

IN THE HIGH COURT OF SIERRA LEONE  
(INDUSTRIAL COURT DIVISION)

BETWEEN:

KENNETH GABBIDON - PLAINTIFF/RESPONDENT  
4(O) HENNESSY STREET  
FREETOWN.

AND

THE UNIVERSITY OF SIERRA LEONE - DEFENDANT/APPLICANT  
A. J. MOMOH STREET  
FREETOWN.

**BEFORE THE HON. MR. JUSTICE JOHN BOSCO ALLIEU, J.A.**

**RULING DATED THE 27<sup>th</sup> DAY OF April 2021**

REPRESENTATIONS:

B.E. JONES - FOR THE PLAINTIFF/RESPONDENT  
E. KARGBO, J.M. FRENCH AND S. WILL ESQ - FOR THE DEFENDANT/APPLICANT

**RULING**

**I**

By Notice of Motion dated 3<sup>rd</sup> July 2020, Counsel for the Defendant/Applicant, E. Kargbo Esq, applied for the following orders:

1. That this Hon. Court set aside the Writ of Summons dated 8<sup>th</sup> May 2020 and all subsequent proceedings for the following irregularities:
  - (a) That the said Writ of Summons and pleadings thereof is frivolous, and it discloses no reasonable cause of action against the Defendant herein, the University of Sierra Leone.
  - (b) That the said action contravened the provisions contained in the Terms and Conditions of Service for Senior Academic and Administrative Staff of the University.
  - (c) That the Plaintiff lacks the capacity to institute such an action against the university.
2. Any other Order(s) that this Hon. Court may deem just in the circumstances.
3. Costs.

In support of his Application is the Affidavit of Joseph Magnus French Esq sworn to on the 3<sup>rd</sup> day of July 2020 and filed herein to which the following Exhibits are attached:

“Ex. JMF1” - Writ of Summons in this action.  
“Ex. JMF2” - Memorandum and Notice of Appearance filed by the Defendant’s Solicitors

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- “Ex. JMF3” - Employment letter of the Plaintiff, Kenneth Gabbidon, Assistant Registrar
  - “Ex. JMF4” - Copy of the Conditions of Service for Senior Academic and Administrative Staff.
  - “Ex. JMF5<sup>1</sup> AND 5<sup>2</sup>” - Letters reviewing Plaintiff’s employment whilst working for the Defendant.
  - “Ex. JMF6<sup>1</sup> and 6<sup>2</sup>” - Letters of redeployment of the Plaintiff to the School of Graduate Studies and the University Secretariat respectively.
  - “Ex. JMF 7<sup>1</sup> and 7<sup>2</sup>” - Copies of Letter of Appointment and Job description of the Plaintiff as Marshall of the Defendant’s University.
  - “Ex. JMF8<sup>1</sup> and 8<sup>2</sup>” - Copies of Expiration of Contract dated 25<sup>th</sup> February 2019 from the Defendant to the Plaintiff and Appeal for renewal of Contract dated 27<sup>th</sup> February 2019 from the Plaintiff to the Defendant.
  - “Ex. JMF9<sup>1</sup> and 9<sup>2</sup>” - Letter dated 13<sup>th</sup> October 2019 from the Plaintiff to the Registrar of the Defendant’s University and her reply thereto dated 15<sup>th</sup> October 2019.
  - “Ex. JMF10” - Copies of the Plaintiff’s contribution statement to NASSIT.

Counsel for the Defendant/Applicant relied on the entirety of the Affidavit and the Exhibits attached thereto.

He referred to paragraph 4 and 6 of the Plaintiff’s Affidavit in Opposition sworn to on 14<sup>th</sup> July 2020 and submitted that the depositions therein are in the form of reply contained in “Ex. JMF1”, the claims from paragraphs 1-4 and “Ex. JMF3,” with particular reference to paragraphs “G, H, and I” all in the Affidavit in Support of this Application dated 3<sup>rd</sup> July 2020.

Counsel for the Defendant/Applicant further relied on the Universities Act 2005, the Terms and Conditions of Service of Senior Academic and Administrative Staff of the University, as contained therein. He further referred to “Ex. JMF4” at page 6 and submitted that under the rubric “Ex-Gratia” – Article 3.3. of the Terms and Conditions of Service, all boarders on the law.

According to him, the Plaintiff did not serve the Defendant’s University for 5 (Five) years. He was employed on 21<sup>st</sup> January 2016 and the date of non-renewal of his contract was on 25<sup>th</sup> February 2019. If the requirements of the employment letter was not met, Counsel for the Defendant/Applicant maintained that the Plaintiff ought not to have come to this Hon. Court and prayed that Order 17 Rule (1) (a) of the High Court Rules 2007 be invoked. He further submitted that the issue of redeployment was based on a yearly contract subject to the consent of both parties and referred to “Ex. JMF3,” paragraph B thereof, of the Letter of Appointment dated 21<sup>st</sup> January 2016.



Counsel for the Defendant/Applicant submitted that by virtue of Section 27 part 5 of the Universities Act 2005, the Defendant is empowered to deploy and redeploy any staff under the employment as, when, and where required. This should not be an issue as it is a statutory provision. Further to that, he referred to “Ex. JMF6<sup>1</sup> and 6<sup>2</sup>” dated 6<sup>th</sup> November 2017 which is the Redeployment to the School of Post Graduate Studies and Redeployment to the University Secretariat, respectively.

He finally submitted that this action is not properly before this court, the reliefs sought by the Plaintiff are not for this court to determine and that the action be stuck out by virtue of Order 21 Rule 17(1)(a) of the High Court Rules 2007.

## II

In his response, counsel for the Plaintiff/Respondent, B.E. Jones Esq, opposed the Application and relied on his Affidavit sworn to on the 14<sup>th</sup> July 2020 to which the following Exhibits are attached:

- |          |   |  |
|----------|---|--|
| "Ex. A"  | - | Copy of the Writ of Summons  |
| "Ex. B"  | - | Offer of Appointment as Assistant Registrar  |
| "Ex. C"  | - | Letter of the Plaintiff's Deferment of Annual Leave  |
| "Ex. D"  | - | Appointment of the Plaintiff as University Marshall.   |
| "Ex. E." | - | Expiration of Contract Letter to the Plaintiff.  |
| "Ex. F"  | - | Offer of Contract to the Plaintiff for six (6) months.   |
| "Ex.G"   | - | Acknowledgement and acceptance of the offer of Contract by<br>the<br>Plaintiff                             |
| "Ex.H"   | - | Letter dated 27 <sup>th</sup> March 2019 captioned Letter of Contract.                                     |
| "Ex. J"  | - | Selected portion of the Defendant's conditions of Service for<br>Senior Academic and Administrative Staff. |

Counsel for the Plaintiff/Respondent relied on the entirety of his Affidavit in Opposing the Application. He submitted that the Plaintiff is praying for 8 (Eight) reliefs; four (4) of which are for damages, interest and costs whilst the other 4 (four) relates specifically to End of Service Benefits, Leave Allowances, Entitlements as University Marshall and outstanding salary for his last month of service which was in September 2019.

In relation to the above, he maintained that Counsel for the Defendant/Applicant made submission in relation to two (2) of the 4 (four) claims, that is the End of Service Benefits and Employment as a Marshall. There are claims for leave allowance and outstanding salaries during the Plaintiff's employment but which were not addressed by Counsel for the Defendant.

He further maintained that even if Counsel for the Defendant/Applicant was correct in part of his submissions, yet, there are two (2) other claims to which answers were not provided and this cannot defeat the Writ of Summons. This Hon. Court, according to him, still have to answer the questions



whether the Plaintiff was paid his leave allowances, his past salary, whether there was a breach of contract and whether he is entitled to damages.

The second limb of the submissions, according to Counsel for the Plaintiff/Respondent is in respect of the period the Plaintiff was employed by the Defendant with reference to clause 3.3. of the Conditions of Service referred to by Counsel for the Defendant concerning that the Plaintiff is not entitled to end of service benefits because he had not worked for 5 (five) years. He submitted that it is an incorrect interpretation of the terms and conditions of service for the following reasons:

- (a) 3.3. deals with "Ex-Gratia". It is not an End of Service benefit. An "Ex-Gratia", according to Black's Law Dictionary, 8<sup>th</sup> Edition at page 613 is a "Favour" not legally necessary. He referred to clause 6.3 (b) which makes provision for benefits on termination of Employment. It is the Defendant who terminated the contract. Therefore, the Plaintiff is entitled to benefits under 6.3 and can even receive "Ex-Gratia" payments.

With further reference to 3.3 Counsel for the Plaintiff/Respondent submitted that the said section is ambiguous.

- (b) As to Deployment and Re-Deployment, counsel for the Plaintiff/Respondent argued that the Plaintiff's deployment to the school of Post Graduate Studies and his Re-Deployment as University Marshall, all mentioned in "Ex JMF6" in November 2017, July 2018 and December 2018 were not connected in any way with reference to "Ex. JMF7".

In "Ex. D" of the affidavit in Opposition, the Plaintiff demanded his entitlements but the Defendant did not reply to him and that is the reason why he is claiming reliefs in this Hon. Court. When he testifies, he will give evidence as to the emoluments of a Marshall and these are claims he is entitled to but as to whether he ought to receive them is a matter for this Hon. Court to decide.

Counsel for the Plaintiff/Respondent submitted that this is an arguable case and a Defence and Reply are to be filed as there are triable issues. He requested this Hon. Court to dismiss the Notice of Motion filed by Counsel for the Defendant/Applicant and the Orders prayed for therein.

He craves that this Hon. Court orders that the Defendant file a Defence in respect of the Plaintiff's claims for End of Service Benefits under clause 6.3 (b) of the Terms and Conditions of Service, his entitlements as a Marshall as indicated in "Ex. JMF 7", and his entitlements for the Deferred Leave as clearly stated in "Ex.C". He reiterated that this Hon. Court Orders the Defendant to file in their Defence.

### III

In his reply, Counsel for the Defendant/Applicant submitted that Counsel for the Plaintiff/Respondent has woefully failed to respond to the Application. First, he conceded to the fact that there is an "Ex-Gratia" provision specifying a 5 (five) year period. Counsel for the Plaintiff/Respondent exhibited "Ex. J" in his Affidavit in Opposition but Counsel for the Defendant/Applicant submitted that the particular provision does not in any way assist the Plaintiff in this action in that he does not fall within the category mentioned. He invited this Hon. Court to look at the whole of clause 6.3 under the rubric



“Benefits on Termination of Appointment”. He reiterated that the Plaintiff does not fall within that category. Counsel for the Defendant/Applicant referred to “Ex. E” of the Affidavit in Opposition indicating that the Plaintiff was a contract staff of the Defendant’s University and therefore, his claims are frivolous.

He submitted that the Plaintiff cannot claim salaries, for September 2019 and in his reply in relation to breach of contract, he argued that it is frivolous. Counsel for the Defendant/Applicant further argued that if all the substantive orders prayed for fail based on the Plaintiff’s contract, then the entire Writ of Summons is frivolous in relation to Order 21 Rule 17 of the High Court Rules 2007. He requested this Hon. Court to dismiss this action as the Plaintiff have nothing more to do with the Defendant upon the expiration of his Contract.

#### IV

I have listened to the respective submissions made by Counsel in this matter and have carefully perused all the documents exhibited herein.

The Plaintiff, in his Writ of Summons dated 8<sup>th</sup> May 2020 claims the following:

- (a) Recovery of End of Service Benefit due to him from the Defendant based on his employment contract.
- (b) Recovery of the total sum being payment for deferred Leave days for the period 2017 and 2018
- (c) Recovery of all benefits and entitlements due under the University Marshall contract of employment.
- (d) Recovery of the outstanding salary for the month of September 2019.
- (e) Damages for breach of Contract
- (f) Interest
- (g) Any further or other Orders
- (h) Costs of the action.

Counsel for the Defendant/Applicant has moved this Court to set aside the said Writ of Summons, on the grounds stated in 2(i)(ii) and (iii) in his Notice of Motion dated 3<sup>rd</sup> July 2020. Arguments advanced by him relates to this action been in contravention of clause 3.3 of the Terms and Conditions of Service for Senior Academic and Administrative Staff of the University and further that the Plaintiff was a contract staff whose contract expired with the Defendant on 30<sup>th</sup> September 2019. He therefore lacks the capacity to institute this action against the Defendant.

Clause 3.3. of the Defendant’s Conditions of Service for Senior Academic and Administrative Staff, referred to in this matter, captioned EX-GRATIA, states as follows:

“on retirement/resignation/termination, a member of staff who has served the University for a minimum period of five (5) years and thereafter continue to serve shall receive ex-gratia as follows:.....”

An Ex-Gratia payment is defined as a sum of money paid to an employee by an employer in a situation where the employer is not obligated to do so. Ex gratia payments are, therefore, gestures of goodwill



on behalf of the employer. The Plaintiff, in his Writ of Summons dated 8<sup>th</sup> May 2020 did not specifically claim ex-gratia payment but as to whether or not he is entitled to such payment is for the Court to decide. This can only be done in a full trial.

The clause referred to extends Ex-Gratia payments to “a member of staff who has served the University for a minimum period of 5 (five) years.....” No distinction is made between a “contract” staff and a “regular” staff. The emphasis here is a member of staff “who has served the University”. It is therefore my considered view that “contract” staff are not excluded from receiving Ex-Gratia payments from the Defendant’s University.

I will now advert my mind to clause 6.3 (b) of the Defendant’s conditions of Service for Senior Academic and Administrative Staff, also referred to in this matter, captioned BENEFITS ON TERMINATION OF EMPLOYMENT, which states as follows:

“A member of staff who has served the University for a period of three years and whose services are terminated, or who voluntarily resigns, shall be entitled to his/her benefits, provided that such staff member had given or had been given a three-month notice, in the case of, a staff below the rank of Associate Professor/Reader; and six months for Associate Professor/Reader and Professor.”

The Plaintiff, in his Writ of Summons dated 8<sup>th</sup> May 2020, specifically claimed recovery of End of Service benefits due to him by the Defendant. An End of Service Benefit refers to a defined payment made to the employee by the employer upon the termination of employment. Again, there is no distinction in clause 6.3(b) of the said Conditions of Service between a “contract” and a “regular” staff. The emphasis therein is a member of staff “who has served the University”.

Now, the Plaintiff, by letter dated 21<sup>st</sup> January 2016 – “Ex. B” – was offered appointment as Assistant Registrar effective 1<sup>st</sup> February 2016.

Clause (b) of the said Letter of Appointment states that “The Appointment is tenable for a period of one year in the first instance and will thereafter be subject to review and renewal by mutual consent”. Accordingly, after 1 (one) year service, no time limit is set for the subsistence of such appointment, review and renewal. What is required is “mutual consent”.

By letter dated 13<sup>th</sup> March 2019 – “Ex F” – approval of the Plaintiff’s contract as Assistant Registrar of the Defendant’s University was granted up to 30<sup>th</sup> September 2019. In effect, the Plaintiff expressly served the University from 1<sup>st</sup> February 2016 to 30<sup>th</sup> September 2019 which is a period over 3 (three) years.

During this period, what clearly came out in the Exhibits attached to the Plaintiff’s Affidavit in Opposition dated 14<sup>th</sup> July 2020, are that first, he was appointed as University Marshall effective 1<sup>st</sup> November 2018 – “Ex.D”, and his redeployment to the school of Post Graduate Studies, Fourah Bay College effective 8<sup>th</sup> November 2017 and the University Secretariat respectively with effect from Tuesday 17<sup>th</sup> July 2018. See “Ex. JMF6<sup>1</sup> and 6<sup>2</sup>” attached to the Defendant’s Affidavit in Support of the Notice of Motion dated 3<sup>rd</sup> July 2020.



The Plaintiff, in a correspondence dated 10<sup>th</sup> December 2018, requested clarifications from the Defendant's University about his monthly allowance for his position as Marshall, that is, "Ex D" attached to his Affidavit in Opposition, but the Defendant did not reply. Further, the Plaintiff by correspondence dated 18<sup>th</sup> March 2019 addressed to the Defendant's University, sought advise as to where he should report as Assistant Registrar. By correspondence from the Defendant's University dated 27<sup>th</sup> March 2019 addressed to the Plaintiff, he was told to wait until further communications are made to him by the University before he reports for duty. He was further informed that whilst waiting, he will receive salaries until September 2019.

Another issue, uncontroverted, is the deferment of the Plaintiff's annual leave due in 2017 to "sometime next year, due to the exigencies of the job". This was contained in a correspondence dated 27<sup>th</sup> November 2017 from the Defendant's University to the Plaintiff.

The entitlements of the Plaintiff's claim to leave allowance, his emoluments as a University Marshall and the non-payment of his September 2019 salary, which the Defendant's University undertook to pay, are all issues in dispute and which the Plaintiff specifically claimed in his Writ of Summons dated 8<sup>th</sup> May 2020.

It is therefore my considered view that all the issues referred to ought to be dealt with in a full trial.

I will further advert my mind to the conditions contained in clause 3.3 and 6.3 (b) of the Defendant's Conditions of Service for Senior Academic and Administrative Staff. Mention is made of retirement, resignation, termination and three (3) months' notice to be given by either the employer or the employee all as conditions for the receipt of entitlements either as Ex-Gratia and or end of service benefits. According to all the exhibits filed in this matter, there is no reference being made to resignation, retirement, termination and the 3 (three) months' notice period from either party required under clause 6.3 (b) of the said Conditions of Service.

The closest I came across is contained in "Ex F" dated 13<sup>th</sup> March 2019 from the Defendant's University to the Plaintiff, the same attached to the Plaintiff's Affidavit in Opposition.

It is contained in the following:

"Please note that this will be your Final Contract with the University."

Will the above be construed as Termination of Contract with the requisite 3 (three) months' notice compliance by the Defendant? Is Termination of Contract required to be entailed in a separate correspondence with the proper heading, the same to be served on the Plaintiff with at least three (3) months' notice? The effect here is that if the Court is to adjudge that there was no Termination of the Plaintiff's Contract with the Defendant, then the Plaintiff will be considered to be in the service and employment of the Defendant till Judgement is delivered in this matter. As a result, he will still be considered as a Staff of the Defendant's University whilst still waiting to receive further communications from the University before reporting for duty and as such be entitled to salaries and other benefits whilst "he is still in waiting". Perhaps, in order to safeguard against the wastage of human resources, it would be best if the Defendant's University correspond to the Plaintiff to report for duty, find a location for him whilst at the same time trying to sought out the issues claimed by him. This is, of course, without prejudice to the Defendant's firm belief and contention that they lawfully terminated the services of the Plaintiff.

Based on all the foregoing, I hold that the Plaintiff is lawfully before this Hon. Court in order to pursue his claims against the Defendant;

AND I HEREBY MAKE THE FOLLOWING ORDERS:

1. That all the prayers contained in the Notice of motion dated 3<sup>rd</sup> July 2020 for and on behalf of the Defendant/Applicant are hereby refused and therefore accordingly dismissed.
2. That the parties in this matter continue to settle their pleadings by filing the relevant papers within the permissible time limits specified by the High Court Rules, 2007 up to the time of full trial when the matter shall be heard.
3. That costs be borne by the Defendant/Applicant in this Application in the minimal sum of Le5,000,000/00 (Five Million Leones).



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**HON. MR. JUSTICE JOHN BOSCO ALLIEU J.A.**