



IN THE HIGH COURT OF SIERRA LEONE
INDUSTRIAL DIVISION

IC10/15

NATHANIEL KANGAJU & ORS.

PLAINTIFF

AND

THE GENERAL MANAGER
LEONE DOCK COMPANY

DEFENDANT

REPRESENTATION:

ELVIS KARGBO ESQ.

COUNSEL FOR THE PLAINTIFF

E. PAPS-GARNON

COUNSEL FOR THE DEFENDANT

BEFORE THE HON. MR. JUSTICE SENGU KOROMA JA.
PRESIDENT OF THE INDUSTRIAL COURT
JUDGMENT DELIVERED ON THE 15TH FEBRUARY, 2018

1. This matter was referred to the Industrial Court by the Ministry of Labour and Social Security (“the Ministry”) pursuant to Section 35 (1) of the Regulation of Wages and Industrial Relation Act, No. 18 of 1971 (“The Principal Act”) and Rule 5 of the High Court (Industrial Relations Procedural Rules) 2010 (“The Rules”).
2. The Plaintiffs in this matter are claiming Backlog salaries, end of service benefits and other entitlements
3. As provided for in the Principal Act, the Ministry of Labour and Social Security ((The Ministry) invited the Defendants to series of meetings, all of which did not yield any dividend due to the apparent non-co-operation of the Defendant. For example in a letter from the General Manager of the Defendants Company, dated the 4th May, 2015, paragraph 1 thereof, the Commissioner of the Labour lamented that “it has come to the full knowledge of the Ministry that the Management of the Leone Dock Company seems to be unwilling in resolving the matter in question due to the inexcusable absence of some Trustee members ...”
4. On the 16th June, 2015 the Ministry forwarded to the Defendants a computation of all entitlements due the Plaintiffs. In the said letter, the Ministry made it clear that the computations were done together with Sierra Leone Dock Workers’ Union and representatives of the Defendants. The Defendants were given a week to pay the workers but this was not done.
5. The matter was finally forwarded to the Industrial Court on the 25th June, 2015 and summons issued on the 6th October, 2015

EXAMINATION OF WITNESSES

PW1 – Nathaniel Kangaju

6. PW1 testified that he was employed as a Stevedore by the Defendant for a period of four years. He worked there from 2012 to 2015. The last salary he received was Le202, 000/00, a total of Le880, 000/00 Monthly. At the end of his services, he was paid no benefits and even when the Maritime Union intervened, the Defendants still refused to pay his benefits.
7. PW1 admitted knowing the other Plaintiffs who had been his co-workers at the Defendants Company
8. PW1 testified that his benefits were never computed. His services were terminated verbally in 2015 though he had pay slips, identity cards and other documents to prove that he worked for them. The identity card was tendered as Exhibit "A".
9. He prayed the Court to order the Defendants to pay their terminal benefits and other entitlements

Cross-Examination

10. Under Cross examination, Pw1 insisted that he worked continuously for the Defendant for a period of four years but agreed that he was never given a letter of appointment nor that of termination as the latter was done verbally by the Manager, a Mr. Njie.
11. PW1 confirmed working with 93 other employees but did not know whether the other employees have been paid. He insisted that his wages were charged weekly but paid monthly.
12. He agreed that his entitlements and those of the other were computed by the Maritime Union but this was not accepted by the Ministry.

PW2 – Gibrilla Kamara

13. This witness corroborated the testimony of PW1 and he specifically mentioned 1st October, 2011 as their date of employment and January, 2016 as date of termination. He also tendered his identity card.
14. He confirmed that this position was the same for all of the other Plaintiffs – in respect of letters of appointment and letters of termination.
15. PW2 tendered his pay slip which was marked as Exhibit “B”

Cross-Examination

16. The witness denied being a casual worker working by the hour. He agreed that he was paid by the number of hours worked but this was done at the end of the month.
17. PW2 agreed that there was no mention of monthly payment on Exhibit “B”. but insisted that he was paid the of Le1, 800,000/00 monthly. However taxes and union due were deducted and the net pay was Le1, 304,718.00. He however agreed that the sum of Le1, 800,000/00 was not stated on Exhibit “B”.
18. PW2 explained that he complained about that as some allowances which should have been paid was never given to them.
19. On the mechanism of their work, PW2 explained that the Plaintiffs worked on different shifts and in “gangs”. There were forty (40) gangs working by shifts – each gang would only work when there were shifts.
20. PW2 admitted that as the signalman, his rate was higher than ordinary gang member. He would therefore be surprised to hear that the benefits of all of them as computed were all the same.
21. He did not know that the workers of the Defendant were made redundant and paid redundancy benefits by the Ministry. PW2 answered that he did not know Jeffrey Moijueh, Zainab Mansaray, Sheriff B.

Kamara, and Brima Kanu. He however knew that apart from the Bauxite and Rutile, mines they worked in other areas where discomfort allowance was not paid anywhere else.

22. On the strength of the workforce, PW2 replied that there were 40 gangs with 12 people in each gang with a total of 480 people. He stated that it was possible for all of these people to work together.

PW3 – Allieu Fofanah.

23. Mr. Fofanah described himself as a Trade Unionist and Secretary General of the Sierra Leone Dock Workers Union. He knew the parties and the dispute between them. His organisation organised workers for the Defendant Company and represented the said workers in negotiation and collective bargaining.
24. In relation to the present matter, he testified that sometime in October, 2014, the Defendants decided to scale down their operations and redundant some staff which decision affected the Plaintiffs. The matter was reported to the Ministry for conciliation and the Minister requested his organisation and the Defendants to compute the entitlements of the Plaintiffs. After some legal arguments, the letter from the Minister in that respect was tendered as Exhibit C¹⁻². The Defendants did not attend to the various invitations or provide their own computations of the Plaintiffs' entitlements. Some industrial unrest Occurred. Apparently because of this unrest, the Sierra Leone Ports Authority (SLPA) intervened and agreed to pay the workers with the understanding that they would be reimbursed from the proceeds of the payments made to the Defendants from the services of the Plaintiffs. An agreement to that effect was signed on the 14th April, 2014 which was tendered as Exhibit "F"

25. He testified that the Trustees from the Defendants did not attend? He also referred to a memorandum from the SLPA. The Plaintiffs had worked for the company since 2011 when the Company came into operation. The witness testified that since the Plaintiffs were made redundant, they were entitled to redundancy benefits.
26. PW3 was recalled on the 14th December, 2016 for further examination-in-chief. He testified that he had computed the entitlements of the Plaintiffs his capacity as the Secretary-General of the Union. He testified that the Computations were a compromise as the Ministry was also looking into the issue. The computations were not honoured by the Defendants. These were tendered as Exhibit "F"

Cross examination

27. On the 20th January, 2017, Mr. Paps-Garnon for the Defendants cross examined Pw3.
28. On Exhibit "F" , PW3 admitted that he was present when the Minister, signed the exhibit but not when a Mr. Aziz did so.

COMMENTS

29. The matter at this stage was adjourned to 23rd January, 2017. Since the matter was adjourned to January, 2017, neither the Defendant nor his Counsel has appeared in Court in respect of same. The Defendants knew that there was an action in Court against them and should have as any prudent corporate institution followed up on it.

30. On the 25th September, 2017, the Plaintiffs' Counsel informed the Court that he had written to the Defendants' Counsel informing him of the adjourned date. On the basis of this information, the file was withdrawn for Judgment.

31. This Court has power under the provisions of Rule 8 of the High Court (Industrial Court Division Procedure) Rules, 2000 to proceed to Judgment when the Defendant has failed to appear. The matter had been adjourned on several occasions for the Defendants to open their case to no avail.
32. The principal responsibility of this Court and its enabling legislation and Rules are for the regulation of the relationship between the employer and employee or put in another way, the user of labour and the employer of labour.
33. In the instant case, from the careful examinations of the witnesses, I have been able discern two main issues in dispute:
- a) Whether the Plaintiffs were casual worker and therefore not entitled to redundancy or any other end of service benefits
 - b) If the Plaintiffs were entitled to benefits what will be the quantum.
34. The first question calls for a determination of who a casual worker is.
35. The phrase Casual Worker is often used to describe workers who are not part of the permanent staff but who supply services on an irregular or flexible basis, often to meet a fluctuating demand for work. The essential characteristics of a casual worker are as follows:
- Has no guaranteed hours of work
 - Usually works irregular hours (but can work regular hours)
 - Does not get paid medical or annual leave
 - Can end employment without notice unless notice is required by agreement, award or employment contract.
36. It should be noted however that Casual Workers get a higher hourly rate than equivalent full-time or part-time employees. This is called “Casual Loading”.

37. In the instant case, the Plaintiffs worked for the Defendant continuously for period of four years. No letter of employment was given to the Plaintiffs clearly stating the nature of their employment. This was contrary to the provisions of Section 4 of the Employer and Employee Act, Cap 212 of the Laws of Sierra Leone, 1960. This Section provides that “A Contract of Service which, or a sufficient memorandum of which, is not in writing and signing by the parties thereto shall not be binding or valid for a longer period than six months from the making thereof”.
38. The Defendant ought to have given a written letters of employment to the Plaintiffs before the expiration of six months which would have specified whether they were casual or permanent employees. By the said provision, the initial agreement between the Plaintiffs and the Defendant ceased to have effect after six months. It would be right to presume that in the absence of evidence to the contrary, the Plaintiffs thereafter could be treated as permanent staff.
39. I am strengthened in this view by Exhibit “H” which is an undertaking by the Management of the Sierra Leone Ports Authority to facilitate payment of the outstanding balance due to Leone Dock Company Workers (the Plaintiffs herein) by the Defendants. In the said Memorandum, dated 12th June, 2015 the Board of Directors and Management of the Defendants authorised the Sierra Leone Ports Authority to deduct any amount owed to the aggrieved workers from invoices submitted by the said Defendants in the event of Default. This Memorandum was signed by the General Manager of Defendants, the Minister of Labour and Social Security, the General Manager of the Sierra Leone Ports Authority, amongst others. Attached to that Memorandum was a spread sheet containing the names of the Plaintiffs and their entitlements for End of Service Benefits and redundancy. Against this

backdrop, I do not see how the Defendants could now lead this Court to treat the Plaintiffs as casual workers. They were not but could be deemed to have been permanent staff. Being permanent workers, they were also entitled to be given notice of termination.

In the circumstances, Judgment is hereby given in favour of the Plaintiffs, subject to the following

- i. That the Commissioner of Labour to recomputes the entitlements of the Plaintiffs in respect of failure to give notice of termination, end of service benefits and redundancy compensation and submit same on the next adjourned date
- ii. Matter adjourned to Thursday, 1st March, 2018 at 9:30AM.


.....
HON. MR. JUSTICE SENGU KOROMA JA.
PRESIDENT OF THE INDUSTRIAL COURT