

S. Bell & Browne Mark

IN THE HIGH COURT OF SIERRA LEONE
(INDUSTRIAL COURT DIVISION)
TRADE DISPUTE
LAW COURTS BUILDING
SIKA STEVENS STREET

I.C. NO. 1/16

MOHAMED FULLAH

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PLAINTIFF

AND

THE GENERAL MANAGER

COLUMBIA DAVIES MEMORIAL FUNERAL PARLOUR. - DEFENDANTS

BEFORE THE HON. MR. JUSTICE SENGU KOROMA – JA
JUDGMENT DELIVERED ON THE 13TH DAY OF MARCH, 2019

1. This matter was referred to the Industrial Court memorandum from the Ministry of Labour and Social Security ("The Ministry") dated 2nd December, 2015.
2. The complaint, as summarized by the Ministry is that the Plaintiff worked for the Defendant for the period January, 2001 to July, 2015. The Plaintiff alleged that he was unfairly terminated by the Defendant and his end of Service Benefits and backlog of salaries were not paid. The Ministry invited the Defendants to five meetings, which they did not attend. As a result of their failure to attend the conciliatory meeting, the entitlements of the Plaintiff was computed and forwarded to the Defendants by letter dated 28th October, 2015. The Defendants did not respond to the said letter. The Ministry therefore referred the matter to the Industrial Court.
3. The matter commenced before Justice Hamilton J.S.C. (President) on the 29th February, 2016. There were fifteen adjournments due to the absence of either the parties or their Counsel or both. The first witness was led in evidence on the 9th November, 2016. The Plaintiff was represented by Sonia Bobanie-Browne and the Defendant by S. Bell Esq. This evidence was taken before Justice Hamilton JSC.

EXAMINATION OF THE WITNESSES

PW1 – MOHAMED FULLAH

4. PW1 informed the Court that he was employed by the Defendant as a driver in 2001 and was sacked in July, 2015. He was not given a letter of employment but was paid his salary by management which was initially Le150, 000.00 per month but was later increased to Le400, 000.00. PW1 informed the Court that he signed for his salary in a voucher.

5. PW1 identified a pay slip in respect of salary received. This was tendered as Exhibit Z¹⁻¹⁶. PW1 had no identity card but had medical papers given to him by the Defendants. The Medical Papers were tendered and marked as Exhibit A1⁻¹³.

6. PW1 testified that he worked during the Ebola period and even drove General Manager, Raymond Macauley to the Connaught Hospital where he passed away; he however ran away when he was asked to drive the deceased to the burial ground. PW1 thereafter went into hiding in Jui but he was traced and taken for testing. He was found to be free of the Ebola virus. When he reported for duty to the new General Manager, the latter told him that he did not know anything about his employment. He was then dismissed. As a result of this, he reported the matter to the Ministry.

7. The matter was adjourned for a further four times during which Hamilton JSC retired from the bench. The matter was reassigned to me on the 22nd June, 2017.

8. The Defendant's Counsel was again absent on successive adjourned dates and so on the 8th August, 2017, the plaintiff's Counsel was allowed to lead her next witness.

9. PW2 – Idrissa Dumbuya. He is the Labour Officer who investigated this complainant. PW2 got to know the Plaintiff in July, 2015 when he came to the Ministry and reported the matter of unfair termination against the Defendants.

10. On receipt of the letter of complaint, PW2 sent letters of invitation dated 23rd July, 2015, 29th January, 2015, 5th August, 2015 and 2nd September, 2015 respectively to the Defendants. All of these invitations were not honoured. A final letter was sent to the Defendant on the 28th October, 2015, and when the Defendants did not still cooperate with the investigations, the complaint was summarised and referred to the Industrial Court. A copy of

Computation of the Entitlements of Plaintiff was tendered as Exhibit B¹⁻¹².

CROSS EXAMINATION OF PW1 – 26/9/17

11. PW1 answered that he worked for the Raymond Macauley in 2001 but as an employee of the Defendant and not a family driver. He was not given a letter of employment. PW1 recalled bringing medical slips to Court but was not able to show the earliest time on the slip. He agreed that he did not have slips prior to 2007 but said it was because the Defendants were not handing them to staff at the time. PW1 also agreed that he did not have the slips from 2008 up to 31st December, 2013.
12. PW1 did not agree that he did not have medical slips for those periods because he worked for the company for only six months. He insisted that he was signing the voucher whenever he received his salary.
13. PW1 recognised a list of employee salary vouchers for the period June 2007 to June 2008. PW1 agreed that he signed for June, 2007, August, 2007, September, 2007 and October, 2007. He also agreed that he did not sign after October, 2007 but insisted that he continued in the employment of the Defendants and worked for them up till the Ebola period.
14. Under further cross examination, the PW1 agreed that if Mr. Raymond Macauley had been alive, he would have brought him to Court and only brought the Defendants because of he was now deceased.
15. Under re-examination, PW1 clarified that he was working for the Defendant and Mr. Raymond Macauley.

EXAMINATION OF PW2-IDRISSA DUMBUYA.

PWI is the Labour Officer who investigated the complaint. He testified that he got to know the Plaintiff in July, 2015 when he came to the Ministry to report a case of unfair termination against the Defendants. On receipt of the letter of complaint, he sent out letters of invitation to the Defendants dated the 23rd July, 2015; 29th July, 2015; 5th August, 2015 and 2nd September, 2015 respectively. All of these invitations were not honoured. A final letter of invitation was sent to the Defendants on the 28th October, 2015 and when they did not co-operate, the entitlements of the Plaintiff were computed, the complaint summarised and matter referred to the Industrial Court.

CROSS EXAMINATION OF PW2 – 31/10/17

16. PW2 admitted that he only had evidence from the Plaintiff but states that, that was because the Defendant did not honour the Ministry's invitation. The computation of the entitlement of the Plaintiff was therefore based on the information received from him.

In the opinion of PW2 if the Plaintiff worked for less than 12 months, he would not be entitled to benefits.

RE- EXAMINATION OF PW2

17. PW2 clarified that he did not receive any documentary evidence from the Defendant.

EXAMINATION OF PW3

18. PW.3 Yusifu Kamara. PW.3 was a previous employee of the Defendant as a driver. He knew the plaintiff when they were both working as employees of the Defendant. PW3 received salary monthly.

19. PW3 testified that they signed a voucher on receipt of their salaries. PW3 concluded that they were all laid off during the Ebola period.
20. Counsel for the Defendant, S.A. Benjamin as usual was not in Court to Cross examine the witness and the matter was adjourned to 13th November, 2017. On the next adjourned date of 13/11/2017 Mr. Benjamin did not again cross examined witness and sought an adjournment.
21. The matter was again adjourned twenty-one times largely due to the absence of Mr. A.S. Benjamin for the Defence. The Plaintiff's Counsel also shared part of the blame because she could not get her third witness to be present for cross examination. PW3 was finally cross examined on the 18th May, 2018.

CROSS EXAMINATION OF PW3 – 18/5/18

22. PW3 confirmed that he worked as a driver for the Defendants and during the time he worked, he signed for his salary. PW3 answered that there were two branches in the company but could not recall working with the Plaintiff at the same branch.
23. PW3 insisted that he was at the time an employee of the Defendant and the payment of salary to him was proof of that. He however agreed that he was not present when the offer of employment was made to the Plaintiff.

CASE FOR THE DEFENDANT

24. In his characteristic fashion, Mr. Benjamin did not attend Court to open the case for the defence until he was deputized by Ms. S. Bell on the 5th June, 2018 who did so.
25. The matter was however adjourned after DW1; Oliver Vernon Macauley took the oath. The absence of the defence counsel continued again unabated.

EXAMINATION OF DW1

26. DW1 described himself as a Manager at the Defendant Company and had been in that position for about 18 years.
27. DW1 confirmed that the Plaintiff was an employee of the Defendant but could not state the number of years he worked for; it could have been two years. The employees all received their salaries at the office and signed for them.
28. He knew PW3 as a former employee. DW1 identified the paying in slips for 2007 – Z¹⁻², 2008 – Y¹⁻². 2009 x X¹⁻² 2010 Exhibits, C¹⁻¹², 2011, Exhibit D¹⁻². All of these continued the name of PW3.
29. DW1 answered that the Plaintiff signed for his salary whilst working for the Defendant and that they never stopped workers from signing for their salaries.
30. DW1 tendered Exhibits E¹⁻⁷ vouchers and paying slips for the period June, - December, 2007. He identified the name of the Plaintiff who signed for his salary during that period.
31. DW1 tendered Exhibit F¹⁻⁵. The pay slip for the period January and May, 2008 to prove that the Plaintiff's name was not on the voucher. He stated that it was not possible for an employee to be paid without signing for his salary.
32. DW1 stated that he used to see the Plaintiff regularly as he was employed by the then General manager to drive for his wife.

CROSS EXAMINATION OF DW1

33. DW1 – stated that the company was establish in 1997 but could not confirm when the Plaintiff started working for the company; it could have been 2007.

34. DW1 recognised the NASSIT SS 1A Form. The name of the employer is stated as the Defendant Company and the date of employment of the Plaintiff is stated as 15th November, 2001.
35. DW1 clarified that there were three branches of the company. Each of the branches had their pay slips indicating each branch. Dw1 recalled paying the Social Secretary Contributions for the Plaintiff during the period he worked for the company. He insisted that the Plaintiff worked for the company in 2007.
36. DW1 stated he would be surprised to learn that the Plaintiff had documents from 2006 to prove that the Defendant paid Social Security contributions for the Plaintiff. NASIT Member Contributions Statement was identified as "W".
37. DW1 recognised the pay slip for July 2008, June, 2009 and November, 2009 and agreed that PW3 did not sign them.

RE-EXAMINATION

38. DW1 clarified that during cross-examination, he identified three pay slips

EXAMINATION OF DW2 – JOHN SESAY

39. DW2 started working for the Defendant as Administrative Assistant on 1st November, 2011. He knew the Plaintiff in 2010 when he was driving the wife of the Manager. He agreed that he never supervised the Plaintiff as the Plaintiff did not drive any of the Defendants' vehicles. Plaintiff did not work for the Defendants.

CROSS EXAMINATION OF DW2

40. DW2 stated that he worked at the Race Course Branch of the company. He agreed that he did not have any form of identification.

CASE FOR THE DEFENDANT

ISSUES FOR DETERMINATION

41. It is not in dispute that the Plaintiff at some stage was an employee of the Defendant. The question however is what was the duration of that employment for the purpose of determining the quantum of benefits payable.
42. The first issue therefore is the duration of the employment of the Plaintiff. The Plaintiff in his evidence informed the Court that he was recruited by the Defendant in January, 2001 and was sacked in July, 2015. During cross examination, Counsel for the Defendants tried to establish that the Plaintiff was employed for a period of Six months in 2007. In support of this DW1, as the Manager of the Defendant tendered Exhibit E¹⁻¹ pay slips for the period June, 2007 to December, 2007 on which the Plaintiff signed for his salary. He also tendered Exhibit F1-6 which is the pay slip for January, 2008 to May, 2008 to prove that the Plaintiff's name was not on the list for that period. This was the same for 2009, 2010 and 2011. According to DW1 it was not possible for an employee to be paid without signing for his salary.
43. DW1 had however testified that he could not recall the exact number of years the Plaintiff worked for the Defendants but it could be two years. There is therefore inconsistency in his testimony in this respect.
44. The Plaintiff as PW1 tendered Exhibit A1-13 which were medical papers issued by the Defendants to the Plaintiff. He had established that when he was employed, his monthly salary was Le150, 000/00. This was proved by pay slip for a period of 10

months. The medical forms from the Defendant were for 2014. The Plaintiff also produced his Social Security Contributions statement for 2006 with the Defendant listed as employer. His date of joining the scheme was listed as 15th November, 2002.

45. As I stated earlier, there is evidence that the Plaintiff was an employee of Defendants. The Defendants are arguing that the employment lasted for a period of Six months in 2007. The Plaintiff has however been able to prove that he was in employment by 15th November, 2001. During cross examination, the DW1 was confronted with the NASSIT SS 1A form which confirmed the date of employment claimed by the Plaintiff. Counsel for the Plaintiff was also able to elicit evidence during cross examination that it was not at all times that employees signed the pay slips. This was evident from the slip for July, 2008, June, 2009 and November, 2009 all of which were not signed by PW3 though the Defendant witnesses had agreed that he was an employee at that time. This testimony is important because right through cross examination, Defence Counsel tried to establish that PW3 signed payment slips as proof of employment whilst the Plaintiff did not.

46. A cursory assessment of the evidence on this point would reveal that the Plaintiff was employed by the Defendant in November, 2001. In this, I rely mainly on the NASSIT SS 1A Form completed by the Plaintiff. This document was recognised by DW1 who made no attempt to contradict it. The SS 1A is important as Regulation 4 of the Social Security and Insurance Trust Regulations 2004 Provides as follows: -

4(1) "Every employer shall require every employee of his to complete the appropriate parts of the SS 1A Form prescribed in the schedule which shall be certified by an Inspector of the Trust".

47. It follows that the Plaintiff could not have registered himself as an employee of the Defendants without the latter's knowledge. The Plaintiff also produced contribution schedule for 2007 with the Defendant employer. The relevance of contribution schedules could be found in Regulation 12 thereof.
48. For the reasons given above, I hold that the employment of the Plaintiff commenced on 15th November, 2001.
49. The next question is when the employment terminated. The Plaintiff is alleging that he was sacked in July, 2015 and his last salary was Le400, 000.00. The problem with this date is that the Plaintiff has not provided any evidence in support thereof. PW3 in his testimony though corroborating the evidence of the Plaintiff merely stated that they worked right through the Ebola period. The Plaintiff in his testimony stated that when the then Manager, Raymond Macauley passed away, he became afraid and ran away.
50. I must point out that the Plaintiff's conduct may at this point amount to abandonment of his employment and not an unfair dismissal. The situation is a difficult one as this was a period of medical emergency. On his return to work, the new Manager of the Defendant did not allow the Plaintiff to continue his employment and in the testimony of the PW1 "the new Manager said he did not know about my employment".
51. The principle governing abandonment of duty is that for an abandonment of employment to arise, the employee must have shown a clear intention to no longer be bound by the terms of the contract of employment. If an employee fails, without explanation, to attend at work, the point at which the employee will be considered to have abandoned their employment will depend on how long the absence extends and the context in which it occurred.

52. The legal effect of abandonment is that the employee would be held to have repudiated the employment contract. In such a situation, the employer may then elect to either accept the repudiation or terminate the contract of employment or to affirm the employment contract so that it remains on foot.
53. The election to either terminate or affirm should be clearly communicated to the employee although it can be implied by conduct.
54. The act of abandonment of the employment does not terminate the employment; the abandonment gives the employer the right to elect to terminate the employee. It follows that an unfair dismissal claim is available. That does not mean that the dismissal is unfair. In these circumstances, the fact of abandonment will usually be the reason which the employer relies upon to justify the dismissal.
55. The case of **LAZAR –V- INGHAM ENTERPRISES LYY.LTD (2013) FWC 3447** provides a neat example of the many issues described above.
56. In the instant case, the Plaintiff had driven the then Manager to the hospital who has later died as a result of Ebola infection. When he was asked to drive the corpse to the cemetery, he became afraid and ran away. This was understandable in view of the type of medical emergency created by the Ebola virus. However when Plaintiff returned, he was informed by the new Manager that he did not know about his employment. This to my mind does not constitute dismissal as it was the right of the employer to elect whether to take him back or terminate his services.
57. It is my conclusion that the plaintiff's services terminated when he abandoned his duty – evidence of which has not been provided. The only evidence available is medical slips up to November,

2014. In fairness to both parties, I hold that the employment period of the Plaintiff was from 15th November, 2001 to end of November, 2014 and his benefits and other entitlements should be worked out for that period. I so order

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Hon. Mr. Justice Sengu Koroma (J.A.)

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FINAL JUDGMENT DATED 3RD APRIL, 2019

1. Following on the Judgment of this Court dated the 13th day of March, 2019, the Ministry of Labour and Social Security through the Plaintiff submitted the re-computation of the benefits of the Plaintiff for the period 15th November, 2001 to 30th November, 2014.

In consequence thereof, I order as follows: -

- 1). The Plaintiff is entitled to the following as end of service benefits and other entitlements: -

a)	Termination Notice	-	Le 500,000.00
b)	End of Service Benefits		Le13, 295,454.00
c)	Annual Leave Rate		Le10, 636,363.00
d)	Annual Leave Allowance		<u>Le 1,560,000.00</u>

Total Due	<u>Le25, 991,817.00</u>
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- 2). Interest thereon at the rate of 10 percent per annum from the 6th day of June, 2016 to date of Judgment.
- 3). Costs of Le3, 00,000.00 to be borne by the Defendant to the Plaintiff.



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Hon. Mr. Justice Sengu Koroma (JSC)