

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

**BETWEEN:**

**CECIL COKER**

**- PLAINTIFF/APPLICANT**

**AND**

**TRANSNATIONAL (SL) LIMITED**

**- DEFENDANT/RESPONDENT**

**COUNSEL:**

**R. JOHNSON ESQ**

**- PLAINTIFF/APPLICANT**

**R.S.V. WRIGHT ESQ }**

**- DEFENDANT/RESPONDENT**

**A. THOMPSON ESQ**

**RULING DELIVERED THIS 11TH DAY OF JUNE 2020 BY THE HON. LADY**  
**JUSTICE F. BINTU ALHADI J.**

On the 8<sup>th</sup> day February 2018 the Plaintiff/Applicant filed a Judge's Summons dated the 7<sup>th</sup> day of February 2018 seeking the following Orders pursuant to Order 16 of the High Court Rules of 2007:

1. that payment of the sum of Le 39,238,894 (Thirty Nine Million Two Hundred and Thirty Eight Thousand Eight Hundred and Ninety Four Leones) comprising of redundancy compensation, terminal benefits, leave pay and leave allowance due the Plaintiff/Applicant;
2. that interest on the said sum of Le 39,238,894 at such rate and for such period at the Court may allow pursuant to the Law Reform (Miscellaneous Provisions) Act Chapter 19 of the Laws of Sierra Leone 1960;
3. any further or other reliefs which the Court may deem fit;
4. that the costs of this application and of the action be borne by the Defendant/Respondent.

The application was supported by the Affidavit of Cecil Coker sworn to on the 7<sup>th</sup> day of February 2018 together with several exhibits attached thereto.

On the 21<sup>st</sup> day of February 2018 the Defendant/Respondent filed and swore to an Affidavit in Opposition. Attached to the Affidavit in Opposition were several exhibits attached thereto.

**Summary of Submissions made by Counsel for the Plaintiff/Applicant - Mr R. Johnson.**

In his submissions inter alia to the Court, Counsel for the Plaintiff/Applicant, Mr. R. Johnson said that the effect of exhibit CC2, which is the termination letter dated the 21<sup>st</sup> day of March 2017, written to Mr. Coker, the Plaintiff/Applicant by the Defendant/Respondent, Transnational (SL) Limited, is that it



amounted to a redundancy in respect of which he should have been made redundant and paid redundancy benefit, terminal benefit and all other emoluments such as leave pay and leave allowance due him at the time the Defendant severed his contract.

Counsel highlighted that instead, the Defendant/Respondent terminated the services of the Plaintiff/Applicant as a result of a restructuring. He pointed out that it was a classic situation of a redundancy; and that the position had ceased to exist. Mr. Johnson argued that the Plaintiff/Applicant's job was taken over by the chief executive officer of the Defendant company.

Furthermore, Counsel complained that the benefit as calculated by the Defendant/Respondent was wrong and hence the rejection by Mr. Coker on two occasions when it was offered to him. He maintained that after Mr. Coker's said refusal, Transnational (SL) Limited wrote a "without prejudice" letter stating that the offer was based on humanitarian concern.

Mr. Johnson espoused that exhibit CC8, which is a reply to a letter written to the Transnational Limited in response to the termination letter he received from the said Transnational Limited's solicitor dated the 10<sup>th</sup> of August 2017, was in direct conflict with exhibit CC5, which is a computation of Mr. Coker's termination benefit as at 31<sup>st</sup> March 2017 and exhibit CC6, which is the second calculation of Mr. Coker's terminal benefit as at 30<sup>th</sup> April 2017.

He said that Transnational Limited cannot contend that it was an ex gratia payment thereby making exhibit CC8 aforesaid untenable. He argued that the calculation of Transnational Limited was wrong and its Defence was not bona fide.

**Summary of Submissions made by Counsel Mr. A. C. Thompson**  
**(Deputising Mr. R. S. V. Wright for the Defendant/Respondent)**

In his reply to the Court, Mr. Thompson submitted that the affidavit in support filed by the Plaintiff/Applicant, Mr. Cecil Coker, was inconsistent with the duty of candour to the Court and in interlocutory matters of this nature. He suggested that the principle of autonomy of contract was very clear, that parties were free to enter into contractual relations that bound their obligations and that any such contract entered into, formed the law of the parties.

Counsel pointed out that exhibit AA1, which is a confirmation of Mr. Coker as the General Manager/Chief Executive Officer, attached to the affidavit in opposition sworn to by Adonis Aboud on behalf of Transnational Limited on the 21<sup>st</sup> of February 2018, forms part of the contract between the parties. He said that since Mr. Coker was above supervisory level, it meant that he was in a position to negotiate his terms and conditions of employment. Mr. Thompson argued that there was nothing in Exhibit AA1 aforesaid which stipulates that the Plaintiff/Applicant was entitled to terminal benefit, redundancy benefit or any benefit whatsoever.

He also argued that since Mr. Coker was above supervisory level, the Labour and Employment Gazette for unionised workers did not apply to him; and neither was any standard terms and conditions of Transnational Limited incorporated by reference into Mr. Coker's contract of employment.

**Analysis and Decision**

I have closely examined the said Judge's Summons dated the 7<sup>th</sup> day of February 2018 and the Affidavits in Support and Opposition filed by the respective Counsel. I have also considered the oral submissions of both Counsel; and I have also taken note of the fact



that the application is made pursuant to Order 16 of the High Court Rules of 2007, which states that:

*"where in an action to which this rule applies a defendant has been served with a statement of claim and has entered appearance, the plaintiff may, on notice apply to the Court for judgment against the defendant on the ground that the defendant has no defence to a claim included in the writ, or to a particular part of the claim except as to the amount of any damages claimed."*

The Plaintiff/Applicant in this matter has complied with this said section; and the Defendant has submitted a robust defence which I find compelling and difficult to dismiss as indefensible and without merits.

Furthermore, I think that the affidavit in opposition clearly elicits contentious facts and issues that can only be resolved by going to trial and not summarily. Given the type of background, no reasonable court would want to determine such fundamental issues summarily; Aiah Momoh v Sahr Samuel Nyandemoh, SC. CIV. App. 6/2006 at p 1-16.

Additionally, does the Court need to consider the points of law at this stage, given the glaring disputable facts that confronts it? Order 17 Rule 1 (1) of the High Court Rules of 2007 states that "the Court **MAY** on the application of a party or its own motion determine any question of law or construction .....at any stage of the proceedings where it appears to the Court that- (a) the question is suitable for determination without a full trial of the action; and (b) the determination will finally determine subject only to any possible appeal, the entire cause or matter or any claim or issue in the cause or matter.

It is my considered opinion that, I do not think that the disputable issues that arise are suitable for determination without a full trial of the action. Also, I do not think that any determination at this stage of the proceedings, will finally determine the entire cause or matter or

any claim or issue in the cause or matter. If for anything, a determination at this stage will only trigger an appeal and which will be justifiable.

Where a clear –cut issue of law is raised by way of defence in an application for summary judgment, the court should decide it immediately; Sime, S. 'A Practical Approach to Civil Procedure' [2<sup>nd</sup> edition, 1995], Blackstone Publishers at 164; but it is not so clear-cut, and as such, it should go to full trial. The Order 16 method is limited to special cases, where there is no disputed fact. However, this is not the case here and as such, Order 16 Rule 1 of the High Court Rules of 2007 is not applicable.

In Aiah Momoh v Sahr Samuel Nyandemoh (supra), Mr. Justice Rhodes – Vivour held inter alia that, once a trial judge finds that there are disputes on facts in the affidavits, he/she has no option but to Order pleadings.

### **CONCLUSION**

In conclusion, in view of the above stated, the application made for and on behalf of the Plaintiff/Applicant, Mr. Cecil Coker is hereby Dismissed.

The following Orders are hereby made:

1. Trial shall commence forthwith in the Industrial and Social Security Division of the High Court, pursuant to Order 4 Rules 2 and 3 of the High Court Rules of 2007; and Constitutional Instrument No. 4 of 2019, The High Court (Divisions) Order 2019.
2. Costs in the cause.

Signed:   
Hon. Lady Justice F. Bintu Alhadi J.

Date: 11<sup>th</sup> June 2020