

SC.CIV.APP.2/2005

## IN THE SUPREME COURT OF SIERRA LEONE

BANK OF SIERRA LEONE - APPELLANT

AND

AHMAD T. ALGHALI - RESPONDENT

CORAM:

Hon.Mr. Justice G. Semega-Janneh	JSC
Hon.Mrs. Justice V.A.D. Wright	JSC
Hon.Mr. Justice M.E.T Thompson	JSC
Hon. Ms. S. Koroma	JA
Hon. Mr.Justice A.N.B. Stronge	JA

JUDGMENT DELIVERED ON THE 9<sup>th</sup> DAY OF NOVEMBER 2007

E.Pabs-Garnon Esq., for the Appellant  
J.B. Jenkins-Johnston Esq., for the Respondent

V.A.WRIGHT. JSC:

The Respondent brought an action against the Appellant that the purported termination of the Respondent's services with effect from 1<sup>st</sup> August 2000 as stated in the letter of termination was unlawful, null and void since the Appellants right to grant an extension of tenure of office to the staff beyond the age of 55 years was not properly exercised.

The Respondent had been employed by the Appellant for 27 years and at the time of his termination of employment he was section Head, Currency Management. On the 4<sup>th</sup> April 2000 the Appellant wrote to him informing him of his retirement due on the 7<sup>th</sup> July 2000. The Respondent claimed that although he was given his entitlements he was not given his pension which was due him on his retirement.

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The grounds of Appeal are:

- (1) That the Court of Appeal failed to consider and give due weight to the available written and oral evidence particularly that of the Plaintiff P.W.1 when it held that there was no evidence to support the contention that the Appellant had not been guilty of any misconduct.
- (2) That the Court of Appeal erred in law when it held that specific charges must be drawn up against the Respondent and proven before disciplinary measures are taken.
- (3) The Court of Appeal erred in law when it held that having regard to the circumstances of the case the Appellant had not complied with the terms of the Staff Rules and Regulations and that the termination of the Respondent was thus illegal.
  - (a) That the judgment of the Court of Appeal be reversed.
  - (b) Any further or other relief as to the Supreme Court may seem fit.

By a Writ of Summons dated the 9<sup>th</sup> day of August 2000 issued by the Respondent against the Appellant claiming inter alia a declaration that the termination of employment by the Appellant was null and void and that he should be granted entitlements owed to him under the Banks Pension Trust Scheme.

The Respondent gave evidence that he had worked for the Bank since 1973 and that he was supposed to proceed to retirement after serving the Bank



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for 27 years. A Defence and Counterclaim to the action was filed on behalf of the Appellant alleging negligence on the part of the Respondent thus causing the Appellant loss to the value of Le80,000,000 and contending that termination of the Respondent was lawful, thereby claiming the same amount by way of counterclaim.

The matter was heard and on the 3<sup>rd</sup> October 2002 by the Learned High Court Judge who gave judgment as follows; "That on the evidence I cannot grant reliefs claimed by the plaintiff. I also find evidence insufficient evidence to allow the counterclaim of the Defendant excepting this. I give judgment for the defendants. Each party will pay it costs".

Learned Counsel for the Respondents appealed to the Court of Appeal and the grounds of Appeal were as follows:

- (1) That the Learned Trial Judge totally failed, and/or neglected, and/or omitted to properly or adequately consider the case for the Plaintiff

Notwithstanding the evidence led before her, the submissions of Counsel and the several authorities cited, leading her to the erroneous conclusion that ".....On the evidence I cannot grant relief claimed by Plaintiff....."

- (2) That the Learned Trial Judge failed to properly evaluate the evidence led before her including the exhibits tendered, but rather merely repeated the

contents of the pleadings, the evidence and some submissions of Counsel in almost the whole of her said judgment excepting the last page thereof.

(3) That the Learned Trial Judge did not consider AT ALL whether or not the Plaintiff was entitled to or qualified to receive a pension from the Defendants after twenty-seven (27) years service according to the Defendant's own records, which was a major and substantial part of the Plaintiff's case.

(4) That the judgment was against the weight of the evidence.

Judgment was delivered on the 19<sup>th</sup> day of November upholding the Appeal of the Appellant.

By Notice of Appeal dated the 12<sup>th</sup> day of January 2005 the Appellant appealed to the Supreme Court.

At the hearing Counsel for the Appellant relied on the dicta of Livesey Luke J. in 7/79 C.A. Gittens-Stronge Vs. Sierra Leone Brewery unreported, said " that if the Employer gives notice for the prescribed period under the contract of Employment or pays the equivalent salary in lieu of such notice the termination is lawful and the employee will have no remedy in law".

He said that the Appellant made payment due to the Respondent in accordance with section 11(b) of Staff Rules and Regulations, and that the investigation was carried out on the payment of the (Le80,000,000.00) eighty million cheque from Union Trust Bank. The junior officials in the Bank thought this was irregular as



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payments to Bank were not usually made over the counter. This same cheque was paid again not knowing that another payment had been made. After the investigation and based on these facts the respondent was terminated. The motive of the employer in terminating the employee is irrelevant so long as he complies with the terms of the contract of Employment. The employer need not give reasons for his termination as in section 11 in the Staff Rules Regulation. He said that since the Respondent was terminated in April, when he was not yet 55 years he was not entitled to pension.

Counsel for the Respondent on the other hand contended that although the Appellant reserves the right of the Appellant to grant an extension of tenure of office to Staff beyond the age of 55 years, it was neither proper nor lawful for the Appellant to grant such an extension of tenure to the Respondent. When the Appellant informed the Respondent in writing to proceed on retirement on the 7<sup>th</sup> July 2000 he Appellant never informed the Respondent that he had been granted an extension of tenure.

Learned Counsel for the Respondent strenuously argued that the same query was not addressed only to the Respondent but also to others. He contended that he should have been queried separately and be given the right to defend his action in accordance with Rule 9 of the Staff Rules and Regulations which was not done.

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an employer gives notice for the prescribed period or pays the equivalent salary in lieu of such notice the termination is lawful and the employee has no remedy in law. The plaintiff cannot raise the question of notice, proper or otherwise.

In this matter, the Appellant included a cheque representing the salary and other entitlements of the Respondent for three months in Exhibit D which the Respondent accepted and did not return.

The letter of termination stated as follows:

"You are hereby informed that in accordance with rule 10.1. of the Staff Rules and Regulations management has reached a decision that your service with the Bank be terminated with effect 1<sup>st</sup> August 2000. Accordingly you will be paid three months salary in lieu of notice. You need not report for duty with effect from tomorrow 19<sup>th</sup> April 2000. Enclosed is a copy of the breakdown of your final benefits and one cheque No.331657 being final entitlement of your benefits as on 31<sup>st</sup> July 2000."

Learned Counsel for the Respondent contended that since the Respondent had served 27 years in the employment of the Appellant and having reached the age of 55 years while still in the employment of the Bank he was entitled to receive a pension from the Bank. Therefore he had been willfully deprived of his said pension by the unlawful termination of his services after the date of retirement.



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Counsel for the Appellant however stated that the Respondent was not in the employment of the Appellant on the date of his retirement and was therefore not entitled any pension. The termination was lawful and in accordance with Rule 11 of the Staff and Regulations and no notice need to be given for the termination.

I shall refer to the Staff Rules and Regulations Rule 10(1) which was referred to in the Letter of Termination.

Rules 10(1) states:

Staff shall have a right of appeal against any disciplinary measures meted out to them. Such appeal which must be in writing, and shall be addressed to the Board of Directors and copied the Governor in the case of Head of Directors and copied the Governor in the case of Head of Departments and Division Heads. In the case of all other employees which appeals shall be addressed to the Governor through the Director, Human Resources. Such an appeal shall be made within one month.

This brings to mind Rule 11 headed separation from service. The service of Staff with the Bank is severed by any of the following:

- (a) Registration
- (b) Termination
- (c) Retirement
- (d) Death
- (b) Termination of Notice
- (i) The Bank reserves the right as employer to terminate the service of an

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employer to at any time and need not assign any reason for such termination.

(II) The Bank shall give staff notice of termination in lieu of such notice in accordance with their rank as follows:

- Probating employees. Fourteen calendar days.
- Employees below the rank of section head one calendar month
- Section Head and above three calendar months.

(111) Staff Terminated who have served a maximum of 5 years shall be Entitled to all earned benefits up to the time of termination.

Later on in my judgment I shall deal with the question of when the letter of termination should took effect.

In SC.Civ.App.7/97 Gittens Stronge V. Sierra Leone Brewery Limited unreported, Livesey Luke C.J. when dealing with a similar case said "whether such cessation is called "termination" or "dismissal" is of no importance in this context. If the "termination" is unlawful if it gives rise to an action for wrongful dismissal" similarly if the dismissal is unlawful it gives rise to an action for wrongful dismissal".

Before the written letter by the Appellant informing the Respondent of his retirement the Appellant and other employees were queried to explain in writing about their involvement in the matter following the report of the shortage of Le80,000,000 from the banking vault.



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There are three different dates in the termination letters. Exhibit E, 1<sup>ST</sup> August 2000 which was actually stated as the termination date; 19<sup>th</sup> April 2000, on which date the Respondent was told not to return to work and 31<sup>st</sup> July 2000 up to when final settlement of benefits were calculated. The Appellant informed the Respondent of his termination and made payment of full settlement of his benefits and at the same time unnecessarily gave notice of three months. It is apparent that Exhibit E was badly written.

I have no doubt in my mind that inspite of the badly drafted letter of termination the date the Appellant stopped work on the orders of the Respondent was 19<sup>th</sup> April 2000. And the fact that in the letter of termination was enclosed a cheque representing the calculated salary of three months and other benefits due the Plaintiff, the termination was lawful. Livesey Luke C.J. in his judgment in Gittins-Stronge v. Sierra Leone Brewery Limited (Supra) had this to say.

'if according to the terms of the employment, termination must be 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.'

Let me here state that I found that the letter of the 4<sup>th</sup> April 2000 from the Director of Human Resources of the .....relating to the Appellants imminent ' employment was a reminder that the Appellant was due to retire on the 7<sup>th</sup> July 2000.

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Rule 11 (C) (11) of Exhibit U the Staff Rules and Regulations states that although the staff will be retired by the Bank on attaining the age of 55 years the Bank reserves the right to grant an extension not exceeding the age of 60 years. Therefore if the Appellant did not exercise such right in favour of the Respondent I do not see how he could have complained about it. See dicta of Livesey-Luke in the case of Vincent Vs. B.P. (Sierra Leone) Limited unreported SC.CIV.APP.2/81 delivered on the 3<sup>rd</sup> day of April 1984.

I find that Exhibit "D" which is the memorandum dated 4<sup>th</sup> April 2000 from the Director of Human Resources to the Appellant relating to the Appellants imminent retirement does not have the same legal effect as Exhibit E and this could be easily distinguished from a notice of termination as highlighted in the judgment of Beccles-Davies JSC in the case SC.CIV.APP. 5 /80 Freetown Cold Storage Limited Vs. Ignatus Guilford Reffell unreported Judgment delivered on 14<sup>th</sup> July 1982 and dealt with in the case of Harris & Russell Limited Vs. Slingsby (1973) ALL E.R. 31, Decro-Wall International S.A. Vs. Practioners in Marketing (1971) 1 WLR 3611 and Riordan Vs. The War Office (1959) 3 ALL E.R. 522.

I shall now deal with Exhibit J which is a letter of query for the payment of cheque No.31960 for Le80,000,000 on the 11<sup>th</sup> August 1999. However on the same date similar letters of query had been served on other members of staff including the Respondent who had been involved in the payment of the cheque. The replies from other members of staff implicated the Plaintiff. The



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Respondent was asked to show why disciplinary action should not be taken against him in accordance with the Staff Rules and Regulation to which he complied. He was also asked to reply to the comments of the other members of staff to which he replied.

D.W.1 Grahe Oladi Hassan Division Head of Procurement Department and Stores General Services Department said that after April 1999 she had cause to carryout investigation because of discrepancy in the Book. There was an outstanding amount of Le80,000,000 against the Bank. She said that they discovered the cheque for Le80,000,000 was paid twice; and she interviewed P.W.1, Ahmed Tafsir Alghali P.W.2 Bintu Sesay, Mr. Roxy Edwards and Mr. Gebai Supervising Cashier. She went on to say that payment on cheques for large sums is effected at the Receiving Bay and not Banking Hall. She said that the Plaintiff should be aware of this and she concluded that because of the breach of this procedure cheque Exhibit Y was paid twice; and the Bank was not able to receive the Le80,000,000.

In cross examination by Counsel for the Respondent she said that there was record that cashier No.4 paid out Le80,000,000 on cheque No. 319606 on the day, it was drawn on Union Trust Bank. The second time the cheque was paid was at the Banking Hall. The first time it was paid was at the Receiving Bay. Looking at the foot of the cheque nothing tells her it was paid at the Receiving Bay.

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From the answers given by the Appellant some of which were envisaged e.g. in Exhibit N (page 154) in answer to Gegbais allegation that he handed over the cheque, he said he could not recall.

The other issue was whether the Rules and Regulations, pursuant to which action was taken to have the Plaintiff's service terminated. The implementing Rule 10(1), rule 9 has to be taken into consideration. Great play was made on the phrase "specifics" of the allegation" both by the Learned Sir John Muria JA as he then was and by Counsel for the Respondent in his address. I hold the view that the Appellant discharged that obligation by bringing to the Respondent's notice the details of any breach of the regulation, or any "display of negligence in general or anything detrimental to the interests of the Bank".

The other limb of rule 9 is that staff should be given an opportunity to make a defence to justify why disciplinary action should not be taken against him or her.

I disagree with the Learned Judge in his view that a charge has to be laid against the member of staff. I hold that the allegation of negligence was clearly made and the Respondent was given ample opportunity as where other staff members under investigation to defend themselves and to justify why disciplinary action should not be taken against them. Exhibits J,K,M2,M4,M6 and N were all about the investigation carried out by the Defendant. Obviously the Respondents replies to queries were not acceptable and the Appellant chose the penalty of



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termination as an option against the Respondent. There is no evidence that in spite of the fact that the matter was speedily resolved that the Respondent was not given every opportunity to make a defence against the allegation levied by the Defendant.

It is not necessary for charges to be laid out as is done in criminal cases so long as the misconduct was adequately brought to the notice of the employee and he was given the opportunity to respond to the allegation contained therein.

From the above it is clear that the Appellant was given ample opportunity to exonerate himself contrary to what was contended by Counsel for the Respondent; and I disagree with the finding of the Court of Appeal on this point. I find also that there is abundant evidence of negligence on the part of the Respondent. He had been negligent in his duty.

One of the main questions to be determined was whether after the Letter of Termination had been issued the Respondent was still in the employment of the Appellant as contained in the Staff Rules and Regulations (Exh.U).

I will first of all deal with when the letter of termination took effect. Let me again say that this letter was badly written Exhibit "E" states "you need not report for duty with effect from tomorrow 19<sup>th</sup> April 2000.

On a strict interpretation of Rule 10 (1), Rule 10 (2) (V) and Rule 11(b)(iii) Exhibit "U" (Staff Rules and Regulations) I opine that the effective date of

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termination of the employment was the 18<sup>th</sup> April 2000, because after paying the Respondent's three months salary and their benefits in lieu of notice there was no need to give any notice. Even Learned Counsel for the Respondent in his case filed on page 9 in the penultimate paragraph said "The Appellant indeed has served the Bank for more than 10 years if he had not been terminated he would have reached the age of 55 years on 7<sup>th</sup> July 2000.

I shall here state that I find that Exhibit "E" as contended by the Counsel for the Respondent did not make the action taken by the Appellant thereon invalid. The Appellant paid the Respondent three months salary in lieu of notice.

See Gittens Stronge Vs. Sierra Leone Brewery Limited (supra) in which Luke JSC said:

"According to Common Law if an employer gives notice for the prescribed period or pays the equivalent salary in lieu of such notice the termination is lawful and the employee has no remedy in law..... If the employer acts in accordance with the terms of the contract of Employment he is protected". See Volta also Aluminum Co. Limited Vs. Tetteh Akuffo-Baddoo volume 2 2003 – 2004 Supreme Court Ghana Law Report page 1163 and Bannerman Mason v. Ghana Employer's Association 1996-1997 SC.GLR.(Ghana Reports.

In the Judgment of S.U. Anu.JSC. In Gidfrey Vs. Isievwore (2002) of S.C.N.J. (Supreme Court Nigerian Judgments page 33 he said:



Pensionable employment does not mean for life or until normal retirement age as stated in Chitty on Common Law Series Volume 2. 24<sup>th</sup> Edition page 101. To become "eligible" to something may mean "legally qualified" to it as pointed out by Lord Chelmsford in Baker Vs. Lee (1880) 8 H.L. Cas. 495 at page 522.

Reference has been made to the Staff Handbook 1971 where it is provided in Clause 12 as follows:

#### PENSIONS

1. will join Pension scheme which is not on confirmation and on attaining the

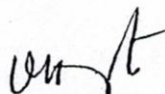
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2. Members of the staff will become eligible for pension after continuous service of ten years or on voluntary retirement at or after the age of fifty years.

According to the records the date on which the Appellant legally qualified for pension was on the 7<sup>th</sup> July 2000, but he was terminated before that date.

The Appellant was not bound to keep the Respondent in employment after the age of 55 years and I disagree with the Learned Justices of Appeal that the termination was unlawful.

As already opined I cannot say that the Respondent was in the service of the Appellant on the date of retirement and I hold that the Respondent was lawfully terminated on the 18<sup>th</sup> April 2000. That being the case he cannot be entitled to pension and I so hold. The Appeal therefore succeeds. Each party to bear its own costs.



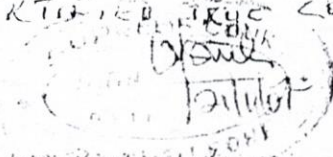
Hon. Mrs. Justice V.A. Wright,

JSC.

Hon. Mr. Justice M.E.T. Thompson - I agree

Hon. Ms. Justice S. Koroma  I agree

Hon. Mr. Justice A.N.B. Stronge  I agree

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 HON. MR. JUSTICE M.E.T. THOMPSON