is common form throughout West Africa for the employment by mercantile companies of their storekeepers, clerks and produce buyers. Such agreements have often been put in evidence before the courts. I cannot recollect any case, in my many years upon the Bench, in which a court has held, or in which it was suggested that a court should hold, that such an agreement constituted a yearly hiring. On the contrary they have been held to be terminable on the giving of the notice specified therein.

[COURT OF APPEAL]

FREETOWN COLD STORAGE CO. LTD . . . . *Appellants*

v.

BRIGHT'S CONSTRUCTION AND FLOWER GARDEN CONTRACTORS . . . . . *Respondent*

[Civil Appeal 27/60]

Contract—Breach of contract—measure of damages—Multiplicity of actions.

Appellants and respondent entered into a written contract whereby respondent agreed to do certain work for appellants for the sum of £535 4s. 0d. to be paid in four equal instalments of £133 16s. 0d. each. After respondent had commenced work and received two instalments totalling £267 12s. 0d. appellants discharged him in breach of the contract. Respondent brought suit in the Supreme Court, which gave judgment for them in the amount of £405 11s. 6d. Appellants appealed on the ground, inter alia, that the damages were excessive.

Held, (1) that respondent's damages for breach of the contract should be arrived at by taking the last two instalments of the contract price (£267 12s. 0d.) and subtracting therefrom the cost of hiring 12 labourers at 6s. 4d. each per day for 52 days (£197 12s. 0d.), leaving a total of £70 0s. 0d.;

(2) that, though respondent's claim for £37 9s. 6d. for missing tools was a claim in tort, the trial judge acted properly in entertaining it in order to avoid multiplicity of actions; and

(3) that the trial judge was correct in awarding respondent £50 10s. 0d. for the supply of 101 bags of grass.

Edward J. McCormack for the appellants.
Respondent in person.

BENKA-COKER AG. C.J. In an action instituted in the Supreme Court of Sierra Leone by the above-named respondent, Bright Construction and Flower Garden Contractors (in fact Rowland Mansfield Bright), against the appellants claiming damages for breach of contract the Supreme Court gave judgment for the respondent and awarded the respondent £50 general damages and £355 11s. 6d. special damages, making in all £405 11s. 6d.

The appellants appealed against the said judgment on the following grounds: (i) that the decision is against the weight of evidence; (ii) that the damages are excessive.

On the hearing of the appeal counsel for the appellants by leave of the court added and argued the following ground: *Particulars of misdirection.* The learned trial judge did not award damages on the basis of a quantum meruit as he should have done.

On August 14, 1958, the appellants and the respondent entered into a written agreement whereby the appellants agreed to employ the respondent to carry

out cleaning, ploughing and planting at the appellants' compound at Knox Farm, King Tom, and to pay the respondent the sum of £535 4s. 0d. (in four equal instalments of £133 16s. 0d.) and the cost of any grass supplied by the respondent. The work was to be carried out by the respondent within four months of 26 days.

The sum of £535 4s. 0d. was the sum total of the detailed estimate submitted by the respondent for the carrying out of the work and the details of the estimate are as follows:

12 labourers @ 6/4 per day for four months of 26 days	£395 4s. 0d.
Transportation of clearance @ 45/- per trip for 20 days	£45 0s. 0d.
Ploughing machine on hire @ £5 per acre for three acres	£15 0s. 0d.
Supervision for four months @ £20 per month	£80 0s. 0d.
	£535 4s. 0d.

On October 14, 1958, i.e., two months before the contract was to be fully performed, the appellants' solicitor wrote to the respondent terminating the agreement before the respondent had completed the execution of the work.

Appellants' counsel having in this court admitted that there was a breach of the contract by the appellants as found by the trial judge, it is only for us now to decide whether the damages awarded are excessive.

It is not disputed that the respondent has received the sum of £267 12s. 0d. under the contract and that if the respondent had been allowed to complete the execution of the work, he would have been entitled to receive a further sum of £267 12s. 0d. and nothing more. The appellants' contention is that the respondent should not have been awarded general damages of £50 and that the amount for special damages should have been reduced by the amount he would have expended in executing the rest of the contract. The appellants' claim in this action is for damages for breach of contract.

The loss to the plaintiffs in this case is the opportunity to earn the last two instalments of £133 16s. 0d. each—£267 12s. 0d. less the cost of hiring of 12 labourers @ 6s. 4d. each per day for two months of 26 days each= £197 12s. 0d., i.e., £70 0s. 0d. As regards the claim for missing tools, the only submission made by the appellants' solicitor before us is that this is a claim in tort and does not arise out of the breach of the contract. We agree that this is not properly a loss arising out of the breach of the contract by the appellants, but as we are of opinion that an action could properly have been instituted in tort for conversion, and as we see no reason for interfering with the trial judge's finding in this regard, we think that the trial judge acted properly in entertaining this claim in order to avoid multiplicity of actions.

We confirm the award of £37 9s. 6d. The appellants have not disputed in this court liability to pay the sum of £50 10s. 0d. claimed by the respondent for the supply of 101 bags of grass, and we confirm the award of £50 10s. 0d. in that regard.

The net result would therefore be as follows: (a) damages £70 0s. 0d.; (b) missing tools £37 9s. 6d.; (c) 101 bags of grass £50 10s. 0d. Total £157 19s. 6d.

We order that judgment should be entered in the court below for the respondent in the sum of £157 19s. 6d. instead of £405 11s. 6d. The appellants to have the costs of this appeal to be taxed.