

IN THE HIGH COURT OF SIERRA LEONE
INDUSTRIAL AND SOCIAL SECURITY DIVISION

BETWEEN:

JIBAO MICHAEL FLEE

REGENT

FREETOWN

- PLAINTIFF

AND

BANK OF SIERRA LEONE

GLOUCESTER STREET

FREETOWN

- DEFENDANT

JUDGMENT

Judgment delivered electronically by the Hon Justice Sengu M. Koroma, JSC on the 9th day of May, 2023

1. The Plaintiff's claim against the Defendant is for the following relief:
 - (i) Damages for unlawful dismissal.
 - (ii) Reinstatement of the Plaintiff and payment of the sum of Le 911,850,262.00 as payment due the Plaintiff from June, 2018 to December, 2019.
 - (iii) Alternatively, recovery of the sum of Le 768,299,551.00 being end of service benefits due and owing the Plaintiff by the Defendant.
 - (iv) Recovery of the sum of Le 3,660,109,770.24 for future loss of earnings.
 - (v) Interest on the said sums or amount pursuant to Section 4 of the Law Reform (Miscellaneous Provisions) Act No. 19 of 1960.

(vi) Any further or other relief this Honourable Court might deem fit and just.

(vii) Costs

1. The case of the Plaintiff is laid out in the Particulars of claim dated the 8th April, 2020. In the said Particulars of claim, the Plaintiff avers that he was employed by the Defendant in May, 1999 and as a result of his hard work and commitment was appointed as Acting Director, Department in August, 2019 and was subsequently confirmed in the position in January, 2018. In Paragraph 6 of the Particulars of claims, the Plaintiff states his salary and perquisites.
2. The Plaintiff avers that on the 13th day of June, 2018, he was issued via an internal memorandum a letter of query for an unauthorised payment to contractors. He replied to the said memorandum explaining that the payment was authorised as it was lawfully due and owing to the said contractors. The matter was sent to a Disciplinary Committee and a hearing was held on the 15th June, 2018. The Disciplinary Committee forwarded its recommendations to the Board of Directors who met on the 19th and 20th June, 2018 and resolved to dismiss the Plaintiff. The Plaintiff alleges that the recommendations of the Disciplinary Committee were never discussed by the Management of the Defendant which contravenes Article 9.6 of the Staff Handbook of the Bank of Sierra Leone.
3. The Plaintiff avers that he was later handed over to the Criminal Investigations Department on the 20th June, 2018 where he was detained for several days on the allegation of his having made payment to a contractor on an issued cheque.
4. The Plaintiff further avers that while in detention, he was served a letter dated 22nd June, 2018 summarily dismissing him. The Plaintiff avers that due to his incarceration, he was unable to appeal the decision to summarily dismiss him.
5. The Criminal Investigations Department subsequently sent the file on him to the Director of Public Prosecutions (DPP) for advice. That the DPP by letter dated the 16th May, 2018 absolved him of any criminal liability. The Plaintiff avers that despite the DPP's advice, the Defendant has failed to reinstate him even after two different firms of Solicitors wrote to the Defendant asking that he be reinstated as a director of the bank.



6. The Plaintiff avers further that as a result of his unlawful dismissal, he has suffered emotional stress, psychological torture, and economic loss. That he has also suffered damages for which he should be compensated.
7. The Defendant filed a Statement of Defence dated the 6th May, 2020. In the said defence, the Defendant denies that the Plaintiff was promoted to the rank of Director, Banking Department as a result of his performance but rose through the ranks. In Paragraph 5 of the said defence, the Defendant avers that the payments made by the Plaintiff were not authorised by it but made in disobedience of express decisions, directives and instructions of the Government of Sierra Leone and the Defendant. The Defendant avers further that the Plaintiff failed to verify the instructions conveyed to him by Mr. Ivan Gbondo from the Governor authorising him to pay the contractors. That the Defendant did not breach Articles 9.5 and 9.6 of the staff Handbook.
8. The Defendant avers further in the Statement of Defence that it is not bound by the advice of the Director of Public Prosecutions and will rely on the Provisions of the Bank of Sierra Leone Act, 2011.
9. The Defendant denies that the Plaintiff suffered any loss and damage and relies on Article 9.1 of the Staff Handbook. The Defendant therefore denies the allegation that it unlawfully dismissed the Plaintiff as the Statement of Claim discloses no cause of action and relies on Section 69 of the Bank of Sierra Leone Act, 2019
10. The Plaintiff filed a Reply dated the 8th July, 2020. In the said Reply, the Plaintiff avers that the express decision, directives, and instructions of the Government of Sierra Leone did not affect or debar his conduct at the Bank of Sierra Leone. The Plaintiff avers further that reliance on Section 69 of the Bank of Sierra Leone Act, 2019 by the Defendant is misplaced as the conduct complained of occurred prior to its enactment and same has no retrospective effect.

THE PLAINTIFF'S CASE

11. The Plaintiff's case is that the Defendant unlawfully dismissed him. He argues that the Defendant did not follow due process in dismissing him. This was

even after the Defendant's Disciplinary Committee had investigated the matter and forwarded it to the Criminal Investigations Department which absolved him from liability. Notwithstanding the advice of the DPP, the Governor, as Chairman of the Board proposed that the Plaintiff be summarily dismissed instead of being terminated as earlier agreed by the said Governor at a meeting held on the 19th June, 2018.

DEFENDANT'S CASE

12. The Defendant argues that payments made by the Plaintiff were unauthorised by the Bank. It explains that in 2018 when there was a change of Government, a moratorium was placed on payments to all Government Contractors even when such payments had been approved. All payments after the moratorium were to be approved by a Cash Management Committee comprising all Heads of Department of the Defendant, the Accountant General and Officials of the Ministry of Finance. It explains further that the Government of Sierra Leone had issued cheques for payments due to Pavifort and Associates, one of the Government contractors which were honoured by the Plaintiff without the approval of the Cash Management Committee. The Defendant contends that the Plaintiff did not deny knowledge of the existence of the Committee, but rather argues that the decision, directives, and instructions of the Government of Sierra Leone did not affect or debar his conduct at the Bank of Sierra Leone.
13. As a result of the action of the Plaintiff, the Governor of the Bank of Sierra Leone gave directives to the Internal Audit Department to audit the Ways and Means Accounts of the Government of Sierra Leone. The Findings and Recommendations of the Internal Audit Department – EXHIBIT B⁴⁷⁻⁶¹ revealed that: -
 - ❖ A total of fifteen (15) transactions valued fifteen Billion, four hundred and twenty-eight Million, five hundred and sixty thousand and forty-five Leones (Le 15,428,560,045.00) were paid to Contractors during the period under review. (Appendix 1) EXHIBIT ⁵¹⁻⁵³.
 - ❖ That Seven (7) out of Fifteen (15) transactions valued Nine Billion, seven hundred Million Leones (Le 9,700,000,000.00) were paid to Paviport and Associates - EXHIBIT ⁵⁴⁻⁵⁵.



❖ That ten (10) out of 15 transactions were not included in the Daily Statistics of the Government Treasury Position (Appendix iii) EXHIBIT ⁵⁶⁻⁶¹

14. On the basis of the findings of the Internal Audit Department, a letter of query dated 13th June, 2018 was sent to the Plaintiff (EXHIBIT B⁶²⁻⁶⁴) to which he replied by memorandum dated 14th June, 2018 (EXHIBIT ⁶⁵) A similar letter of query was sent to the Assistant Director, Banking Operations, Mrs. Florella Hastings-Spaine dated 13th June, 2018 -(EXHIBIT B⁶⁶⁻⁶⁹) to which she also replied on the 13th June, 2018.
15. A Disciplinary Committee was set up to investigate the allegations which Committee met on the 14th and 18th June, 2018, respectively. The Disciplinary Committee made findings and recommendations which found the Plaintiff wanting and recommended that his services be terminated from the services of the Bank - (EXHIBIT B⁷⁰⁻⁸⁰). The exact wording of the recommendation is as follows: -

“That Messers Jibao Flee’s and Ivan Gbondo’s Services be terminated from the Bank for making unauthorised payments and concealment of such payments, thereby misleading the Executives of the Bank of Sierra Leone and the Ministry of Finance in accordance with the Bank’s code of Conduct Rules 1.4.1; 1.8.1; 1.31.3 and the Staff Handbook Article 9.1.

16. The Report of the Disciplinary Committee was forwarded to the Governor, who, because the Plaintiff was a Head of Department took the matter to the Board of Directors of the Bank of Sierra Leone. The Board of Directors at an emergency meeting held on the 19th June and 20th June, 2018 respectively decided not to follow the recommendation of the Disciplinary Committee to terminate the service of the Plaintiff and opted to dismiss him. The letter of Dismissal was dated the 22nd June, 2018 – EXHIBIT B⁹⁰.

WITNESSES

1


Several witnesses testified for both the Plaintiff and the Defendant, and I shall analyse their various testimonies, where necessary when dealing with the various issues for determination.

ISSUES FOR DETERMINATION

17. The main issue for determination is whether the summary dismissal of the Plaintiff was unlawful. The other issues such as damages and costs will only be considered if the unlawful dismissal is proved.
18. In his submission on this point, Demba Barrie Esq., Counsel for the Plaintiff submits that the Plaintiff was wrongfully dismissed by the Defendant without recourse to due process and fair hearing. The investigation into the alleged breach by the Plaintiff was hurriedly done and considering the enormity of the allegation, there were bound to be mistakes. He submits that after the conclusion of the investigation by the Disciplinary Committee, the recommendations ought to have been discussed by Management in accordance with Article 9.6 of the Staff Handbook. This procedure was not followed since the Board of Directors met and took a decision not recommended by the Disciplinary Committee.
19. On all the allegations made against the Plaintiff and for which he was summarily dismissed, Mr. Barrie submits that the Plaintiff did not breach any of the procedures of the Bank. He argues that it came out clearly during the proceedings of the Disciplinary Committee that there was no clearly laid down procedure for communicating payment instructions as it could be either oral or written.
20. Mr. Barrie refers to the testimony of Ivan Gbondo, DW4, who the Court was told has also instituted proceedings against the Bank for unlawful dismissal. During the cross examination of DW4, he agreed that the payment made by the Plaintiff could not be deemed to be unauthorised as the cheques were legal instruments originating from the Accountant General. In re-examination, DW4 admits that a Cash Management Committee was set up to approve payment to Contractors, but that not all payments were subject to the approval of the said Committee.

UNAUTHORISED PAYMENTS TO CONTRACTORS



21. In this reply on the procedural issues involved in the dismissal of the Plaintiff, P. Lambert Esq for the Defendant explains that the Investigation of the Disciplinary Committee started with the Governor of the Bank of Sierra Leone instructing the Internal Audit Department to investigate unauthorised payments and deletions. The Internal Audit Department completed its investigation and submitted a report tendered as EXHIBIT B⁴⁷⁻⁶¹. This led to the setting up of a Disciplinary Committee to investigate the Plaintiff and others. The Committee recommended that the services of the Plaintiff be terminated. Mr. Lambert submits that the Defendant followed the procedures provided for in Articles 9.5 and 9.6 of the Staff Handbook. Although the matter was not taken to the Heads of Department as Management, the decision to dismiss the Plaintiff was made by the body which by law has the highest authority in the Bank; that is the Board of Directors. For this Counsel refers to Section 18 (4) of the Bank of Sierra Leone Act, No. 15 of 2011. He also refers to Section 17 (b) of the said Act.

THE DAILY STATISTICS OF GOVERNMENT TREASURY POSITION.

22. In addition to the allegation of making unauthorised payments to Contractors, the Plaintiff was also accused of deleting processed payments from the Daily Statistics of Government Treasury Position during finalisation.

23. In his submission to the Court on this point, P. Lambert Esq relies on the testimony of one Mr. Abdulai Kamara before the Disciplinary Committee (at page 6 of the report – EXHIBIT B 75) in the following words:

- i “He confirmed that he prepares the Daily Statistics of Government Treasury Position Reports and forwards the draft to the Head, Banking Operation Division for vetting. The Head, Banking Operations Division and himself then discuss the report with the Director, Banking Department before finalising.”



- ii. “That Mr. Flee (The Plaintiff herein) had formerly been instructing him to delete processed payments to Contractors from the Daily Statistics of Government Treasury Position Reports during finalisation.”

23. Mr. Lambert submits that the Disciplinary Committee recommended that the Plaintiff’s services be terminated for making unauthorised payments and the concealment of such payments thereby misleading the Executives of the Bank of Sierra Leone and the Ministry of Finance in accordance with Code of Conduct Rule 1.14; 1.8.1; 1.31.3 and Staff Handbook Article 9.1. He further submits that the Disciplinary Committee is only bound to make recommendations to the Management based on their findings. There is nothing in the Code of Conduct and Staff Handbook to make it mandatory to go by the recommendations made by the Disciplinary Committee.

24. Mr. Barrie on the other hand argues that the evidence of Mr. Abdulai Kamara and that of Mrs. Florella Hastings Spaine were not corroborated. Indeed, they were not invited to testify in Court and be cross – examined. He submits that there is no straightforward evidence that the Plaintiff ordered the deletion of the processed payments from the Daily Statistics of Government Treasury Bill position.

25. On the issue of corroboration, Mr. Lambert quoting from PHIPSON ON EVIDENCE, 12TH EDITION at PARAGRAPH 1626 at page 681 submits that as a general rule of law, Courts or tribunals may act on the testimony of a single witness, even though uncorroborated or upon duly proved documentary evidence without such testimony at all. Where the testimony is unimpeached, the court should act on it. He further submits that there was sufficient evidence supporting the testimony of Abdulai Kargbo given to the Disciplinary Committee. Counsel refers to the response of Mrs. Hastings-Spain to a letter of query written to her by the Human Resource Department – EXHIBIT 68 in which she stated that she verified entries made by Abdulai Kamara in the Daily Statistics before passing it on to the Plaintiff and so was therefore surprised by the findings of the Internal Audit Report that certain entries were missing. Mr. Lambert further submits that even the Plaintiff himself accepted responsibility when he said, “In the light of the foregoing and as Head in Charge during the period, I take full responsibility and once again tender my



sincere apologies for all the embarrassment these actions have caused the Bank.”

26. On relevance of the advice of the Director of Public Prosecutions, Mr. Lambert submits that neither the DPP nor the Director of Crime Management sent any advice to the Bank of Sierra Leone. In any event, the Bank is not bound to follow the advice of the DPP as averred in paragraph 10 of the Statement of Defence. He relies for the proposition on Section 6 of the Bank of Sierra Leone Act, 2011 which proves that:

“The Bank shall be an autonomous institution and shall in that respect not be subject to the control or direction of any person or authority.”

27. On the Plaintiff’s claim for unlawful Dismissal, Reinstatement and future loss of earnings, P. Lambert Esq refers the Court to Section 122(2) of the Constitution of Sierra Leone, 1991 and the decision of the Supreme Court of Sierra Leone in the case of JESSIE ROWLAND H. GITTENS – STRONGE -v- SIERRA LEONE BREWERY LIMITED: Civ. App. 97/79 (Unreported).

28. As regards the claim for future loss of earnings, Counsel refers to the decision of the Supreme Court in the Case of THOMAS O. VINCENT vs. B.P. (SIERRA LEONE) LTD: S. C. Civ. App 2/81 (Unreported) and submits that by Article 8.1(b) of the Staff Handbook - EXHIBIT B 38 and 38, which provides that the Bank can terminate the contract of the Plaintiff by giving three calendar months’ notice, the Plaintiff’s contract of employment can be terminated by giving notice and he is therefore not entitled to claim the future earnings. He submits that the High Court lacks jurisdiction to order the reinstatement of the Plaintiff in the employment of the Defendant or for the payment of future loss of earnings as claimed in the Writ of summons.

AUTHORITIES CITED

29. The Plaintiff relies on following cases in support of his submissions:

- i. JESSIE ROWLAND H. GITTENS – STRONGE -v- SIERRA LEONE BREWERY Civ. App. 7/79 (Supreme Court) Unreported.
- ii. DONOHOGUE -v- STEVENSON (1932) AC
- iii. R -v- BASKERVILLE (1916) 2 KB. 658 at 667.
- iv. RE H (Minor) (1996) AC 563.
- v. RE B (Children) (2008) UKHL 35.

- vi. PATRICK MASSAQUOI -v- BANK OF SIERRA LEONE I.S.S. 49 OF 2019) delivered on the 1st February, 2022.
- vii. NEARY AND NEARY -v- DEAN OF WESTMINSTER (1999) IRLR 288.
- viii. DIETMAN -v- LONDON BOROUGH OF BRENT (1988) IRLR.

30. The Defendant on the other hand relies on the following authorities:

- 1. JESSIE ROWLAND H. GITTENS – STRONGE -v- SIERRA LEONE BREWERY (also relied on by the Plaintiff).
- 2. Section 122(2) of the Constitution of Sierra Leone, 1991.
- 3. THOMAS O. VINCENT -v- B. P (SIERRA LEONE) LTD: S.C. Civ. App. 2/81 (Unreported).

DETERMINATION OF ISSUES IN DISPUTE

a) UNLAWFUL DISMISSAL

31. The Plaintiff has centered his arguments under this head on two crucial issues:

- (i) That the Procedure used by the Defendant was wrong in that the recommendation of the Disciplinary Committee was not submitted to Management but was sent directly to the Board of Directors contrary to Article 9.6 of the Employee Handbook.
- (ii) That the allegations against the Plaintiff which formed the basis of his dismissal were not proved at the trial.

32. I shall deal with both issues in the order in which they are stated herein.

33. Before doing so however, I shall first of all state the law on unlawful dismissal as we know it in Sierra Leone. A good starting point in this discourse is the statement of Livesey Luke C. J in JESSIE ROWLAND.H. GITTENS-STRONGE -v- SIERRA LEONE BREWERY LIMITED (Ubi supra) relied on by both parties:

“In this connection, it is necessary to remind ourselves that an action for wrongful dismissal is an action for breach of contract. In this regard, it is important to emphasise that in such an action there are two important and separate issues involved, namely, breach of contract and damages for the breach. A Plaintiff may succeed in establishing breach of

contract, yet he may recover only nominal damages or no damages at all. The Plaintiff's first burden is to prove a breach of the relevant contract. So, in an action for wrongful dismissal, the Plaintiff must first of all establish breach of his Contract of employment. It is only after that that the question of damages would arise."

34. His Lordship further said "... The employer must comply with the terms stipulated in the contract of service for the termination or dismissal of the employee; otherwise, he terminates the employment at his peril. He will then be held to be in breach and the dismissal will be unlawful."
35. Having the foregoing statement of Livesey- Luke CJ in mind, can it be said that the Defendant complied with the terms stipulated in the contract of service of the Plaintiff for termination or dismissal? The Plaintiff argues that the recommendation of the Disciplinary Committee was not laid before Management for discussion but hurriedly taken to the Board of Directors by the Governor for deliberation. The Defendant on the other hand argues that though the recommendation was not taken to the management of the Bank, it was taken to the Board of Directors which is the highest authority in the Bank.
36. In order to resolve this issue, it will be necessary to look at Article 9.6 of the Staff Handbook which forms part of the Contract of employment of the Plaintiff: Article 9.6

"A Disciplinary Committee will be Constituted by the Management from time to time. Alleged breaches of discipline will be referred to this Committee which will investigate such allegations, determine guilt or otherwise of staff member(s) and make recommendations to Management for disciplinary action when required."

37. What this Article is saying is that whenever a Staff member is found wanting, a disciplinary Committee must first be set up by Management which shall investigate the allegations and report its findings to Management. In the instant case, after Management set up the Disciplinary Committee to investigate the Plaintiff, the findings of the said investigation were handed over to the Governor who did not take it to Management for discussion but rather laid it before the Board which agreed to summarily dismiss the Plaintiff (and not to terminate as recommended by the Disciplinary Committee).

38. The law on this issue is well established. Employers clearly have the right to set rules and standards relating to discipline and develop their own procedures. These rules, standards and procedures are often set out in an Employee Handbook. The said Employee Handbook is binding on both the employer and employee. In any disciplinary proceedings, the employer is bound to follow the procedure laid down in the said Handbook. Where it fails to do so, even where it can establish that the reason for the dismissal was right, it may still be found to have been unlawful for failing to follow the correct procedure.
39. The Corporate Structure of the Bank of Sierra Leone provides for the following:
- (i) The Board of Directors of which the Governor is Chairman. The other members are the Deputy Governor and five non-executive Directors – Section 15 of the Banking Act, 2011.
 - (ii) The Executive Directors of the Bank of which the Governor is again the Chief Executive. These constitute the Management of the Bank. The Board of Directors is not part of Management.
40. The Governor is responsible for the day-to-day administration of the Bank and for implementing the policies of the Bank. The Board is responsible to, amongst others, determine the general policies and adopt internal rules applicable to the administration of the Bank (Section 17 (b)). The Board is not to act on any issue that does not originate from Management. Thus, the failure of the Governor to place the Disciplinary Committee's recommendations before Management for deliberation is a breach of the Plaintiff's contract of employment as envisaged by Article 9.6 of the employee Handbook.
41. The Defendant's Counsel in his conclusion submits that the Defendant has a contractual right to dismiss the Plaintiff from its employment for:
- (i) Disobedience of the lawful order of the Government of Sierra Leone that no payment should be made to contractors of the Government without the approval of the Cash Management Committee.
 - (ii) Instructing Abdulai Kamara to delete entries of payments made from the daily statistics of government treasury position.
 - (iii) Failure to confirm the now denied instructions which he said were given to by the Governor through Ivan Gbondo.

(iv) Failure to perform his duties and confirm that all payments were entered into the daily statistics.

42. On the first point, I will refer to the submission of Counsel for the Defendant on the advice of the D.P.P in which he emphasised the independence of the Bank of Sierra Leone.

43. Central Bank independence refers to the freedom of Central Banks or monetary authorities to conduct monetary policy in accordance with their set mandates without political interference. It has been said to be a means of protecting policy makers against the temptation of using monetary policy in a distortionary way (Lorenzo Bini, member of the Executive Board of the European Central Bank). In Sierra Leone, as submitted by Mr. Lambert, this is provided for by Section 6 of the Bank of Sierra Leone Act, 2011 which states as follows:

“The Bank shall be an autonomous institution and shall in that respect not be subject to the control and direction of any person or authority.”

44. In the instant case, the Accountant General prepared cheques for the payment to contractors which were submitted for payment and honoured by the Plaintiff. The directive of the Government of Sierra Leone not to honour its own cheques does not make sense. Section 53(1) of the Bank of Sierra Leone Act, 2011 provides that “The Bank shall be banker, fiscal agent and advisor to government on monetary and financial matters and shall be a depository of all government funds.” The Government issued cheques which had not been cancelled but ordered its Banker not to honour them. This is wrong. The cheques should have been cancelled or the government should have informed the bank that they were invalid. The reason being that for the sake of the integrity of the banking system, banks are expected to honour all validly issued cheques. Cheques are not invalidated by press releases. There is no evidence before the court that the directive of the Government not to honour the cheque was passed through the Board of Directors which is the only authority by virtue of Section 17 (b) of the Bank of Sierra Leone Act, 2011(as repealed and replaced by the Bank of Sierra Leone Act, 2019) to give such instructions to the Management of the Bank in the form of a Board Resolution.

45. The relationship between the bank and any other body or institution is further clarified by Section 4(2) of the Bank of Sierra Leone Act, 2019 which provides that: -

“In the exercise of their functions under this Act, members of the Board and staff members shall not take instructions from any person or body.”

46. On the alleged deletion of the entry in the daily, this Court characterises the allegation as one of civil fraud. In *BARCLAYS BANK -v- COLE* (1966) 3 All. ER. 948, Lord Diplock provided a succinct definition of civil fraud:

“For at least one hundred years, (see *BULLEN LEAKE* (3rd Edition) “fraud” in civil actions at common law, whether as a cause of action or as a defence, has meant an intentional misrepresentation (or, in some cases, concealment) of fact made by one party with the intention of inducing another party to act on it to his detriment”.

47. As Baroness Hale puts it in *Re B (children)* (2008) UKHL 35 “My Lords there are some proceedings, though civil in form, whose nature is such that it is appropriate to apply the criminal standard of proof.”

48. Similarly, in the Malaysian case of *HOISK SENG -v- YIM YUT KIU* (1997) 2 MLT 45, the Federal Court considered the standard of proof for civil fraud and came to the conclusion that it would be the protean standard. As was put by His Lordship Mohd Azmi:

“In civil proceedings such as conspiracy to defraud or misappropriation of money or criminal breach of Trust, it is settled law that the burden of proof is the criminal standard of proof beyond all reasonable doubt, and not on a balance of probabilities.”

49. In the instant case, there are three persons involved in this alleged deletion of the entries- the Plaintiff, Mr. Abdulai Kamara, and Mrs. Florella Hastings – Spaine. It is strange that neither Mr. Kamara nor Mrs. Hastings – Spaine was called to testify as to the alleged deletion and be subject to cross-examination. There is therefore reasonable doubt as to the veracity of the allegation; especially when there is no evidence of any gain made by the Plaintiff from

the said deletion from the daily Statistics. There is also no loss to the Defendant since the cheques were valid and ought to be honoured.

50. On the issue of future loss of earnings, I agree with the Defendant on the authority of THOMAS O. VINCENT -v- BP (SIERRA LEONE) LTD SC. Civ. APP. 2/81 that the claim is misconceived. The Defendant was under no obligation to maintain the Plaintiff in his employ until the age of retirement. As the Court held in the THOMAS VINCENT CASE:

“The company was entitled to determine the contract at any time by Notice of Termination or foreshortening the normal retiring age by mutual consent or by the exercise of his discretion under the contract. And the fact that the employment was referred to as pensionable and that he was confirmed officer does not affect the position.”

51. Finally, Counsel for the Defendant quoted extensively from the Judgment of Livesey Luke CJ in the JESSIE ROWLAND H. GITTENS – STRONG CASE (Ubi supra). It appears to me that Counsel has made the same mistake as others in construing Unlawful Dismissal and Unfair dismissal as the same, but they are not. In the quoted passage, Livesey-Luke CJ was referring to “UNFAIR DISMISSAL” which includes power of an employer to terminate the services of an employee as long as the contractual notice is given notwithstanding that the Plaintiff has done no wrong.

52. The terms “Unfair dismissal” and “Unlawful dismissal” are often used interchangeably but there are clear distinctions and key differences in law. A wrongful dismissal is a dismissal in breach of contract, where the only relevant consideration for a Court will be contractual obligations of the employer. In contrast, Unfair dismissal is a statutory right arising where the employer has failed to dismiss for a fair reason or failed to follow a fair process. What Livesey-Luke C.J meant was that there is no statute governing unfair dismissal in Sierra Leone as in the UK. So, an action for Unfair dismissal cannot succeed in Sierra Leone. Unlawful dismissal is a common law remedy and is unaffected by the nonexistence of a Statute; an action for Unlawful dismissal is available under the Laws of Sierra Leone. I may venture to say that the passage cited by Counsel for the Defendant is an obiter dictum and therefore does not constitute the ratio decidendi of the case.

CONCLUSION:

53. After taking all the foregoing reasons into consideration, I hold that the Defendant was wrong in law for summarily dismissing the Plaintiff from the services of the bank. There were more appropriate options open to it which the Board of Directors chose not to use.
54. Having held that the summary dismissal was unlawful, I shall now proceed to assess damages, if any, payable to the Plaintiff.

ASSESSMENT OF DAMAGES

55. As I reasoned in the ALUSINE CONTEH -v- SIERRA LEONE ROADS AUTHORITY CASE CC 524/15 (unreported) delivered on the 3rd October 2018, it is settled as a trite matter 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.
56. The Courts have consistently shown their disfavour or dislike of reinstating a wrongfully dismissed employee where there is, in existence, a master-servant relationship between them. Some of reasons for this range from difficulty of enforcing such an order to public policy consideration. Only in a few exceptional circumstances or exceptional cases – for instance those with Statutory or legal favour is the Court ready and willing to reinstate a wrongfully dismissed employee.
57. In the instant case, the Plaintiff is asking to be reinstated or in the alternative be paid a certain sum of money. However, quite apart from the common law position on this matter, the Bank of Sierra Leone Act, 2011 (as repealed and replaced by the Bank of Sierra Leone Act, 2019) is clear on how to proceed in such a situation:

Section 69(d) of the 2019 Act which is ipsissima verba Section 75(d) of the 2011 Act provides as follows:

“In a court or arbitration proceedings against the bank, the court or arbitration body shall be authorised, in appropriate cases, to award monetary damages to the injured parties, but shall not enjoin, stay, suspend, or set aside the actions of the

bank.”

58. It follows from the previously mentioned provision that this court lacks the power to Order the reinstatement of the Plaintiff as such an Order would amount to setting aside the action of the bank. The only remedy open to the Plaintiff, therefore, is damages.
59. In the ALUSINE CONTEH CASE (Ubi Supra) I quoted MCGREGOR ON DAMAGES, paragraph 28- 00 on the measure of damages for wrongful dismissal:

“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 other employment which the Plaintiff would have 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. If, however, the Plaintiff would have earned an amount in substituted employment since the breach, that amount must be deducted.”

60. This principle was applied by Supreme Court of Sierra Leone in the case of BANGURA -v- SIERRA LEONE ELECTRICITY CORPORATION S.C. Civ. APP. 10/81, Per Harding JSC. In the instant case, the principle that the Plaintiff has an entrenched Common Law duty to mitigate the loss suffered will not practically apply to the Plaintiff. The Banking Industry is a specialised industry where no other financial institution would be prepared to employ a senior officer of the Central Bank whose services have been summarily terminated. In fact, before gaining employment in the industry, it is the responsibility of the said Central Bank to determine if the Plaintiff is a “Fit and Proper Person.” The Bank of Sierra Leone will naturally not declare a person it has summarily dismissed “a fit and proper person.” There will therefore not be any deduction for any employment the Plaintiff may have obtained.
61. It can be gleaned from the foregoing analyses that in determining the measure of damages for unlawful dismissal, the following should be taken into consideration:

- a) Salary for the length of time during which notice should be given in accordance with the contract of employment.
- b) Legitimate entitlements due to the Plaintiff at the time the employment was determined e.g., Terminal benefits, bonus etc.
- c) Interest – The Court can award interest on claim for breach of an employment contract. Interest runs from the date of dismissal.

62. This is the settled law on matters of unlawful dismissal, and I shall apply them in this case.

63. In the circumstance, Judgment is hereby entered in favour of the Plaintiff and the court Orders as follows:

1. The Defendant is liable to the Plaintiff for damages for wrongful summary dismissal as follows:

- (i) Three months' salary to be paid to the Plaintiff in lieu of notice using the current salary of Staff at Director level.
- (ii) Interest on the said sum at the rate of 15 percent per annum from the 22nd June, 2018 to the date of this Judgment.
- (iii) Terminal benefits, bonus, and all other entitlements to be paid to the Plaintiff (less any amount already paid) for the period 1st May, 1999 to 22nd June, 2018 using the current basic salary of Staff at Director level.
- (iv) Interest on the said sum at the rate of 15 percent per annum for the period 22nd June, 2018 to date of Judgment.
- (v) Costs to the Plaintiff, such costs to be taxed if not agreed.



Hon. Justice Sengu M. Koroma JSC