**BANGURA v SIERRA LEONE ELECTRICITY CORPORATION**

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**SUPREME COURT OF SIERRA LEONE**, Supreme Court Civil Appeal 10 of 1981, Hon Mr Justice Livesy Luke CJ, Hon Mr Justice CA Harding JSC, The Hon Mrs Justice AVA Awunor-Renner JSC, Hon Mr Justice S Beccles Davies JSC, Hon Mr Justice SMF Kutubu JA, 5 May 1983

**[1] Employment Law – Wrongful dismissal – Misconduct – Whether conduct incompatible with employment – Question of fact for trial judge**

On 1 October 1973 the appellant, who was employed as a payments cashier by the respondent, the Sierra Leone Electricity Corporation, was summarily dismissed on the basis that he was "culpable of serious misconduct in respect of his handling and management of the Corporation's funds". The appellant took action against the respondent claiming damages for wrongful dismissal. On 20 October 1978, Williams J awarded the appellant damages for wrongful dismissal and on 14 July 1982 the Court of Appeal overturned this decision, against which the appellant appealed to the Supreme Court. The appellant argued that misconduct must be proved on the balance of probabilities and that it was a question of fact whether or not misconduct had been proved by the respondent or not, and that the trial judge was right in finding that the appellant had been wrongfully dismissed. The respondent argued that there was abundant evidence to show that the appellant's conduct in his office disclosed misconduct, disobedience of lawful orders, dishonesty and negligence.

**Held, per Harding JSC, allowing the appeal:**

1. While it is the duty of an appellate court to form its own opinion upon the evidence adduced, a distinction must be drawn between findings based on conflicting testimony and deductions to be made from the evidence as a whole. In the former case a finding on a question of fact should not lightly be disturbed, but in the latter an appellate court is in as good a position to evaluate the evidence as the trial judge and should form its own independent opinion giving weight if possible to the opinion of the trial judge. *Watt (or Thomas) v Thomas* [1947] AC 484 referred to.

2. The key question was whether the appellant's conduct was of such a type that it was inconsistent in a grave way, incompatible, with the employment in which he had been engaged as a manager. In the instant case the respondent sought to justify the summary dismissal of the appellant. The grounds on which it had relied were found by the trial judge, after an exhaustive review of the entire evidence, to be untenable. It was within the trial judge's province to decide on the credibility of the witnesses and it has not been shown that his evaluation of the evidence or the inferences he drew from facts were wrong. Therefore, the appeal should be allowed. *Clouston & Co Ltd v Corry* [1904-7] All ER Rep 685, *Laws v London Chronicle (Indicator Newspapers) Ltd* [1959] 2 All ER 285 and *Sinclair v Neighbour* [1967] 2 QB 279; [1966] 3 All ER 988 applied.

**Cases referred to**

*Avo Wilson v James Samura & Anor* (Supreme Court Civil Appeal 3/74, 3 June 1973, unreported).
*Benmax v Austin Motor Co Ltd* [1955] AC 370
*Clouston & Co Ltd v Corry* [1904-7] All ER Rep 685
*Dominion Trust Co v New York Life Insurance Co* [1919] AC 254
*El Nasr Export & Import Co Ltd v Mohie El Deen Mansour* (Supreme Court Civil Appeal 3/72, 25 April 1974, unreported)
*Laws v London Chronicle (Indicator Newspapers) Ltd* [1959] 2 All ER 285
*Montgomerie & Co v Wallace-James* [1904] AC 73
*Sinclair v Neighbour* [1967] 2 QB 279; [1966] 3 All ER 988
*Texaco (Sierra Leone) Ltd v EB Smith* (Civil Appeal 15/77, unreported)

*Watt (or Thomas) v Thomas* [1947] AC 484

**Appeal**
This is an appeal against the judgment of the Court of Appeal on 14 July 1981 which reversed the judgment of Williams J who awarded damages against the respondent for wrongful dismissal. The facts appear sufficiently in the following judgment of Harding JSC.

*Mr MJ Clinton for the appellant.*
*Miss PS Wellesley-Cole for the respondent.*

**HARDING JSC**: The appellant was employed as a payments cashier by the Sierra Leone Electricity Corporation (hereinafter referred to as "the respondent") and was earning a salary of Le1,350.00 per annum when he was summarily dismissed from his employment on 1 October 1973 by letter dated 28 September 1973 alleging that the Corporation's Board of Directors had concluded that he was "culpable for serious misconduct in respect of his handling and management of the Corporation's funds". The appellant was aggrieved with his dismissal and so he consulted a solicitor who, after exchange of correspondence with the respondent, instituted proceedings against them on behalf of the appellant for the recovery of arrears of salary and damages for wrongful dismissal by writ of summons dated 8 July 1976. The respondent after entering appearance to the writ delivered and filed a defence and counterclaim to which the appellant delivered and filed a defence and reply. The action went to trial and on 20 October 1978, Williams J dismissed the respondent's counterclaim and gave judgment for the appellant in the sum of Le2,067.50 which award included an amount of Le1,365.00 assessed as general damages.

The respondent appealed to the Court of Appeal against the judgment of Williams, J on five grounds of appeal. In their judgment dated 14 July 1981 the Court of Appeal (Ken EO During, Marcus EA Cole and MS Turay JJA) allowed the appeal on three of the grounds and held that the other two were without merit. The three grounds on which the appeal succeeded were:

> 2. That the learned trial judge misdirected himself on the case for the appellants on the evidence.
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> 4. That the learned trial judge erred in law in finding that the plaintiff/respondent had been wrongfully dismissed and in awarding damages to him.
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> 5. That the decision is against the weight of evidence.
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> Marcus Cole JA, in delivering the unanimous judgment of the court, stated as follows:
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> "The issue whether the appellant was justified in the instant case in summarily determining the respondent's services was one of fact. There is no fixed rule of law defining the degree of misconduct which will justify dismissal. Each case would depend on its facts and circumstances. The appellant in the instant case has stated in Exhibit "D" letter of dismissal:
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> *… the Board of Directors has given careful attention to the facts pertaining to the pay roll frauds in the Western Area and has reviewed the part you played for which you were suspended. The Board has concluded that you are culpable for serious misconduct in respect of your handling and management of the Corporation's funds …* .
>
> Cogent and credible evidence has been adduced by the appellant to justify that the respondent had been found culpable for serious misconduct in respect of his handling of the appellant's funds. This decision was reached as a result of careful investigation by the appellant. A proper evaluation of the evidence and correct inference therefrom indicate irresistibly that the appellant was justified in summarily dismissing the respondent from its employ and I so hold."

The appeal now before this court is against that judgment. Twelve grounds of appeal were filed but in my view grounds 10, 11 and 12 embodied the main complaint of the appellant, *viz*:

10. The Court of Appeal erred in law in failing to uphold the High Court decision which was based upon the question of truthfulness of the witnesses and not necessarily upon inferences to be drawn.

11. The Court of Appeal erred in holding that the judge's finding in the present case is based on inconsistencies in the evidence of the appellant's witnesses particularly that of DW2.

12, The decision was against the weight of evidence.

Counsel for the appellant conceded the respondent's rights both at common law and under the "Rules, Regulations and Conditions of Employment" of the respondent corporation to summarily dismiss the appellant, if he was guilty of serious misconduct, but contended that misconduct must be proved on the balance of probabilities and that the burden of proof throughout as to such misconduct was on the respondent; and that it was a question of fact for the court to decide whether or not there was such a misconduct. He submitted that on the basis of the evidence adduced no such misconduct had been proved and that the learned trial judge was right in finding that the appellant had been wrongfully dismissed from his employment.

Counsel for the respondent, on the other hand, contended that the learned trial judge misdirected himself on the case for the respondent on the evidence in that he erred in law in finding that the appellant had been wrongfully dismissed and urged that there was abundant evidence to show that the appellant's conduct in his office disclosed misconduct, disobedience of lawful orders, dishonesty and negligence.

The respondent's case is stated in their defence and counterclaim as follows:

6. As a direct result of the failure and negligence of the plaintiff to conduct his business strictly in accordance with the directives of the defendant, his employers, the defendant sustained a loss of Le1,952.60 which the plaintiff has neither accounted for nor paid. In breach of the express terms and conditions of his employment, the plaintiff:

(a) Made out payments which were not supported by valid and authorised pay cards;

(b) Kept cash, from wages in his custody for more than three days in flagrant violation of the mandatory regulations which required him to re-bank such monies within 48 hours after pay day.

(c) On 2 January 1973 repaid to the defendant's banking account Le1,045.47 from his own monies in part satisfaction of a general total deficit of Le4,164.31. When queried about this the plaintiff described the payment as "excess cash" accumulated in his safe from October to December 1972. This payment to the bank was made after the defendant had pointed out to him that his reconciliation statements were erroneous.

(d) Failed to provide a reconciliation for January 1973.

As stated earlier the trial judge found for the appellant, i.e., held that he was wrongfully dismissed, but this decision was reversed by the Court of Appeal on the ground that "a proper evaluation of the evidence and correct inference therefrom indicate irresistibly that the appellant (the respondent herein) was justified in summarily dismissing the respondent (the appellant herein) from its employ."

Thus, the issue before this court is, whether on a review of the evidence as presented in this case, there is any, and if so sufficient material to warrant the Court of Appeal in holding that the appellant had been dismissed justifiably. However, before embarking on a review of the evidence it is necessary to state that whilst it is the duty of an appellate court to form its own opinion upon the evidence adduced a distinction must be drawn between findings based on conflicting testimony and deductions to be made from the evidence as a whole. In the former case a finding on a question of

fact should not lightly be disturbed, but in the latter an appellate court is in as good a position to evaluate the evidence as the trial judge and should form its own independent opinion giving weight if possible to the opinion of the trial judge. Indeed, the Court of Appeal in its judgment referred to various authorities on the subject: *Dominion Trust Co v New York Life Insurance Co* [1919] AC 254; *Montgomerie & Co v Wallace-James* [1904] AC 73; *Benmax v Austin Motor Co Ltd* [1955] AC 370; *Texaco (Sierra Leone) Ltd v EB Smith* (Civil Appeal 15/77, unreported).

In *Watt (or Thomas) v Thomas* [1947] AC 484 Lord Thankerton stated (at pp 487, 488) the principles were enunciated in all the above-mentioned cases thus:

> "1. Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence, should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses, could not be sufficient to explain or justify the trial judge's conclusion.
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> 2. The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence.
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> 3. The appellate court, either because the reasons given by the trial judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court."

See also *El Nasr Export & Import Co Ltd v Mohie El Deen Mansour* (Supreme Court Civil Appeal 3/72, 25 April 1974, unreported) and *Avo Wilson v James Samura & Anor* (Supreme Court Civil Appeal 3/74, 3 June 1973, unreported).

According to the evidence adduced before the trial judge, the appellant was the payments cashier in the Finance Section of the respondent business and his duties as stated in a memorandum dated 24 September 1972, Exhibit E, were:

1. Writing of cheques for all payables received from stores and finance section respectively.

2. Cashing of cheques for salaries and wages, leave payments, petty cash and payments of all staff.

3. Posting of payments and petty cash books.

4. Preparing of payment vouchers.

Other employees in the Finance Section were the payroll clerks, accounts clerks, assistant finance officer and the finance officer, who at the material time was a Mr PE Temple, and who was the first of two witnesses to testify on behalf of the respondent.

According to Exhibit E the duties of the finance officer include:

1. Supervising the staff in the finance section.

2. Reconciliation with Tab 32 of sixteen balance sheets accounts.

3. Reconciliation of Bank of Sierra Leone accounts and National Development Bank accounts.

4. Submitting payment vouchers and petty cash journals with other journals to Management Accounts Section for processing at Central Statistics Office.

5. Checking the payment and petty cashier at intervals and during reimbursements.

6. Initialling cheques drawn by the payments cashier and forwarding to chief accountant.

7. General duties of office management.

The appellant's main duty was to pay wages monthly based on timed job cards prepared by the time keepers of the various sections showing the name of the employee, his designation, rate per day, deductions, etc. The names on the job cards are taken from a register which is kept by the section head and it is he who supplies the names to the time keeper. After the time keeper has prepared the job cards they are passed on to the section head for signature after which they are journalised to arrive at a total amount required for the payment of wages in respect of all the sections. A cheque for a little over the exact amount – to make up for errors – is then prepared by the appellant. The finance officer initials the cheque after which it is cashed at the bank by the appellant. On his return he packets the wages of each worker according to the job cards in the presence of the finance officer and on pay day he would go to the various sites and make payment to the workers each of whom would be identified by the time keeper and section head. After payment of wages it was the appellant's duty to prepare a reconciliation statement each month showing the amount received from the bank, the amount paid out and the total amount of unclaimed wages. It was also the appellant's duty to re-bank all unclaimed wages within two days after making payment of wages. It was also stated in evidence that it was the duty of the finance officer to check the reconciliation statements, and if found to be correct to sign them. It was whilst the reconciliation statements for the year 1972 were being checked that the finance officer discovered certain discrepancies, i.e., that there were differences between what the appellant paid out and what was recorded in the job cards and journal vouchers; this was on 29 December 1972. The discrepancies were pointed out to the appellant by the finance officer who also instructed him to go with the payroll supervisor to the various stations where the differences arose. They left about 3 pm for Blackhall Road Power Station but returned about an hour later only to report that the time keeper could not lay hands on the register as it was locked up in the distribution officer's room. On 2 January 1973, the finance officer ordered the appellant and the payroll supervisor to go again to Blackhall Road Power Station, but the appellant refused to go with the supervisor and insisted in going alone. The appellant, according to the finance officer, thereupon secured his safe and cashier's cage and went out alone. Later he returned with a Barclays Bank paying-in-slip for the sum of Le1,045.47 and at the same time he informed him that a Mr Kamara, the time keeper, was unable to pay his own portion or the difference and that he (Kamara) would prefer to repay by instalments. The finance officer thereupon told the appellant that the matter was a serious one which he would have to report. On the next day the matter was reported to the acting chief accountant, Mr Salaam, who subsequently ordered an investigation. The investigation was conducted by one Mukhtar Rahman of the Internal Audit Section (DW2). In evidence he stated thus:

> "I discovered that certain monies allegedly paid out by the plaintiff were in fact paid out on forged cards and the sum of Le1,045.47 had not been properly accounted for. I made some findings about surplus cash and the plaintiff. Some bank paying-in-slips were showing a re-banking of the Le1,045.47. I discovered that the re-banking was not done at the correct time as it should have been re-banked within 48 hours. According to my investigation monies which should have been re-banked within 48 hours were not so re-banked for three months. The re-banking took place before my investigations started. I spoke with the plaintiff the question of his records relating to re-banking of unclaimed wages. The Le1,045.47 I have referred to was described by the plaintiff as excess cash in his safe. I discovered that there was no reason why he should have had excess cash. I discovered that the sum of Le1,045.47 was made up of three separate sums of money. He said that the first sum was in October, the second in November and the third in December 1972. I asked him why he had not re-banked them as he discovered them. He replied that he did not know how the excess came about and he had referred the matter to Mr Temple (DW1) and that Mr Temple had told him to investigate and find out. Mr Temple denied any knowledge of this."

I should here state that in his evidence before the Court the finance officer denied giving the appellant any counter instruction to keep surplus cash.

The witness then went on to state that all his findings were embodied in Exhibit M which was a query dated 6 July 1973 addressed to the appellant by the respondent. He stated further that during his investigation he referred to job cards principally and the journals and the reconciliation statements.

The appellant on his part stated that during the months of October, November and December 1972, he discovered excess cash, that he reported the matter to the finance officer who instructed him to keep same until the journal vouchers had been checked. In support of this allegation he produced two documents which were admitted in evidence without any objection, by counsel for the respondent and marked Exhibits P and Q respectively.

Exhibit Q dated 30th October 1972 was written by the Finance Officer to the appellant and it reads as follows:

*Finance Officer, Electricity House 30/10/72.*

*J.S. Bangura, please keep any excess cash you have discovered after your normal re-banking. I shall check the job cards and the journals for October 1972. I shall inform you of the date you will rebank it. The payroll clerks are busy on other work,*

*(Sgd) Finance Officer.*

Exhibit P was written by the appellant to the finance officer and it reads thus:

*Electricity House 30th November 1972.*

*PE Temple Finance Officer, Sierra Leone Electricity Corporation. I am reminding you that I have experienced another excess cash of Le646.19 in November 1972 after my normal re-banking which I called your attention to sometime in October 1972. What shall I do although you told me to wait as the payroll clerks are busy on other work? I consider this instruction extremely dangerous as I don't like to keep cash in my safe for long time.*

*(Sgd.) J.S. Bangura, Payment Cashier*

As previously mentioned the respondent's case was embodied in paragraph 6 of the statement of defence and counterclaim and counsel has urged on us to hold that, contrary to the learned trial judge's finding, the appellant has been guilty of such a serious dereliction of duty that the respondent was justified in dismissing him summarily from its employ. This is an issue of fact and as regards the first allegation that the appellant made payments which were not supported by valid and authorised job cards the learned trial judge had this to say:

> "The evidence produced points to the fact that the plaintiff did not prepare job cards. The evidence goes further to say that on pay day the job cards were handed over to the time keepers who were always present and it was they who used to call out the names on the job cards and then identify the worker to the plaintiff before he paid him. On the evidence, therefore, there is nothing to show that the plaintiff was connected in any way with the allegedly forged job cards. On this same allegation the defendant did not produce any of the allegedly forged job cards before this court. There was also the allegation that there was some difference between the number of job cards handed over to the plaintiff for payment purposes and the number returned after payment. Again, no record was produced by the defendants in support of this allegation."

As regards the second and third allegations that the appellant kept cash from wages in his custody for more than three days and that he refunded the sum of Le1,045.47 from his own monies in part satisfaction of a general deficit of Le 4,164.31 on 2 January 1973, after it had been pointed out to him that his reconciliation statements were erroneous, the trial judge found that the appellant was justified in not re-banking the excess cash he had discovered because of instructions he had

received from the Finance Office to hold on to such cash until such time as he, the finance officer, should communicate with him. The appellant stated in evidence that it was the finance officer who asked him on 2 January 1973 to go and pay the amount and that he thereupon took out the money from his safe and went and paid it. The finance officer was appellant's immediate boss and according to Exhibit E the appellant was under his supervision. Indeed the appellant in his "defence to counterclaim and reply" had pleaded that if at all there were any mandatory regulations which required him to re-bank any monies kept by him within 48 hours such regulations had been waived by the issuing of Exhibit Q to him by the finance officer. The finance officer did not deny receipt of Exhibit P or the issuing of Exhibit Q. The inference is that the appellant acted on the finance officer's instructions. It would be unreasonable to say that he was disobeying lawful instructions when in fact he was acting under the instructions of his immediate boss who up to the time of trial was still in the respondent's employ. If indeed it was in breach of regulations it was not so serious as to warrant summary dismissal especially as the finance officer was still in service. Assuming that this was an unlawful order as stated by the Court of Appeal which the appellant was not justified in obeying, I do not think that this default constituted such an act of grave misconduct or a flagrant violation of laid down regulations as to warrant the summary dismissal of the appellant.

As regards the fourth allegation that the appellant failed to provide a reconciliation statement for January 1973 the appellant stated in evidence that he could not have prepared such a statement as by then he had been relieved of his duties. This was never controverted by the respondent.

The Court of Appeal in its judgment referred to the case *Clouston & Co Ltd v Corry* [1904-7] All ER Rep 685 where it is stated in the headnote that: "in an action for wrongful dismissal, if the defendant pleads that the misconduct of the servant justified the determination of the contract of service, the question whether the misconduct proved established the right to dismiss the servant is a question of fact for the jury."

Lord James in his judgment at p 687 observed: "The sufficiency of the justification depended upon the extent of the misconduct. There is no fixed rule of law defining the degree of misconduct which will justify dismissal. Of course, there may be misconduct in a servant which will not justify the determination of the contract of service by one of the parties to it against the will of the other. On the other hand, misconduct inconsistent with the fulfilment of the express or implied conditions of service will justify dismissal."

In *Laws v London Chronicle (Indicator Newspapers) Ltd* [1959] 2 All ER 285 where an employee had been dismissed summarily for one act of misconduct Lord Evershed MR observed:

> "I think that it is not right to say that one act of disobedience, to justify dismissal, must be of a grave and serious character. I do, however, think that one act of disobedience or misconduct can justify dismissal only if it is of a nature which goes to show (in effect) that the servant is repudiating the contract, or one of its essential conditions; and for that reason, therefore, I think … that the disobedience must at least have the quality that it is "wilful": it does (in other words) connote a deliberate flouting of the essential contractual conditions."

Sellers LJ in *Sinclair v Neighbour* [1967] 2 QB 279; [1966] 3 All ER 988 expressed his own views on the question as to what kind of conduct by an employee would justify instant dismissal by the employer thus, at p 989:

> "The whole question is whether that conduct was of such a type that it was inconsistent in a grave way, incompatible, with the employment in which he had been engaged as a manager."

In the instant case the respondent had sought to justify the summary dismissal of the appellant. The grounds on which it had relied were found by the learned trial judge, after an exhaustive review of the entire evidence, to be untenable. It was within his province to decide on the credibility of the

witnesses and it has not been shown that his evaluation of the evidence or the inferences he drew from facts were wrong.

As regards the award made by the High Court, I would allow the amount of Le365.30 claimed as arrears of half salary from 14 March 1973 to 30 September 1973. On the claim for salary in lieu of notice, the appellant, according to the terms and conditions of service as laid in Section A of the respondent's rules regulations and conditions of employment, Exhibit U, is entitled to only one month's notice or pay on termination of employment; I would also allow the amount awarded under this head *viz*, Le112.40.

As regards the claim for Le224.80 for salary for the months of January and February 1974 arising out of redundancy as a result of his wrongful dismissal I see no basis for the learned trial judge making such an award. There is no justification also for awarding Le1,356,00 general damages since the award of one month's salary in lieu of notice constitutes general damages. This award as well as the award of Le224.80 redundancy pay are set aside.

I would allow the appeal and set aside the judgment of the Court of Appeal and restore the judgment of the High Court to the extent stated above.

Costs in this court and in the lower courts to the appellant.

**Hon Mr Justice E Livesey Luke CJ**: I agree. **Hon Mrs Justice AVA Awunor-Renner JSC**: I agree. **Hon Mr Justice S Beccles Davies JSC**: I agree. **Hon Mr Justice SMF Kutubu JA**: I agree.

Reported by Patrick Fofanah