



IN THE HIGH COURT OF SIERRA LEONE
LAW COURTS BUILDING
SIAKA STEVENS STREET

CC. 524/15

ALUSINE CONTEH

APPLICANT

AND

SIERRA LEONE ROADS AUTHORITY
RESPONDENT

REPRESENTATION:

R. JOHNSON ESQ. COUNSEL FOR THE PLAINTIFF

D.J. LAVALY ESQ. COUNSEL FOR THE DEFENDANT

BEFORE THE HON. MR. JUSTICE SENGU KOROMA JA.
JUDGMENT DELIVERED ON THE 3RD OCTOBER, 2018.

1. The Plaintiff issued a Writ of Summons against the Defendant herein claiming the following relief:
 1. A declaration that the dismissal of the Plaintiff by the Defendant Authority was wrongful or unlawful;
 2. Damages for wrongful or unlawful dismissal;
 3. Interest on such amounts as found to be due to the Plaintiff at such rate and for such period as to this Honourable Court may appear just pursuant to Section 4 of the laws of Sierra Leone;
 4. Any further or other relief; and
 5. Costs
2. The Defendants herein entered an appearance to the Writ of Summons on the 4th April, 2016 and filed a defence and counterclaim on the 14th day of April, 2016.
3. Summons for Direction was moved before the Hon. Justice M.M. Samba J dated 20th June, 2016 which was granted by order of Court dated 11th day of November, 2016.
4. The matter was re-assigned to this Court on the 22nd May, 2017 and on that date: Counsel for the Plaintiff, Ransford Johnson Esq. Informed the Court that both parties have complied with the Directions of Justice M.M. Samba.

EXAMINATION OF WITNESSES:

5. (a) PW1 Alusine Conteh

The examination of the PW1, the Plaintiff who is the Plaintiff herein commenced on the 6th June, 2017. He informed the Court that he was once employed by the Defendants as a License Officer and was in that employment until September 2014 when he was dismissed after an investigation. He recalled making a witness statement dated 24th day of December, 2016:

5.2) Mr. Johnson at this point applied that the Witness Statement form part of the evidence pursuant to Order 30 Rule 1 of the High Court Rules, 2007 which was granted.

5.3) The witness recognised paragraph 5 on page one of his Witness Statement. Apart from his salary, he received medical allowance of Le1, 500,000/00 per annum and Le500, 000/00 per annum as transport

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allowance. He referred to the documents listed as A¹⁻¹⁸ in his Court bundle.

5.4) The witness denied making any confession of negligence or malpractice during the investigation and prayed that this Court awards him damages for wrongful dismissal.

5.5) The witness was cross-examined by the Counsel for the Defendant, David J. Lavalley Esq. of Betts and Berewa. In the said cross-examination, PW1 confirmed his testimony that he served as license Officer for the Defendants. He agreed that he served for over ten years. Between January and May, 2014, an investigation committee was set up to look into discrepancies in respect of Licence stickers issued to him and other members of staff.

5.6) The Plaintiff under cross-examination explained that the one of his functions was to requisite for Licences and prepare learner's permits. Between January, 2014 to May 2014, Licence Stickers were issued out to his station by the Defendants to be sold to vehicle owners. The supplies were made after he had made requisitions for them from Head Office. After this, the cashier would make a request to him for the supply of the Licences for sale to the public. At the end of the day, the Cashier would print out the serial numbers, the vehicle registration number and the category. He agreed that a paying in ship would be handed over to him which is taken to the Cashier after payment. PW1 denied that it was his responsibility to check on the Cashier.

5.7) Mr. D.J. Lavalley at this stage applied for an adjournment which was granted.

5.8) The Cross-examination of PW1 continued on the 28th June, 2018. On this date, PW1 denied being the Cashier's supervisor. He explained that vehicles were registered by categories and so on the payment advice he prepares, he would state the category of the vehicle, amount to be paid and the name of the owner.

5.9) PW1 admitted that he was queried for not giving proper accounts – Exhibit A-7 dated 27th August, 2014 to which he replied on the same date – Exhibit A8. He denied that it was his responsibility, to collate the print out done by the Cashier. PW1 agreed that mistakes were made.

5.10) PW1 agreed that he appeared before two special Management Committees and the Board.

5.11) Mr. D.J. Lavalley at this point informed the Court that he had filed a Notice of Intention to use an additional document dated 14th June.

2017. Mr. R. Johnson had no objection and the additional document was marked A19.

5.12. PW1 insisted that it was not part of his function to verify payment nor did he issue out Licence Stickers without evidence of payment.

5.13 Under re-examination, the PW1 recognised Exhibit 19- Minutes of the Special Investigative Committee meeting and they were signed by one Sama Gamanga. He answered that he did not take part in the preparation of Exhibit 19 nor did he admit negligence as stated in paragraph 3 therein.

5.14. The Plaintiff closed his case at this point.

6. The matter was adjourned to Tuesday, 11th July, 2017 for the Defendants to open their case. Annoyingly, Counsel for the Defendant took the liberty of not attending Court on the following adjourned dates: 11th July, 2017, 20th September, 2017, 27th September, 2017 12th October, 2017 respectively without any reference to the court.

7. As a result of the repeated absence of Counsel for the Defendant Counsel for the Plaintiff applied to this Court for the matter to proceed to address and Judgment. The court was not averse to the application.

8. In the face of the Court's intention to invoke its coercive powers, the Defendants filed a Notice of Motion dated the 20th October, 2017 seeking the reinstatement of the matter. The Plaintiff's Counsel did not have any objection to the said application and so it was granted with costs of 2,500,000/00 to be borne by Defendants to the Plaintiff. The Defendants were thereafter granted leave to open their case.

9. CASE FOR THE DEFENDANTS:

8.1 DW1- Sama Gamanga who informed the Court that he was and still is the Company Secretary of the Defendant. He recalled that in the early part of June, 2014, the Head of Finance of the Defendants discovered that there was a mismatch between the Licence Stickers that the Plaintiff was supplied and the income it was generating. The Head of Finance made a spot check at the three stations of Kissy Road, Pademba Road and Lungi where he discovered that financial fraud had been committed. As a result of this discovery, personnel in the three stations were suspended.

8.2. I should say that up to this point, the testimony of DW1 is hearsay and do not fall within any of the exceptions thereto and is therefore inadmissible. Although Counsel for the Plaintiff did not object to its admissibility, this Court in the exercise of its inherent Jurisdiction to see that Justice done, can do so.

8.3 The other part of the Witness's testimony related to the investigation of the matter. The witness admitted to been Secretary to the investigative committee. He identified the report of the committee as A19 dated 27th June, 2014. The findings of the Committee were that the Plaintiff was negligent and it recommended that the requisite provision in the conditions of service for worker of the Defendants be invoked.

8.4. DW1 continued that Management forwarded the matter to the Board of Directors for its consideration. The Plaintiff, his superior and subordinate was questioned and both of the others accepted liability and signed written admissions of guilt. The Plaintiff did not admit guilt. The two confession statements were identified as Exhibit 2 ¹⁻³. The Board subsequently found them culpable and were dismissed for negligent performance of their duties leading to financial loss. The Board relied on clauses A and B of Exhibit 1.

8.5 As Secretary to the Board, the DW1 informed the Court that he took minutes of the deliberations. The Minutes were dated 13th July, 2014 and were signed by DW1 as Secretary. They were tendered as A20 -25.

9. Cross-examination of DW1.

10. DW1 agreed that management and the Board relied on Clause 13A and 13B of the terms and conditions of service to dismiss the plaintiff. He also agreed that they were separate grounds. It was the view of the Committee that the Plaintiff was both negligence and fraudulent. DW1 admitted the following:-

- a) There was no audit of the accounts before the action to dismiss was taken;
- b) Plaintiff had supervisory authority over the Cashier – Ms. Vamboi;
- c) Plaintiff did not collect money from customers;
- d) The Finance Department did not have oversight function over the Plaintiffs Office as they were autonomous; and
- e) All Licence fees were paid into the same accounts

11. On the conclusion of the cross examination, Counsel for the Defendants applied for an adjournment to enable him file additional documents. The matter was adjourned to 1st November, 2017. On that date, the Defendants Counsel was not in Court. He was also not in Court on the adjourned date of the 8th November, 2017.

12. It was against the backdrop of the frequent absence of the Defendants Counsel at the trial and noting that the substance of the parties' case had been laid out by the testimonies of PW1 and DW1, I invoked my inherent Jurisdiction and withdrew the file for Judgment.

12. ISSUE IN DISPUTE

Both parties agreed that the issue in dispute was whether or not the Defendants dismissal of the Plaintiff by letter dated 12th September, 2014 pursuant to clause 13 sub clause s (a) and (b) of the Terms and Conditions of Service of the Board Transport Corporation Authority, 2011 was wrongful or unlawful and therefore entitled to damages.

13. Clause 13 (a) and (b) provide as follows:

a) It an employee commits any act of dishonesty or moral misconduct or any act which in the opinion of the Authority is likely to bring the Authority or any of its officials or employees into disrepute and it does not matter whether or not such dishonest, misconduct or act is directly related to the affairs of the authority ; and

b) Negligence of any employee in the performance of his duties

THE LAW

14. The Law governing employment in Sierra Leone is rooted in the Common Law. The only legislation governing this vast area of the law is the Regulation of Wages and Industrial Relations, No18 of 1971. This Act however covers only workers below supervisory level and actions thereunder can only commence at the instance of the Ministry of Labour and Social Security or a Trade Union Group

15. That said, for our present purpose, the first stage in the process is whether or not there is an employer - employee relationship between the Plaintiff and the Defendants. This is not in dispute as both parties admitted that the Plaintiff was confirmed as a permanent staff in the capacity of a

Licensing Officer of the Defendants Kissy station earning a net salary of Le1. 607.719/00 per month on the 1st day of July, 2015.

16. The second stage is to determine whether a dismissal had taken place. Again it is uncontroverted that the following took place:

- a) That by a Memorandum dated 22nd July, 2014, the Plaintiff was suspended from work on allegation of malpractice relating to the Licensing of vehicles
- b) On the 27th August, 2014 the Plaintiff was queried in relation to the said malpractice
- c) By a letter dated 3rd September, 2014, the Plaintiff answered the said query.
- d) That by letter dated 12th September, 2014 the Plaintiff was summarily dismissed.

17. I must state at this point that the Defendant committed a procedural unfairness. The Plaintiff was suspended from work before been queried. This was wrong as it seems to establish guilt before the investigation. The Plaintiff should have first been queried and be allowed to respond. It would be on the basis of the response that he could be suspended.

18. The third stage would be to determine whether the dismissal was unfair. In determining this issue, I will refer to the letter of dismissal dated 12th September, 2014. In the said letter A9, the Human Resource Officer of the Defendants stated that "sequel to the Board and Management investigation of financial malpractice by you and/or on your part in handling licences and performance of your duties, followed by your submission to the above two groups of authorities, I am directed to inform you that the reasons you have adduced in your reply to our query to exculpate yourself are most unsatisfactory and therefore not accepted."

19. To my mind, this letter is vague and does not state the nature of the financial malpractices or negligence. In order to establish breach of warranty of negligence by the employee, the employer must prove that the employee is not reasonably competent to perform the duties under the contract or otherwise. He is not expected to have the highest level of competence or skill possible.

20. The Plaintiff here is claiming damages for wrongful dismissal. Here a distinction must be drawn between a wrongful dismissal and an unfair dismissal. A wrongful dismissal is the unilateral termination by the employer of services of the employee.

21. A dismissal is unfair when it is in violation of the statutory right of an employee not to be dismissed without a valid reason or without following a prescribed procedure. It is important to note that both claims can be available to a dismissed employee.

22. Having stated that the Defendants have not provided sufficient evidence of the Plaintiff's culpability –especially in the face of Plaintiff's persistent denial and lack of evidence linking him to the alleged offence, it is important to look at Exhibit A10 dated 2nd October, 2014, to further buttress the point. In this exhibit, the Plaintiff strenuously pleaded that:

- i. I was not responsible for the printing and or issuance or preparation of daily and monthly statistics relating to the vehicle licence
- ii. "...all cash payments for licences are made through the local commercial banks, and I do not handle cash payments. The payment system of the Authority only accepts full payments of license fees and ticket fines, if any before any vehicle licence transaction is processed and receipt issued

23. Despite all of these facts, the Authority still proceeded to summarily dismiss the Plaintiff. Even the intervention of the Ministry of Labour and Social Security by letter dated 10th March, 2015 did not move the Defendants and in fact ignored their invitation to a meeting.

24. Finally, the full disciplinary procedure had not been followed. Where a Board of Directors takes a decision at a meeting, such deliberations must be recorded and signed by the chairman and Secretary. Here, the Minutes of the meeting relied on by Management to dismiss the Plaintiff were unsigned and unconfirmed. They were therefore not valid.

25. There was no opportunity to appeal the decision. The Human Resources Officer therefore had no authority to issue the letter of

dismissal based on an unsigned by the chairman and unconfirmed by the Board.

26. By reason of all the reasons given herein, I hold that the Plaintiff was wrongfully dismissed and therefore entitled to damages.

ASSESSMENT OF DAMAGES.

27. It is settled as a trite matter of course that a court should not use its powers to force an employer to retake an employee it no longer wishes to continue to engage. However, if the dismissal be it express, implied or even constructive is unequivocal, then the only remedy available to the wronged employee is damages. The issue that remains to be decided there is the measure of damages...."
28. According to McGregor on damages, paragraph 28-002 "the measure of damages for wrongful dismissal is prima facie the amount the Plaintiff would have earned had the employment continued according to the contract subject to a deduction in respect of any amount accruing from any other employment which the Plaintiff, in the minimum either had obtained or shall reasonably have obtained; basically, the amount the Plaintiff should have earned under the contract is the agreement to pay including any bonus- LAKE V CAMPBELL (1862) 5LT. If however, the Plaintiff would have earned an amount in substituted employment, since the breach that amount must be deducted.
29. In the Ugandan case of UGANDA REVENUE AUTHORITY -V- WANUME DAVID KITAMARIKI, CACA, No 43, 2001, the Court also considered the time which might reasonably be expected to lapse before the Respondent would, in the ordinary course of things, likely to obtain a similar employment to that which he/she lost by the wrongful dismissal. Having fixed that period, he or she will be given sufficient sum to reimburse him for the loss sustained, calculated on the basis of emoluments he/she was enjoying at the time of such loss"
30. The Plaintiff has an entrenched common law duty to mitigate the loss suffered as far as is reasonably possible.
31. This rule was ably articulated by COOKBURN CJ in the landmark CASE OF FROST -V- KNIGHT (1861) 73 ALL ER

"In assessing damages for breach of performance, a Court will of course take into account whatever the Plaintiff has done, or as had the means of doing, and as a prudent man, ought in reason to have done, whereby his loss has been, or would have been diminished"

32. Thus, the Plaintiff cannot claim any part of the damage which is due to his neglect to take such steps that would have the effect of reducing his loss. Damages must be reduced by reason of the Plaintiff's failure to take any steps such as getting another job mitigate his loss. The Plaintiff carries the ultimate burden to prove on a balance of probabilities, that he discharged this duty.

33. The principles stated herein are encapsulated in the dictum of Galadima JSC in the Nigeria case of IDUFUEKO – V- PFEIZER PRODUCTS (2014)

"The standard set by law for the enforcement of damages to a party whose employment has been unlawfully terminated has been established in a plethora of the decisions of this Court. The position of the law contract of service was found to have been given in accordance with the contract of employment.

He would, in addition be paid other legitimate entitlements due him at the time his employment was terminated".

34. This dictum is not different from that applied in the Sierra Leonean case of BANGURA –V- SIERRA LEONE ELECTRICITY CORPORATION (S.C. CIV. APP) 10/81(1983) SLSC 5 per Harding JSC.

35. From the principles enunciated in the aforementioned cases, my view is that in determining the measure of damages for wrongful dismissal, consideration shall be given to

- a) Salaries for the length of time during which notice should have been given in accordance with the contract of employment;
- b) Legitimate entitlements due the Plaintiff at the time the employment was terminated e.g. terminal benefits; and
- c) Interest on the said sum.

36. This is the settled law on the subject and I believe that the interest of Justice would be best served if it is applied herein.

37. For the reasons given, I hereby order as follows:-

1. The Defendants are liable to the Plaintiff damages for wrong dismissal as follows:-
 - a) Le4,823,157/00 being three months' salary in lieu of notice
 - b) Terminal benefits covering the period of service from 1st July, 2005 to 12th September, 2014 using the most current basic salary of staff at licensing officer level.
2. Interest on the sum of Le4,823,157/00 at the rate of 15 percent from 26th day of October, 2015 to date of Judgment
3. Costs to be taxed if not agreed

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Hon. Mr. Justice Sengu Koroma. (J.A.)