

**1SS. 79/20 J**

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

**BETWEEN:**

**OSMAN JALLOH**

**- PLAINTIFF**

**AND**

**THE MANAGEMENT OF NJALA UNIVERSITY**

**- DEFENDANT.**

**JUDGMENT ELECTRONICALLY DELIVERED BY HON. JUSTICE  
SENGU M KOROMA JSC ON THE 11TH DAY OF JUNE, 2024.**

1. This matter originated from the Ministry of Labour and Social Security (hereinafter known as “The Ministry”) through a notification dated 28<sup>th</sup> August, 2019.
2. It is the claim of the Plaintiff, who testifies as PWI that after working for the Defendant for several years, he was summarily dismissed. In support of this, he tendered his letter of employment dated 14<sup>th</sup> December, 2009 as Exhibit “A”. His duties included the endorsement of students’ course forms, preparation of returns, preparation of cash book, consolidation of the financial statement of the Defendant and any other duties that may be given to him by his supervisor. He testifies further that before his dismissal, he was suspended from work and summoned to appear before a disciplinary committee hearing. The reason given for his suspension was allegation of allowing students to present incorrect pay-in slips and issuing them with fake receipts which he then used to justify the signing of their course forms. The Plaintiff testifies



that he did not commit the act nor did his functions include the admission of students.

3. The Plaintiff testifies further that he was suspended before any investigation was conducted. He alleges that during the investigation, he was not given an opportunity to be represented or to cross-examine the witnesses. The Plaintiff admits that he was issued with a letter of dismissal after the disciplinary committee hearing. This he tenders as Exhibits "E." On receipt of Exhibit "E," he made a complaint to the Ombudsman by a letter dated 6<sup>th</sup> February 2018- Exhibit "1-3" which the latter acknowledged by Exhibit "G". The Plaintiff alleges that he never saw the report of the disciplinary committee until after his complaint to the Ombudsman. He tenders a copy of the provisional report marked Exhibit "H 1-35" which was unsigned. After seeing the report, he sought the services of the firm of Halloway and Partners who wrote to the Defendant demanding his reinstatement, amongst others, the said letter is tendered and marked Exhibit "J 1-3". The Defendant wrote back confirming its decision- Exhibit "K". The Plaintiff at his stage complained to the Ministry which invited the Defendant to a meeting.
4. The Plaintiff tenders another report of the disciplinary committee which is marked Exhibit I-L 1-47. The Plaintiff testifies that his supervisor gave evidence at the hearing of the disciplinary committee. The Plaintiff concludes his testimony in chief by stating that the Ministry forwarded the matter to Court.
5. Under cross-examination, the Plaintiff admits that after his suspension, a Disciplinary committee was set but denies that he was found liable. He agrees that all administrative activities of the Defendant were communicated through the Registrar but does not know that the latter is the Secretary to the University Court. The Plaintiff agrees that he knows one Jarata Habib who as a staff member of the Defendant and was working with her in the Finance Unit but denies knowing one Mariama Kemokai. The Plaintiff explains that all payment of fees slips were submitted to the Finance Office and that the Finance Unit oversaw preparing receipts. He agrees that he was responsible for the signing students' course forms which he did only after the presentation of a receipt. He was not responsible for inputting the students' particulars into the electronic system.

6. The Plaintiff identifies paragraph 13 of the Disciplinary Committee report but denies that he was responsible for the reconciliation of payments; the report on that aspect is incorrect. He states that the statement he made at the Disciplinary Committee meeting is at variance with what is written in the report. The Plaintiff alleges that he was dismissed before the Disciplinary Committee Report was released; in fact, he did not see the said report until his lawyer requested for it two years later.
7. In re-examination, the Plaintiff states that he was not given the opportunity to cross-examine the witnesses.
8. The second witness for the Plaintiff is Mr. Abdulai Conteh, PW2, an official of the Ministry and he investigated the complaint. He explains that the matter originated from the Regional office of the Ministry in Bo. On receipt of the file, he invited the parties to a conciliation meeting. The Defendant did not attend the first meeting but later attended the second one. At the said meeting, the representative of the Defendant presented the report of the Disciplinary Committee to him. After the Defendant failed to attend subsequent meetings, the Ministry forwarded the matter to the Industrial Court.
9. Under cross-examination, the Plaintiff insists that he notified the Defendant of the pending court action. He states that the Defendant promised to provide all documents concerning the Plaintiff's alleged financial impropriety.
10. At the close of the Plaintiff's case, the Defendant opens its case with Mr. Joseph Kandeh testifying as DW 1. DW1 testifies that he knows the Plaintiff as a former co-worker of the Defendant. He however came to know him more when the Disciplinary Committee was set up. DW2 recalls that on the 10<sup>th</sup> August, 2016, it came to his notice that malpractices were going on at the University which was reported by Dr Turad Senesie. The malpractices included bribery for grades, illegal registration, and irregular admissions. As a result, the Deputy Vice Chancellor of the Bo campus set up a Committee comprising of nine (9) members to investigate the said allegations. DW1 was Chairman of the Committee. The Plaintiff was invited by the Committee to

answer to the allegations and was given the opportunity to call witnesses. The DWI testifies that one Mary Kemokai divulged information on how the financial practices were conducted. She explained that they were conducted using improper documents/receipts evidencing payment of fees. She stated that the Plaintiff inserted her name into the electronic system though she had not paid her fees in full. At the end of the investigation, the Committee used the information to make decisions affecting Mariama Kemokai, Jarata Habib and the Plaintiff.

11. Under cross-examination, DW1 does not agree that Dr. Turad Senesie should be a witness in the case because he did not make any specific complaint against the Plaintiff. DW2 states that there is a link between Mary Kemokai and Jarata Habib in their irregular activities. He recognises the area of the report titled “**methodology**” and “**Design of the Methodology**” and states that the opportunity was given to the Plaintiff to question witnesses and call his, but he did not avail himself of it. He agrees that the Plaintiff denied the allegations. He states that it was outside his terms of reference to talk to the Bankers at the Bank Students were paying their fees. DWI states that Jarata Habib admitted the allegations but does not recall that Mariama Mary Kemokai and the Plaintiff were not interviewed at the same time.
12. DW2, Mr. Paul Komba Nguajah describes himself as the Deputy Registrar, Human Resource of the Defendant. He corroborates most of the testimony of DWI and explains in detail how the malpractices were conducted and the Plaintiff’s involvement therein. He clarifies that the Committee was set up to investigate allegations of falsification of bank pay-in-ships, insertion of names of students who have not fully paid up their fees into the database . At the end of the investigation, the Committee recommended the dismissal of the Plaintiff for financial malpractices. On receipt of the report, the Administration passed it on to the Coordinating Committee which is the statutory body responsible for Financial and Human Resource Matters.
13. The Coordinating Committee endorsed the recommendations of the Disciplinary Committee on the 17<sup>th</sup> June, 2019. In support of this, he tenders the Minutes of the Inaugural meeting of the Defendant’s Executive

Committee as Exhibit O<sup>1-10</sup>. After the dismissal of the Plaintiff, the Registrar of the Defendant received an invitation to a conciliation meeting from the Ministry. After the deliberations there, the Registrar received a report which he tenders as Exhibit 1- p1-2. DW2 and explains that when a staff is dismissed, he has a right to appeal to the University Court. Furthermore, all staff belong to an Association and so when dismissed, they could also appeal to it to negotiate on their behalf.

14. Under cross-examination, the DW2 admits that the Committee concluded that another Committee investigates its conclusions. He agrees that the letter of dismissal did not mention that the Plaintiff has a right to appeal. DW2 admits that Exhibit J<sup>1-3</sup> which is a letter from the Plaintiff's Solicitor citing several breaches in the process. DW2 states that the Plaintiff was given an opportunity to adduce evidence.
15. DW3, Dr Munir Jalloh is the Registrar of the Defendant. As Registrar, his functions include being Head of Administration, Chief Adviser to the Vice Chancellor/Principal, Secretary to the Court and all Court Committees. He knows the Plaintiff as a former employee of the Defendant. His duties included updating and analysing cash books, helping in preparing returns of the quarterly subvention to the campus and helping in the registration of students.
16. In addition to corroborating the testimonies of DW1 and DW2, DW3 explains that the Plaintiff was issuing fake receipts to students to allow them to register. DW3 confirms that the University Court approved the dismissal of the Plaintiff, but the latter did not follow the correct procedure by pursuing the appeal process. What happened was that the Defendant received letters from the Ombudsman and later from Halloway and partners. The DW3 concludes that the Plaintiff had the rank of a supervisor.
17. Mr. Alusine Babatunde Newland gave evidence as DW4. He describes himself as the Finance Director of the Defendant and his duties include advising the Vice Chancellor and general administration on all financial matters. DW4 explains that the Plaintiff was responsible for the posting of

the cash book and the signing of the Student course form. The process is that after a Student pays fees into the Bank, he is expected to present his/her pay-in-slip to the Financial Unit for the issuance of the University's official receipt. After which, the student presents the receipt and course form to either the Plaintiff or the Finance Assistant for signing. DW4 agrees that the Plaintiff was the most senior staff in the Unit but was not a supervisor. He tenders in evidence Exhibit R<sup>1-2</sup> which are fake and authentic receipts. R<sup>2</sup> is a fake receipt with the same serial receipt as R<sup>1</sup>; the amount stated on R<sup>2</sup> is Le 2, 313,500/00 whilst that on the authentic one is Le 655,000/00. DW4 testifies that the said receipts are within the purview of the Finance Assistant and Senior finance Assistant before signing.

18. Under cross-examination, DW4 answers that he was appointed as Finance Director in 2010 and before that, he was the Deputy. Exhibits R<sup>1 and 2</sup> are issued by the Finance Assistants and the Senior Finance Assistant. He cannot confirm that the bank was contacted during the investigations as he was not a member of the Committee. DW4 states that the allegation against the Plaintiff came to the notice of the administration when Jarata Abibu confessed, and investigation commenced. He cannot tell whether a letter of query was issued to the Plaintiff but confirms that it is the responsibility of the University Court to dismiss staff; the Co-ordinating Committee only makes recommendations. He recognises Exhibition "E" and admits that based on it, the University Court did not dismiss the Plaintiff. DW4 also admits that no finance staff participated in the investigation.
19. In re-examination, DW4 recalls saying that the co-ordinating committee was not responsible for dismissal. He explains that since the University Court meets six times a year, the Co-ordinating Committee takes decisions and report to the Court.

### **SUBMISSIONS OF COUNSEL**

### COUNSEL FOR THE PLAINTIFF

15. The Plaintiff's Counsel, Alfred Kamanda Esq of Brewah and Co, submits that the Defendant dismissed his client without following the procedure laid down in Section 15 (i) of the University Act, 2021. Further to that, the Plaintiff denied the allegation but was never given the opportunity to cross-examine the witnesses nor was he allowed to call his own witnesses. Counsel contends that the Plaintiff believes that he was wrongfully/unlawfully dismissed by the Defendants as it failed to follow strict facta its own terms and conditions laid down in their own University Act, 2005 (which was in force at the time) as well as the University Act of 2021 (which has repealed and replaced the Act of 2005) and their own handbook.
16. Counsel relies on a dictum of Livesey-Luke CJ in JESSE ROWLAND GITTENS STRONGE-V- SIERRA LEONE BREWERY LIMITED Civ. App.7/79 and that of IGUH JSC IN THE Nigerian case of CALABAR -v- DR OKON J. ESIEN. He also cites the cases of PROFESSOR F.N NDILI -v- MR J.M AKINSUMADE AND ORS 200 LPELR 6910 (Nigerian Court of Appeal) Per. Olagunju JCA and ISMAEL KANU -v- SIERRA LEONE PORTS AUTHORITY CC 81/12/2012 Per Musu- D. Kamara J.
17. Counsel concludes by submitting that the Plaintiff should be entitled to what he claimed for.

#### (b) SUBMISSIONS BY COUNEL FO RTHE DEFENDANT.

18. Counsel for the Defendant, Saidu Will Esq. of Betts and Berewa by way of introduction repeats the claims of the Plaintiff as listed by the Ministry in their notification to the Court dated 28<sup>th</sup> August, 2019 and proceeds to narrate the evidence of both the Plaintiff and the Defendant. Counsel submits that the Plaintiff cannot properly claim for damages as this was not pleaded. In support of this, he relies on the cases of WILLIE CHARLES -v- MRS ISATU CHARLIE Civ App 56/2012 (unreported) and MADAM SALLY SESAY & ANOTHER -V- FESTUS VINCENT.

19. Counsel states further that the Plaintiff has not brought an action for damages against the Defendant. He argues that in order to do so, the two important and separate issues referred to by Livesey – Luke CJ in JESSE R.H. GITTENS – STRONGE -v- SIERRA LEONE BREWERY LTD Civ App. 7/97 should be fulfilled – these are breach of contract of employment and it is only after this question is answered in the affirmative that the question of damages would arise. He submits that the Plaintiff was dismissed for financial impropriety which is contrary to clause 3.2 of the Conditions of Service for Senior Academic and Administrative Staff, 2013.
20. Quoting from Chitty on Contracts, 21<sup>st</sup> Edition, Counsel submits that the conduct of the Plaintiff was such that the Defendant had the right to dismiss him. In further support, he cites Section 9 of the Employer and Employee Act, Cap 212 of the Laws of Sierra Leone, 1960 and Section 15 (2) (b) of the Universities Act, No 5 of 2021. Mr. Will submits that Exhibit L1-47- The Investigation Report which was tendered by the Plaintiff narrates on page 6 that Mariama Kemokai was introduced by the Plaintiff into the scam. According to her, the said Plaintiff entered her name and other registration particulars into the electronic system as paid up. Mariama confessed further that she never paid fees for her first year notwithstanding that she went through all her academic exercise and got promoted to the third year.
22. On the disciplinary procedure used, the Counsel submits that the principles of natural justice were observed.
23. Counsel submits that after his dismissal, the Plaintiff, did not follow the appropriate procedure laid down in section 15 (4) of the Universities Act, No. 5 of 2021. This is supported by the testimony of the DW2.
24. In conclusion, the Defendant prays this court to dismiss the Plaintiff's claim for lack of proof.

### **ISSUES FOR DETERMINATION**



25. I have identified the following issues for determination in this matter.
1. Whether the Plaintiff was a “supervisor” at the materials time in this action.
  2. Whether the appropriate procedure was followed by the Defendant in summarily dismissing the Plaintiff.
  3. If the above is answered in the negative, whether the Plaintiff has otherwise established his claims.
- 26 The first issue for determination is whether the Plaintiff was a “supervisor.” The Defendant has argued that the Plaintiff was a supervisor and therefore could not bring an action under the Regulation of Labour and Industrial Relations Act, 1971, Act, No 18 of 1971 (The Act) and the Industrial Court (Procedure) Rules, 2000.
27. In my Judgment in the case of JOHN WRIGHT AND ANOTHER -v- THE MANAGEMENT OF WEST AFRICAN LOGISTICS (2019) S C H C I S S D 5, I had this to say:
- “By Section 2 (1) of the Act, which is the Interpretation Section, a “Supervisor means an employee that, as agreed between an employer and a Trade Union to which the Minister has issued a Collective Bargaining Certificate, performing supervising functions.
- This same section defines a “worker” as any person who has entered or works under a contract with an employer, whether the contract be by way of manual labour, clerical work or otherwise expressed or implied, oral or in writing... but does not include any person comprised in or responsible for the management or supervisor.
28. The second definition clearly states who should be a worker for the purposes of the Act. I must however add that a person is not merely a supervisor because his title is that of a supervisor... generally, because of the relevance of the distinction between a “worker” and a “supervisor” for the purpose of the Act, an employer must meet a higher standard before its employee is considered as a supervisor; because as a supervisor, he shall lack the locus stand to bring an action in the Industrial Court”.

29. “In determining who is a supervisor, I shall seek guidance from other jurisdictions to adopt best practice to achieve industrial justice. In the English Employment Tribunal case of cook INLET TUG & BARGE -v- BUCHANAN MARINE LP, The National Labour Board described the supervisor as a person who has authority to assign duties. When he designates an employee to a place or time or assigns significant duties to that employee... second, a supervisor” exercises independent judgment when he uses discretion in assigning or directing employees form employer control.”
30. In the instant case, the evidence of DW4 clearly establishes that the Plaintiff is not a supervisor. In view of this testimony and the authorities referred to herein, I hold that the Plaintiff is not a “Supervisor” and so the matter is properly before this Court.
31. It should however be understood that the Statute referred to herein has been superseded by the Employment Act, 2023, Act No 15 of 2023 which has a clear definition in the Interpretation section of who is a “supervisor”. Under the provisions of the 2023 Act, a “supervisor” is defined as “ a worker having authority in a workplace to recommend the hire, transfer, suspension, lay – off, recall, promotion, discharge, reward or discipline of other workers or to recommend such action.” However, this Act was not in force at the time of this action and so the old 1975 Act has been used here.
32. The second issue for consideration is whether the appropriate procedure was followed by the Defendant in summarily dismissing the Plaintiff.
33. Counsel for the Plaintiff has argued that there were Procedural defects in the dismissal of the Plaintiff because of non-compliance with the Universities Act. He submits that the Plaintiff was not allowed to cross-examine the witnesses of the Defendant, nor was he allowed to call his own witnesses. Further, that there was a violation of clause 2.2 (b) of the University of Sierra Leone and Njala University College Conditions of Service Handbook.
34. Counsel for the Defendant on the other hand argues that the Defendant followed due process.
35. To resolve this issue, at will be necessary to reproduce the provisions of

section 15 (1) of the Universities Act, 2021.

Section 15 (1) : "The Court may, after due investigation and for good cause shown.

- (a) suspend any senior member of the University and any holder of any other post specified by the Court, from the receipt of emoluments thereof in whole or in part, for any period, not exceeding one year, after which the case shall be reviewed.
- (b) remove any such person from office by:
  - (i) termination of contract; or
  - (ii) dismissal"

1.5 (2) (b) " in case of dismissal, which may be summary, no notice shall be given, and the person concerned ceases to be employed by the University form the date of the dismissal".

- 36. The other sub-sections refer to senior member of staff who may not be removed unless good cause is shown.
- 37. In the instant case, the dismissal of the Staff is summary and so section 15 (2)(b) applies, and no notice was required. However, the Defendant exercised its discretion and had the Discipline committee investigate the matter. It is the case of the Plaintiff that the Committee did not follow laid down procedure. In Labour Law parlance, there was no procedural fairness.
- 38. Procedural fairness is critical in cases of dismissal of a worker. The principle is that even if there are valid substantive reasons for the dismissal of a member of staff, an employer must follow a fair procedure before dismissing the employee. Procedural fairness may in fact be regarded as the "rights" of the worker in respect of the actual procedure to be followed during the process of discipline or dismissal.
- 39. In the instant case, the Plaintiff was suspended from work, investigated, and brought before on disciplinary committee. He is alleging that he was not allowed to call or question witnesses during the investigations. This is refuted

by the Defendant who calls witnesses to support its position. Surprisingly, the Plaintiff did not call witnesses in court to prove his case though he had all the opportunity to do so. This is important because one of the objections of the Plaintiff is that he was not allowed to call witnesses at the disciplinary committee hearing. If there were in fact witnesses, why did he not call them at the trial of the matter? The Plaintiff has the burden to prove that he was wrongfully dismissed.

40. The practice is that if there are glaring procedural irregularities which could deprive an employee of the right to fair hearing, they deserve attention; but if not, the enquiry should focus its energy on issues of substance. Substantive fairness is more important in assessing the fairness of the dismissal. In the instant case, the Plaintiff focused too much energy on procedural technicalities to try to sidestep serious substantive charges. The allegation herein is that the Plaintiff and others accepted incorrect bank slips and entered the names of students into the database as paid up though they have not done so. This resulted in the Plaintiff and others issuing fake receipts to students and signed their course forms which allowed them to take examinations. The Defendant investigated the allegation and summarily dismissed the Plaintiff for gross misconduct. This is the substantive issue which the Plaintiff was bound to address to prove his case.
41. In the book "Essentials of Employment Law" 6th Edition, 2000 para. 194 under the rubric " Termination without notice -Summary Dismissal " by David Lewis and Malcolm Sargeant, it is stated thus:

" In order to justify summary dismissal, the employee must be in breach of an important express or implied term of the contract, i.e. guilty of gross misconduct although certain terms are always regarded as important, the significance of the other terms will depend on the nature of the employer's business and the employee's position in it... it is the nature of the act and not its consequences which is relevant".
42. They wrote further:

"The employer must provide proof of other misconduct, based on the test of balance of probabilities; in other words, the probability of the misconduct

taking place, is greater than the possibility of the misconduct not taking place".

In the Nigerian case of SULE-v- NIGERIAN COTTON BOARD (1985) 6 S.C 62, the Court, Per Aniagulu JSC held that " to warrant it as said in SINCLAIR -v- NEIGHBOUR (1967) 1 WLR i; (1966) 3 ALL. E.R. 988, that the conduct of the servant is of such grave and weighty character as to undermine the relationship of confidence which should exist between master and servant."

43. The Crucial issue that there must be substantive fairness, which is that there are just fair and equitable reasons for an employer to dismiss an employee.
44. In the instant case, the Plaintiff was responsible for the endorsement of students' course forms, preparation of cash book and help in consolidating the financial statement of the Defendant. Under cross-examination, the Plaintiff admits that bank slips in respect of fees were submitted by students to the Finance Office and the Unit he was working in prepared receipts. He also admits that he was responsible for signing of the course forms which was done after presentation of a receipt by a student. The Disciplinary Committee also found that the Plaintiff was responsible for the reconciliation of payments which he denies. The evidence against the Plaintiff is that he and one Jarata Habibu concocted a plan to allow students to submit improper receipts evidencing payment of fees. This information was received through the confessions of Jarata Habibu and Mary Kemokai. The Plaintiff denies the allegation but did not lead any witness to corroborate his testimony. His defence is based solely on his own denial and the failure of the Defendant to follow the laid down disciplinary procedure. This is not sufficient.
45. What is important is this stage as to determine whether the Plaintiff's position in the Defendant University was such that the nature of his act would harm its activities. The plaintiff was a Finance Officer in a fee-paying institution who had the responsibility of receiving receipt of payment slips which would justify the signing of course forms of students leading to their registration. It is only after registering that students are allowed to attend lectures and sit examinations. The Plaintiff's responsibilities were huge and failure to

discharge them diligently would irreparably harm the Defendant. In the instant case it has been proved that the Plaintiff failed to discharge this responsibility honestly and in good faith.

46. In the circumstances, it is hereby ordered as follows:
1. That the summary dismissal of the Plaintiff is hereby upheld.
  2. Costs to the Defendant assessed at Le 3,000.



**Hon. Justice Sengu Mohamed Koroma JSC**  
**President, Industrial and Social Security Division.**