

SC. CIV. APP. NO.5/84

OSMAN B. CONTEH

- APPELLANT

VS.

SIERRA LEONE DOCK WORKERS UNION - RESPONDENTS

CORAM:- HON. MR JUSTICE C.A. HARDING - J.S.C.

HON. MRS JUSTICE A.V.A. AWUNOR-RENNER - J.S.C.

HON. MR JUSTICE S. BECCLES DAVIES - J.S.C.

HON. MR JUSTICE F.A. SHORT - J.S.C.

HON. MR JUSTICE M.S. TURAY - J.A.

JUDGMENT DELIVERED ON THE 8<sup>th</sup> DAY OF July 1994

AWUNOR-RENNER, J.S.C. :

THIS IS THE JUDGMENT OF THE COURT WITH WHICH THE OTHER MEMBERS OF THE COURT AGREE WITH THE EXCEPTION OF THE HONOURABLE JUSTICE F. A. SHORT WHO IS NOW DECEASED.

This is an appeal from the Judgment of the Court of Appeal dated the 6th day of January, 1984 reversing a judgment of the High Court dated the 20th day of October, 1982.

The facts on which the appeal turns are as follows:

The Appellant Osman Borbor Conteh had been in the Service of the Sierra Leone Dock Workers Union (hereinafter known as the "Union"), the Respondent herein, for a number of years during which period he had been elected as Assistant General Secretary and finally in November, 1971 as full time General Secretary of the Union.

His salary at the time was Le4000.00 per annum plus other fringe benefits.

On the 22nd day of May, 1979, the President of the Respondent Union one D.F. Kanu wrote to the Appellant as Secretary General asking him to convene a meeting of the Executive Council for Saturday the 26th day of May. The Appellant wrote back to say that that day was not convenient for him. Kanu wrote again asking him to convene the said meeting on Monday the 28th day of May, 1979 but the Meeting was not convened by the Appellant on that date. The President himself convened the meeting and it was on that date that the Executive Council wrote to the Appellant to say that he had been suspended from office with effect from that date.

He was neither present at the said meeting nor informed in writing that charges would be preferred against him at that meeting.

The Appellant was then ordered to make an inventory of the Unions' properties in his custody in the presence of the Trustees of the Union, this he refused to do and was subsequently dismissed from the office of Secretary General by the Executive Council of the Union.

The Appellant thereafter instituted this action against the Respondents asking the High Court for a declaration that the action taken by the Executive Council of the Respondent Union in suspending him on the 28th day of May, 1979 and in subsequently dismissing him on the 22nd day of September, 1979 from the Office of Secretary General of the Union were both contrary to the Rules of Natural Justice and therefore illegal and in the alternative were ultra vires the rules of the Respondent Union.



The Appellant further claimed arrears of salary plus other fringe benefits which he alleged he was entitled to from the date of his suspension on the 28th day of May, 1979 until the date of Judgment.

At the time of the suspension referred to, the Appellant stated that he was in receipt of a salary of:

- (1) Le4000.00 per annum
- (2) Transport Allowance of Le160 per month and
- (3) Entertainment Allowance of Le60.00 per month.

The Respondent filed a Defence and Counterclaim against the Appellant. Judgment was however given in favour of the Appellant in the High Court but this was later reversed in the Court of Appeal substituting a Judgment in favour of the Respondent. Let me at this stage deviate and say that the Appellant's appointment and Conditions of Service were subject to the Rules of the Sierra Leone Dock Workers Union (hereinafter referred to as the "Rules") which were tendered in evidence. The Rules govern the Union and bind everyone of its members and officials, it is therefore convenient at this stage to refer to the relevant Rules in so far as they affect the position of the Appellant in this matter:

RULE 5 (1) : "The government of the Union shall be the Annual Conference and Subject to that authority the Executive Council.

RULE 7 (5) : "The Executive Council may appoint organisers and such clerical staff as it may consider necessary for the smooth working of the Union. It may suspend or dismiss any officer or member of staff

for neglect of duty, dishonesty - incompetence, refusal to carry out the decisions of the Executive or for any other reasons which it deems good and sufficient in the interest of the Union. It shall decide the salary of the General Secretary, Office Staff and the amount of honoraria to be paid to other officers.

RULE 8 (2) : The Officers of the Union shall be the President, General Secretary, Assistant Secretary, Financial Secretary, Treasurer Trustees and Auditors.

RULE 8 (4) : The General Secretary shall be elected by a vote of the Annual Conference and shall hold office at the pleasure of the union etc.

RULE 19 (3) : No member or official shall be suspended or expelled unless he has been given an opportunity to state his case personally at a meeting of the Executive Council of which he has received not less than seven days notice in writing.

The matter with which the official is charged shall be set out in such notice.

The Appellant has now appealed to this Court on the following grounds:-

- (1) That the Learned Justices of Appeal wrongfully and unjustifiably usurped the functions of the Learned Trial Judge who had the advantage of seeing and hearing the witnesses in their oral testimony and had resolved violent conflicts in the evidence given by witnesses on both sides



by reversing findings of facts made by him and substituting their own impression of how the evidence should have been viewed and how the issues should have been decided, without applying or seeking guidance from any of the settled and well established legal principles contained in decisions of the Court of Appeal or the Supreme Court or indeed in any other Court for that matter setting out the criteria governing cases where an Appellate Court can properly reverse findings of fact made by the said Judge.

- (2) That the Learned Justices of Appeal failed to consider adequately the various legal issues raised in the Appeal inspire of the Legal Arguments on both sides and the several authorities cited by treating the matter as being one between Master and Servant notwithstanding the fact that the matter concerned essentially members of a Trade Union and the interpretation of the Rules of a Trade Union.
- (3) That the Learned Justices of Appeal failed to avert their minds to and accordingly failed to apply the several legal principles and presumptions governing the rules of Natural Justices to the instant case, thereby arriving at an erroneous Judgment.

Counsel for the Appellant argued that the Respondents failed to comply with the principles of Natural Justice and that they were therefore in breach of the audi alteram partem rule when they suspended the Appellant on the 28th day of May, 1979 and subsequently dismissed him on the 22nd day of September, 1979 and that these actions were therefore illegal and in the alternative were ultra vires the rules of the said union. He referred the Court to the case of RIDGE V BALDWIN and several

other authorities in his case for the Appellant. He further stated categorically that he was submitting and I quote that:

"One of the fundamental rules of Natural Justice is that man has a right to be heard : audi alteram partem.

The rule embrace the whole nature of the fair procedure or due process. The position is clear in that when a person is in a judicial or quasi judicial position to exercise judgment or administer power and does so in a manner which could affect the livelihood of another then that person is bound to comply with the principles of Natural Justice"

He also stated that the Appellant was never informed, that he was going to face charges at the meeting of the 28th April, nor informed of what the charges were. He also alleged that the Appellant was never afforded the opportunity of defending himself. He also relied heavily on Rule 19 (3) of the rules of the Union, as stated supra.

Counsel for the Respondents on the other hand presented the following arguments on their behalf. He argued that Counsel for the Appellant and himself conceded that the Appellant himself was an employee of the Union and that if that was the case the Rules of Natural Justice would only apply if there was any attempt to expel the Appellant from his Union. In the present case he said that the Appellant was dismissed from his employment. He referred to ABBOT V. SULLIVAN reported in (1952) 1 K.B. at page 189 and Rule 19 (3) Supra. He further argued that the Appellant held office at the pleasure of the Union and was never suspended or expelled by the Union. The applicable rule he contended was Rule 7 (5). He said therefore that the Appellant should not have come to Court for wrongful dismissal but for wrongful expulsion. He too referred to the case of RIDGE V BALDWIN and another reported in 1963 2 A.E.R. at page 66 and at page 71. He further claimed that the High Court and the Court of Appeal applied two principles. The High Court relied on Rule 19 (3) of the Rules of the Union and the Court of Appeal relied on Rule 7 (5) of the same rules and came to the conclusion that the



Appellant was an employee of the Union and in addition to being a member of the Union.

The rules of Natural Justice were therefore not applicable to his dismissal or suspension.

I have already referred to the relevant rules in this action and now propose to deal with the most salient points and uncontroverted facts given in the evidence so far briefly:

Let me first of all deal with the question of Natural Justice as was presented to [ the Court ] me by Counsel for the Appellant on his behalf. In my opinion, the gravamen of Counsel's argument was that he claimed that the Appellant had been employed as Secretary General of the Sierra Leone Dock Workers Union. He had been elected by virtue of Rule 8 (4) supra and should have remained in office at the pleasure of the Annual Conference. Had that been the case this would have been a simple matter. See the case of TERREL & COLONIAL SECRETARY of State for the Colonies. Reported in (1953) 2 A.E.R. at Page 90. That case involved the tenure of office of a Colonial Judge who had been dismissed and who had held office at the pleasure of the crown. On a Claim by him that he was not liable to be dismissed before he reached the age of 62 when he would be entitled to a larger pension it was held:

1. That Judges in Malaya did not held office during good behaviour but had held office at the pleasure of the crown and therefore the claimant had held office during pleasure.

(continued at p.7)

2. The right of the Crown to dismiss at pleasure was a rule of law which could not be taken away by any contractual arrangement made by any Executive Officer or department of State and therefore the letter of July 5 and August 7 1930 did not constitute a contract between the claimant and the Crown that the Crown would employ him till he reached the age of 62 and therefore his claim must be dismissed.

Apart from Judges and others whose tenure of office is governed by Statute all servants and officers of the Crown hold office at pleasure

and this has been said to apply to a Colonial Judge "TERREL & SECRETARY of STATE Supra "It has always been held and I think rightly that such an officer has no right to be heard before he is dismissed and the reason is clear, as the person having the power of dismissal need not have anything against the officer, he need not give any reason".

I have cited this case to give illustrations of what is meant by "at the pleasure of"

The Appellant in this matter was not suspended and dismissed by the Union. As a matter of fact the Appellant was first suspended by the Executive Council on the 28th day of May, 1979 in accordance with Rule 7 (5) of the Rules. He was subsequently dismissed from his office as Secretary General by the same Executive Council who claimed to have acted under the same rule.

The Executive Council had power to suspend or dismiss any officer or member of Staff for neglect of duty, dishonesty, incompetence or refusal to carry out the decision of the Executive etc.

The Appellant was not only a paid up member but also an officer of the Union. He had been asked to convene a meeting of the Executive Council on the 26th day of May, 1979. This he failed to do.

A meeting was convened by the Executive Council on the 28th day of May, 1979 and it was at that meeting that the decision was taken to suspend the Appellant. He was neither present at that meeting nor told that charges would be preferred against him on that date or what the charges would be. He had no opportunity of defending himself in any way before the suspension. Later on in September he was subsequently dismissed. It is my opinion that the Executive Council was definitely in breach of the Rules of Natural Justice and legal principles of the Audi Alteram Partem Rules. What Audi Alteram Partem rule contemplates is an adequate opportunity to appear and be heard. I have come to this conclusion after considering all the evidence and legal principles relating to this matter [canvassed] adduced before this Court.



I do not in anyway support [agree with] the arguments put forward for the Respondents.

The Court of Appeal was clearly wrong in arriving at a different conclusion from that of the High Court without even averting their minds to the Audi Alteram Partem rule or rule 19(3) which in my view are more or less synonymous with that of the audi alteram partem rules.

I would also like to quote a few of the utterances made by Justice Navo - J.A. in his Judgment to support my conclusion. At one point he said and I quote:-

"It is clear, that the Respondent was not heard in his defence before he was suspended and dismissed but was he given an opportunity to be so heard? or did the occasion require the Executive to clearly sit and wait for the Respondent at his convenience to be first heard before they took the steps while they did.

There is no doubt that Justice Navo knew from the evidence that the Appellant had not been notified of the charges that would be brought against him or informed him why the meeting was being held, (See page 13).

In another paragraph he further had this to say again I quote:

"On the complaint that the appellant did not observe the rules of natural justice that is the audi alteram partem rule, there was abundant evidence, that the respondent was summoned to the meeting which discussed his suspension but in flagrant disobedience, arrogance and gross insubordination refused to attend and instead was holding an unauthorised meeting with some members of the Union at the same time the Executive meeting was held".

From these quotations it is quite clear that the Court of Appeal was quite cognisant of the fact that the Appellant was not heard in his own

defence before he was suspended and dismissed. It is also quite clear that there was a breach of the audi alteram partem rule because even though the Court of Appeal accepted that the Appellant was summoned to the meeting they refused to accept that in fact no notice of the charges which the appellant had to face was ever communicated to him in writing at least seven days before meeting at which the appellant case was considered and his subsequent dismissal.

For the reason given above, I have no alternative but to find for the appellant after considering the evidence, the rules and cases referred to supra, again I must say that.

On the while I do not agree with the Court of Appeal for the reasons given above and wish to add that apart from the Appellants case the Respondent in his own case and arguments presented in this matter seem to have supported the Court of Appeal in some parts by agreeing with them whole heartedly. I do not expect him[ them] to behave otherwise as he [Counsel] gave his reasons for his support by stating that this was a case of Master and Servant and that the Appellant further held office at the pleasure of the Union. He further stated that the Respondent was suspended from office as General Secretary and subsequently dismissed from that post. He was neither suspended nor expelled from the Union. That distinction is absolutely necessary to be made quite apparent because the principle of natural Justice has been held not to be applicable to the original contractual relation of Master and servant as stated above. I agree with Counsel for Respondent when he said that the appellant was dismissed by the Executive Council as secretary General but had they the right he do? The answer is no. This is in contrast to the Letter of Dismissal Exh "E". That letter states that Appellant was dismissed in pursuance of Rule 7(5) Supra. He himself Counsel for Respondent had admitted that the Appellant" held office at the pleasure of the Union rule 8(4).

This being the case the Executive had no right to dismiss him as



Rule 8(4) is quite clear on this point as I have already explained the position Supra. The Executive Council alleged that the Appellant had been disobedient and refused to call a meeting of the Executive Council when requested to do and to make an inventory of the Unions Properties in his possession which he was requested to do and as such they had very wide powers of disciplining him. I hold that the Appellant should have been dismissed by the Annual General Council and no more.

This is not a case of Master and Servant. The Respondent's counsel relied on The Rules of the Union. In paragraph 15 of the case for the Respondent, he said;

"The Respondent consequently submits that the purpose of Rule 19(2) and 19(3) of Exh. "A" was to meet the requirement.

English Law as outlined above, and further said that the provisions of the said subsections of 19(2) and 19(3) have absolutely no application in the contractual relationship of Master and Servant. After considering the rules of natural Justice and the rules of the Union as relied upon above and the evidence adduced. I hold that the declaration sought in this case ought to be granted.

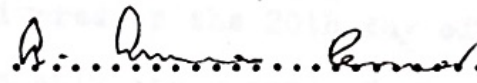
1. The Appellant is entitled to his salary from the 28th day of May 1979, to the day of judgment in the High Court which is the 20th day of October 1988.
2. I allow Le.60 a month for entertainment.
3. I allow Le.100 a month for transport for the same period.


As regards the Defendants/Respondents Counterclaim. I would allow them the sum of Le600 which had been paid to the Appellant in respect of the Seminar, in Ghana, which did not materialize. I would also allow them the sum of Le600 which the Appellant had not accounted for as alleged by the Respondents. He had produced debit notes from Giani Store in support of his case that he had bought drinks for the I.T.F. Seminar. There is no receipt in support of his assertion.

The Appellant had paid 17 instalments totaling Le1,413.12 from May 1979 on the loan granted him by the Respondents for the purchase of his car, this I would allow him. The outstanding balance would be deducted by the Respondents from the salary due to him.

Interest to be paid to the Appellant on all monies due and owing to him under this Judgment at the rate of 5% per annum.

Costs to be paid by the Respondents to the Appellant. Such costs to be taxed.

  
.....  
Hon. Mrs. Justice A.V.A. Awunor-Renner, J.S.C.

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

I agree