

IN THE HIGH COURT OF SIERRA LEONE

(INDUSTRIAL AND SOCIAL SECURITY DIVISION)

IN THE MATTER OF THE EMPLOYMENT ACT NO.15 OF 2023

AND

IN THE MATTER OF CONVENTION 095-PROTECTION OF WAGES CONVENTION
1949 (NO.95)

AND

IN THE MATTER OF AN APPLICATION UNDER THE INTERNATIONAL COVENANT
ON ECONOMIC SOCIAL AND CULTURAL RIGHTS

AND

IN THE MATTER OF AN APPLICATION UNDER ORDER 5 RULE 4 OF THE HIGH
COURT RULES 2007, CONSTITUTIONAL INSTRUMENT NO.8 OF 2007

IN THE MATTER OF AN APPLICATION FOR THE CONSTRUCTION AND
DETERMINATION OF ENACTMENT, CONTRACT AND OTHER DOCUMENTS

BETWEEN:

FELIX BERETHE & 50 OTHERS - PLAINTIFFS

AND

STANDARD CHARTERED BANK - DEFENDANT
SIERRA LEONE LIMITED

COUNSEL:

O. Jalloh Esq. for the Plaintiffs with him Z. D. Kamara (Ms), I. Williams (Ms), A. Kamara Esq. & M. Bah Esq.

R. Johnson Esq. for the Defendant with him J. Benjamin (Ms) and C. I. Pateh Bah Esq.

**RULING DELIVERED THIS 24TH JUNE 2024 BY HONOURABLE MRS. JUSTICE
JAMESINA E. L. KING J. A.**

Background

On 23rd January 2024, this Court granted Judgment in favour of Felix Berethe & 50 others, the Plaintiffs in this matter, in respect of an action instituted by an Originating Summons dated 3rd August 2023, for the construction and or determination of questions relating to their employment with the Defendant, Standard Chartered Bank SL Ltd. In that Judgment, the Court determined that the Plaintiffs were inter alia entitled to their claim for primarily redundancy payments and end of service benefits under the Employment Act No.15 of 2023 and its Regulations also of 2023. This was due to the ongoing processes by the Defendant for sale of its shares and divestment to Access Bank and impending termination of the Plaintiffs' employment by reason of a redundancy.

This Court also ordered that the Plaintiffs were entitled to costs of the action even though Counsel for the Defendants were vehemently opposed to payment of costs. A date was set for submissions to enable the court assess the quantum of costs due the Plaintiffs. This decision is in respect of assessment of costs that the Defendant should pay to the Plaintiffs.

Both Counsel for the parties addressed the Court on the question of costs. In sum, Mr. Jalloh Counsel for the Plaintiffs requested costs on a percentage basis of the Judgment sums which when calculated, such costs were approximately between NLe4,500,000 – 6,000,000 depending on whether redundancy occurred in June or December 2024. He gave reasons why such an amount was claimed one of which was that costs incurred should not be disproportionate to the value of the winning party's claim. He relied on the decisions of *Kiri Industries Ltd v Senda International Capital Ltd and Dystar Global Holdings (Singapore) PTE Ltd* 2021 SGHC (1) 16 delivered by the Singapore International Commercial Court in 2021 and *Wraith v Sheffield Forge Master's Ltd* 1 WLR 1996 p 64 as well as the provisions of the High Court Rules 2007.

On the other hand, Mr. Johnson Counsel for the Defendant claimed that such costs were excessive, that the Defendant initial stance was due to its historical operation of a clear wage package and provident fund scheme in place of end of service benefits. He submitted that no sooner the Employment Act 2023 made end of service benefits mandatory, the Defendant offered to comply with the law, however at the commencement of the action there were no multipliers to calculate the entitlements of the Plaintiff. He maintained that the Plaintiff's Solicitor presented one case for all 51 Plaintiffs and that costs awarded should not exceed NLe250,000.

I have considered the submissions of both Counsel briefly outlined above, the High Court Rules and authorities cited. I have had due regard to all of the circumstances of this case particularly the proceedings and work done by both Counsel and their teams.

In assessing costs, this Court is bound by Order 57 of the High Court Rules 2007 which provides that the costs of and incidental to proceedings shall be at the discretion of the Court and shall ordinarily be designed to compensate for expenses reasonably incurred and court fees paid, and provide reasonable remuneration for the solicitor of work done by him. The discretion of the Court is not to be exercised arbitrarily, but in accordance with established principles and in relation to the facts of the case.

In assessing the amount to be awarded, O57 R 2(4) requires this Court to have regard to the following:

- (a) the amount of expenses, including travel expenses reasonably incurred by that party or that party's solicitor or both in relation to the proceedings;
- (b) the amount of court fees paid by the party or that party's Solicitor in relation to the proceedings;
- (c) the length and complexity of the proceedings;
- (d) the conduct of the parties and their solicitor during the proceedings; and
- (e) any previous order as to costs made in the proceedings.

In addition to the above it is imperative that costs awarded must be reasonable and proportionate. I have taken all the above factors into consideration but the two which demands the most attention based on the facts of the case are (c) and (d) above which are the length and complexity of the proceedings and the conduct of the parties and their solicitor during the proceedings.

The length and complexity of the proceedings

The proceedings commenced on 3rd August 2023 and since then there were multiple applications filed mainly on behalf of the Plaintiffs, and a few on behalf of the Defendants. At some point in time there were two Defendants. The parties led evidence by affidavits sworn to by the parties and or their solicitors with exhibits attached. Almost all of such applications were vigorously contested and several rulings delivered. There were a few concessions on the part of both parties in respect of some of the applications. This matter did not last long as Judgment was delivered in January 2024. However, by no stretch of imagination can the length reflect the complexities of the proceedings reflected in the numerous motions and affidavits filed and submissions made. The Judge's notes alone run into 155 pages and papers filed are in excess of three files.

This case involved 51 Plaintiffs and fortunately the same legal firm represented all of them. The drafting of pleadings and all of the documents filed though numerous and or voluminous were done on behalf of the Plaintiffs jointly and not separately. For the most part, the Plaintiffs' cases were identical with a few differences or variations in the figures they were entitled to. Much work was done by their solicitors in relation to the calculation of the benefits due the Plaintiffs which was done on an individual basis and had to be changed several times. I note that the amount awarded to the Plaintiffs at the end of the proceedings was lower than what was originally claimed. This notwithstanding, considerable work was done by Counsel for the Plaintiffs. No

doubt dealing with 51 Plaintiffs and taking instructions from them even though as per agreement only four of them were regularly attending the proceedings and filing affidavits for the rest of the group, this must have been challenging to manage.

This case was a complex case not only for the Plaintiffs but admittedly also for the Defendant. The major complexities in the action were resolved after commencement of the action, by the enactment of the Employment Regulations which provided the multipliers to be used in the calculation of the benefits due the Plaintiffs, guaranteed in the Employment Act 2023. Almost all of the questions for construction and or determination were answered in the affirmative as a result of the enactment of both legislation.

Conduct of the parties and their solicitors during the proceedings

At all material times the Defendant Counsel insisted that their posture had always been to comply with the law and once the laws which clarified their obligations were enacted, they were ready and willing to comply. Admittedly from the onset they had indicated their willingness to provide reference letters to the Plaintiff upon redundancy.

I must also say that it is apparent that instituting the action against the Defendant to my mind was deliberately preemptive because even though the Plaintiffs had not yet been made redundant, the ongoing processes for sale and divestiture of the Defendant's assets to Access Bank and departure from Sierra Leone appeared imminent. But what was concerning to the Plaintiffs was the uncertainty of their fate should the processes be completed and the Defendant departs, and the fact that enquiries about their status, future and benefits had not been satisfactorily addressed. They felt that their issues had been overlooked and were not taken seriously. This is important to note because this was responsible for the underlying fears and tensions that manifested itself throughout the proceedings.

Notwithstanding the enactment of the Regulations, the matter was not concluded immediately as there were still a lot to be done in arriving at the amount the Plaintiffs were entitled to. A lot of time was spent in calculating and presenting computations of the benefits due the 51 Plaintiffs which had to be done individually. There were a lot of back and forth on this which was only concluded after a joint meeting ordered by the Court of both Counsel, their teams and representatives of the parties. Hearings were on a regular basis with a lot of time and effort on all sides.

I do recall the tensions, distrust and apprehensions. The proceedings were contentious. This was exacerbated by the fact that even though the parties were in court the Plaintiffs were still working for the Defendant, an unusual scenario in employment matters.

During the first day of hearings, the Court had to intervene to prevent an interruption to the court proceedings on that day and to ensure all 51 Plaintiffs leave the court premises safely as it was reported that there were law enforcement officers waiting to arrest them, and that the Defendant had allegedly taken steps to prevent them from accessing their offices. Due to the

timely intervention of the Court and the co-operation and efforts by Counsel for the parties and the parties this issue was resolved, the tension was reduced and an agreement reached that throughout the proceedings only 4 of the Plaintiffs nominated by their colleagues will attend Court.

I narrate the above to highlight the importance of the matter to all of the parties particularly the Plaintiffs. The Defendant were also eager to proceed with their divestiture plans which was under threat as a result of the proceedings. I therefore do recognize the skills, efforts and responsibilities of both Counsel and their teams as well as the parties in managing the case during the proceedings.

In concluding my deliberations on assessing reasonable costs, I adopt what I said in my earlier Judgment in this case as follows:

“The passage of the Regulations was not within both parties control, however, I am of the firm view that it was due to the uncertainty about their status and the need to secure their entitlements that resulted in litigation. I therefore hold that the Plaintiffs are entitled to reasonable costs of the action which must be borne by the Defendant. In determining costs, consideration should be given to the fact that the dispute between the parties was resolved in part by the Regulations that provided the multipliers to be applied in the calculations of the benefits due the Plaintiffs. Much work was done by both sides and this Court is grateful for the efforts and assistance of both Counsel and their teams. However, had it not been for the efforts of Counsel for the Plaintiffs who instituted the action in August 2023 and vigorously pursued it, I doubt whether the Plaintiffs would have had the certainty of protection of their rights and assurances of their entitlements they were seeking prior to litigation.”

Having regard to all of the above this Court awards costs of the action to the Plaintiffs to be paid by the Defendant assessed at NLe850,000. (Eight Hundred and Fifty Thousand New Leones).

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HON. MRS. JUSTICE JAMESINA E. L. KING J. A.