

IN THE HIGH COURT OF SIERRA LEONE

INDUSTRIAL DIVISION

BETWEEN:

FATMATA MAMIE MOIJUEH

- PLAINTIFF

THE MANAGEMENT ZENITH BANK

- DEFENDANT

**JUDGMENT DELIVERED BY THE HONORABLE JUSTICE LORNARD
TAYLOR ON THE 25TH MARCH 2024**

A.R. KARGBO

-COUNSEL FOR THE PLAINTIFF

R.A.D. JONES

-COUNSEL FOR THE DEFENDANT

This is an industrial matter commenced by summons dated 13th December 2022. The Plaintiff's case is that she was an employee of the defendant. That she started working for the defendant in 2015 until 2022 when she was dismissed by letter dated 29th July 2022.

The allegation is that on the 1st February 2021, the Plaintiff was called by a colleague employee named Albert Yankuba who informed her that another colleagues Solomon Tuah had deposited the sum of US\$ 10,000 (Ten thousand United States dollars) into her account. The Plaintiff said she took the issue to her boss Mr. Thomas Macauley who told her she could attend to Solomon Tuah. On this basis, she approached another Teller named Esther P. Kamara and made the withdrawal. She gave the money to Solomon Tuah's wife and later called Solomon to inform him that she will not grant him the favour the next time this situation occurs.

On the 13th January 2022 almost a year after the incident, the plaintiff received a query letter from the defendant on the issue. The Plaintiff responded to the query on the 14th January 2022. She was invited to the

Police and detained for 3 days. She was subsequently released on bail and was not charged with any offence. A few days later, the Plaintiff was asked to resume duty by the defendant and she started working again. The Plaintiff did not receive her salary at the end of January. At the end of February, she received only Le 300,000 (Three hundred thousand Leones) as salary when she was in fact earning Le 3,250,000 monthly. The Plaintiff continued receiving this portion of her salary between February and July when she was dismissed by the defendant for making the withdrawal and handing the money to Solomon Tuah's wife.

The Plaintiff reported the matter to the Ministry of Labor and Social Security who after investigating the matter forwarded same to court for determination.

The defendant's case is that the Plaintiff was an employee of the defendant working as a cash officer. That sometime in December 2021, a fraud was discovered in the bank by which the bank lost US\$ 193,097.85 (One Hundred and Ninety-Three Thousand and Ninety-Seven United States Dollars and Eighty-Five cents). Of this amount, US\$ 10,000 (ten thousand United States dollars) was channelled through the Plaintiff. When the Plaintiff was asked who transferred the money to her, she told the defendant she received the money from Solomon B. Tuah who was also a staff of the defendant but who by then was at large. The defendant claims that the said money deposited in the Plaintiff's account emanated from the account of one Fatmata Binta Jalloh which said account was fraudulently opened by Solomon B. Tuah for that purpose and that the Plaintiff failed to report the issue to the compliance department which was against the Bank's policy.

According to the head of audit one Mr. Patrick Ahmed, during the investigation of the incident, the supervisor stated that he must have signed off on the transaction out of collegial trust and that he did not suspect the transaction to be fraudulent and he did not face any disciplinary action. Also, there was no evidence during the investigation that the teller Esther P. Kamara knew the transaction was suspicious as when the Plaintiff's account was credited, the name of the sender of the funds is shown with all the information.

The defendant also called the head of compliance, Ibrahim Tejan-Jalloh as a witness. His testimony is that trainings are organised quarterly to ensure that the staff are educated on fraud and money laundry and are not used as a conduit to perpetuate these offences. The Plaintiff was a part of these trainings. According to him, the Plaintiff should have had suspicion with respect to the transaction considering that the account from which the funds emanated was different from that of the person who claimed to be the sender. Further, the volume of the funds was too huge for a staff to receive without raising suspicion especially when the funds were received from a colleague who was not paid in United States Dollars.

The defendant's fourth witness was the supervisor, Thomas B. Macauley. His duties include the supervision of tellers and he reports to management. He was called by internal control and questioned on the transaction, the subject-matter of this action. His recollection is that the cashier Esther P. Kamara brought the said transaction together with other transactions to his office for approval for payment. He said that the procedure was that the cashier would check whether the payer's account was funded, the signature, the amount in words and figures, and verify who the recipient of the funds is by checking the identity card. She would then check the funds to confirm whether it was within her limit and where it was above her limit, she would send the request to him for approval. When Mr. Macauley receives the slip, he would conduct his due diligence to confirm whether the instructions are due or post-dated, whether the amount in words and figures are in sync as well as the signature before authorising payment. He said he had no clue the funds were being sent to the Plaintiff and that the transaction was a normal one. He said there is no way he could decipher that the account was the Plaintiff's.

Based on the above, the following are quite clear;

1. The Plaintiff was an employee of the defendant.
2. The Plaintiff operated a dollar account with the defendant which was credited with the sum of US\$ 10,000 from an account named Fatmata



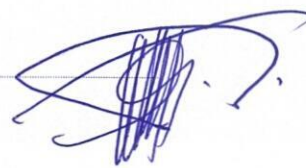
Binta Jalloh. Which said sum the plaintiff withdrew and gave to the wife of Solomon Tuah.

3. The Plaintiff's action was queried and after her reply to same, the matter was referred to the Criminal Investigation Department for investigation.
4. The Plaintiff spent three days in the custody of the police after which she was released on bail with no charges proffered.
5. The Plaintiff was subsequently asked to resume her duties and was placed on a significantly lower salary.
6. The Plaintiff was made to face the disciplinary committee which later recommended that the Plaintiff be dismissed and which said recommendation was acted upon by the defendant.
7. As a result of the dismissal, the Plaintiff has not been paid her end of service benefits and her arrears of salary.

The question this court must answer is whether the Plaintiff breached the terms of her employment contract with the defendant thus rendering her ineligible to receive her arrears of salary and end of service benefits. This is so because it is based on this alleged breach that the defendant maintains that it was within its right to dismiss the Plaintiff.

During the course of the trial, the defendant tendered Exhibit J. This document contains the Terms and Conditions pursuant to which the Plaintiff was employed by the defendant. It is this document that governs their relationship and this court can only interpret and apply its contents in determining this matter.

One of the Plaintiff's complaint is that she was suspended from duty during the investigation of the matter by the Police. After she was released, she was asked by the defendant to resume work but was not paid salary for the month of January and only received a fraction of her salary from February until she was dismissed in July. **Clause 6.3 of the Terms and Conditions of Service** does make provision for the circumstance pursuant to which the Plaintiff was suspended from duty. It states;

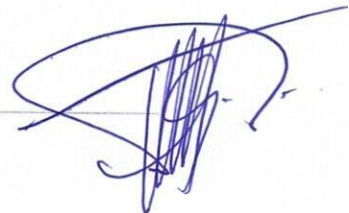


"An employee who has an official charge which is pending or whom the police have arrested or detained on a criminal charge may be suspended from duty with no pay or partial pay as management may decide until he/she is discharged, acquitted or released of the accusation levied against him/her".

By this clause it is understood that when the allegation was made against the Plaintiff at the Criminal Investigations Department, it was within the defendant's right to suspend the Plaintiff with no pay or on partial pay. The Plaintiff believed this to be the case and it is clear from her evidence that even after she was released, she did not show up for work until she was invited to resume her duties by the defendant. The defendant also had the option of keeping the Plaintiff at her desk despite this state of affairs. It is for this reason that the question that remains is whether the defendant was right having asked the Plaintiff to resume her duties, but nonetheless kept her on no pay and or partial pay.

It is clear from the above-mentioned clause, that an employee may be kept on no pay or partial pay in circumstances where the employee was suspended while being investigated. However, in the present situation, while the Plaintiff was on suspension, the defendant recalled her to resume her duties. At this point, it is clear that despite the fact that the police investigation was pending, the defendant had chosen to exercise the option of no longer keeping the Plaintiff on suspension. She was asked to resume her duties. If the plaintiff was asked to provide her services regardless of the circumstances, it is but fair that the Plaintiff be remunerated. As such, there is no justification for placing the plaintiff on no pay or partial pay between the period January to July, when she was no longer under suspension and had been asked to resume her duties. If she worked, it is but fair that she must be paid.

The next and possibly primary question in this dispute is whether the Plaintiff is entitled to end of service benefits. Pursuant to **Clause 6.4 of the Terms and Conditions**;



"An employee who is dismissed for a cause loses all benefits granted to a regular employee such as medical benefits, retirement benefits accrued leave, etc. except to the extent of his/her own contribution to the NASSIT fund".

This I understand to mean that where the defendant dismisses an employee for a reason, then the employee loses all benefits to which he/she is entitled as an employee of the defendant. In the present matter, the Plaintiff was dismissed by the Defendant on the 29th July 2022. The letter dismissing the Plaintiff stated;

"Further to the disciplinary committee meeting held on Friday March 25, 2022 at the Bank's headquarters, and having considered the findings from a case of "involvement in a transaction relating to the fraudulent activities which took place in the bank, it was resolved that in your capacity as cash officer in the head office:

1. You colluded with Solomon B. Tuah (Funds transfer officer – Kenema) to defraud the Bank with the sum of \$ 10,000 by withdrawing the said amount being proceeds of fraudulently obtained funds and gave it to Solomon Tuah's wife.
2. Your fraudulent action has caused the bank an unavoidable financial loss and reputational damage.

Based on the above, you are hereby dismissed by Management from the services of the bank effective Friday July 29,2022.

Please ensure that you hand over your identity card and all other bank's properties in your possession to the Human Resource Department".

It is clear from the above letter that the Plaintiff was dismissed from employment by the defendant because according to the defendant, the Plaintiff in her capacity as Cash Officer in the Head Office colluded with Solomon Tuah to defraud the Bank and that her actions as described caused the bank financial loss and reputational damage.



Clause 21.6 (b) of the Terms and Conditions provides for summary dismissal in relation to Theft, fraud or dishonesty. It states;

"A staff may be summarily dismissed from the service on the ground of incompetence, gross negligence, misconduct, or disobedience which makes his/her continued employment prejudicial to the proper working of the bank.

These include;

b. Theft, fraud or dishonesty in connection with the Bank's business or property. Any employee guilty of these offences may be liable to prosecution".

It is clear that when the defendant dismissed the Plaintiff, it was activating and applying this provision in the Terms and Conditions. It is without doubt that an employee found to have contravened this provision is to be summarily dismissed and therefore is not entitled to end of service benefits. This brings us to the next question, is the Plaintiff in contravention of this provision?

The facts at this stage are quite clear. The Plaintiff's dollar account was credited. That act in itself is not an offence nor is it in contravention of her employment conditions. She issued a withdrawal slip and presented it for encashment with another teller in the bank named Esther P. Kamara. That also in itself is not a violation of her terms and conditions. As the procedure requires and as is the testimony of the witnesses at trial, the teller checked to confirm that the Plaintiff does have the funds requested in her account and also account from which the funds emanated. At this stage, it was clear that there was no suspicion even by the teller that the funds were fraudulent. However, based on the bank's procedure, she forwarded the withdrawal to her supervisor as she didn't have the authority to proceed with payment in the amount requested by the Plaintiff. The supervisor also conducted his due diligence as per procedure and found nothing suspicious with the transaction. He authorised payment. The Plaintiff made the withdrawal and as admitted in her letter of dismissal, gave the money to Solomon Tuah's wife.



As narrated above, this is a perfectly lawful transaction between the bank and its customer. The funds were in her account and she made the withdrawal. It has absolutely no relation with the fact that the Plaintiff was an employee of the defendant. She could well have been an individual walking into the bank to close a transaction. In that case, issues of her employment would have been practically irrelevant.

Further, it is clear that the bank had systems in place to ensure that it is not defrauded as alleged against the Plaintiff and it is but fair to state that the Plaintiff herself and all customers relied on that system to work. The teller was to check whether the plaintiff had the funds in her account and the source of the funds. She allegedly did and it is clear that the transaction was clear from her perspective. The supervisor was to conduct further due diligence especially considering the total exposure of the defendant should it turn out that the transaction was fraudulent. According to him, he did and he found no reason to be suspicious. It was on this basis that the Plaintiff was allowed to make the withdrawal.

The defendant's defence is that the Plaintiff ought to have reported the issue to the compliance department considering the volume of the transaction and that it was coming from Solomon Tuah who was not receiving salary in foreign currency. That her refusal to report meant she was complicit and grossly negligence thus causing the defendant to lose the money.

As convincing as this might sound, it will be most unfair to hold that the defendant's loss was as a result of the gross negligence of the Plaintiff. Firstly, as stated above, this was a private transaction and not by the Plaintiff acting in her official capacity. It is for this reason, that the defendant would be said to have been wrong when it stated in the Plaintiff's letter of dismissal that the Plaintiff was being dismissed for being grossly negligent ".....in your capacity as cash officer in the head office". The transaction for which the Plaintiff is alleged to have been dismissed is not an official transaction. She did not make the withdrawal as an official of the Defendant and everything she did throughout the transaction was not as an employee but rather as a customer



of the defendant. She therefore had no responsibility to report the issue to the compliance department in that circumstance.

Secondly, assuming without conceding that the Plaintiff was acting in her official capacity, she still cannot be held to have been grossly negligent. She presented a withdrawal slip to a teller, Esther P. Kamara. If anyone must have been in position to suspect and report the issue to the compliance department, it must have been the teller. She had access to the system to confirm the source of the funds and its availability for withdrawal. She also knew the Plaintiff in person and had her identity card to verify this. If anyone was to have been in position to notify the compliance department that the Plaintiff was attempting to make a suspicious withdrawal based on her income, it must have been the teller. She was the one acting in her official capacity during the course of the transaction and not the Plaintiff. However, the evidence is that she was not held to be liable for the loss incurred by the defendant.

When the teller realised that she did not have the authority to disburse the amount requested by the Plaintiff, she forwarded the transaction to her supervisor as per the system. The supervisor also conducted due diligence as required. He also acted in his official capacity. According to him, he had no reason to be suspicious of the transaction and I do not doubt that. The transaction was presented to him as a personal transaction between the defendant and its customer and not as one between the defendant and an employee which is actually the case.

According to him, his due diligence was limited to checking whether the instruction was post-dated or not and whether the amount in words and figures synchronised. Like everyone that participated in this transaction on the side of the withdrawal including the Plaintiff, there was no way they could have been suspicious based on the evidence before this court. If anything, this was a failure of the system itself and I do not see a fraudulent intent in the Plaintiff nor in the teller and the supervisor.



Added to all this, there has been no evidence before this court showing that the transaction which is the subject-matter of this action was a fraudulent one. The matter was reported to the criminal investigations department and it's been two years without them proffering charges against the Plaintiff for fraud and or related offences. I cannot see how it is fraudulent for someone to make a withdrawal from an account which had the funds the source of which the customer was able to identify. The Plaintiff was told her account was credited by her colleague and she believed him. The situation would have been different if no one had called the Plaintiff to inform her that her account had been credited and what she was to do with such funds. If I must find against the Plaintiff in this circumstance, I put every businessman at risk. It is not uncommon between business people to have their accounts credited from an unrecognised source but nonetheless being notified subsequently of the actual source and purpose of the funds. It was therefore not the gross negligence of the Plaintiff that resulted in the alleged loss by the defendant. If blame must be apportioned, the system itself is suspect.

However, regardless of the above, the Defendant in its closing address challenged the jurisdiction of the court to hear and determine this matter. Its challenge rests on a piece of evidence extracted during cross-examination of the Plaintiff. In his closing address, counsel for the defendant stated the following;

"The Plaintiff testified clearly that she had attained supervisory level and that she had people under her supervision. The various statement of the other Defence Witnesses also affirmed same. Due to this reason, it is clear that this Honourable Court lacks jurisdiction to hear or make a final determination of this matter owing to the fact that the Plaintiff had attained supervisory level and the Industrial Court does not have the jurisdiction to hear such claims".

If this point is found to have merit, then the whole trial and the judgment as delivered above would certainly amount to a nullity. I took the liberty to peruse the records particularly the evidence of the Plaintiff in cross examination. Counsel is indeed correct to have cited the plaintiff as stating



that she had attained supervisory level in the defendant's employ and in fact has other people under her supervision.

It is without doubt that this court being the industrial court was established by **The Regulation of Wages and Industrial Relations Act, 1971** for the settlement of trade disputes. Section 34(1) states that;

“there shall be established an Industrial Court for the settlement of trade disputes in accordance with the provisions of the Act, in this Part Called “the Court”.

The interpretation section of the Act does give a clear definition of what amounts to a trade dispute. It states that;

“trade disputes ‘means any dispute or difference between employers and workers or workers and workers; connected with the employment or non-employment or the terms of the employment or with the conditions of labour of any person’”.

The Act also defines a worker as;

“any person who has entered into 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 and whether it be a contract of service or a contract concerning learning or a contract personally to execute any work or labour and includes an outworker, and an employee of the Government other than a public officer, but does not include any person comprised in or responsible for the management of any undertaking or a supervisor”

Based on this definition it is quite easy to see that the Plaintiff in this matter certainly have approached this court not using the proper channel. Is it proper that this court should have to bring the curtains down on this matter? I think not. But this is a challenge to the jurisdiction of this court and if it does have merit, I have no option but follow the law.

However, my concern is why counsel for the defendant did not raise this issue earlier. I am quite sure he was in possession of evidence of the status of the



Plaintiff even prior to the commencement of the proceedings considering that the represents the employer of the plaintiff. He was able also to extract this piece of evidence from the Plaintiff quite early on in the trial and was at liberty at that stage to apply for the matter to be dismissed and or determined on a point of law. He chose not. Rather, counsel ingeniously allowed the proceedings to run its full course thus amassing financial and other costs on the way all in a bid to burden the plaintiff and this court knowing fully well that it all will amount to a nullity. This is ingenious but it is also unethical. If this court accedes to the argument of the defendant, the matter would have to be struck out. The Plaintiff would then have to approach the industrial division again but in a different manner. Solicitors would have to be contracted again. Witnesses would have to be re-called and trial would have to be repeated. This would certainly be a burden on the plaintiff financially or otherwise and I would not be surprised if she at this stage feels burnt out and decides to abandon her quest for justice. This in itself is injustice and it is one the court can do very little to curb. But that which this court can do, it must do. Based on the above, it is but fair that the defendant having put the Plaintiff through this difficulty be made to pay the costs of this proceedings in full.

In the circumstances I make the following orders;

1. The Plaintiff's claims in this matter are accordingly struck out.
2. The costs of this matter is assessed at Le 75,000,000 to be paid by the defendant to solicitors for the Plaintiff.



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HONORABLE JUSTICE LORNARD TAYLOR