

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 95-31157  
Summary Calendar

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CATRINA M. REED,

Plaintiff-Appellee,

versus

R.C. JOHNSON, ET AL.,

Defendants,

WESLEY C. JOHNSON, d/b/a  
African Harvest,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
USDC No. 93-CV-1652 K  
- - - - -

January 14, 1997

Before DAVIS, EMILIO M. GARZA and STEWART, Circuit Judges.

PER CURIAM:\*

Following a bench trial, the district court found Wesley Johnson and African Harvest, Inc., liable for violating the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 206 and 207. Johnson argues that the

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\* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

district court erred in striking African Harvest's brief. African Harvest has not filed a notice of appeal and thus the question whether the district court erred in striking African Harvest's answer is not properly before us. See Fed. R. App. P. 3(b). Reed's motion to strike the portions of the brief relating to this issue is GRANTED.

Johnson also argues that the district court erred in excluding evidence concerning whether African Harvest was an enterprise exempt from the FLSA provisions under 29 U.S.C. § 213(a)(2)(iv) (West 1965), thereby denying Johnson the opportunity to present a defense. This exemption was repealed in 1989. 29 U.S.C. § 213(a)(2) (West Supp. 1996). Johnson's appeal is without arguable merit and is frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). The appeal is DISMISSED as frivolous. 5th Cir. R. 42.2. We AWARD Reed appellate attorney's fees and REMAND to the district court for a determination of the amount of the award.