

MASON *v.* MAYOR, ALDERMEN, COUNCILLORS AND CITIZENS
OF FREETOWN

WEST AFRICAN COURT OF APPEAL (Smith, C.J. (Sierra Leone), Lewey,
J.A. and Robinson, J. (Nig.)): December 10th, 1951
(W.A.C.A. Civil App. No. 2/51)

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[1] **Employment—termination—on notice—reasonable notice—factors to be considered:** Where a person is engaged without any specific period as to notice being provided, his employment may be terminated in one of two ways: if he is guilty of misconduct, such as stealing from his employer, or flagrant disobedience, he may be summarily dismissed; or he may be dismissed on reasonable notice, and what is reasonable depends on a number of factors such as length of service, salary, position held, the customary practice in his particular job, and the scarcity of employers for his type of work (page 140, lines 9–34).

[2] **Employment—termination—summary determination by employer—misconduct or flagrant disobedience by employee good grounds:** See [1] above.

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The appellant brought an action in the Supreme Court against the respondents to recover arrears of salary, damages for wrongful dismissal and an account of superannuation payments.

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The appellant was employed by the Freetown City Council. The council, acting on certain unfavourable remarks made against the appellant by a commission of inquiry, before which the appellant was given no opportunity to appear to answer criticisms, reduced his salary. The appellant protested vigorously but continued to draw the reduced salary until his services were terminated for reasons which included disobedience; he received one month's salary in lieu of notice. He then instituted the present proceedings against the respondents to recover damages for wrongful dismissal, payment of the difference between his original and his reduced salary and an account of what was due him under the superannuation fund. The Supreme Court (Wright, Ag.J.) held that the respondents were justified in summarily dismissing the appellant for wilful disobedience, and that he was entitled only to the money due to him from the superannuation fund.

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On appeal, the West African Court of Appeal considered whether the appellant had in fact been summarily dismissed, or whether he had been dismissed on notice and, in which case, whether the payment of one month's salary in lieu of notice was reasonable in the circumstances of the case.

Case referred to:

(1) *Cole v. Freetown City Council*, 1948, followed.

Legislation construed:

Freetown Municipality Ordinance (Laws of Sierra Leone, 1946, *cap.* 91), s.43, as substituted by the Freetown Municipality (Amendment) Ordinance, 1948 (No. 4 of 1948), s.6:

The relevant terms of this section are set out at page 139, lines 37-39.

R.B. Marke for the appellant;
Zizer for the respondents.

SMITH, C.J. (Sierra Leone):

I am of the opinion that this appeal must be allowed in so far as it relates to the finding of the learned judge that the appellant was not entitled to any damages for wrongful dismissal. The learned judge found that he was summarily dismissed by the City Council and that the City Council, on the facts, were entitled so to dismiss him. That finding appears to me to be clearly in conflict with evidence as to what the City Council actually did.

On April 11th, 1950, a motion was carried that the appellant's services with the council be terminated. The next day, the Town Clerk wrote the appellant a letter informing him of the decision of council, and this is what he wrote:

"I am directed to inform you that at a meeting of the City Council held yesterday, April 11th, 1950, it was resolved that your services with the Council be terminated under s.43 of the Freetown Municipality Ordinance, 1945. Accordingly, your services are hereby terminated as from today.

You will be paid salary up to and including April 30th, 1950, and a month's salary in lieu of notice on application to the City Treasurer.

The question of your rights under the Freetown Municipality Officers' Superannuation Scheme will be considered, and I shall address you in due course."

I read that letter not as a summary dismissal for misconduct, but as a termination of service, giving salary in lieu of notice. Section 43, under which the Council acted, gives it the discretion to appoint officers and employees and says it—"may at any time in its discretion, terminate such appointments." There are two or three classes of officer to which special terms apply, but the appellant was not one of them. Ordinary employees of the council may be

engaged and discharged at the discretion of the council. That, in my view, puts the council in exactly the same position as an ordinary individual engaging and discharging such employees as he wants at his discretion.

5 Well now, how can that discretion be exercised in the eyes of the law? The employer may enter into formal contracts with his employees providing for specific notice to be given on either side. It may be so many weeks or days or months, but the council did not do that in this case. Secondly, he may engage a person without any
10 specific provision as to notice, in which case the law will permit an employer to terminate employment in one of two ways according to the circumstances. If an employee is guilty of misconduct, such as stealing from his employer, or flagrant disobedience, an employer may dismiss him summarily without any notice. But if the case is not
15 such that the employer wishes to act summarily, he may dismiss him on giving reasonable notice. Well, what is or is not reasonable notice depends on a number of circumstances. First, the position which an employee holds, and secondly, what is the customary practice in employment of that type. For instance, it is customary that domestic
20 servants are engaged monthly and get a month's notice. That is one instance of it. Well, I say, there is no fixed general term for all types of employment. A reasonable notice therefore depends on the particular job and the particular circumstance of the employment. It may be that the state of affairs was such that the City Council
25 could properly have dismissed the appellant summarily. It is not necessary for me to consider that, because in effect they did not do so; they dismissed him on notice. The question is, did they give him reasonable notice? Here was a man who had been working for the council and its predecessor for 19 years. He was on a salary
30 of over £200 a year. He was not a head of department, but was the second man in his department, and he was engaged in a type of work for which there are only very few employers in this country. He was a waterworks man. He might have considerable difficulty in finding other suitable employment.

35 Taking all this together and following the analogy of the case of *Cole v. Freetown City Council* (1) in 1948, I consider that six months' notice should have been given and the measure of the appellant's damages is the difference between the six months' salary in lieu of notice which he ought to have got and the one month's
40 salary awarded to him. I have not worked out the arithmetic of

this, but that is the principle, and, if necessary, the working out can be referred to the Master.

LEWEY, J.A.:

I entirely agree with what has fallen from the learned Chief Justice, and I concur in his judgment for the reasons he has given. I desire only to add a few words upon the question of wrongful dismissal, as to which it seems to me there may be some confusion of thought in this case. 5

It is not necessary, in my view, that wrongful dismissal should be limited to cases where there has been the exercise of non-existent powers of dismissal. It is more often concerned with powers which are quite properly invoked, but not properly exercised. One of the most common examples is the dismissal of an employee in circumstances which justify the dismissal, but without the necessary or due notice being given, or wages paid in lieu thereof, to which the employee is entitled either by law or by the terms of his contract with his employers. 10 15

In the present case, I must say that it seems to me that the City Council was trying to act fairly to the appellant, and that it thought one month's notice sufficient. It gave him a month's wages in lieu. But the point is, however worthy its motives may have been, that does not prevent it from being challenged as to the notice or salary given. The employee can still come to the court and say that he has been wrongfully dismissed because the notice or salary, in all the circumstances of his employment, is unreasonable. 20 25

That, in effect, and looking at this case broadly, is what the appellant has done here; and because of that it becomes necessary for this court to look into the question, and to decide what is or what is not reasonable, whether a month's wages or more is the proper sum to be paid in lieu of notice. I agree with the learned Chief Justice that in this case six months' wages is reasonable. 30

ROBINSON, J. (Nig.):

I entirely agree with the judgment of the learned Chief Justice. The order will be that the appeal is allowed and, the judgment of the court below, in so far as it relates to the issue of wrongful dismissal, set aside and judgment entered for the appellant for six months' wages in lieu of notice and costs. 35

The appellant will have the costs here, and will also have the costs of this particular issue in the court below. The other orders 40

made by the court below this court is not called upon to disturb and should remain.

Appeal allowed.

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FOULAH v. KOLIFA ROWALA CHIEFDOM TRIBAL AUTHORITY

SUPREME COURT (Luke, Ag.J.): December 13th, 1951
(Civil Case No. 32/51)

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[1] Evidence—burden of proof—false imprisonment—burden on plaintiff to show imprisonment without lawful excuse: In an action for false imprisonment, the onus is on the plaintiff to show that he was imprisoned without lawful excuse (page 146, lines 2–3).

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[2] Jurisprudence—justice—rules of natural justice—judge in own cause contrary to natural justice: It is a breach of one of the principles of the administration of justice for a person to sit as a judge in his own cause (page 145, lines 4–6).

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[3] Tort—false imprisonment—burden of proof—burden on plaintiff to show imprisonment without lawful excuse: See [1] above.

[4] Tort—false imprisonment—definition—complete deprivation of liberty without lawful excuse: False imprisonment is complete deprivation of a person's liberty for any length of time without lawful excuse (page 145, lines 40–41).

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The plaintiff brought an action against the defendants to recover damages for false imprisonment.

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A dispute arose between the plaintiff and the Paramount Chief of the defendant tribal authority over a matter within a native court's jurisdiction. The plaintiff was asked by a messenger to attend the native court of the area to answer complaints brought by the Paramount Chief. The plaintiff was taken to the court, asked what defence he had to the complaints, and then fined. As he was unable to pay the fine immediately, he was imprisoned until it was paid. When he was released, he instituted the present proceedings against the defendants for damages for false imprisonment.

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The plaintiff contended that he was not properly summoned to appear before the native court, was fined without a trial, and was then imprisoned without lawful excuse.

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The defendants maintained that the plaintiff was orally summoned before the native court in compliance with s.28 of the Native

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