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

I.C. NO. 29/18

JOHN R.O. WRIGHTS & AN OTHER - PLAINTIFFS

AND

THE MANAGEMENT WEST AFRICAN LOGISTICS - DEFENDANTS

BEFORE THE HON. MR. JUSTICE SENGU KOROMA – JA
JUDGMENT DELIVERED ON THE 30TH DAY OF JANUARY, 2019

L. Jusu Esq. for the Plaintiff s

G. T. Koroma Esq. for the Defendant

1. This matter was referred to the Industrial Court by the Ministry of Labour and Social Secretary ("The Ministry") by a memorandum dated 13th June, 2018. A Summons dated 20th day of June, 2018 was issued for the parties to attend at the High Court.

2. The Hearing of the matter commenced on the 3rd July, 2018. The delay was caused by the difficulty of serving the summons on the Defendants. Lloyd Jusu Esq. and L.J. Kamara Esq. appeared for the Plaintiffs and Emmanuel T. Koroma Esq. appeared for the Defendant.

3. The trial did not begin until 18th July, 2018. This delay was caused by the Defendants Counsel seeking adjournments to allow him time to receive full briefing from the Managing Director of the Defendant Company.

EXAMINATION OF WITNESSES:

4. PW.1 – Moses Bassie Conteh. He is an employee of the Ministry of Labour and Social Security and was Labour Officer who investigated this Complainants. In that capacity PW1 investigated the allegations of the Plaintiffs as contained in the letter of complaint marked Exhibit "A". On receipt of Exhibit "A", the Defendant was invited to a meeting by letter dated 28th May, 2018. The invitation was not honoured and when PW1 contacted the Managing Director on Phone, the latter warned him not to call his again. The Commissioner of Labour also tried the line of the Managing Director without success. Another letter dated 4th June, 2018 was sent to the Defendants inviting them to a meeting. This letter was tendered and marked Exhibit "C". The Defendant did not again honour the invitation as a result of it, PW1 summarised the facts of the case, computed the entitlements of the Plaintiffs and forwarded the matter to the Industrial Court.

5. The summary of the complaint was tendered by PW1 as exhibit "C". The computation of the entitlements of the 1st Plaintiff was tendered as Exhibit "D" and that of the second Plaintiff as Exhibit "F".

CROSS EXAMINATION OF PW1

6. PW1 explained that employment starts from the probationary period. During the probationary period, the employer has the latitude to determine whether to confirm the Employee or not. PW1 further explained that in computing terminal benefits, it is the basic salary plus the number of days stipulated in the Trade Agreement multiplied by the number of years served divided by 22. He argued that the shipping, Clearing and Forwarding Trade Group Agreement was used Article 9 (a) and (b) thereof. PW1 was not aware that the said Trade Group Agreement has been amended.

7. PW.1 insisted that he served two letters of invitation on the Defendant and both were not honoured.

8. The first Plaintiff worked for 7 years and his employment did not start on the 1st January, 2018. PW1 agreed that both Plaintiffs resigned without notice.

RE-EXAMINATION

9. PW.1 explained that the Plaintiffs were employed from 2011 to 2018.

EXAMINATION OF PW2

10. PW.2 – John R. O. Wright. PW 2 is the first Plaintiff in the matter. He produced an Identity Card to prove that he was formerly an employee of the Defendant Company. This was produced and marked Exhibit "G" and a letter of offer of employment to him was

also produced and marked H^{1-2}. His employment was confirmed by letter dated 1st January, 2013 which he produced and was marked Exhibit "G".

11. PW.2 insisted that he worked continuously for the Defendant until he resigned by letter dated 21st May, 2018. The letter of resignation was tendered as exhibits "K". The last monthly salary he received was Le3,880,000/00.

12. PW.2 explained that he has not received his terminal benefits and leave pay as he never proceeded on leave during his period of work employment. He testified that because his benefits were not paid, he made a complaint to the Ministry of Labour and Social Security.

CROSS EXAMINATION

13. PW.2 answered that his employment was confirmed on the 1st January, 2013 but his employment commenced in 2011.

14. PW.2 agreed that When African Minerals closed down, the Defendant Company also stopped operations tentatively but he continued working as part of the skeleton staff. He worked up to the 21st May, 2018. At the time he resigned, the Defendant company was operating.

RE-EXAMINATION - NONE

EXAMINATION OF PW3

15 PW.3 Umunatu Zainab Kamara. She testified that the Defendant Company were formerly her employers. Her letter of employment dated 8th December, 2011 was tendered and marked Exhibit "J". PW.3 also tendered her letter of confirmation which was marked as Exhibit "K". She tendered her identity card issued to her by the Defendant Company which was marked Exhibit "L".

The letter of resignation dated 21st May, 2018 which was marked as Exhibit "M".

16. The PW.3 testified that she was not paid her terminal benefits and other entitlements. She therefore made complaint to the Ministry.

CROSS EXAMINATION OF PW.3

17. PW.3 answered that she was confirmed as a permanent staff on the 1st January, 2013.

18. PW.3 answered that she worked in the Finance Department of the Defendant but was never part of management. She denied misappropriating money but affirmed that a letter of warning was issued to her but not on the issue of financial impropriety. PW.3 denied been demoted during her employment..

19. PW.3 answered that she tendered her letter of resignation because the Defendants were not treating her well. She confirmed receiving Salary for January, 2018.

20. She answered that when the AML ceased operations, she was issued a redundancy letter through her boss but he informed her verbally that the redundancy notice did not include her and she continued working. She denied been recalled when operations were re-started by the Defendant.

21. The Plaintiffs closed the case and the matter was adjourned to 2nd October, 2018. Both the Defendant and Counsel were absent at this hearing and the matter was again adjourned to Thursday 4th October, 2018.

CASE FOR THE DEFENDANT

22. The Defendants called their first witness on the 4th October, 2018.

EXAMINATION OF DW1

23. DW.1 – Abdulai Mansaray. He is an Accountant and the Chief Finance Officer of the Defendant. DW1 knew the Plaintiffs and described the 1st as a former supervisor in their company at the Quay. He explained that PW.2 managed the affairs of their Company at the Airports

24. **DW.1** referred to an email between the CEO of the Defendant and the 2nd Plaintiff dated 29th June, 2017. The response of the 2nd Plaintiff is dated 7th July, 2017. The email and response were tendered as Exhibit "H"

25. **DW.1** reconfirmed the curriculum vitae of PW3 which revealed her last position in the company as Finance Officer.

26. He explained that because of the close business link between the Defendant Company and AML, when the latter ceased operations in 2014, their operations were affected and they faced problems with paying their staff. This necessitated the Defendant Company making them redundant and paid for a period up to January, 2015. In January 2016 some of the staff including the Plaintiffs were recalled. In November, 2017 a similar scenario occurred.

27. **DW.1** testified that the Plaintiffs are still holding on to the office Laptops and other items though they have resigned.

28. **DW.1** testified that the Plaintiffs received their respective salaries up till January 2015 and in 2016, they were made redundant. The said notices of redundancy were tendered and marked Exhibit "J1-2".

CROSS EXAMINATION OF DW1

29. DW1 answered that the Plaintiffs were given probationary letters before been employed. In their letters of confirmation, the 1st Plaintiff was confirmed as a Supervisor, Port Operations whilst the 2nd Plaintiff was confirmed as Finance Officer. The 2nd Plaintiff was later appointed as Head of the Lungi Operations and performing the role of Finance Manager. He agreed that the 2nd Plaintiff was not given a letter of appointment as Finance Manager.

30. DW1 recognised an email from the CEO of the Company to Management dated 24th May, 2017 in Exhibit "K". He disagreed that the Plaintiffs were made redundant and were not in employment for the 23rd January, 2015 to January, 2016. He also recognised an invoice from the 2nd Plaintiff to the Defendant dated 12th November, 2015 as Exhibits "L^{1-2}".

31. DW1 denied knowing that the first Plaintiff was working during the redundancy period.

32. He recognised NASSIT member contribution statement dated 20th June, 2018 Exhibit "M".

33. DW1 informed the Court that the Defendant have an estimate of monies due and owing the Plaintiffs as end of service benefits

RE-EXAMINATION

34. DW1 informed that if given time he would provide what the Defendants consider to be the end of service benefits due the Plaintiffs.

35. The matter was adjourned at the request of the Defence Counsel to enable DW1 produce their own computations. This was done on the 25th October, 2018 in Exhibit "N^{1-2}".

CROSS EXAMINATION OF DW1

36. Lloyd Jusu Esq., for the Plaintiffs cross-examined the DW1 on their computation of the entitlement of the Plaintiffs.

37. DW 1 explained that he did the computation for a period of two-three years. But he recognised exhibit 'P', letter dated 20th November, 2017. The effective date of employment as stated by DW1 in the said letter was in 2011. He explained that the second Plaintiff joined the Defendants As Typist as a and her last post was Finance Officer.

38. DW1 admitted that the Plaintiffs were not paid benefits.

RE-EXAMINATION OF DW1

39. In re-examination, DW1 now stated that in 2011, the second Plaintiff was only coming to help. He finally confessed that Exhibit "P" was merely written to help the second Plaintiff.

EXAMINATION OF DW2

40. DW2 – Abdulai Karim Sesay. He is a Personal Assistant to the General Manager and the Chief Finance Officer. (GM) and (CFO).

41. DW2 recognised the Plaintiff as former employees of the Defendant Company. He knew the First Plaintiff as Supervisor and the second Plaintiff as Head of the Lungi Branch as Manager. In 2015, all the employees were made redundant after AML ceased operations for about a year. They were all recalled in February, 2016 and formed a new relationship with the Defendant.

42. DW2 testified that he started working for the Defendant company in 2014

CROSS-EXAMINATION – DW2

43. DW2 confirmed the year of his engagement as 2014. He agreed that the Head of Human Resources was his boss and that he was a Manager.

EXAMINATION OF DW3

44. DW3: - John Foday Jusu. He is an Accountant in the Defendant Company and knew the Plaintiffs as employees of he same company. The first Defendant was a Supervisor whilst the second Defendant was Head of Lungi Branch performing an Accounting role. DW3 confirmed that he was informed about redundancy.

CROSS EXAMINATION – DW3

45. DW3 admitted that he was employed in November, 2017. He explained that the Plaintiffs were his subordinates. DW3 was not aware that the Plaintiffs were paid benefits.

46. The Defence closed their case on the 29th November, 2018 and the matter was adjourned for both Counsel to address the Court.

47. On the adjourned date of 3rd December, 2018. Defence Counsel was absent and on the application of the Plaintiffs' Counsel, the file was withdrawn for Judgment.

ISSUES

48. The issues for determination consist of both law and fact.
    1. The first issue to determine whether the Plaintiffs were below supervising level so as to bring them within the Provisions of the Regulation of Wages and Industrial Relations Act No. 18 of 1971 (The Act) ("The Rules") and the Industrial Court (Procedure) Rules 2000. This issue is based on the law.

2. If the answer to (1) is in the affirmative what is the quantum of benefit payable to the said Plaintiffs.

49. By Section 2(1) of the Act that is the Interpretation Section, a "Supervisor means an employee that, as is agreed between an employer and a Trade Union to which the Minister has issued collective bargaining certificate, performs supervising functions.

50. This same Section defines a worker "as any person who has entered into or works under a contract with an employer, whether the contract be by way of manual labour, clerical work or other wise expressed or implied, oral or in writing.... but does not include any person comprised in or responsible for the management or a supervisor.

51. The second definition clearly states who should be a worker for the purposes of the Act. I must however add that a person is not a supervisor merely because his title is that of a supervisor. To be a supervisor, several criteria have to be met. Generally, because of the relevance of the distinction between a "worker" and "supervisor" for the purposes of the Act, an employer must meet a higher standard before their employees will be found to be supervisors. If an employee is a supervisor, he shall lack the locus standi to bring an action in the Industrial Court.

52. In determining who is Supervisor, I shall seek guidance from jurisdictions other than Sierra Leone so as to adopt best practice in achieving Industrial Justice. In the English Employment Tribunal case of **COOK INLET TUG & BARGE V BUCHANAN MARINE LP,** the National Labour Board described a supervisor as a person who has authority to assign duties. When he designates an employee to a place or time or assigns significant duties to that employee.

53. Second, a supervisor has authority to direct which employee will perform a task and the order in which the task is performed. The supervisor must be held accountable and suffer adverse consequences for his employers performance.

54. Third, a Supervision exercises independent judgment when he uses discretion in assigning or directing employees from employer control.

55. This represents the conventional supervisory functions but are interpreted so narrowly that many named supervisor may no longer qualify as such.

56. In the Cook **INLET** case for example, the Board first stated that the Captains did not assign tasks to dockhands using independent Judgment because there was only one dockhand available and the assignment of tasks was controlled by Management Criteria.

57. Similarly, the Board found that the Captains did not schedule employees using independent judgment. A task that flows logically from the employer's routine operations is not substantial.

58. In the instant case, throughout the trial, the Defendants tried to establish that the Plaintiffs were supervisors. It is a principle of law that he who asserts must affirm. It was the responsibility of the Defendants to prove that the Plaintiffs were supervisors and not workers for the purpose of the Act. This they failed to do.

59. I have perused the letter of employment of the first Plaintiff dated 8th December, 2018. In the said letter the 1st Plaintiff is offered employment as shipping supervisor. As I have already stated, being referred to as a "supervisor" does not make an employee a Supervisor for the purposes of the Act.. In order to the treated as

such, the strict conditions laid down in the cook **INLET TUG AND BARGE** Case must be fulfilled.

60. However in this case, though the first Plaintiff was employed as Shipping Supervisor, paragraph 4 of the exhibit "H" stated that "…. Your place of work should be such locations within Sierra Leone as

you may from time to time be deployed by the company. You should also be required with prompt dispatch to perform duties and instructions that shall be given to you from time to time. These duties may be modified and updated by the company from time to time as and when the situation so demands".

61. This paragraph limits the power of the first Plaintiff as his functions could be modified and updated by the company. For this reason, it is my conclusion that the first Plaintiff was a 'worker' for the purpose of the Act and I so hold.

62. The issue as to whether the second Plaintiff is a worker is not difficult to discern. The second Plaintiff was employed by letter dated 8th December, 2011 as shipping officer. However she was confirmed on the 1st January, 2013 as a Typist. On the 26th July, 2013, she was transferred from the Shipping Department to the Finance Department in the capacity of Finance Clerk. On the 17th July, 2017, the Defendant Managing Director – Exhibit "H" informed the second Plaintiff of his decision to introduced the cross functional transformation. By virtue of that decision, the second Plaintiff was appointed Head of the Lungi Airport clearing service but with the obligation to report to their Lungi Airport Office.

63. The Managing Director ended the mail by stating that he will decide the end date of this transformation implying that it was not permanent.

64. By a letter dated as late as 20th November, 2017, the Managing Director and CFO confirmed that 2nd Plaintiff position as at that date was Finance Officer. Her duties as described in paragraph 2 were Clerical in nature. From a totality of this evidence; the 2nd Plaintiff is a "worker" and not a "Supervisor"

65. Having held that the Plaintiffs were "workers", the next issue is whether they are entitled to benefits for a period of 7 years (2012 - 2018) as computed by the Ministry or for two years,3 months as computed by he Defendants.

66. The Defendants argued that because the Plaintiffs were made redundant due to adverse business conditions – Exhibit J1-2 and re-employed on the 1st January, 2016, they were only entitled to 2.3 Months benefits.

67. The Plaintiffs argued on the other hand that though they were given redundancy letters they continued working up to their re-employment

68. To my mind the important issue here is whether the Plaintiffs were paid redundancy compensation. This is a requirement under Article 26 of the Collective Agreement relating to the Shipping, Clearing and Forwarding Trade Group. No mention is made of redundancy payments in the testimonies of the Plaintiff or the Defence witnesses. What the Finance Director of the Defendant testified to was they owe the Plaintiffs benefits for 2.3 years.

69, In the absence of any evidence to the contrary this Court shall hold that redundancy compensation was not paid and I so hold. Non payment of redundancy benefits is clear evidence that the Plaintiff were not made legitimately made redundant

70. Further more, the Defence witness as did not controvert the testimonies of the Plaintiffs that they worked right through the so-called redundancy period.

71. In the circumstance this Court upholds the testimonies of the Plaintiffs and the Labour Officer and order as follows: -

72. 1. That the Defendants are liable to the Plaintiffs as follows: -

(a) **First Plaintiff:** -

(i)	Outstanding Salary for February, March, April and May, 2018 at Le 3,880,000.00 per month	Le15,520,000.00
(ii)	Annual Leave rate Article 9(a)	Le28,956,545.00
(iii)	Annual Leave Management	Le73,500,000.00
(iv)	End of Service benefit Article 29(5)(b)	Le36,750,000.00
(v)	Less One month Salary in Lieu of notice	Le 3,880,000.00
		Le150,844,545.00

(b) Second Plaintiff

(i)	Outstanding Salary for February, March, April and May, 2018 at Le 2,480,000.00 per month	Le 9,920,000.00
(ii)	Annual Leave Rate	Le20,516,363.00
(iii)	Annual Leave Allowance Article 9 (b	Le52,080,000.00
(v)	End of Service benefit Article 29(5)(b)	Le26,040,000.00
(v)	Less One month Salary in Lieu of notice	Le 2,480,000.00
		Le106,076,363.00

Both computations were done using the shipping, clearing and forwarding trade group Agreement – Vol. CXLVI of the Sierra Leone Gazette No. 38.

2. That any benefits already paid to the Plaintiffs shall be deducted from their respective awards.

3. Costs to be taxed if not agreed.

HON. JUSTICE SENGU KOROMA - JA
PRESIDENT OF THE INDUSTRIAL COURT