

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

BETWEEN:

CHRISPINA T. FYNN
FREETOWN

- PLAINTIFF/APPLICANT

AND

NATIONAL REVENUE AUTHORITY
7 Bathurst Street
Freetown.

- 1ST DEFENDANT/RESPONDENT

THE COMMISSIONER – GENERAL
NATIONAL REVENUE AUTHORITY
7 Bathurst Street
Freetown.

- 2ND DEFENDANT/RESPONDENT

Counsel :

A S Marrah Esq
(Marah & Associates)

- for the Plaintiff/Applicant

S. M. Tarawally Esq
(Brewah & Co.)

- for the Defendant/Respondent

JUDGMENT DELIVERED THIS 17th DAY OF NOVEMBER 2021

A. Counsel for the Plaintiff/Applicant filed a Judge's Summons dated 20th July 2020 seeking the following Orders:

1. That Judgment be entered for the Plaintiff/Applicant herein against the Defendants/Respondents, pursuant to Order 16 Rules 1 and 3 of the High Court Rules of 2007, for the reliefs prayed for as endorsed on the Writ of Summons to wit:
 - a. Payment of all outstanding end of service benefits due and owing the Plaintiff.
 - b. Arrears of unpaid acting allowances and leave allowances due and owing the Plaintiff.
 - c. An order for the complete payment by the 1st Defendant of all NASSIT contributions in regard the Plaintiff's employment with the 1st Defendant.
 - d. Interest from the date sum was due until judgment.
 - e. Interest from the date of judgment until payment pursuant to the Law Reform Miscellaneous Provisions Act Cap 19.
 - f. Any further or other reliefs that this Honourable Court may deem fit and just.
 - g. Costs.
2. Any further Order(s) that this Honourable Court may deem fit and just.
3. Costs.

B. The application was supported by the Affidavit of Chrispina Fynn sworn to on the 20th of July 2020 together with exhibits attached thereto and filed.

C. Following the said Judge's Summons, Counsel for the 1st and 2nd Defendants/Respondents, Mr. S. M. Tarawally of Brewah & Co, filed an affidavit in opposition on the 8th of October 2020 and a subsequent supplemental affidavit filed on the 23rd of February 2021. Thereafter, on the 24th of February 2021 Counsel for the Plaintiff/Applicant filed an affidavit in reply.

D. Summary of Submissions made by Mr. Marrah for the Plaintiff/Applicant

Counsel for the Plaintiff/Applicant, Mr. Marrah, submitted that the case is a civil case about whether what is due to the plaintiff as end of service benefit has been paid to her; and if not, why? He said that it is a matter that does not warrant a trial of the facts; since the plaintiff was employed by the 1st Defendant in March 2008 and which is not in dispute. He espoused that the plaintiff deposed in her affidavit in support that, she acted in several other capacities, and this had not been controverted. He pointed out that exhibit C shows the various acting positions she occupied, even though she was the director of policy and legal affairs.

Counsel pointed out that exhibit B, which is the terms and conditions of employment of the plaintiff; article 24 of the same specifies the plaintiff's entitlement to allowances for acting in the position of Director of Policy and Legal Affairs. Counsel espoused that in all the correspondences, between the Plaintiff and the Defendant, the Defendant did not dispute the plaintiff's entitlements to the said acting allowances. He therefore asked for the sum of Le 254,148,606 to be paid as unpaid acting allowances for the periods she acted for.

He referred to the end of service benefit as the second issue. He said that the amount should have been calculated by the number of years of service and her monthly salary of Le 32,285,601, in order to determine her end of service benefit. Mr. Marrah pointed out that when she resigned, her bank account was credited with the sum of Le17,074,805; for the months of November, December, January and February i.e. 4 months (Exhibit H). He said that it is not clear what the calculation of Le17,000,000 was for. He submitted that instead of using Le32,285,601 as her salary in the calculation, Le17Million was used, and he could not fathom the reason for such calculation.

Mr. Marrah maintained that the sum of Le203,340,707 which was paid by the 1st defendant as the plaintiff's end of service benefit was erroneous. He said that a trial is not needed for this issue, since at the time the plaintiff resigned, which took effect on the 26th November 2018, her last salary was Le32,285,601.

The third issue according to Counsel, is that of leave allowances. He referred the court to paragraph 9 of the affidavit in support and asserted that when Ms Fynn resigned from the employment of The National Revenue Authority, she requested that 90 days be deducted from 145 days leave she had accrued.

Counsel submitted that the fourth and last issue is that of NASSIT contributions. He said that in exhibit F, in 2010 and 2011, Ms. Fynn's NASSIT payments were not completed and in 2018 there were discrepancies. He espoused that the affidavit in opposition filed, contains a proposed defence; and that a quick glance of it show no triable issue(s), which demand a trial as the only mode of disposing of the action.

Mr. Marrah concluded that on the strength of the arguments, the court is urged to grant a summary judgment in this matter pursuant to Order 16, rules 1 and 3 of the High Court Rules of 2007. He considered the case to be one in which the issues do not require witnesses to be called to adduce evidence; since the court can rely on the affidavit evidence to dispose of the matter.

E. Summary of Submissions made by Counsel for the Defendants/Respondents,
Mr. S. M. Tarawally

In his submissions to the court, counsel argued the following: that firstly, the plaintiff/applicant was neither appointed Director of Policy and Legal Affairs, nor acted in several other capacities as asserted by Mr. Marah. He said that she was instead, appointed Principal Legal Adviser, and later because of a gap created by the absence of the Director of Policy, Ms Fynn was transferred to "cushion" the gap. He referred to exhibit A of the affidavit in support which shows that, she was asked to act.

Secondly, he argued that there is no paragraph in exhibit J of the affidavit in support to show that the plaintiff/applicant, Ms. Fynn, pleaded that the Defendants owe her an acting allowance of Le254,148,606, an amount she is now requesting.

Thirdly, he submitted that in view of exhibit MK4 (1-2) of the affidavit in opposition, which clearly shows the last salary of Ms Fynn as Le17,074,805, and contrary to what is deposed to in paragraph 12 of the affidavit in support, the plaintiff/applicant's last salary as at the date of her resignation, was Le17,074,805. It was submitted therefore that, the plaintiff/applicant's end of service benefit of Le587,010,927.28 is erroneous and misleading.

Fourthly, counsel espoused that, by reason of exhibit MK3 of the affidavit in opposition, which shows a total of leave days as 103; and contrary to what is deposed to in paragraph 9 of the affidavit in support, that she had 145 leave days at the time of resignation. He therefore argued that it was the plaintiff/applicant that asked the defendant/respondent to deduct 84 leave days from her 103 leave days she had to her credit. Thereby remaining 19 unpaid leave days which amounted to Le11,586,474.82; and not Le82,146,283 as she wants the court to believe.

Fifthly, Counsel submitted that contrary to what is deposed to at paragraph 13 of the affidavit in support, as the plaintiff/applicant's outstanding benefit of Le383,670,220; the defendant/respondent have paid the plaintiff/applicant her full entitlement as shown in paragraph 10 of the affidavit in opposition. Save for the unpaid 19 leave days allowance of Le11,586,474.82 (which is the only outstanding sum owed by the defendant/respondent to the plaintiff/applicant).

Sixthly, Counsel submitted that the plaintiff/applicant acted as Acting Director of Policy and Legal Affairs from March 2010 to April 2014 as deposed to in paragraph 4 of the Affidavit in support and paragraph 6 of the particulars of claim in paragraph J of the affidavit in support. He maintained that this shows that the calculation done in exhibit C of the affidavit in support is misleading; since they show the calculation in favour of the plaintiff/applicant for the period she acted in

March to December 2010, January to July 2011, November to December 2016 and January to December 2017.

Furthermore, he argued that the periods, November to December 2016 and January to December 2017 mentioned are misleading, since Ms. Fynn deposed in her affidavit in support that she was only appointed to act in the absence of the Director of Policy and Legal Affairs for the period 24th March 2010 to April 2013. He said that the calculation for 2016 and 2017 are misleading.

On the issue of NASSIT contribution, he submitted that the defendant/respondent have paid NASSIT contributions in favour of the plaintiff/applicant; contrary to the averments in paragraph 11 of the affidavit in support. He maintained that, NASSIT contributions have been paid in full.

Counsel espoused that by exhibit MK5 of the affidavit in opposition, the defendant/respondent have a good defence with a real prospect of success at trial. He said that there are issues in dispute as shown in the affidavit of opposition, and in the submissions he has made. He relied on the case of Aminata Conteh and the All Peoples Congress; and the Jones v Stone (1898) case of the Privy Council as his authorities.

F. Summary of Closing Address of Counsel for the Plaintiff/Applicant – Mr. Marah

Mr. Marah noted that Counsel for the defendant/respondent raised 4 main issues for summary determination by the court. He said that firstly, the defendants have not contended that the plaintiff did not act in the capacities she indicated in her affidavit. He said that exhibit D (1-3) of the affidavit in support are demand notices for payments of acting allowances as far back as 2011. He averred that these demands were never contested or challenged by the defendants. He argued that the defendant cannot now after a decade later, maintain that the plaintiff was not entitled to the acting allowances she claims.

On the issue of end of service benefit, Mr. Marah espoused that end of service benefit is calculated based on the last salary paid to the employee. The plaintiff's last salary in October 2018 was a gross sum of Le32,285,601. Reference was made to the exhibit in the affidavit in reply showing the statement of account of the plaintiff for the year 2018. He said that, what the defendant did after she resigned, was to pay into her account a sum of money which was not her actual salary. He maintained that the end of service benefit, which Ms Fynn is entitled to, should be calculated based on her actual salary and not on an amount which does not represent her last salary. From the affidavit in opposition, the defendant noted that the last salary was Le17Million and not Le32,285,601 which is erroneous.

Counsel suggested that on the issue of leave allowances, the defendants have not shown any proof to the court that, what the plaintiff claim she is entitled to by virtue of the unspent days, is incorrect. He argued that the defendants have the responsibility to document the number of unused leave days that the plaintiff has. He argued that, on the contrary, what they have submitted in the supplemental affidavit, is the plaintiff's application for leave which is exhibit MK13, which has no indication of unused leave days.

Counsel highlighted and agreed that the arrears of NASSIT contributions have been paid but only in February 2021. He maintained that even the NASSIT contributions statement supports the case of the plaintiff, that the gross salary was Le32,285,601.

Counsel concluded that this case is a perfect case for summary judgment and the authority is Aminata Conteh and The All Peoples Congress.

G. Analysis, Findings and Decision.

I have closely examined the said Judges Summons dated 20th July 2020 and the affidavits in support, opposition, and reply. I have heard the oral arguments. I am of the opinion that the plaintiff, Ms Fynn, was employed as a Principal Legal Officer in 2008. By a memorandum dated 5th December 2011, as exhibited by D 1-3 of the affidavit in support, she was temporarily transferred to the position of Head of Policy and Legal Affairs from 24th March 2010 to 14th July 2011. That is, for a period of 16 months. She was never confirmed or promoted to the said position, in accordance with Article 21.2 of the Terms and Conditions of Service (TACOS) where the process and procedure states that the Board is to approve.

In the plaintiff's acting capacity, she was not officially, i.e. via Board approval, paid an "acting allowance" as prescribed by Article 24.2 of the Terms and Conditions of Service of the National Revenue Authority (TCOS). However, what is clear is that she was being paid the salary of a Director of a Head of Policy and Legal Affairs. This in my opinion, could implicitly be the acting allowance. Her salary position changed from that of a Principal Legal Officer to that of a Head, with a salary difference of between Le 6,500,000 and Le 7,000,000 according to exhibit C of the affidavit in support. Furthermore, it is apparent from Article 24.2 of the TCOS that, to have an acting allowance, the Board has to approve and the amount to be paid is discretionary. Therefore, on the issue of "Acting Allowance" the Court is of the view that her increase in salary whilst in the position of Director, amounts to an acting allowance; and as such, the defendant need not pay any more acting allowance to the Plaintiff.

On the issue of leave allowance and leave days owing, I note that the defendant's records show that Ms. Fynn's remaining leave days at her date of resignation was 103 working days; and the defendant used 84 working days as her 3 months in-lieu of notice with 19 working days remaining. The defendant

also pointed out that those 19 days amounted to Le 11,586,474.82 as amount duly owed to Ms. Fynn. On this the court accepts the remaining leave days as being 19 days but that it ought to be calculated on the basis that Ms. Fynn's last salary as a Principal Legal Officer was Le 32,285,601 as is stated in exhibit F, which is the statement of NASSIT as of October 2018, and not Le 17,074,805.00. The amount of Le 15,522,550.00 that was paid to Ms. Fynn in November 2018 was pro-rated, hence the reduced amount. Therefore, the defendant ought to calculate Ms. Fynn's 19 working days on Le 32,285,601.00, and not Le 17,074,805.

Since the plaintiff, Ms Fynn, was appointed as a principal legal officer and even though her department was merged with the corporate affairs department of the defendant, from the evidence before the court from either party, she was not officially promoted to the position of Director; and therefore, cannot be paid her end of service benefits based on her temporary transfer to Head of Policy and Legal Affairs Department. Her end of service benefit should be calculated on her last salary of principal legal officer, that is, Le 32,285,601.00, and her years of service, which was 10 years. Hence Le 32,285,601 x 10 years.

On the issue of NASSIT contributions, I understand that this has been resolved.

H. In view of the above, I HEREBY MAKE THE FOLLOWING ORDERS:

1. Payment of outstanding end of service based and calculated on the monthly salary or last salary of Le 32,285,601 x 10 years is to be made.
2. There is no arrear of unpaid acting allowance owed to the Plaintiff.
3. Leave allowance for 11 days unspent leave is to be paid to the Plaintiff based on monthly salary of Le 32,285,601.
4. NASSIT contributions has been resolved. I therefore make no order on this issue.
5. Interest is to be paid at the rate of 2% from the date sum was due until judgment.
6. Interest of 2% from today's date of judgment until payment pursuant to the Law Reform Miscellaneous Act Cap 19.
7. Costs to be taxed if not agreed upon.



17/11/2021