

IN THE HIGH COURT OF SIERRA LEONE
(INDUSTRIAL DIVISION)

IN THE MATTER OF COMMON CLAUSE 12 OF THE EMPLOYMENT OFFERS BETWEEN IN
THE PLAINTIFFS AND THE DEFENDANT RESPECTIVELY

AND

IN THE MATTER OF THE ARBITRATION ACT CHAPTER 25 OF THE LAWS OF SIERRA LEONE
1960

BETWEEN:

MOMOH H. FOH
9 BARLATT DRIVE
REGENT ROAD
FREETOWN

- 1ST PLAINTIFF

LAMIN D. KEMOKAI
MORIBA TOWN
RUTILE

- 2ND PLAINTIFF

STEVEN R. ALLIEU
145 PENINSULAR ROAD
GODERICH
FREETOWN

- 3RD PLAINTIFF

ALFRED NDANEMA
MOGBEMO VILLAGE
RUTILE

- 4TH PLAINTIFF

VINCENT LAVALIE
MORIBA TOWN
RUTILE

- 5TH PLAINTIFF

SOLOMON P. BLANGO
47 ASHWOOD DRIVE
MALAMA
LUMLEY-FREETOWN

- 6TH PLAINTIFF

SAHID M BANGURA
77 CAMPBELL STREET
FREETOWN

- 7TH PLAINTIFF

RANDOLPH I. DAUDA
MORIBA TOWN
RUTILE

- 8TH PLAINTIFF

MOHAMED M. CONTEH
GBANGBATOK VILLAGE
VILLAGE

- 9TH PLAINTIFF

MAADA N. GOMBEH
4 PENINSULAR ROAD
ADONKIA
GODERICH-FREETOWN

- 10TH PLAINTIFF

KENNETH V.S. KEKE
MOGBEMO VILLAGE
RUTILE

- 11TH PLAINTIFF

EDMOND TENGA
MOGBEMO VILLAGE
RUTILE

- 12TH PLAINTIFF

ALBERT S.G. COKCARIE
MORIBA TOWN'
RUTILE

- 13TH PLAINTIFF

(All erstwhile employees of Sierra Rutile Limited)

AND

SIERRA RUTILE LIMITED
110 WILKINSON ROAD
FREETOWN

- DEFENDANT

COUNSEL:

- A. S. MARRAH ESQ FOR THE PLAINTIFFS
- A. C. THOMPSON ESQ FOR THE DEFENDANT

RULING DELIVERED ON THE 7TH DAY OF OCTOBER, 2019

The Plaintiffs by an Originating Summons dated 10th day of May 2019 seek the following Orders:-

1. That Clause 12 of the Employment Offers variously dated and signed by the Plaintiffs and Defendants respectively be varied by this Court and that Mr Osman Jalloh Esq be appointed Arbitrator ^{Pursuant to} Act Cap 25 of the Laws of Sierra Leone 1960 to arbitrate the dispute between the Plaintiffs and the Defendant.
2. That any further other Order(s) that this Honourable Court may deem fit and just.
3. Costs.

The application is supported by the Affidavit of Adrian Camara-Macauley sworn to on the 10th day of May 2019. Attached to same are several exhibits marked exhibit ACM 1- ACM 5. There is also an affidavit in Opposition to the said Originating Summons sworn to by Anrite Columbus Thompson sworn to on the 21st day of June 2019.

The brief background leading on to this application is that the Plaintiffs were all employees of the Defendant serving in different capacities. They were all later issued notices of Termination of employment. In essence their services were terminated by the Defendant. The Plaintiffs on the other hand demanded what they considered as full end of service benefits. This resulted in disagreement with the Defendant. The Plaintiffs argument is that all of them should go to arbitration while the Defendants contention is that, it is only the 1st, 3rd, 8th, 10th and 13th Plaintiffs that should go for Arbitration, in view of their employment contract.

In my view the issue for determination in this matter is simple, clear and unambiguous, and that is, should the dispute between the parties be referred directly to an Arbitrator? Or should the Plaintiffs be severed as to who goes to Arbitration or not?

It is important to underscore the fact that the Law governing Arbitration in our jurisdiction is Cap 25 of the Laws of Sierra Leone 1960. Section 6 of the said Provision is so clear and unambiguous that it needs no further elucidation, in that it give Powers to the High Court in certain cases to appoint an arbitrator. In the instant case both parties are in agreement with the aforesaid provision in respect of the 1st, 3rd, 8th, 10th and 13th Plaintiff. This is confirmed by exhibits ACMI 1, ACMI 2, ACMI 3 and ACMI 4. It is clearly stated in these employment offer that "any dispute and controversy between you and the company shall be settled exclusively by arbitration, conducted before a single arbitrator". The Court is therefore bound to act in accordance with the said agreement.

I have perused the content of exhibit ACT 2 b, E, F, which are employment offer. The trend that runs through these offer Letters as far as the resolution of issues of dispute is stated thus.

"Any dispute or controversy between you and the company shall be settled exclusively through the company's grievance policies and procedures".

Counsel for the Plaintiffs A. S. Marrah esq argued that the said provision should be interpreted by the court to mean that the Parties should go for arbitration on the basis that there is an unresolved dispute. Conversely Counsel for the Defendant A. C. Thompson esq contended that the said Provision cannot be given a different meaning and that the parties cannot invoke Cap 25 of the Laws of Sierra Leone 1960.

I have also perused the entire evidence before me. The aforesaid Provision in respect of the 2nd Plaintiff and the other Plaintiffs (save the 1st, 3rd, 8th, 10th, 13th) is also obvious in that it clearly spells out the mode of resolving conflict between the Parties through the Company's grievance Policies and Procedures". In my view except this Procedure is exhausted the Plaintiff³ cannot come and apply to the Court seeking its jurisdiction to appoint an Arbitrator. However, where such Plaintiffs are not avail the opportunity to use the Company's grievance policies, they can then approach the Court not to appoint an Arbitrator but for the grievances to be addressed. In my considered opinion where a statute or an agreement lays down procedures to be followed it is the duty of the Court to ensure that such agreement or contract is followed to the letter except if it is unjust. In the instant case if the employment offer contemplated that the parties should go for Arbitration it must be stated in the contract as reflected in the contract for 1st, 3rd, 8th, 10th and 13th Plaintiff. It is important to also note that where there are expressed provisions in a contract the Court cannot ignore same and infer otherwise.

I have also considered the arguments and submissions of A. S. Marrah esq that there are no company grievances procedure in place and as such it is implied that the remedy available is for the Court to appoint an arbitrator to resolve the dispute. He also relied on "Chitty on contract volume 1, 29th Edition 2004 to submit that the Court has unilateral Powers to vary contract in the interest of justice, where such contract has

been unilaterally varied by one party. I must state that the said Provision of the Law is not applicable in the present case. There is no evidence before me to show that the contract between the parties was varied by either party. I also hold the view that where a party to a contract fails (which is not so in the instant case) to follow laid down procedures, it is the duty of the other party to apply to the Court for specific performance and pray for other order but not to invoke the courts jurisdiction to fundamentally redraft or change the contract.

In view of all I have said, I make the following Orders:

1. That Mr Ibrahim Sorie Yillah is hereby appointed as a single arbitrator to arbitrate the dispute between the 1st, 3rd 8th 10th and 13th Plaintiff and the Defendant, pursuant to Section 6a of the Arbitration Act Cap 25 of the Laws of Sierra Leone 1960.
2. That the other Plaintiffs, that is, the 2nd 4th 5th 6th 7th 9th 11th and 12th Plaintiffs must be given the opportunity to address their grievances as stated by the employment offer not later than thirty days of this Order.
3. No Order as to costs.


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Sgd: Hon Mr Justice K Kamanda –J