is, do you know the complainant?"

Answer: I really don't know the complainant in the action or the bank issue. For clarity to him and court, if this court permits for detailed clarity of my involvement as per the oath I took, I am willing to acknowledge the entire court and this hearing.

Question: Mr. Witness, the complainant was dismissed by the GN Bank for involvement in a fraud that took place at the bank sometimes back. That fraud case traveled to the Liberia National Police at which time you represented those accused of the fraud. And those accused were Justine Smith, Niama Y. Sondah, Winston Prowd, Madeleine Gamys, Merlyne Dalamey and bank's staff. Can you please tell this investigation your knowledge on the fraud in question and those represented?"

Objection: Ground 1. Not the best witness 2. Witness does not know the name of the complainant.

Investigation Ruling: The objection is hereby sustained. And it is hereby so ordered.

To which ruling of Your Honor, counsel for defendant/management excepts.

Exception noted.”

Subsequently, on the 30th day of August, 2018, efforts to have Mr. Hightower continue with his testimony was frustrated due to the hearing officer sustaining of the objection interposed by the appellee during the hearing of August 9, 2018. The record also shows that Mr. Prowd did not appear as sheriff’s return to the writ of subpoena shows that he could not be found.

On October 25, 2018, when the case was call, the appellant submitted that the hearing officer having sustained the objection of the appellee to a question posed to Mr. Hightower, one of appellant’s witnesses thereby technically discharging him from the witness stand and it being practically impossible to have Mr. Prowd to testify since he could not be found for the service of the subpoena *ad testificandum*, the appellant requested the hearing officer to admit its oral and documentary evidence into evidence, the hearing officer granted the application. The court entertained final argument after which the hearing officer in its ruling held appellant liable for wrongful dismissal as quoted below.

“FINDINGS

The relevant fact is that complainant, Morris N. Barsi-Giah, Jr. was employed by defendant/management (GN Bank) on June 6, 2016 as audit officer with the salary of US\$780.00 (Seven Hundred Eighty United States Dollars).

The defendant/management (GN Bank) dismissed the complainant on April 17, 2017 for being a part of the fraud that took place in the finance department and not conducting a detailed investigation before dismissing complainant Morris N. Barsi-Giah, Jr. The defendant/management as [opined] by the Honorable Supreme Court of Liberia on gross breach of duty by employees.

RULING

Wherefore and in view of the foregoing, it is our holding that based on the documentary evidence adduced during hearing of the subject matter coupled with the testimonies of witnesses, it is our candid opinion that defendant/management (GN Bank) is held for wrongful dismissal of former employee Morris N. Barsi-Giah, Jr. The defendant/management (GN Bank) is hereby ordered that complainant Morris N. Barsi-Giah, Jr. be reinstated with all his entitlements and all benefits as if he was not dismissed or in lieu of reinstatement be paid the aggregate of his monthly salary for 12 months in the amount of US\$9,360.00 (Nine Thousand Three Hundred and Sixty United Dollars).

RELIANCE

Part IV, Chapter 14, Section 14.10 of the Decent Work Act.

AND IT IS HEREBY SO ORDERED.”

The appellant bank excepted to the above ruling and filed a petition for judicial review before the National Labour Court. The principal errors assigned by the appellant bank in its petition are that the hearing officer erroneously ignored the testimony of the appellee that he was employed as an audit officer under whose watchful eyes the fraud was committed; that the appellee investigated the fraud and confirmed the commission of the act thereby admitting to his failure to detect fraud; that the conduct of the appellee having caused losses to the appellant bank, the law supports his immediate dismissal; that Merlyne Dalamey, a subpoenaed witness who could not be located for service of the writ of subpoena *ad testificandum*, testified in her own case of wrongful dismissal that the appellee is the referenced unknown staff who was involved in the fraud; that Merlyne Dalamey’s testimony can be found on records of her case presided over by Hearing Officer Nyensway Nagbe and the present Hearing Officer, Boakai Sheriff. The appellant bank gave notice to the National Labour Court that it will request for a subpoena *duce tecum* on the records of the Merlyne Dalamey’s case. The appellant then prayed the trial court to reverse the ruling of the hearing officer for reasons stated herein.

The appellee filed his returns to the petition for a judicial review and averred that the appellee was part of a two-man committee that investigated the fraud and found three staffs and two customers culpable of the commission of the crime which facts were

established during the investigation; that there was no evidence to link the appellee to the fraud; that the appellee denied any admission of his failure to detect the fraud; that the appellee was not accorded due process prior to his dismissal by the appellant bank; and that the testimony of Merlyne Dalamey referenced by the appellant is a mere speculation and hearsay which are not admissible. The appellee therefore prayed the National Labour Court to deny and dismiss the appellant's petition for judicial review.

After a hearing on the petition and the returns thereto, the trial court affirmed the ruling of the hearing officers as follows:

“This court having listened carefully to the legal argument put forth by the parties has decided on four (4) issues for its determination as follows:

Whether or not negligence and breach of duty are grounds for dismissal of an employee?

Whether or not respondent/complainant was afforded due process of law as required by 1986 Constitution of Liberia?

Whether or not petitioner/management prove its allegation that respondent/complainant Morris N. Barsi-Giah, Jr. was involved in the fraud syndicate?

Whether or not the denial of the bank witness' testimony in the instant case constitutes a reversible?

In addressing the first issue, this court says, section 14.3 of the Decent Work gives grounds for the immediate termination of an employee, which states: ‘an employer will immediately terminate the employee’s employment for grave misconduct or which makes it impossible to continue or to resume the necessary relationship of mutual trust and confidence between (i) the employee and employer; (ii) the employee and other employees of the employer.

Upon a careful perusal of the case file and as found in respondent/complainant’s returns number 4, 5, 6, & 7 respectively, it can clearly be seen that there was never a single day that respondent/complainant name was ever mentioned by any of the accused

witnesses as being a part of the fraud syndicate referred to and touching on the issue as not performing his duty. This court says, the records before it shows that respondent/complainant did perform his duty at which time a report was submitted to petitioner/management on November 7, 2016 and said report was buttressed by a commit made by those involved in the fraud syndicate by stipulating a payment schedule to retribute the amount that was criminally take away when they were arrested by the police. Copy of said report which is attached to respondent/complainant[‘s] pleading. Respondent/complainant says that petitioner[‘] three witnesses’ testimonies did not mention anything to the extent that respondent/complainant was involved in the syndicate as can clearly be seen from sheets 25, 35, 43, & 54 minutes of court which is a clear demonstration that indeed respondent/complainant did exercise due diligence in detecting and reporting fraud as it is clearly demonstrated by R/1 in bulk. Respondent/complainant also says that the so-called testimonies made by Merlyne Dalamey that respondent/complainant Morris N. Barsi-Giah, Jr. is the referenced unknown staff who was involved in the fraud is a mere speculation and hearsay; which is not admissible under our law as the testimonies of petitioner/management three witnesses only point to the involvement of Justin Smith, Niami Y. Sondah, Williams Prowd, Madeliene James and Merlye Dalamey in the fraud syndicate of which they have commenced the payment in keeping with the payment stipulation which payment totally exonerates respondent/complainant.

In addressing issue number two this court answers in the negative. Article 20 subparagraph (a) of the 1986 Constitution says 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 the provisions laid down in this Constitution and in accordance with due process of law.

In the instant case respondent/complainant was suspended by petitioner/management on the 29th day of December 2016, subsequently followed by his dismissal on the 17th day of April, A. D. 2017 without being investigated in any form or manner.

Touching on issue number three, that is whether or not petitioner/management proved its allegation when he said that respondent/complainant Morris N. Barsi-Giah, Jr. was involved in the fraud syndicate? This court say No! as same was not proven by the preponderance of evidence as required in labour cases because the burden of proof rests on the one who alleges the facts, and in the instant case, petitioner/management witnesses testimonies did not mention the name of respondent/complainant to be of those involved in the fraud syndicate as can clearly be seen from the minutes of court, which is a clear demonstration that respondent/complainant did exercise due diligence in detecting and reporting fraud as required of him.

In the case: Salala Rubber Corporation, represented by its General Manager and/or its Legal Representative, appellant versus Francis Y. S. Garlawolu, appellee 39 LLR page 609 syl. 3. reads: 'the mere allegations or averments set forth in the complaint do not constitute any proof, but evidence is essential as to the truth of the facts constituting the claim in order to render a judgment with certainty concerning matter in dispute.'

As to the fourth issue, the court says referencing the records before it and during the hearing, the bank made several attempts to get staff who perpetrated the fraud to testify, but it was not forthcoming according to petitioner/management, they believe was orchestrated by an unknown staff who was doing everything humanly possible not be named in the fraud,[assumingly].

Petitioner/management named Atty. Randolph Hightower as the best witness who would have testified to respondent/complainant's involvement in fraud, but when finally contacted, the best witness Atty. Randolp Hightower said that he really did not know respondent/complainant Morris N. Barsi-Giah, Jr. but was only ready to give detail clarity as per his involvement in the preparation of the resolution document where he named the respondent/complainant as 'cash payer' in resolution stipulation document, which has no bearing on the fraud perpetrated nor the names mentioned. Hence, this court does not see where there was a denial of the witness's testimony that would have constituted a reversible error.

In its legal citations, petitioner/management defined [breach] of duty from the Black's Law Dictionary as 'any violation or omission of a legal or moral duty. More particularly, the neglect or failure to fulfill in a just and proper manner the duties of an office or fiduciary employment'. What comes to mind is the fact that petitioner/management having clue or knowledge that the respondent/complainant was involved, why did they include him on the two men committee to investigate those that were involved in the fraud? Another thing is, why respondent/complainant would be a part of the syndicate and the five persons that were involved and have committed themselves to retribute the total amount never in any of their testimonies mentioned the name of respondent/complainant Morris N. Barsi-Giah, Jr. except for Merlyne Dalamey who said assumingly that the unknown person was an employee of the bank.

Another issue argued by petitioner/management is that respondent/complainant Morris N. Barsi-Giah, Jr. did not perform and/or neglected or failed to fulfill in a just and proper manner the duties of an office his fiduciary employment. According to the case file, while the case was before the court, the respondent/complaint counsel requested the hearing officer to order the clerk to issue a writ of subpoena on the bank to produce the original preliminary report of the two men committee which was granted, and the report was brought by GN Bank on February 27, 2018 through Archiebald [Tarwallay] from which report excerpt from Archiebald [Tarwallay] were recorded when he said; 'the documents filed at this hearing is the original document and that it bears my signature. The two persons involved with the preliminary investigative report of the suspected fraud were Archiebald [Tarwallay], Audit Manager

and Mr. Morris N. Barsi-Giah, Jr. then Audit Officer. After the preliminary investigation was made to petitioner/management by the investigative team, during the investigation I interacted with two of the accused and they are Niami Sondah and Merlyne Dalamey. These interactions were not involving the respondent/complainant. In other words, the respondent/complainant was not involved. The respondent/complainant in support of his claim, testified, identified and confirmed the instruments which were marked by the hearing officer to form a cogent part of the

records as filed in bulk C/3 and C/4 and admitted into evidence upon respondent/complainant's counsel request.

This court say without admitting that respondent/complainant Morris N. Barsi-Giah, Jr. was involved in the fraud syndicate, why was he then made a member of two-men committee established by petitioner/management to investigate those accused of the fraud especially those who admitted to the act? Are we saying that the alleged perpetrators who volunteered to retribute the amounts, which they have commenced paying, were so much in love with respondent/complainant that they agreed to leave out his name during the entire investigation, except of Merlyne Dalamey who only assumed that the unknown person could have been Morris N. Barsi-Giah, Jr. without any proof? Why was the accused not given due process to face the one person who accused him?

Wherefore and in view of the foregoing, it is the holding of this honorable court that based on the documentary evidence adduced during the hearing coupled with testimonies of witlessness, it is the candid opinion of this court that petitioner/complainant (GN Bank) is hereby held liable for wrongful dismissal of the respondent/complainant (Morris N. Barsi-Giah, Jr.). Petitioner/management is ordered to reinstate respondent/complainant with all of his entitlements and benefits as if he was never dismissed or in lieu of reinstatement be paid the aggregate of his monthly salary for twelve months plus amounting to USD9,360.00 (Nine Thousand Three Hundred Sixty United States Dollars), including legal interest and costs..."

It is from this final ruling of the National Labour Court that the appellant noted its exceptions and announced an appeal to this Court of last resort. The appellant bank has assigned a nine-count bill of exceptions which can be summarized as follows:

That the trial judge erred when she ignored the contention of the appellant that the refusal of the hearing officer to allow the appellant's witness, Randolph Hightower, amounted to suppressing and denying the appellant's right to present evidence in its defense; that the trial judge erred when she ignored the fact that the appellee contradicted himself with respect to whether or not he interacted with the accused fraudsters during the preliminary investigation conducted by the appellant bank; that the trial judge erred

when she ignored the argument of the appellant that the appellee fraudulently acquired documents from appellant bank and introduced same into evidence during the hearing at the Ministry of Labour; that the trial judge erred when she ruled that the appellee, though under accusation, was made a part of the two-man investigation team to conduct the preliminary investigation which suggests that the trial judge was misled with the facts of the case; that quite to contrary, the appellee's name surfaced after the appellant's preliminary investigation and after having forwarded the matter to the police at which time a settlement document was prepared by Randolph Hightower; that the trial judge erred when she characterized the testimony of Merlyne Dalamey that the unknown staff referenced in the settlement document was the appellee as a mere speculation and hearsay which she allegedly made during the hearing of her own wrongful dismissal action; that the trial judge erred when she relied upon the case *Salala Rubber Plantation v. Francis Garlawolu*, 39 LLR 609 which is not applicable to the facts of the present case; that the trial judge erred when she ignored the law which provides that "an employer shall not retain in its employ an employee in the capacity of an auditor who failed to perform his duties as in the case of the appellee; that the trial judge erred when she ignored the gross misconduct of the appellee which resulted into substantial losses to the appellant, a ground for immediate dismissal under the law; and the trial judge erred when she ignored the admission of the appellee for his failure to detect/uncover and report fraud.

From the review and analysis of the parties' arguments as contained in their briefs and arguments made before this Court, we are called upon to determine a singular issue which is whether the trial judge erred when she ruled that the testimonies of appellant's witnesses were based on hearsay and assumptions and therefore inadmissible into evidence?

The appellant's principal contentions are that the trial judge erred when she ignored the fact that its material witness, Randolph Hightower's testimony was dismissed by the hearing officer on grounds that the witness had testified on the direct examination that he (witness) does not really know the appellee whose name he had mentioned in the stipulation document. It is also the contention of the appellant that the witness was material to its case in that he prepared the stipulation document in which Merlyne Dalemay David declared that the appellee had admitted to the fraud and has agreed to a settlement; that to have dismissed the testimony of its material witness was prejudicial to its defense in establishing that the appellee had committed gross misconduct and a breach of duty. On the other hand, the appellee contended that the witness having

testified that he does not really know the appellee, he was not the best evidence to further testify in the case as his testimony would amount to hearsay.

In passing on the appellant's exception to the ruling of the hearing officer, the trial judge reasoned that the witness having testified that he really does not know the appellee, but that he was willing to clarify his involvement in the preparation of the stipulation document which designated the appellee as a "cash payer", were such testimony to be allowed, it would have no bearing on the fraud perpetrated by the accused persons who were forwarded to the police for criminal investigation; and that the failure by the appellant to produce Merlyne Dalamey to testify in the case renders the allegation levied against the appellee as mere allegations which if allowed would result into speculation, conjecture and/or uncertainty; and that a judgment in a court of law must be based on evidence which established proof of the allegations made by the parties to a dispute.

While we agree with the trial judge's stance that judgment of a court of law must be based on evidence that established the proof of the allegations made by a party *Reynolds v. Garfueh*, 41 LLR 362 (2003), *Universal Printing Press v. Blue Cross Insurance Company*, Supreme Court Opinion, March Term, A.D. 2015, we are concerned with that aspect of the trial judge's ruling that had the hearing officer to allow the appellant's witness to continue his testimony, the witness having said that he does not really know the appellee, then would have amounted to a hearsay evidence or that such testimony would have no bearing on the case of fraud perpetrated by certain employees and customers of the appellant. We inquire as to the basis of this line of reasoning in the face of the undisputed fact that this witness prepared the stipulation document which was a result of the witness' effort to negotiate a settlement between the accused persons and the appellant?

Our concern stemmed from the fact that the perpetration of fraud by certain employees and customers in the appellant bank was investigated by the appellee and another staff; and that the report of the preliminary investigation was not only conceded by the perpetrators, but that when the matter was forwarded to the police for a criminal investigation, a co-conspirator in the crime allegedly divulged the complicity of the appellee. It is alleged that when the appellee became aware that his name had surfaced during police investigation, he negotiated through Merlyne Dalamey, a co-conspirator, in an effort to conceal his identity notwithstanding his willingness to make settlement. It is also alleged that the appellee made the first settlement of US\$2,000.00 which was short delivered by US\$1000.00 by Merlyne Dalamey, the co-conspirator. To our mind,

these allegations by a co-conspirator allegedly communicated with Randolph Hightower not only have bearing on the fraud committed at the appellant bank, but that the testimony of the appellant's witness would therefore operate within the contemplation of the hearsay exception as follows:

“Statements made out of court and offered in evidence through a witness or a writing not to establish the truth of the matter stated but to establish the fact that the statement was made, is not to be excluded as hearsay under paragraph 1 of this section” *Civil Procedure Law Revised Code:1:25.7(4)*.

“A statement by a person who is not a party to a suit and is not available to testify at trial, discussing a matter that is within the declarant's personal knowledge and is adverse to the declarant's interest; such a statement is admissible into evidence as an exception to the hearsay rule” *Black's Law Dictionary, Ninth Ed. Page 469*.

“A declaration is an unsworn statement made by a party to a transaction or by one having an interest in the existence of some fact in relation to the transaction. A declaration is the assertion or statement of a fact, whereas an admission is a voluntary acknowledgement made by a party of the existence of certain facts which are inconsistent with his or her innocence or the position that he or she is attempting to establish in the case and, therefore, amounts to proof against such party. An admission has also been defined as a statement, oral or written, or conduct of a party or his or her representative, suggesting any inference as to any fact in issue or which is relevant or is deemed to be relevant to any fact, made or on behalf of any party to any proceeding...

A party's admissions are always competent evidence against him or her, and they may be used either as substantive evidence, or for purposes of impeachment.” *29A AM JUR Particular Types of Evidence, Generally §767*.

Moreover, it is also alleged that the Merlyne Dalamey, the co-conspirator in the commission of theft at the appellant bank, who disclosed to the appellant's witness, Randolph Hightower, of the appellee's alleged complicity in the crime was reported to have instituted an action of wrongful dismissal against the appellant. In that trial, the said co-conspirator is alleged to have testified to the complicity of the appellee in the act of theft against the appellant bank at the Ministry of Labour. In other words, aside from the fact that Merlyne Dalamey was alleged to have informed the appellant's witness

other complicity of the appellee in the fraud, the appellant gave notice to the National Labour Court for a subpoena of the records in the hearing of the wrongful dismissal complaint filed by Merlyne Dalamey in which she allegedly testified to the complicity of the appellee in the fraud. The records show that the trial judge referred to such records in her final ruling as being an assumption.

This Court has held in numerous opinions to include *Jung Park et al v. Brumskine, Supreme Court Opinion, March, A.D. 2010* that “every court (including administrative tribunal) is bound to take judicial notice of its own records; no evidence of a fact of which the court will take such notice need be given by the party alleging its existence.” It follows that appellant having given notice of the existence of such records at the Ministry of Labour, the National Labour Court ought to have, *sua sponte*, taken judicial notice and ordered the Ministry or the hearing officer to produce, if any, that record containing the said testimony; rather than declaring such testimony without a review as being an assumption. It is a long settled tenet of this Court that labor hearing, like all other administrative hearings, concerns itself with fact-finding that conduce fairness and justice and does not concern itself with the application of the rigid rules of evidence in applicable to cases at law. *Johnson et al v. Lamco J. V. Operating Company 31 LLR 735 (1984); The Liberia Institute of Certified Public Accountants of Liberia v. The Ministry of Finance et al, 38 LLR 657 (1998); Vijayaraman and Williams v. The Management of Xoanon Liberia (Ltd), 42 LLR 41 (2004; His Honor Nathaniel Dickson et al v. Her Honor Comfort S. Natt et al, Supreme Court Opinion, March Term, A.D. 2016.*

In view of the all that have been said, it is our considered opinion that the National Labour Court erred when it failed to have recognized the exceptions to the hearsay rule and that the said court ought to have remanded the case to the Ministry of Labour to allow the appellant’s witness, Randolph Hightower, to testify and to order the said Ministry to take judicial notice, if any, of the testimony of Merlyne Dalamey or in the alternative, subpoenaed the appearance of the said Merlyne Dalamey so as to afford the appellee to cross examine the witness in keeping with due process of law. We so hold.

WHEREFORE and in view of the foregoing, the final ruling of the National Labour Court is reversed. This case is remanded with instruction that the lower court shall order the Ministry of Labour to conduct a new investigation. The Clerk of this Court is ordered to send a mandate to the court below commanding the judge presiding therein to resume jurisdiction over this case and enforce the Judgment of this Opinion. Costs shall abide the final determination of this case. AND IT IS HEREBY SO ORDERED.

When this case was called for hearing, Counsellor Alexandra K. Zoe of the Zoe & Partners Law Firm appeared for the appellant. Counsellor Mamee S. Gongbah, Jr. of the Liberty Law Firm appeared for the appellee.

Reversed and remanded