

IN THE HIGH COURT OF SIERRA LEONE
GENERAL CIVIL DIVISION

BETWEEN:

DR. JAMES D. ROGERS - PLAINTIFF
AND
BANK OF SIERRA LEONE - DEFENDANT:

J.B. JENKINS-JOHNSTON & CO. FOR THE PLAINTIFF

RENNER-THOMAS & CO. FOR THE DEFENDANT

JUDGMENT DELIVERED THIS 14th DAY OF JANUARY, 2011

ROBERTS. J.A.

This action was commenced by a Writ of Summons issued on the 25th January 2009 in which the plaintiff claims as follows:

- “(1) A DECLARATION that the Plaintiff is entitled to a revision of his Pension as an Ex-Governor of the Bank of Sierra Leone correspondingly with the recent revision upwards of the salary of the Incumbent Governor of the Bank of Sierra Leone in accordance with the Policy decision of the Emergency Meeting of the Board of Directors of the Bank of Sierra Leone held on 12th November 1985.
- (2) FOR A DECLARATION that the words “current provisions relating to retired Governors and Deputy Governors”. Contained in paragraph two(ii) of the Plaintiff’s “Terms and Conditions of Service” attached to the letter dated 24th April 2003 from the Secretary to the President to the Plaintiff forwarding his Instrument of Appointment as Governor of the Bank of Sierra Leone, under the rubric “GRATUITY AND PENSIONS” to wit:
- “you will be entitled to payment of gratuity and pension in accordance with the “current provisions” relating to retired Governors and Deputy governors of the Bank of Sierra Leone.”

include the policy decision of the Board taken at its Emergency Meeting held on the 12th November 1985, as reflected in the minutes of the said meeting at Clause B(v) thereof.

- (3) FOR AN ORDER that the Pension of the Plaintiff as Ex-governor of the Bank of Sierra Leone be revised upwards correspondingly to reflect the increase from Le4,335,000/00 per month (which was the take home pay of the Plaintiff as Governor up to his removal from Office in 2008,) to \$7000/00 (approx. Le21,000,000/00) per month (take home pay of the present incumbent).
- (4) FOR ANY ORDER or Further Order as the Court may deem fit in the circumstances.
- (5) THE COSTS OF THE ACTION.”

The Defendant the Bank of Sierra Leone caused an appearance to be entered on their behalf as well as a Defence and Counterclaim dated 4th March and 13th March 2009 respectively. The Plaintiff filed a Reply and Defence to Counterclaim dated 20th March 2009 and then later filed a Summons for directions. The necessary directions were given by order dated 15th June 2009. After compliance with the said directions by the parties the action proceeded to trial accordingly.

At the trial the Plaintiff testified and called two other witnesses. The Defendant on the other hand called one witness. The parties then filed written addresses as their closing arguments.

In this action the Plaintiff alleges that by an instrument under seal dated 2nd April 2003 (Exhibit A) he was appointed Governor of the Bank of Sierra Leone (the Defendant) by the President for a term of 5 years effective 22nd April, 2003. The Plaintiff further alleges that by letter dated 24th April 2003 the Secretary to the President forwarded to him the said instrument of appointment as well as his terms and conditions of service. The Plaintiff added that the said terms and conditions stated in paragraph two(ii) thereof were as follows:

“ii. GRATUITY AND PENSIONS

You will be entitled to payment of Gratuity and Pension in accordance with the current provisions relating to retired Governors and Deputy Governors of the Bank of Sierra Leone.....”

The Plaintiff further alleges that at the time he was appointed Governor there was in existence a policy decision taken at an emergency meeting of the Board of Directors of the Defendant held on the 12th November 1985 in which the following (among others) was approved.

“B Pension

(v) The Pension of a retired Governor or Deputy governor shall be revised periodically and correspondingly with the revision of salaries of the Governor and Deputy governor of the Bank.....”

The Plaintiff alleged that the above policy applied to him and that he was therefore entitled to a revision of his pension having regard to the take home salary of his successor in office the incumbent Governor. The Plaintiff added that he was removed from office in 2008 and that at that time his take home salary was Le4,335,000 per month; whereas the take home salary of the present Governor of the Defendant is \$7,000 (or Le21million) per month and that his pension should be revised upwards relative to the present governor’s salary consistent with the policy decision of 12th November 1985.

The Defendant on their part reject the Plaintiff’s contention, arguing that though they admit the existence of the said policy decision the same is ultra vires the statutory powers of the Board of Directors of the Defendant and is therefore void ab initio. The Defendant also claim in the alternative that there has been no revision of salary of the Governor as the salary of the incumbent was fixed by the President by special dispensation. The Defendant consequently counterclaimed a declaration that the said Policy Decision of the Board of Directors of the Defendants is void and of no effect.

In dealing with the issues in this action I shall firstly examine the terms and conditions governing the employment of the Plaintiff. It is clear from Exhibit A (the instrument under seal of the President) that the Plaintiff’s appointment was made

pursuant to section 13(1) & (ii) of the Bank of Sierra Leone Act 2000. This section provides as follows:

“13(i) The Governor and Deputy governor shall each be appointed by the President by instrument under the public seal for a term of five years and shall be eligible for re-appointment.

(ii) The Governor and Deputy Governor shall be persons of recognized financial experience and shall be appointed on such terms and conditions, which may not be altered to their disadvantage during their tenure of office, as may be set out in their respective letters of appointment.”

Having reproduced section 12 of the Bank of Sierra Leone Act 2000 it would be useful to refer to the contentions of counsel for the Defendant.

It is contended in argument by counsel for the Defendant that though there may have been in existence a Policy Decision (made on the 12th November 1985) the same was ultra vires the powers of the Board, arguing that under the Bank of Sierra Leone Act 1970 (which was in force during the period and the policy decision was purportedly made) it was only the President who had powers to fix the terms and conditions of service of the Governor. In dealing with this contention by counsel for the Defendant I have had to read section 10(1) of the Bank of Sierra Leone (Amendment) Act 1970 which provides as follows:

“The Governor and Deputy Governor shall each be appointed by the (Governor-General) by instrument under the public seal for a term not exceeding five years and shall be eligible for re-appointment. They shall be persons of recognized financial experience and shall be appointed on such terms and conditions, which may not be altered to their disadvantage during their tenure of office as may be set out in their respective letters of appointment.”

This section suggests that it is the President (Governor General) in his instrument who shall “set out” the terms and conditions of the Governor. In the case of the Plaintiff, the Secretary to the President forwarded his terms and conditions in a

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letter dated 24th April, 2003. In this regard I have made the following salient observations.

Firstly, the said terms and conditions forwarded to the Plaintiff contained the provision which states that the Plaintiff shall be entitled to "gratuity and pension in accordance with current provisions relating to retired Governors....." This in my view is a tacit acknowledgement in the part of the office of the President that not all the terms and conditions of the Plaintiff would be found in the letter of 24th April 2003 and its attachment, but that one would have to refer to the "current" or existing provisions in order to ascertain what clearly are the specific terms and conditions especially relating to gratuity and pension of Governors. It is my view in this regard that the "Current Provisions" must refer to such provisions in existence that have been applied by the Defendant institution in respect of retired Governors over the years. And from the evidence of PW 1, PW 2 and PW 3 (who are retired Governor, retired deputy Governor and retired Governor respectively) the Defendant institution had consistently applied the Policy Decision in respect of the gratuity and pension of Governors and Deputy governors.

It is very significant to note here that there is absolutely no evidence that any other guide had been used (over the years) other than that contained in the said Policy Decision. It was also observed (in respect of the letter of 24th April 2003 that the office of the President empowered and recognises the Board in respect to its role in reviewing the said Conditions of Services of Governors and deputy Governors. For this observation I shall refer to the second paragraph of the said letter of 24th April 2003 which reads

"The Board of Directors of the Bank of Sierra Leone may at any time in the future review your terms and conditions of service, pursuant to sub-section (1) of Section 18 of the Bank of Sierra Leone Act, 2000."

The above paragraph as well as the portion of the terms and Conditions of Service headed "Gratuity and Pensions" forwarded to the Plaintiff urged me to come to the conclusion that the Policy decision of the Board was indeed applicable and that the office of the president itself recognised and approved of the role of the Board in

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respect of setting the terms and conditions of Governor and Deputy Governors. Besides (and rather significantly) the Defendant has for over 20 years applying the said policy decision. The evidence of PW 2 and PW 3 confirmed this. According to the evidence, PW3 was Governor from 1995 to 2003 whilst PW1 was Deputy governor for the same period. Of further importance is the evidence of DW1 Andrina Coker who is presently the Deputy governor and she confirmed that the said policy decision has been applied by the Bank although she added that the same had never been approved by the President. This evidence by DW1 that the President never approved the Policy Decision was in my view contradicted by the letter dated 24th April 2003 in which the Office of the President recognised that the Board could review the terms and conditions of the Governor and Deputy Governor accordingly.

Furthermore, having applied the said policy for over 20 years (as confirmed by both Plaintiff and Defence witnesses) the doctrine of estoppel must operate to prevent injustice being done to the Plaintiff. The Defendant must be estopped from now arguing that their act is ultra vires their powers when for all these years they had consistently applied the said Policy Decision. I cannot here resist the temptation of again referring to the 2nd paragraph in the letters of 24th April 2003. It is my view therefore that even if it is only the President who could set out the terms and conditions of service of Governors, he had by that letter (of 24th April 2003) cited or delegated such power to the Board to do so, recognising that they could do so under section 18 of referred Act.

It is clear that the provisions of section 10(1) of the Bank of Sierra Leone Act 1970 are in similar terms as section 13 of the current Bank of Sierra Leone Act No. 3 of 2000, especially with regard to the provision that the Governor and Deputy Governor shall be "appointed on such terms and conditions..... as may be set out in their respective letters of appointment".

My reading of the said Acts (the 1970 and 2000 Acts) therefore leave me the view that the position at the time the plaintiff was appointed Governor remains unaltered even under the 2000 Act. This in a way has been confirmed by the

Defendant consistently applying the policy decision since 1985 as confirmed by all the witnesses both for the Plaintiff and the Defendant.

Counsel for the Defendant also contended that the "increase" in salary of the present Governor was a special case "triggered by the special and peculiar circumstances of an incumbent Governor or deputy Governor" and must therefore be distinguished from the regular revision of salary envisaged by the Board in its Policy Decision. I am afraid I find nothing in the Policy Decision or anywhere else for that matter that supports this contention. The decision or act of the President in making special arrangements for the incumbent as regards in terms and conditions of service is nothing new as the same is provided for or perhaps contemplated in section 10 of the 1970 Act and section 13 of the 2000 Act. Also the Policy Decision speaks, provides for and contemplates any revision of salary of Governor and Deputy Governor. The relevant portion of the policy decision provides that:

"(v) The Pension of a retired Governor or Deputy Governor shall be revised periodically and correspondingly with the revision of salaries of the Governor and Deputy Governor of the Bank....."

I find no reason to give it any other interpretation than its ordinary meaning and interpretation. Indeed the spirit and general impression that I got from the Policy Decision is a desire to provide for the regular, consistent and progressive review of the conditions of Retired Governors which said review is measurable in comparison with the conditions of current Governors.

Having perused all the exhibits tendered in this action and having reviewed the evidence led by witnesses of both the Plaintiff and the Defendant and having considered the various Acts referred to I am clear in my mind that the Policy Decision made by the Board on the 12th November 1985 is applicable to the Plaintiff and that he is therefore entitled to a revision of his "Gratuity and Pension" relative to the salary of the present Governor. The Plaintiff's claim in this action therefore succeeds. Also in consideration of the above reasons and foregoing the Defendant's counterclaim must fail.

I therefore make the following orders:

- 1) It is declared that the words "Current provisions relating to retired Governors and Deputy Governors" contained in paragraph two (ii) of the Plaintiff's "Terms and conditions of Service" attached to the letter dated 24th April 2003 from the Secretary to the President to the Plaintiff forwarding his Instrument of Appointment as Governor of the Bank of Sierra Leone includes the Policy Decision of the Board taken at its Emergency Meeting held on the 12th November 1985.
- 2) The pension of the Plaintiff as ex Governor of the Bank of Sierra Leone shall be revised upwards corresponding to reflect the increase from Le4,335,000 per month (which was his take home salary per month at the time of his removal from office) to \$7,000 (or its equivalent in Leones) per month (which is the take home pay of the present Governor of the Bank of Sierra Leone.
- 3) That the said increase referred to in Order 2 above shall take effect from the date of the appointment of the present Governor of the Bank of Sierra Leone.
- 4) The cost of this action shall be the plaintiff's. Such cost to be taxed.



Hon. Justice E.E. Roberts, J.A.