

C.C 164/10 2012 K. NO. 25

IN THE HIGH COURT OF SIERRA LEONE
(GENERAL CIVIL DIVISION)

BETWEEN: -

MOHAMED SAHEED KAMARA - PLAINTIFF

AND

SIERRA RUTILE LIMITED - DEFENDANT

L. Jenkins Johnston Esq. for the Plaintiff

E. Beoku Betts Esq. for the Defendant

JUDGMENT DELIVERED THE ^{15th} 27th DAY OF September 2012.

The Plaintiff herein issued a writ of summons dated 15th June 2012 against the Defendant Company claiming the following reliefs:

1. Damages for Breach of Contract
2. Punitive Damages for Breach of Contract
3. A declaration that the termination of the contract of employment dated 6th August 2009 was unfair and wrongful.
4. Costs.

In his particulars of claim the Plaintiff averred that he was an employee of the Defendant Company from 1st August, 2009 to 28th February 2010 and that prior to his employment with the Defendant Company he was employed at the Special Court as a Security Officer. He averred that he was approached by a **MR. TEDDY WILLIAMS** who was Chief Security Officer of the Defendant Company and who informed him of a job at the Defendant's Headquarters in Mobimbi to head the Company's investigation branch within the Security Unit. The Plaintiff applied for the said job and was interviewed and succeeded in being appointed. He further averred that he subsequently resigned from his job at the Special Court after he got the said appointment in which his letter of appointment dated 6th August 2009 stated, *inter alia*, that "if at the end of the period your performance meets expected standards of Sierra Rutile Limited your contract will be made permanent." The appointment was for a period of 1st August to 30th September 2009.

The Plaintiff further averred that at the end of the period ending 30th September 2009 no appraisal of his performance was made and no query was given to him but rather he received another 3 months contract from the Defendant Company to end on 31st December 2009. He stated that the contract was further extended from 31st December 2009 to 31st January 2010 and then from 31st January 2010 to 28th February 2010 with no reference to the permanent contract promised him.

He further pleaded that after 28th February 2010 he was handed a document entitled "certificate of service." He alleged that by the Defendant's conduct he has suffered loss in that he gave up a more lucrative job with the Special Court and he is now out of work and with no hope to return to the Special Court. He therefore instituted the present action seeking the reliefs already set out.

The Defendant Company entered appearance and filed a defence in which they admitted that the Plaintiff was their employee and was offered a short term contract dated 6th August 2009 and they referred to the variation and the extension of same contained in letters dated 10th October 2009, 30th December 2009 and 20th January 2010 from the said Defendant Company to the Plaintiff. They further admitted that the letter of appointment dated 6th August 2009 provided that if at the end of the Plaintiff's contract as contained therein his performance met expected standards of the Company his contract would be made permanent. Further they admitted that no appraisal was made of the Plaintiff's performance before 30th September 2009 and that he continued to work for the Defendants upon the terms of the contract.

The Defendants went on to aver that it was explained to the Plaintiff that security services within the Defendant Company had been outsourced effective 1st March 2010 and therefore his contract could not be extended as usual. They averred that it was the Plaintiff who requested the certificate of service which they prepared and handed to him. They denied that the Plaintiff has suffered loss as alleged.

The Plaintiff then filed a Judges Summons dated 5th October 2010 in which he prayed for Judgment to be entered against the Defendant Company for the reliefs set out in his writ of Summons pursuant to Order 16 rule 1 of the High Court Rules 2007. The Defendant Company opposed the application. The application was refused and the matter was then set down for trial after compliance by the parties with the court's directions for the conduct of the trial.

At the trial, the Plaintiff testified on his own behalf and tendered his witness statement as Exh K which was used as part of his evidence-in-chief. He elaborated on the facts already set out in his particulars of claim.

Under cross-examination, the Plaintiff admitted that he was informed that the Defendant Company was outsourcing their security services. The witness was made to read the fifth paragraph of his letter of contract Exh B which stated that his appointment will be made permanent subject to his satisfactory performance and he admitted this condition was not included in his other letters of appointment Exh C, D, and E. He further admitted that the said contracts stated that there are no other agreements or promises outside the said letters. He stated that he accepted Exh C because the Chief Security Officer and the Human Resource Manager told him to hold on to his original letter of appointment.

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The witness admitted that the offer of appointment was tentative and that he was told so by the Chief Security Officer.

That ended the case for the Plaintiff.

MR. JOSEPH ASKIA MUNGU DW1, the Senior Human Resources Officer of the Defendant Company testified on behalf of the Defendants. He tendered in evidence his witness statement as Exh L which was used as part of his evidence-in-chief. He told the court that he was the Human Resources Manager during the period in question, and that he and the said **MR. TEDDY WILLIAMS** discussed that they give the Plaintiff a short term contract and the letter Exh B was prepared and handed to the Plaintiff. He stated that during the period of this contract the Board of the Defendant Company decided to outsource the security unit to a private security firm and that the employees within that unit were going to be made redundant.

The witness DW1 further testified that the process of outsourcing and handing over was protracted and since the employees in the unit were still working, they decided to give the Plaintiff a contract extension and letter Exh C was prepared in October 2009 for the period 1st October 2009 to 31st December 2009. He stated that the Plaintiff discussed the issue of his position being made permanent but he was informed by the General Manager that the unit was being outsourced

so there was no need for his position to be made permanent which was the reason why the Defendant Company was extending and varying his contract. He said the Plaintiff accepted the contract extension and variation and worked for the Company until the end of the said contract.

The witness DW1 further stated that a further contract extension was given to the Plaintiff for a month to expire on 31st January 2010 –Exh D. He stated that in January 2010 there was a general staff meeting of the security unit where all the staff were informed that at the end of February 2010 a private security firm was taking over the unit and that all the staff of the said unit would be made redundant. He stated that based on that information, a final one month contract extension was made for the Plaintiff to expire on 28th February 2010.

The witness was cross-examined and admitted that the Plaintiff did not violate the rules of the Company and that his contract was not made permanent. He further admitted that during the currency of his first contract was the time plans were made for outsourcing the security unit. He told the court that he saw the Plaintiff's CV but that the Plaintiff never told him that **MR.TEDDY WILLIAMS** had told him to leave his more fruitful job at the Special Court and join the Defendant Company.

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The witness also admitted that the Plaintiff's performance was never evaluated and accepted that by not evaluating the Plaintiff they breached the contract.

That ended the case for the Defendant.

Both counsel submitted written closing addresses.

The Plaintiff's claim principally is for damages for breach of his contract of employment with the Defendant Company. The issue for determination is therefore whether or not the Defendants did breach the said contract of employment. It is therefore necessary to look at the terms of the original contract as contained in the letter of appointment dated 5th August 2009, Exh B.

The Plaintiff has relied heavily on the term contained therein that "if at the end of the period your performance meets the expected standards of Sierra Rutile Limited, your contract will be made permanent." The Plaintiff's contention is that the failure on the part of the Defendant Company to make his contract permanent as promised amounted to a breach of the contract.

The Defendant Company in response to this contention argued that there were subsequent agreements that varied and altered the terms of the original contract.

The original contract in the first instance is for a specific period namely 1st August to 30th September 2009. The final sentence therein stated that "This constitutes our employment offer to you under this appointment. There are no implied or verbal agreements or promise outside this letter."

Counsel for the Plaintiff contended that all the subsequent contracts, Exh C, D and E were not new contracts or variations, they were merely extensions of the original contract. He maintained that essentially they carried the initial contract with them and that additions were made.

I believe at this stage it is necessary to look at the evidence to establish the reason for giving the Plaintiff additional contracts. I shall set out what the Plaintiff in his witness statement, Exh K said on the issue.

" 9 The current Human Resource Manager, Joseph Mungu, when contacted promised to talk to me later. Consequently --- Captain Yayah, the Deputy Chief Security Officer --- informed me that Sahr Wonday had approved another one month contract extension for me ending 31st January 2010. Captain Yayah further explained to me that this is based on the pending security unit restructuring, that is the proposed outsourcing."

Under cross-examination the Plaintiff admitted that he was told by the Defendants that they were outsourcing their security services.

Let me now set out what **MR. MUNGU DW1** had to say on the issue in his witness statement, Exh L. He stated as follows

“5 During the period of this contract the Board decided to outsource the security department to a private security firm and that all employees were going to be made redundant.

- 6 The process of outsourcing and handing over took sometime and since the employees in the department were still working, a contract extension letter was prepared for **MR. MOHAMED SAHEED KAMARA** in October 2009 for the period 1st October 2009 to 31st December 2009. **MOHAMED SAHEED KAMARA** talked to **MR. YAYAH KAMARA** who was acting as Chief Security Officer when **TEDDY WILLIAMS** was on leave asking that his position be made permanent, but the General Manager **MR. SAHR WONDAY** told me that he explained to **MOHAMED SAHEED KAMARA** that the department was in the process of being outsourced so there was no need to make his position permanent and that was why the Company (Sierra Rutile Ltd) was extending and varying his (Mr. Mohamed Saheed Kamara's) contract and that the said **MR. MOHAMED SAHEED KAMARA** accepted the contract extension and variation and worked for the Company until the end of the said contract.”

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From the above testimony from both the Plaintiff and the Defendant Company it is evident that the reason for not making the Plaintiff appointment permanent was made known to the Plaintiff. It is clear that the situation in the Defendant Company changed since the initial contract was given to the Plaintiff to his knowledge necessitating a variation of the original contract.

As pointed out by counsel for the Defendant there was a variation in the letter of 10th October 2009 Exh C extending the Plaintiff's contract. The condition in the original letter of offering a permanent appointment to the Plaintiff subject to his satisfactory performance no longer existed. The letter Exh C made it clear that the terms contained therein constitutes the employment offer to the Plaintiff under the present appointment. It went on to state that there were no verbal agreements or promises outside the said letter.

It is my view that the terms of the letter, Exh C were the only ones on offer to the Plaintiff at that material time. He could either take them or reject them.

Counsel for the Defendant submitted that the Plaintiff's claim for damages for breach of contract is misleading and deceitful as there could be no breach of contract when same is varied and extended by subsequent contracts which the Plaintiff accepted thereby waiving his right to rely on the original contract for any alleged breach.

He relied on **Chitty on Contract**, 25th ed. ch. 1489 at page 820 as well as **Bullen and Leake and Jacob's** 12th ed. at page 1013. He submitted that by the Defendants act of varying the original contract, Exh B and extending same, Exhs C, D, and E which was accepted by the Plaintiff who worked for the Defendants until the expiration of same after 7 months, the Plaintiff had waived his right to any damages under the original contract. I agree with counsel's submission.

In my view the Plaintiff was well aware that the situation of the Defendant Company had changed. He had been informed that he could not be offered a permanent appointment because the security services of the Company were being outsourced. He was offered an extension of his appointment for another three months Exh C which he accepted. The original contract had therefore been varied. The terms of his appointment under Exh C were not the same as those contained in Exh B, the original contract. The letter Exh C clearly stated that the terms in the letter constituted the employment offer to him under that appointment and that there were no verbal agreements or promises outside the said letter. The Plaintiff opted to accept the appointment and continued to work for the Defendant Company under the terms stated in the said letter. He clearly waived the terms which were available to him as set out in his original contract.

Counsel for the Plaintiff has laid heavy emphasis on the testimony given by the Defendant's witness DW1 when he stated that by not evaluating the Plaintiff the Defendant breached the contract. He submitted that this was an admission entitling the Plaintiff to judgment pursuant to Order 34 Rule 3 of the High Court Rules 2007.

With all due respect to counsel for the Plaintiff, the issue of whether or not the Defendants breached the contract is for the court to determine. It is certainly not for a witness of fact to ascertain as it is a question of law. Indeed its determination is a principal issue in the action. The answer of the witness DW1 to the said question has no evidential value and accordingly no weight has been given to it.

In my view there is sufficient evidence before the court to establish that adequate reasons were given to the Plaintiff why his appointment could not be made permanent. His letters Exh C, D and E offering him extensions of his employment which clearly stipulated that the terms under the said extensions were confined to those stated in the individual letters, made no mention of his employment being made permanent. At the stage when his employment was first extended he had the option to either accept the variations or reject them. He chose to accept them and continue to work for the Company and did so right to the end of the several extensions accorded him.

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In my Judgment the Plaintiff cannot now succeed in an action claiming breach of contract the terms of which he had forgone. By accepting the subsequent varied contracts, the Plaintiff waived his right to require that the contract be performed in accordance with its original terms. The Plaintiff's action against the Defendant Company is therefore dismissed with costs to be taxed if not agreed upon.

*A. Showers***SIGNED: - A. SHOWERS** 27/9/2012**JUSTICE OF COURT OF APPEAL**