

IN THE SUPREME COURT OF SIERRA LEONE

SC CIV. APP. NO.2/2005

BETWEEN:

STANDARD CHARTERED BANK (S.L.) LTD	-	APPELLANT
AND		
MRS. FRANCES FOREWA (AS ADMINISTRATRIX OF THE ESTATE OF J.S. FOREWA (DECEASED))	-	RESPONDENT

CORAM:	HON. MS. JUSTICE U.H. TEJAN-JALLOH	-	J.S.C.
	HON. MR. JUSTICE G. SEMEGA-JANNEH	-	J.S.C.
	HON. MR. JUSTICE M.E. T. THOMPSON	-	J.S.C.
	HON. MR. JUSTICE P.O. HAMILTON	-	J.A.
	HON. MS. JUSTICE S. BASH-TAQI	-	J.A.

COUNSEL: MR. PATRICK LAMBERT AND WITH HIM MS. MARIAMA  
DUMBUYA FOR THE APPELLANT

MR. E.E.C. SHEARS-MOSES AND WITH HIM MRS. M.A.P.  
DAVIES FOR THE RESPONDENT

JUDGMENT DELIVERED ON THE 23<sup>rd</sup> DAY OF OCTOBER, 2007.

SEMEGA-JANNEH J.S.C. On the first of November 1965, Standard Chartered Bank Sierra Leone Limited (Appellant herein and hereinafter referred to as "the

Bank") employed John Augustus Forewa (Respondent herein and hereinafter called "Mr. Forewa") as a clerk. He rose through the ranks and as at the time his services were terminated by letter dated the 23<sup>rd</sup> October 1992 (Exhibit C-1") he had reached the rank of manager and was aged forty-three (43) years old. The termination letter alleged that the Bank's investigation of Mr. Forewa revealed that he was negligent in his duties and guilty of misconduct; as a result his services were terminated with immediate effect.

The investigations referred to were in respect of allegations that Mr. Forewa during his tenure as manager of the Bank's Makeni branch had suppressed cheques instead of following the Bank's procedure in respect of the processing of cheques. The termination letter is the result of the investigations. Mr. Forewa was, at the time of his termination, paid one month's salary in lieu of notice and given his terminal benefits. Mr. Forewa protested the termination by a letter dated the 30<sup>th</sup> November 1992 (Exhibit 'D') and when he received no response he instructed his solicitor.

The solicitor caused a Writ to issue in which Mr. Forewa claims the following reliefs:

- "(a) The salary he would have earned up to and including the retiring age of 60 years (he being 43) years at an annual salary of Le.2,682,819.00 (Two Million Six hundred and eighty-two thousand eight hundred and nineteen Leones) with prospect of a salary increase to wit for 17 years.*
- (b) Leave pay for 17 years at 15% of the Plaintiffs basic annual salary*  
**AND**
- (c) Rent subsidy for 17 years at 10% of the plaintiff's yearly basic salary.*
- (d) Lunch allowance of Le.25,000.00 (Twenty-five thousand Leones) monthly.*
- (e) Monthly car allowance of Le.25,000.00 (Twenty-five thousand Leones). He also claims general damages.*



The learned Judge of the High Court, A.B. Raschid, J, after reviewing the evidence concluded that the Bank had breached the contract of employment in that the Bank, amongst others, failed to give Mr. Forewa a fair opportunity to defend himself and, therefore, gave judgment to Mr. Forewa. In his judgment, he concluded that since no contractual term for notice to terminate the employment was in evidence he would resort to the common law principle of reasonable notice and, after taking into account the circumstances "including the nature of the employment and the difficulty of getting such another or a like one", held that twelve months notice was reasonable. He accordingly awarded Mr. Forewa the following:

Eleven month's salary	-	Le.2,459,250.08
Eleven month's car allowance	-	275,000.00
Eleven month's lunch allowance	-	275,000.00
Rent allowance of 11 months	-	<u>368,887.00</u>
Total	-	<u>Le.3,378,137.69</u>

The Bank being dissatisfied with the judgment appealed to the Court of Appeal on the following grounds:

- "1. That the learned Judge misdirected himself on the evidence when he held that there was no agreement relating to the notice to be given by the Defendants (the Bank) before terminating the Plaintiffs (Mr. Forewa's) employment. (Bracketed words added).
2. That the learned trial Judge erred in law in holding that in the absence of an agreement the Plaintiff was entitled to 12 months salary in lieu of notice of termination of pf his services.
3. That the judgment is against the weight of the evidence."

From the Grounds of Appeal it is clear that the Bank did not appeal the decision of A.B. Raschid.J that the Bank breached the contract of employment with Mr. Forewa by the manner the termination was carried out. Notwithstanding the fact that the breach of contract was not an issue in the appeal and that as a matter of fact the issue was not argued before the Court of Appeal, F.C. Gbow J. dealt with the issue and, rightly, without making any determination. The thrust of Counsel's arguments centered on what period of notice was applicable on the facts of the case.

The Court of Appeal in the judgment of F.C. Gbow J. examined the evidence and came to the same conclusion as the trial court that there was no acceptable evidence of a contractual term of notice. The court held that in the circumstances the Common Law principle of reasonable notice was the applicable yardstick and allowed twelve months as reasonable, with V.A.D. Wright J.S.C. dissenting on this point, thus confirming the judgment of A.B. Raschid J. In the result, the Appeal was accordingly dismissed.

Once more the Bank was dissatisfied and appealed to this Court. The grounds, without the particulars, are as follows:-

- (1) *That the Court of Appeal failed to consider and give due weight to the available oral evidence given by P.W.1, P.W.2 and D.W.2 at the trial as to the quantum of notice required to terminate the Plaintiffs employment.*
- (2) *The Court of Appeal erred in law in holding that twelve months' notice was reasonable in the circumstances of this case.*
- (3) *The Court of Appeal erred in law when it held that the Appellants/ Defendants were obliged to produce a copy of the Respondent/ Plaintiff's Letter of appointment after Notice to produce was served on them.*



This Court is now being asked to determine more or less the same issues raised in the hearings below, that:

1. *There were some evidences to support a decision that there was a contractual term of one month notice to terminate the employment or payment of one month's salary in lieu.*
2. *If in the event the common law principle of reasonable notice applicable, whether twelve months notice is reasonable in the circumstances of the case.*

The third ground of appeal is linked to the issue of a contractual term of notice and, in that regard, I will deal with the question in the course of this judgment.

Mr. Forewa's case is that the available evidence on contractual notice to terminate employment of the Bank's staff relates to one month's notice or one month's salary in lieu of notice but that this affects only non managerial staff below supervisory level. This is reflected in the collective agreement between the Bank and the Clerical Insurance Bank, Accounting, Petroleum, Industrial, and Commercial Employers Union (Exhibit "E") – the only written document evidencing a period for notice to terminate in evidence. This fact is confirmed by the evidence of the Bank's witness (DW2) and paragraph 4 of the Statement of Defence. Mr. Forewa also gave evidence that he was subsequently given a document (Exhibit 'F') which dealt with terms and conditions of Senior Staff. Exhibit 'F' apparently did not contain provision as to notice to terminate. Besides Exhibit 'F', Mr. Forewa was given in 1998 a pamphlet covering the terms and conditions of Service of Senior Staff. As in the case of the appointment letter, Mr. Forewa could not find the document.

The Bank's case is that by the contract of employment Mr. Forewa's *"employment was terminable at any time at the discretion of either party by giving one month's notice or payment of one month's salary in lieu thereof"*. He relies on the evidence of P.W. 1 (the Plaintiff), P.W. 2 and D.W.2.



Counsel for the Appellant's argument that the evidence of P.W.1, P.W.2 and D.W.2 supported the Bank's contention that the requisite notice for the termination of Mr. Forewa's employment was rejected by both the trial court and the Court of Appeal. The evidence of Mr. Forewa (P.W.1) in page 42 lines 1 – 2 in which he says that the Bank's management never informed him that either side could give one month's salary in lieu of notice, and his evidence in the same page 42 lines 24 – 27 that as a permanent staff he could have left his employment by given one month's notice are not inconsistent or in conflict contrary to the submission of Counsel for the Appellant. In the first instance Mr. Forewa made a statement of fact that he was not informed and in the second instance he felt he could terminate his employment by giving a month's notice. His two statements can equally be correct without being contradictory. This is not to say that the second statement was correct. One is not sure at what point in time Mr. Forewa was referring in response to a question from the Bank's Counsel in the trial court. The bank had permanent staff below supervisory level and thereby subject to exhibit "E". I am of the view that Mr. Forewa was merely expressing an opinion and not a matter of fact or law. In the event Mr. Forewa was wrong in his opinion or statement, does mere expression of that opinion or statement make it a fact of the employment relationship? The issue of notice is a question of fact evidenced by agreement and not by what one of the party thinks the agreement is.

The evidence of P.W.2, Albert Binga Bayoh, a Senior Employment Officer, Department of Labour, Bo, was called by the Plaintiff. I am not sure as to why he was called as a witness but I am certain that his evidence is not helpful at all in determining the issues. Under cross examination he speaks of an ordinary monthly paid worker giving one month's notice to terminate his employment and the employer being able to terminate the worker's employment for minor offence by giving him a month's salary in lieu. He also states that were there is no specific provision for termination that a month's notice is required on either side and where there is a specific contract the general law does not apply. What was the purpose of this cross-examination in eliciting such answer? It appears the purpose was to tell the trial court what the law is. I am sure the witness had no



pretensions of knowing the law better than the trial court. His evidence in Chief was just as unhelpful. His evidence in chief was in effect telling the trial court that a vital element was missing in exhibits 'F' that is, provision for the termination of an employee's services. This is evidence that PW1 has already given and, of course, the trial court could know that by reading exhibit 'F'. I have spent time discussing the evidence of the witness only to illustrate the need for counsel to consider well the purpose of calling a witness or what counsel wants to elicit under cross-examination if it is all necessary to cross-examine.

The evidence Ayodele Randal, Head of Human Resources Division of Bank, does not further the Bank's counsel argument that either the Bank or Mr. Forewa could give the other one month's notice or one month's salary in lieu. The witness's statement that *"according to the terms and conditions of service either party can terminate by the giving of a salary in lieu"* gives the impression or imply that there was a written document/ agreement containing terms and conditions of Mr. Forewa's employment. There is no such document in evidence to support counsel's contention. On the other hand if the witness wants it understood that the terms and conditions were given orally, one would expect him to give evidence of the circumstances in which the said terms and conditions were given. One would also have expected her to say whether she was present at the time and, if not, the source of the information. I conclude that she was only giving evidence as Head of Human Resources of the Bank and could not give any basis for the piece of evidence in issue. The piece of evidence seems to have been snatched out of the air as it has no basis and is not rooted into the ground. Such is the work of magicians who conjure up things from nowhere and not for witnesses who appear before the courts whose concerns are of facts and reality.

In my view the Court of Appeal (and the trial court before it), after due consideration of the evidence was right in coming to the conclusion that there was no plausible evidence of the period of notice that Mr. Forewa was contractually entitled as a Manager. I am of the considered opinion that ground one of the Grounds of Appeal has no basis and, therefore, fails.



In my considered view it is now settled law that in the absence of expressed stipulation or agreement on notice for the determination of the employment contract, a requirement of reasonable notice would be implied by the Common Law, and any termination of the employment contract by either party without reasonable notice being first given to the other or payment in lieu thereof, would be a breach of contract. See *Payzu Ltd Vs Hannaford* (1918) 2 K. B. 348; and *Richard Vs. Koefod* (1969) 3 WLR 1264. There is no predetermined yardstick of what constitute reasonable notice; decided cases may serve as a useful guide but each case depends on its peculiar circumstances, such as the nature of the job; the length of service; the age of the individual etc. The list is inexhaustible.

The real bone of contention between the Bank and Mr. Forewa is the question of quantum of damages. I have already stated that the finding of breach of contract by the trial court has not been appealed against and the issue that stands out now to be dealt with is the quantum of damages.

The Court of Appeal and the trial court before it resorted to the Common Law principle of reasonable notice and after due consideration reached the conclusion that twelve months was reasonable in the circumstances. Ground 2 of the Grounds of Appeal complains that twelve months in all the circumstances was wrong. I will now consider the issue. Mr. Forewa, a man of not much formal education, rose through the ranks from a clerk to the position of manager at the time he was wrongly dismissed after serving the Bank for 27 years. At the time of his dismissal there were only a few banks in the country. There was the very strong likelihood of word spreading in the small banking community of the actual reason for the banks dismissal of Mr. Forewa. There was also the likelihood of any potential employer, and in the case of a Bank, certainty, requiring references. He was trained as a banker and moving into other job areas was going to be difficult.

The Court has not been provided with cases that dealt with the issue of reasonable period of notice in respect of dismissed bank employees. There are



a plethora of cases on printers dealing with reasonable notice. The case of *Grundy and Sun Printing and Publishing Association (1916) 3 T.L.R. 77*. is one of them. The period of notice in these cases range from six months to twelve but the determination of the period of notice usually turned on the custom of the trade. I am inclined to follow the case of *MASON v MAYOR, Alderman, Councillors and Citizens of Freetown – 1950 – 1956 – ALR SL 138* which by analogy, I think, is closer to the instant case. In *Mason* case the employee was a waterworks man. He had worked for the Council and its predecessor for 19 years. He was not the Head of Department but the second in command, and was engaged in work for which there were only very few employers in the country (i.e. Sierra Leone) and he might have considerable difficulty in finding other suitable employment. In the Mayor's case *Smith*, CJ stated that "A reasonable notice therefore depends on the particular job and the particular circumstance of the employment" and after describing the circumstance as given above, considered six months notice reasonable and not the one month's payment of salary in lieu of one month's notice.

I have already given the inhibiting circumstances in Mr. Forewa's case and they all indicate that Mr. Forewa would have found it extremely difficult, as in fact happened, in finding other suitable or comparable employment. In the circumstances of this case I am of the view that six months notice should have been given, and I so hold. The measure of Mr. Forewa's damages is the difference between the six months salary in lieu of notice which he might have received and the one month's salary in lieu that had been paid to him including his entitlements as claimed over the five months period.

The arithmetic works out as follows:-

Five months salary	-	Le.1,117,841.20
Five months car allowance		125,000.00

Five months lunch allowance	-	125,000.00
Five months rent allowance	-	<u>167,675.00</u>
<b>TOTAL</b>	-	<u><b>Le.1,535,516.20</b></u>

Mr. Forewa is entitled to the sum of Le.1,535,516.20 in damages, and I so hold.

I the premises I give judgement in the sum of Le 1,535,516.20 to Mr. Forewa. If the judgement sums given in the Court of Appeal have been paid, the difference is to be refunded by the estate of Mr. Forewa.

*Each party to bear the costs*

*G. Semega-Janneh*

HON. JUSTICE G. SEMEGA-JANNEH – J.S.C.

I agree

*U.H. Tejan-Jalloh*

Hon. Ms. Justice U.H. Tejan-Jalloh - J.S.C.

(PRESIDING)

I agree

*M.E. Tolla-Thompson*

Hon. Mr. Justice M.E.Tolla-Thompson – J.S.C.

I agree

*P.O. Hamilton*

Hon. Mr. Justice P.O. Hamilton – J.A.

I agree

*S. Bash-Taqi*

Hon. Ms. Justice S. Bash-Taqi – J.A.