IN THE SUPREME COURT OF SIERRA LEONE

CORAM

Hon. Mr. Justice E. Livesey Luke - C.J.

Hon Mr. Justice C.A. Harding - J.S.C.

Hon Mr. Justice O.B.R Tejan – J.S.C.

Hon. Mr. A.V.A Awunor –Ranner - J.S.C.

Hon Mr. Justice S. Beccles Davies – J.S.C.

Civ. App 7/79

Jessie Rowland H. Gittens –Strong - Appellant

And

Sierra Leone Brewery Limited - Respondents

A.B.N Strong, Esq. for the appellant

Borthan Macaulay, Jr. for the respondents

JUDGMENT DELIVERED 17th OF THE DECEMBER, 1980

LIVESEY LUKE O.J.: The appellant enter the employment of the respondent company {hereinafter called the company} on 20th August, 1970 as a Brewer-in-training. The company is brewers of beer and stout. On 1st June, 1971 the appellant was made an assistant Manager. Letter informing him of this decision was dated 8th June, 1971 an attached to it was "a summary of the terms and conditions and for assistances "Management." The applicant was required to complete and signs the services agreement. That was the first time the parties signed a formal written contract of services setting out the terms and conditions governing the appellant's employment. The appellant was sent to Ghana in 1971 for further training with the Kumasi brewery. He return to Sierra Leone in or about February, 1972 he was sent to Heinekens brewery in Holland for further training, returning to Sierra Leone in or about March, 1973 after the completion of the training. During the later period the company made agreements for the appellant to undergo a management course in Britain. On first July, 1973 the appellant was promoted to the post of brewery/manager, which according to the letter {dated 5th June, 1973} communicating the good news to the appellant was of "full management status." That letter, apart from informing the appellant of certain improved benefits and fertilities to which he became entitled as "full manager," did not state what his conditions of service as a full manager were. Nor was the first contract of service setting out his terms and conditions of service as full manager signed then or at all.

There was a misunderstanding between the production manager and the appellant in December, 1975 relating to production on December 31th 1975. This resulted in a written query dated 5th January, 1976 being issued by the production manager Mr. A.O Bart-Williams to the appellant. The appellant promptly sent a written reply to the query, and the matter seemed to have ended there. Apart from that isolated incident in the relationship the appellant and his employers seemed to have been satisfactory and cordial. Indeed by later dated 1th March 1976 the appellant was informed of certain improved benefits and salary to which he became entitled. Everything seemed to have progress normally and satisfactorily until 5th October, 1976. The appellant reported for duty as 6am. On that day. At about 9am. Was summoned by the acting general manager. Immediately to the general manager's office where he met the acting general manager Mr. Koopmans and the production manager Mr. Bart-Williams he asked to sit down and then the acting general manager proceeded to pronounce these words:

"The company does not require your services any longer." In a state of shock and disbelieve the appellant retorted "I beg your pardon?" where upon the acting general manager repeated his previous pronouncement. The appellant asked Mr. Koopmans whether there was any reason for such action. Mr. Koopmans replied that he has received a complaint a week before from the head of security that he heard gone round one money at about 2am and heard found him {the appellant} sleeping whist on duty, that on the previous Friday morning after he {the appellant} had finished work he had found some bottles of beer in the Bright beer seller and that on that same Friday the security officer had found casual workers who in his opinion were intoxicated and Mr. Koopmans added that he thought the foregoing allegation amounted in negligence on his {the appellant's} part. Mr. Koopmans further referred to the production manager's query of 5th January, 1976 and concluded by saying that company did not therefore need his services any longer. Mr. Koopmans suggested to the appellant that instead of having his services terminated or being dismissed, he {the appellant} should adopt an easy way out by tendering a letter of resignation. The appellant replied that he was not prepared to do any such thing. Where upon Mr. Koopmans said that the appellant could take it that is services had been terminated and that he could go home and wait a letter to follow. The appellant subsequently received the promised letter. It was dated 5th October, 1976 and in the following terms: - "Dear sir", I confirm your interview in my office this morning in the presence of the production manager. You appear either unable or unwilling to conform to the company requirements of its managers, as evidenced by the series of disciplinary instances, brought to your attention both verbally and in writing by the production, the general manager and myself.

I regret therefore that I have no alternative but to terminate your employment with Sierra Leone brewery limited with immediate effect.

You will be advised separately of your financial status with the company, including your outstanding car loan, and entitlements under clause 11 {a} of the service agreement. The union African pension fund will also advise you as to your entitlement.

Yours faithfully,

{Sgd} C.D.M. Koopmans

Acting general manager.''

A few weeks later the appellant received letter dated 28th October, 1976 and signed by Mr. Koopmans. That letter referred to the letter dated 5th October, 1976 and proceeded to give details of the appellant's entitlement on termination of his employment including le98.10 as a salary for 1st to 5th October, 1976, le58.33 as rent allowance for October, 1976 and le1105 as two month salary in lieu of notice. The appellant was requested to call upon the Administrative Union Africa pension fund, U.A.C. House, Freetown to collect the amount owed him. The Appellant was not satisfied with the way in which his services with the company had been terminated. And so in December, 1976 he issued a write of summons against the company claiming inter alia damages for wrongful dismissal. In his statement of claim the appellant inter alia referred to the letter of termination dated 5th October, 1976 and alleged that his dismissal was wrongful. In their Defend the company pleaded inter alia that the appellant's employment was governed by the service Agreement dated 1st June, 1971 and that in pursuance of that agreement the company terminated the appellant's employment and paid him his entitlement including two months' salary in lieu of notice. In the Reply it was inter alia denied that the appellant's employment was governed by the service Agreement dated 1st June, 1971.

On the basis of the pleadings, the issues that went to trial may be summarized as follows:-

[i] Was the service Agreement dated 1st June, 1971 the operative contract governing the employment of the appellant on the date of his dismissal i.e. 5th October, 1976?

[ii] If the answer to[i] above is in the negative what were the terms and conditions governing the appellant's employment on the date of his dismissal?

[iii] If the answer to [i] above is in the affirmative, was the appellant's dismissal in accordance with the terms of the said service Agreement?

[iv] If the answer to [i] above is in the negative, Was the appellant's dismissal in accordance with the terms and conditions as stated in [ii] above?

[v] If the appellant was wrongfully dismissed was he entitled to General Damages and what was the measure of such damages?

[vi] If the appellant was wrongfully dismissed was he entitled to Special Damages?

[vii] Was the appellant entitled to salary for the whole of October, 1976 or for only up to the date of his dismissal [i.e. 5th October, 1976]?

The trial in the High court was by Williams J. The appellant [Plaintiff] gave evidence on oath in the course of which he tendered in evidence relevant correspondence and other documents including the service Agreement dated 1st June,1971 [marked EX. ''B'']. He did not call any witness. Only one witness was called on behalf of the company and that was the chairman of the Board of Directors and General Manager of the company in the person of John Jeffrey Allan Clegg. The learned judge delivered his considered judgment on 22nd December, 1977 dismissing the appellant's claim. The learned judge held inter alia that the appellant's services ''were terminated and he was not dismissed,'' that the service Agreement of 1st June, 1971 governed the appellant's employment on the date of termination, that the appellant's appointment had been properly and lawfully terminated by the company in accordance with the terms of clause 11[a] of the service Agreement.

The appellant appealed to the court of Appeal on two grounds of appeal which were rather vaguely worded. However, the hearing of the appeal proceeded on the basis of those two grounds. The main arguments in the court of Appeal turned on whether there was a distinction between termination and dismissal and the significance of such distinction and whether the appellant had properly dismissed under clause 11 of the service Agreement. The learned trial judge's decision that the service Agreement of 1st June, 1971 governed the appellant's employment on the date of termination appears to have been accepted on all sides. Learned counsel for the appellant did not challenge it before the court of Appeal or in this court. Indeed the judgment of the court of Appeal proceeded on the basis that decision was right. However, I think that it is of interest to mention in passing that in the letter dated 8th June 1971 [Ex. ''D''] forwarding the service Agreement [EX. ''B''] to the appellant, the service Agreement is referred to in paragraph two there as ''a summary of the terms and conditions of service for Assistant Management……'' [Emphasis mine]. If the issues had been raised , it would then have been necessary to consider whether those terms and conditions of service governed employees of full management status to which the appellant was appointed on 1st July , 1973 by letter dated 5th June, 1973 [EX. ''C'']. But the issue does not arise in this appeal and therefore it is not necessary to consider it. The court of Appeal [consisting of M.E.A Cole, Navo and Turay JJ.A.] delivered judgment on 25th May, 1979 allowing the appeal, setting aside the judgment of High court and substituting judgment in favor of the appellant but awarding no damages or costs to the appellant.

In a well-reasoned judgment delivered by Navo J.A. and concurred in by Cole and Turay JJ.A. The court held inter alia that the distinction between ''termination'' and dismissal'' was of little significant, and that the appellant had been summarily dismissed under clause 11 of the service Agreement but that the company had failed to justify the reason for the dismissal.

The appellant has appealed to this court complaining against the refusal of the court of appeal to award him General damages, Special damages and costs. The company has filed a notice of cross-appeal complaining that the court of appeal erred in law in holding that there was no legal difference between the words ''Termination'' and ''Dismissal'' and in holding that the burden is upon the master to justify the reason for the dismissal of a servant.

The important issue raised in this appeal on which many other issues stand or fall is whether the termination of the appellant's employment was lawful or wrongful. Both the lower courts held that the termination was under clause 11 of the service Agreement dated 1st June, 1971, but while the High took the contrary view. It is therefore necessary to consider the all-important clause 11 of the Service Agreement and the evidence relating to the termination of appellant's employment.

Clause 11 is in the following terms:-

''11. The company may terminated the employment of the Employee-

[a] Without assigning any reason therefore by giving to the Employee two months previous notice in notice in writing or without previous notice by crediting him in account in it own books two months' salary or if the employee shall have not completed two years' service with the company then by one month's previous notice in writing or without previous notice by crediting him with one month's salary;

{b} Summarily at any time and without previous

notice if the employee shall be guilty of

any act omission inconsistent with the

due performance of the employee's obligations

under this agreement, failure to obey orders or any other breath of this agreement.''

''The important question then arises, the company terminate the appellant's employment in accordance with clause 11{a} or clause 11{b}? The company's case is that the termination is accordance with clause 11{A}.

Argument in support of their case proceeds thus: they are obliged to assign any reason for terminating the appellant employment under clause 11 {a}, if they either gave two months' written notice or without previous notice if they credited is account in their books in two months' salary, the termination was lawful.

And that in the instance case they credited the appellant account in their book with two months' salary in lieu of notice and therefore his termination was lawful. I shall now consider evidence determine whether this contention is tenable. It will be recalled that at the end of the interview on 5th October, 1976 Mr. Koopmans said to the appellant that he could take it that is services had been terminated and that he could go home and await a letter to follow. The letter that followed Ex. "K" dated 5th October, 1976 which has been set out above. That letter confirmed that the appellant employment was terminated with immediate effect an added "You will be advised separately of your financial status with the company…….And your entitlement under clause 11{a} clause of the service agreement.'' The crucial questions that are rises is this: did that letter comply with the limb of clause 11 that the company is relying on? Was there any

indication in that letter that the company had fulfilled condition for the exercise of that power of termination by crediting him {the appellant} in its books with two months' salary"? the answers in this questions are in any opinion; clearly" No." the next significant event in this sad story is that a letter dated 28th October, 1976 {Ex." L''} the company details appellants entitlement on termination of his employment which included two months' salary in lieu of notice. That of the intimation in appellant had that is account are been credited with two months' salary in lieu of notice. Crediting the appellant account with the two months' salary over three weeks after his termination, or compliance with clause 11{a} of the service Agreement? In my opinion the answer must be "No.''

Let me demonstrate my views by reference a termination with notice and termination with salary in lieu of notice. Take the case of employer A according to the terms of contract Employment of his employee X has to give X one months' written notice or one month's salary in lieu of notice. On the 15th of the month A invitees X to his office and gives him verbal notice of termination of his service adding that a letter would follow. Five day later X receives a letter from A dated 15th an informing him that his services were terminated with effect from the 15th. In my opinion that will not be a valid termination of the employment because it does not comply with the requirement of one month's previous written notice. Similarly if A had told X that his services were terminated with immediate effect and that he will be hearing from him, and five days later he paid X a month's salary in lieu of notice, the position should still be the same. In my view such an action on the part of A would not be in compliance with his obligation under the contract of service. If according to the terms of the employment, termination must be by written notice, or salary in lieu of notice such notice or such payment of salary must, in my opinion, be contemporaneous with the act of termination. It seems to me that if an employer dismisses an employee on the 1st of January and pays him his entitled salary in lieu of notice on the 1st March, he is in breach of contract of the employment.

So what he is paying on 1st of March is not strictly speaking salary in lieu of notice but anticipated damages. Similarly, if an employer is under an obligation to pay salary in lieu of notice into his employee's account on termination of employment, he is under an obligation to pay it contemporaneously with the termination. I am of the view that if the payment is made not contemporaneously but weeks later there is a breach and the payment ceases to be payment of salary in lieu of notice and becomes anticipated damages paid in mitigation of damages. Quite clearly, circumstances contemplated by the first limb of clause 11 (a) are firstly the employer should give two months previous written notice, the notice to the to take effect from the date of its receipt and employee is entitled to continue working during the period of the notice:

See Addis V. Gramophone Company Ltd. (1909) A. C. 488 H. L. per Lord Loreburn L. C. at pp. 489 – 490.

Secondly, the employer without previous written notice may terminate the employment by contemporaneously crediting the employee's account with two months' salary in lieu of notice. In

my opinion the reasonable inference to draw from the letter dated 28th October, 1976 is that it was on that date that the salary in lieu of notice was paid into the appellant's account. Certainly, the company did not lead evidence or event suggests that it was paid on an earlier date. Contemporaneously does not necessarily mean immediately. But in my opinion, by no stretch of imagination can it mean weeks afterwards.

In this connection it is necessary to remind ourselves that an action of wrongful dismissal is an action for breach of contract. In this regard it is important to emphasize 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 a breach of contract yet he may recover only nominal damages 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 first has to establish breach of his contract of employment. It only after that the question of damages would arise.

- Was a breach of the contract of employment established in this case? According to their own admission, the company terminated the appellant's employment without notice. They peremptorily terminated his employment on the 5th October, 1976 and it was not until 28th October, 1976 that he had any intimation that his account had been credited with any salary in lieu of notice. It seems to me that such a belated crediting of the appellant's account could hardly be said to be compliance of the requirement imposed by clause 11 (a) of the Service Agreement. In my view failure to pay salary in lieu of notice on the date due constitutes a breach of contract for which an employee can institute immediate legal proceedings for wrongful dismissal. Applying that principle to the facts of this case, failure to credit the appellant's account with two months' salary at the time due constitutes a breach of clause 11 (a) of the service Agreement and therefore a breach of the contract. The appellant was entitled to institute proceeding against the company for wrongful dismissal from 5th October, 1976 up to 27th October, 1976. Let us suppose that he had taken such action, what would have the defence of the company? They would have had to confess that they had not credited the appellant's account with the two months' salary. How would they have avoided the consequences of that confession? By pleading that they intended to credit his account with the salary in lieu of notice due him at a later date? In my opinion that would not be a tenable defence to such an action. Payment of salary in lieu of notice, or in this case, crediting the appellant's account on a later date than the due date in the circumstances of the particular case does not cure the original breach of contract. Such late payment, or crediting, could only mitigate damages. I hold the view therefore the company did not comply with clause 11 (a) in terminating the employment of the appellant.

In their judgment, the Court Appeal did not consider the position under clause 11 (a) and clause 11 (b) separately. They seemed to have considered them together and then came to the conclusion that the appellant was summarily dismissed and that the dismissal was wrongful and in breach of the contract of service. In other words they held that the appellant's dismissal was in breach of the whole of clause 11 i. e. 11 (a) and 11 (b) it may have been neater to consider the sub – clauses

separately. Be that as it may, their conclusion on the clause taken as a whole was beyond any doubt.

Having considered the appellant's position under clause 11 (a), I shall now proceed, out of defence to the Court of Appeal and in view of the cross – appeal, to consider whether he was summarily dismissed under clause 11{b}. It is reasonable to infer from the evidence as to what transpired at the General manager's office on the morning of 5th October, 1976 {Ex. "K"} that intention of Mr. Koopmans was top summarily dismiss the appellant. There is no doubt that clause 11{a} confers a right on the company to summarily dismiss an employee {including the appellant}. But it is important to note that that right is not and cannot be absolute. It is circumscribed within prescribed limits. It is limited only to the following circumstance "if the Employee shall be guilty of any act or omission inconsistent with the due performance of the Employee's obligation under the Agreement, failure to obey orders or shy order breach of this Agreement." I think that it is necessary to point out that the company did not rely on clause 11{a} in their Defence, and no evidence was led to prove that the appellant was guilty of any of the acts or omissions specified in clause 11{a}. So if the intention of the Acting General Manager was to summarily dismiss the appellant under clause 11{b}, his action was wrongful and in breach of the appellant's Contract of employment. In my opinion, whichever way on approaches the problem, whether considering only Clause 11{a}, or considering Clauses 11{a} and {b} separately or considering the whole clause together, the end result is the same and that is that the appellant was wrongfully dismissed by the company.

Both counsel referred us to the case of McClelland v. Northern Ireland General Health Services Board: {1957}1 W.L.R. 594. In that case the appellant was appointed in 1948 to a "permanent and pensionable" post as a Senior Clerk by the responded board, and was shown the terms and condition of services. These contained a Clause providing for the dismissal of officers for "gross misconduct" or if they proved "inefficient and unfit to merit continued employment." There was also a provision for dismissed on failures to take or to honors the oath of allegiance and another related to termination of employment by reason of permanent ill-health or infirmity. There was no provision for dismissed in other circumstances. It was, however, provided that permanent officers,'' who wished to terminate their employment with the Board, must give one month's notice. In 1953 the Board purported to terminate the appellant's employment on six months' notice on the ground of redundancy of staff and without any suggestion of misconducted or efficiency on her part. It was held by the house of Lords that on the true construction of the terms and conditions of service the express powers of the Board of dismiss an officer were comprehensive and exhaustive and no further power could be implied. Accordingly, her service had not been validly terminated. In my opinion the relevant lesson that that cases teaches us is that an employer must comply with the terms stipulated in the Contract of service for the termination or dismissal of the employee; otherwise he terminate the employment at this peril. He will then be held to be in breach and the dismissal will be wrongful. This is a support of the view that I have expressed above that

the company did not comply with the stipulated terms for termination of the employment of the appellant and therefore they were in breach and the dismissal wrongful.

It is also pertinent to recall the words of Lord Maugham in Jupiter General Insurance Co.Ltd. v. Shroff {1937} 3 All E.R.67.P.C. He said inter alia at pp.73 - 74:-

"Their Lordships recognize that the immediate

dismissal of an employee is a strong measure,

……..

On the one hand, it can be in exceptional

Circumstance only that an employer is acting

Properly in summarily dismissing an employee on

His committing a single act of negligence; on

The other, their Lordships would be very loath

To assent to the view that a single out break

Of bad temper, accompanied, it may be, with

Regrettable language, is a sufficient ground

For dismissal."

I think that this is a convenient stage to deal the issued raised by the Responded Company in their notice of Cross Appeal. In their first ground of cross appeal the company content that the Court of Appeal erred in law in equating the term "unlawful dismissal'' with ''termination" within a Contract in interpreting the contract of employment between the appellant and the Company. In the course of his judgment Navo J.A. said inter alia:-

"If termination of service is wrongful it gives

rise to an action for wrongful dismissal

Mr. Borthan Macaulay Jr. loaned counsel for the company submitted that there is a very important distinction between termination and dismissal. That may be also, but such a distinction is not relevant to the solution of the issue in this case. The problem with which we are faced is whether the cessation of the appellant's employment with the company was lawful or unlawful. Whether such cessation is called "termination" or "dismissal" is of no importance in this context. If the "termination" is unlawful it gives rise to an action for "wrongful dismissal." Similarly if the "dismissal" is unlawful, it gives rise to an action for "wrongful dismissal." So the cause of action

is the same whether the term used in the Contract of service or the notice is "termination'' or "dismissal.'' This statement can be illustrated by reference to the Service Agreement {Ex. "B"} and particularly the now famous Clause 11, the full text of which has been set out above. It will be noted that it commences as follow:-

"The Company may terminate the employment of

the Employee –

{a}……

{b}……..."[Emphasis mine]

Nowhere in that all important Clause is the word "dismissal" used. But if the company unlawfully "terminates" an employee's employment under the Clause, the employee's cause of action will be for "wrongful dismissal" and not for" wrongful termination." So although there may be an important distinction between "termination" and "dismissal," yet the nomenclature which we have inherited from the common law for such causes of action is "wrongful dismissal," and we continue to use it in this jurisdiction. In my opinion therefore Navo J.A. stated the correct legal position quoted above.

Another contention in the Cross-appeal is that the Court of Appeal erred in law in holding that the burden of proof of unlawful dismissal is not upon the party alleging unlawful dismissal. What the Court of Appeal in effect was that the company having alleged negligence, insubordination and misconduct for the summary termination of the appellant, it was not for the appellant to prove he had not be been negligent etc. but for the company to prove negligence, insubordination and misconduct which justified the appellant's dismissal. In my opinion that is the correct legal position.

Having held that the appellant's employment was wrongfully damages (if any). I think that it is well settled that a successful plaintiff in an action for wrongful dismissal is entitled to general damages for breach of his contract of his contract of employment and to special damages if property claimed and proved. As regards general damages, the measure of damages to be awarded varies according to the circumstances of the particular case. An important distinction is made between cases where a definite period of notice of termination is provided under the contract and cases where there is no such provision.'' In the former type of cases, the normal measure of damages is the amount the employee would have earned under the contract for the period of the notice. So if the service agreement provided for 3 months' notice of termination, the measure of general damages will ordinarily be 3 months' salary and other entitlement if applicable. See Addis V. Gramophone Company Ltd.'' (supra) ''In the letter type of cases, the measure of damages is

the salary or wages for the period that the Court considers would constitute reasonable notice of termination of the employment in all the circumstances of the case.''

In this case, as was rightly held by Williams J. and the Court Appeal the measure of general damages to which the appellant is entitled having regarded to the term of the contract of service is two months' salary and allowances to which he was entitled for that period. That he has already received. And as the Court of Appeal rightly held he is therefore not entitled to any more compensation by way of general damages. But in my opinion that is not the end of the matter as regards damages. The appellant claimed special damages for loss of income. The question then arises: is he entitled to special damages, and if so for what?

The Court of Appeal did not dispute the appellant's entitlement to special damages, but they seemed to have the view that there was not sufficient material before them for the assessment of special damages. In my considered opinion, a plaintiff in an action for wrongful dismissal can claim as special damages loss of salary or wages for a reasonable period that he would take to obtain another employment. I drive support for this view from the speech of Lord Atkinson in Addis V. Gramophone Company Ltd. (supra)

He said inter alia at p. 493:-

"The damages plaintiff sustained by this illegal dismissal were

(1) The wages for the period of six months during which his formal

Notice would have been current;

(2) The profits or commission which would, in all reasonable probability, Have been earned by him during the six months had he continue in the Employment; and possibly
(3) Damages in respect of the time which might reasonably elapse before he could obtain other employment.''

In my opinion such special damages are damages flowing from the breach which having regard to the particular circumstances of the case, the parties should have reasonably foreseen as the probable result of the breach of the contract of service. The circumstances may vary from case to case, and whether this principle is applicable will depend on the circumstances of each particular case. Relevant circumstances may be the nature of the employment, the availability of similar or alternative employment in the locality or in the country as a whole, the special skill or training of the employee. Obviously, if a clerk, a typist or a domestic servant is dismissed it is not unlikely that any circumstances would warrant or justify a claim for special damages under this head.

But if an employer wrongfully terminates an employee trained in specialized skills and it is only the employer ought establishment that that skill could be used in a whole country, in my opinion, the employer to have foreseen as a probable consequence of his action that it will take some time

for the dismissed employee to find alternative employment. This view cannot be said to be an extension of the rule in Hadley V. Baxendale (1854) 9 Exch. 341; (1843 – 1860) All E. R. Rep. 461. On the contrary, it is, in my humble opinion, an application of it. The rule as laid down by the Court of Exchequer in that case state inter alia:-

''Where two parties have made a contract which one of them has broken the damages

which the other party ought to receive in respect of such breach of contract

Should be such as my fairly and reasonably be considered as either arising naturally

i. e. according to the usual course of things, from such breach of contract itself, or such

as may reasonably be supposed to have been in the contemplation of both parties at

the time they made the contract as a probable result of the breach of it.''

In this connection it is pertinent to recall the words of Lord Du Parcq in Monarch Steamship Company Ltd. V. A/B Karlshamns Oljefabriker AB (1949) All E. R. H. L. He said inter alia at p. 19:-

I do not doubt the wisdom of the judges who,

In Hedley V. Baxendale and the many later cases which interpreted or

explained that classic decision, have laid down rules or principles for the

guidance of those whose duty it is, as judges or jurymen, to assess damages.

When those rules or principles are applied, however, it is essential to remember……

That in the end what has to be decided is a question of fact, and, therefore a question

proper for a jury. Circumstances are so infinitely various that, however carefully

general rules are framed, they must be constructed with some liberality and not

too rigidly applied. It was necessary to lay down principles lest juries should be

persuaded to do injustices by imposing an undue, or, perhaps, an inadequate,

liability on a defendant. The Court must be careful, however, to see that the

principles laid down are never so narrowly interpreted as to prevent a jury, or judge of fact, from doing justice between the parties. So to use them would be misuse them.''

I think that is should be made abundantly clear that the special damages which I have said are recoverable under this head are not for the manner of the dismissal or injured feelings, or humiliation, embarrassment or loss of reputation. It is well settled that damages cannot be recovered under any of those heads in an action for breach of contract of employment: See Addis v. Gramophone Company Ltd. (1909) A.C. 488 H.L. and British Guiana Credit Corporation v. De Silva (1965) 1 W.L.R. 248.

On the meaning of special damages, I cannot do better than recall the words of Bowen L.J. in delivering the judgment of the Court (consisting of Lord Esher M.R. , Bowen and Fry LL.J) in Ratcliffe v. Evens (1892) 2 Q.B. 524 at 528:-

"Lest we should be led astray in such a matter by mere words, it is desirable to recollect that the term "special damage". Which is found for centuries in the books, is not always used with reference to similar Subjects-matter, nor in the same context.

At times (both in the law of tort and of contract) it is employed to denote that damage arising out of the special circumstances of the case which, if properly pleaded, may be superadded to the general damage which the law implies in every breach of contract and every infringement of an absolute right: See Ashby v. White. In all such cases the law presumes that some damage will flow in the ordinary course of things from the mere invasion of the plaintiff's rights, and calls it general damages. Special damages in such a context means the particular damage (beyond the general damage) which results from the particular circumstances of the case, and of the plaintiff's claim? to be compensated, for which he ought to give warning in his pleading in order that

there may be no surprise at the trial."

There is no dispute that the rule of practice is that particulars must be given of special damages claimed.

See Monk v. Redwing Aircraft Company Ltd. (1941) 1 K.B. 182 where Lord Greene M..R. said inter alia at p. 185:-

"In his statement of claim the plaintiff claims 'under para. 8 damages.' It is to be observed that the damage suffered under that head is in its nature special damage, and, in accordance with the ordinary rule, where a plaintiff is alleging special damage he must give sufficient particulars of it"

and he continued at p. 186:-

> What, then, is the position of a plaintiff who claims damages in a case such as this? It seems to me that he must specify what it is that he claims, and in every statement of what he claims by way of special damages there is necessarily implicit one of two allegations, either that he has not earned any renumeration in other employment during the relevant period, or that he has done so, and any form of pleading or any particulars given which do not bring to the clear knowledge of the defendant which of those two an implicit statement he is going to rely on is, in my judgment, embarrassing. The function particulars in such a case is to bring out clearly by express language which of those allegations is relied on, and if it be the latter, sufficient details showing how the figure is arrived at should be given in the particulars.''

It should be noted that the rule prescribe no particular form for the particulars. The important requirement is that the particulars should be given in the body of the pleadings. All the relevant particulars need not to be contained in one paragraph. They may be stated in two or more paragraphs. And the particulars should be limited to what is really reasonably necessary to enable the party seeking them to know what case he has to meet. See Phipps V. Orthodox Unit Trusts Ltd. (1958) 1 Q. B. 314 per Jenkins L. J. at p. 321. The question then arises; did the appellant in the instant case give sufficient particulars of his claim for special damages for loss of income? For an answer to this question, reference should be made to the statement of claim. It should be said at

the outset that statement of claim was inelegantly drafted. But on a proper reading of paras. 3 and 4 thereof the following particulars are given:-

(i) That his employment was terminated on 5th October, 1976;
(ii) That his salary at the time of termination was le6,630 per annum;
(iii) That he received housing allowance of le700 per annum;
(iv) That he received a fixed car allowance of le360 per annum;
(v) That on 12th January, 1977 (the date of the statement of claim) was still unemployed

In my opinion the above constitute sufficient particulars to bring the clear knowledge of the company what case they had meet. No surprise could possibly have arisen at the trail. So I did not think there can be any valid complaint on that score. On the question of evidence, the appellant gave on uncontroverted evidence that since the day of his termination up to the day he was giving evidence at the trial on 10th October, 1977, he was unemployed. He also gave uncontroverted evidence of the efforts that he had made to obtain other employment without success and went as far as to produce copies of applications for employment sent to various establishments. In this connection it is pertinent to quote the learned author of chitty on contracts (specific contracts) 23rd Edition. He states at para. 745 p. 387; :-

> "The onus of proof is on the defendant employer to produce evidence to show
>
> Show the dismissed employee ought reasonably to have obtained alternative
>
> employment.''

In my opinion there abundant evidence on which the special damages claimed could be assessed. The evidence shows that the appellant was unemployment for over a year. I do not think that would be reasonable to compensate him for the whole period of his unemployment. He is under a duty to mitigate his loss. The special damages awarded to him under this head should be for be Court considers a reasonable period having regard to the all the circumstances of the case. The circumstances which I consider relevant and important in this case are that the appellant was trained as brewer and it is common knowledge that the respondent Company is the only brewers in Sierra Leone. In the circumstances I that six months is a reasonable period for which to compensate the appellant under this head of Special damages. I would therefore award the appellant le3315 for loss of salary, le350 for loss of housing allowance and le180 for loss of car allowance, totaling le3845.

Learned counsel for the appellant contended that the appellant was entitled to be paid for the whole of October, 1976. Mr. Berthan Macaulay Jr. learned counsel for the Company submitted that the appellant was entitled to salary only the days worked i. e. 5days for which he had been paid. He relied for his submission on the Apportionment Act, 1870 which is an English Act of general application applicable in Sierra Leone by virtue of section 74 of the Courts Act, 1965. Section of the Apportionment Act 1870 provides inter alia that;

"all annuities…….and other periodical payments in the nature of income……shall,……
be considered as accruing from day to day, and shall be apportionable in respect of time
accordingly." And section 5 of the Act expressly
includes "salaries" within the meaning of annuities."

I agree with Mr. Berthan Macaulay's submission and the appellant's claim in this regard therefore fails.

There was some argument on the Court of appeal's failure to award costs to the appellant. Suffice it to say that any useful purpose would be served by discussion this object in any details in this judgment. Suffice it to say that the well-established rule of this Court and of all courts inferior to it is that the successful party is entitled to his costs unless the Court in exercise of its description comes to the conclusion that for some special reason connected with the case he should be deprived of it: C Ritter V. Godfrey {1920} 2 K.B. 47 C.A. Donald Campbell and Co v. Pollak {1927} A.C. 732 H.L. Administrator General v. Biakieu {1972 – 1973} A.L.R. {S.L.} 310 S.C and A.J. Thomas v. J. Val. Doherty & anor. Civ. App. 28/72 C.A. {unreported} judgment delivered on 28th January, 1976.

In my opinion this case has highlighted certain imperfections in our law relating to Employment. The defence of the company was that they acted in Accordance with the service agreement by paying two months' salaries in lieu of notice in to the account of the appellant. If they had made the payment at the time due, that plea would have succeeded at the appellant's claim would have failed. That is the strict common law position. According to the common law if an employer gives notices for the prescribed period under the contract Employment or pays equivalent salary in lieu of such notice, the termination is lawful and the employee has remedy in law. Similarly in a case where no period notice is prescribed in the contract of Employment if the employer gives what the Court considers to be reasonable notice in circumstances or pays salary in lieu thereof, the termination is lawful and the employee has no remedy in law. It does not matter how unfair or high-handed the termination was, or for how long the employee have served employer. If the employer Acts in Accordance with the terms of the contract of Employment is protected. The common law rule is illustrated by innumerable in the Law Reports. A few random examples are Addis vs., Gramophone Company {supra} Austwick v. Midland Railway {1909} 25 T.L.R. 728, and U.A.C. Ltd. v. Kallay {1960-1961} S.L.L.R. 136.

The resulting position according to our present law is that an employee is at the mercy of his employer. An employee who may have rendered many years, maybe 10 or 20 years, of loyal, faithful and meritorious service, could be dismissed for no just cause, without assigning any reason, by the employer giving him the prescribed notice or salary in lieu thereof in accordance with the terms of the contract of Employment . The employer may have acted out of spite, malice or other unworthy motives. But according to the common law so long as he complies with the

terms of the contract of Employment he is protected and the employee has no remedy in law. In such a situation no employee feels secure in his employment. There is no security of tenure. A man who has done twenty years of faithful and exemplary service may at the stroke of the pen appended to a valid notice of termination be thrown into the unemployment pool. The seniority of the employee does not matter, so long as the employer complies with the terms of contract. And if an employer can act in that way to senior employee one can only pray ‘’May the Lord save the junior employees.’’

In my opinion the present position reveals a most undesirable state of affairs that should be remedied as soon as possible. Unfortunately, the hands of the courts are tied. We cannot intervene to remedy the situation by extending the common law to confer new rights or remedies on dismissed employees. The situation calls for statutory intervention. Parliament enacts laws for the protection of employees against arbitrary, high-handed and unfair dismissals. This has been done in the other countries. See unfair {U.K.} Industrial Relations Act, 1971, {U.K.} Trade Union and Labour Relations Act, 1974, {U.K.} Employment Protection act, 1975, and {Ghana} Industrial Relations Act, 1965. And there is no reason why it should not be done in Sierra Leone. Such an enactment could confer a right of action on an employee for unfair, as distinct from wrongful, dismissal; prescribe the minimum notice of termination to be given having regard to the nature of the job, the seniority of the employee, the length of his service; specify that the reasons for the termination must be stated in writing and communicated to the employee; Limit the causes for which an employee may be terminated after a stated number of years’ service; and confer on the courts or other appropriate tribunal power to order the reinstatement of the employee or order compensation or both. Such or allied legislation could also make provision for compulsory minimum pension and gratuity rights of all employees in prescribed establishments e.g. Companies or bodies employing more than 50 persons or with a prescribed share capital or engaged in certain enterprises. Having said all this, it must be obvious that the need and urgency for reform in the field of the law relating to Master and Servant cannot be over-emphasized. It must be recognized that invariably employees are in a less advantageous bargaining position vis-à-vis employers. Most of the time they have no alternative but to accept the terms and conditions presented to them by their employer. It is an attitude of ‘’Take it or Leave it.’’ So if an employer presents a service contract to an employee he propose to engage as manager providing for one month’s notice of termination, the employee does not have much choice but to accept the terms or return to the employment market. Employees need to be protected by the state from unscrupulous, unreasonable, unsympathetic or oppressive employers. That is one sure way to guarantee the existence of a contented and secure body of workers in the realm. It only remains for me to express my gratitude to learned counsel who appeared in this appeal for their assistance and to say that I would allow the appeal and award the appellant Le3845 as Special damages with costs to the appellant in the courts below and this court. I would dismiss the Cross-appeal with costs.

{Sgd} E. Livesey Luke, C.J.

I agree……. {Sgd} C.A. Harding, J.S.C.

I agree……. {Sgd} O.B.R. Tejan. J.S.C.

I agree…… {Sgd} A. Awunor-Renner, J.S.C.

I agree…… {Sgd} S. Beccles Davies, J.S.C.

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