

CIV. APP. 56/2017

IN THE COURT OF APPEAL OF SIERRA LEONE

Between: **ALFRED M. SESAY & OTHERS**

- Appellants

And : **SIERRA LEONE TELECOMMUNICATIONS CO. LTD**

- Respondents

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HON. MR. JUSTICE ALLAN B. HALLOWAY JSC

HON. MR. JUSTICE M. SENGU KOROMA JSC

HON. MR. JUSTICE JOHN B. ALLIEU JA

COUNSEL

I. KANNEH ESQ. for the Appellants

K. M. LISK ESQ. for the Respondents



JUDGEMENT

DELIVERED THIS 9th DAY OF November 2021

ALFRED M. SESAY and OTHERS being aggrieved by and dissatisfied with the Decision/Judgment delivered by the **HON. MS. JUSTICE MIATTA M. SAMBA J**, (as she then was) on the 19th January 2017, hereby on the 24th July 2017, appeal the said Decision/Judgment on the grounds that the Learned Trial Judge erred in law and misdirected herself when she held that the applicable law in respect of redundancy payment/tax deductions for the Appellants herein is the **INCOME TAX ACT 2000**,

WHEREFORE ALFRED M. SESAY and OTHERS, the Appellants herein, pray that, that part of the Decision/Judgment aforesaid that relate to the applicable tax, be set aside and that an order be made that the correct applicable tax regime is that under Sections 10 of the **FINANCE ACT 2015**.

The Learned Trial Judge, **HON, MS. JUSTICE MIATTA M. SAMBA J** (as she then was) on the 19th January 2017 ordered inter alia as follows:

1. That the Defendants (the Respondents herein) pay monies owed each of the persons named in Exhibit C¹⁻⁵ (the Appellants herein) for redundancy compensation and terminal benefits for the extra months they served the Defendants' Company (the Respondents herein).

2. That Section 9 of the **FINANCE ACT of 2014** is not a continuation of Section 10 thereunder and that the applicable law in respect of taxation for redundancy and terminal benefits for the Seventy Four (74) Plaintiffs (the Appellants herein) for the period under consideration is the **INCOME TAX ACT 2000**.

The orders aforesaid were granted pursuant to the claims of the Plaintiffs (the Appellants herein) as contained in their Statement and Particulars of claim accompanying the Writ of Summons herein issued by the said Appellants against the Defendants (the Respondents herein) on the 7th May 2015, for the Recovery of the sum of One Billion, Four Hundred and Eighteen Million, Three Hundred Thousand, Five Hundred and Sixty One Sierra Leone Leones and Twenty Seven cents (SLL1,418,300,561.27) from the Respondents herein, due and owing the Appellants herein in respect of redundancy and terminal benefits after end of service benefits were wrongly calculated contrary to the terms and condition of services of the Appellants' employment contract.

The parties herein do not dispute the fact that, all the Appellants herein were made redundant on the 31st December 2014, the said Appellants who were paid a total of Eighty Three Million, Five Hundred and Four Thousand, One Hundred and Eight Sierra Leone Leones and Twenty Five Cents (SLL83,504,108.25) as redundancy and terminal benefits after tax deductions calculations of which are contained from pages 130 to 151 of the Records of Appeal herein based on the provision of the **INCOME TAX ACT 2000** thus:

'For tax exemption on redundancy compensation and terminal benefits on the First Twenty Million Sierra Leone Leones (SLL 20,000,000/00) after which all excess amount are charged at a rate of thirty (30) percent'.

Whereas the Respondents herein contends that the applicable tax regime in respect of the tax deductions made from the redundancy and terminal benefits of the Appellants herein were covered by the **INCOME TAX ACT** aforesaid, the total sum of which would not exceed the sum of Eighty Three Million, Five Hundred and Four Thousand, One Hundred and Eight Sierra Leone Leones and Twenty Five Cents (SLL 83,504,108.25) paid to the Appellants herein, the Appellants herein contend that the redundancy and terminal benefits of the Appellants should have amounted to the total sum of One Billion, Four Hundred and Eighteen Million, Three Hundred Thousand, Five Hundred and Sixty One Sierra Leone Leones and Twenty Seven Cents (SLL1,418,300,561.27), after tax deductions calculations of which are contained from pages 9 to 78 of the Records of Appeal herein, based on Section 10(2) of the **FINANCE ACT 2015 (Act No. 15 of 2014)** which provides thus:

'The maximum redundancy or terminal payment which is to be excluded from employment income... shall be Fifty Million Sierra Leone Leones (SLL 50,000,000/00) and any excess above this amount shall be taxed at Five (5) percent'.



The Appellants' contention aforesaid is based on the fact and as submitted by I KANNEH ESQ of Counsel for the Appellants herein, that Section 10(2) of the **FINANCE ACT** aforesaid repeals and replaces the provision aforesaid of the **INCOME TAX ACT 2000** and in this regard, if it is not in dispute that the all Appellants herein were made redundant on the 31st December 2014, it is Section 10(2) of the **FINANCE ACT** aforesaid, that is applicable to the calculating of the tax deductions from the redundancy and terminal benefits of the Appellants herein, having regard also to the undisputed fact that in the absence of a commencement date of an Act of Parliament, it takes effect on the date it is signed by the President of Sierra Leone, a fact which the Learned Trial Judge herself confirmed as contained in an excerpt of her Decision/Judgment delivered on the 19th January 2017, found at paragraph 29 thereof at page 381 of the Records of Appeal herein as follows:

'In the absence of a commencement date, Section 10(2) of the FINANCE ACT 2015 as well as other provisions of the Act save Sections which commencement dates are specifically provided for, become effective on the date the Act was signed by the President'....

This Court finds that, there is no contention put forward and contained in the appeal herein suggesting a contrary view that, the law as it stands is that, in the absence of a specific commencement date in a Statute or any provision contained therein, it is the date on which the Statute itself is signed by the President which is the effective date of its commencement and any provision contained therein. There is further, absolutely no reason put forward as to why this Court should not uphold the decision of the Learned Trial Judge as contained in the excerpt of her Decision/Judgement aforesaid. This Court finds also that, in this case, it is seen on the face of it that, the **FINANCE ACT, 2015 (Act No. 15 of 2014)** was signed by the President of Sierra Leone on the 23rd December 2014. Accordingly the fact that all Appellants herein were made redundant on the 31st December 2014, coupled with the fact that the application of provisions of the **FIANCE ACT 2015 (Act No. 15 of 2014)** commenced on the 23rd December 2014, this Court upholds in its entirety, the submission of I. KANNEH ESQ of Counsel for the Appellants that it is Section 10(2) of the **FINANCE ACT** aforesaid that is applicable to the calculations of the tax deductions from redundancy and terminal benefits of the Appellants herein. Clearly this holding differs in sharp contrast to the one arrived at by the Learned Trial Judge as contained in an excerpt of her Decision/Judgement delivered on the 19th January 2017. found at paragraph 29 thereof, at page 381 of the Records of Appeal herein as follows:

'Section 10 (2) of the FINANCE ACT 2015, as well as other provisions of the Act save Sections which commencement dates or specifically provided for, became effective on the date the Act was signed by the President, the 23rd day of December 2015 as appeared on the face of the said Act. That provision of the Act does not apply retrospectively to cover periods preceding the date on which it was signed. It is clear that the Seventy Four (74) Plaintiffs (the Appellants herein) were made redundant and or terminated in December 2014 which period

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is before the FINANCE ACT 2015 came into effect. The applicable law therefore in respect of tax deduction for the affected Seventy Four (74) Plaintiffs, the Appellants herein is the INCOME TAX 2000 and I so hold'.

Obviously, the statement that the **FINANCE ACT 2015 (Act No. 15 of 2014)** was signed by the President on the 23rd December 2015, is absolutely incorrect. As stated above, it is seen on the face of it that the **FINANCE ACT 2015 (Act No. 15 of 2014)** was signed by the President of Sierra Leone on the 23rd December 2014. If this is the correct position then it is further absolutely incorrect for the Learned Trial Judge to say as contained in the excerpt above that, the Appellants herein were terminated in December 2014, before the **FINANCE ACT 2015** came into effect. In this regard, the issue of applying the provisions of the **FINANCE ACT** aforesaid, particularly Section 10 (2) thereof retrospectively, does not arise because the said Act itself came into effect on the 23rd December 2014, rather than 23rd December 2015, before all the Appellants herein were made redundant on the 31st December 2014. This Court finds that K.M. LISK ESQ. of Counsel for Respondents himself tacitly concedes that the **FINANCE ACT** aforesaid came into effect on the 23rd December 2014, by his submission hereunder as follows:

'The FIANCE ACT aforesaid, may have come into effect on the 23rd December 2014, on the date it was signed but it was very ambiguous about the period in respect of which it can be implemented by virtue of its short title being, an act to provide for the imposition and alteration of taxes for the year 2015 and for other related matters'.

This Court holds the view that the submission of K.M. LISK ESQ. of Counsel for the Respondents herein that, it is not for the Court to alter the clear intention of Parliament, as is stated very clearly in the short title of the **FINANCE ACT** aforesaid, that the period in respect of which it can be implemented, which to all intents and purposes was not for the period 2014 is clearly untenable. This Court holds the view that the short title aforesaid does not in any way create an ambiguity about the period in respect of which the **FINANCE ACT** aforesaid, is to be implemented. It cannot be disputed that, pursuant to Section 10(2) of the **FINANCE ACT** aforesaid, the calculation of tax deduction from the redundancy and terminal benefits of the Appellants herein, who were made redundant by the Respondents herein, on the 31st December 2014, Section 10(2) aforesaid which imposes a Five (5) percent tax on any redundancy or terminal payment in excess of Fifty Million Sierra Leone Leones (SLL Fifty Million Sierra Leone Leones) will only be done on or after the 1st January 2015. In this regard, an Order made by this Court that it is Section 10(2) of the **FINANCE ACT, 2015 (Act No. 15 of 2014)** which is applicable to the calculations of the tax deductions from redundancy and terminal benefits of the Appellants herein would clearly not in any way whatsoever alter the clear intentions of Parliament, as to the period within which the **FINANCE ACT** aforesaid, is to be implemented. This Court holds the view that on the contrary, such an order would be re-iterating the clear intentions of Parliament as to the period of implementation of the said **ACT**.



By reason of the above, this Court upholds the view that the Learned Trial Judge erred in law and misdirected herself when she held that the applicable law in respect of redundancy payment/tax deductions for the Appellants herein is the **INCOME TAX ACT 2000**. In this regard, this Court allows the appeal herein and order as follows:

1. That the order that the applicable law in respect of taxation for redundancy and terminal benefits for the Seventy Four (74) Plaintiffs (the Appellants herein) for the period under consideration is the **INCOME TAX ACT 2000**, is hereby set aside and replaced with the order that the applicable law in respect of taxation for redundancy and terminal benefits for all the Appellants herein is the **FINANCE ACT 2015 (Act No. 15 of 2014)**.
2. That the costs of the action at the Court below and the costs of the Appeal herein, the same which shall be taxed if not agreed upon shall be borne by the Respondents herein.

[Signature of Allan B. Halloway]

HON. MR. JUSTICE ALLAN B. HALLOWAY JSC

I agree

[Signature of M. Sengu Koroma]

HON. MR. JUSTICE M. SENGU KOROMA JSC

I agree

[Signature of John B. Allieu]

HON. MR. JUSTICE JOHN B. ALLIEU JA

