

JUDGMENT

GIBRIL CONTEH

-

PLAINTIFF

AND

FOODLAND SUPERMARKET

-

DEFENDANT

1. The issue here involved two Plaintiffs who instituted independent claims against the same Defendant – FOOD LAND SUPERMARKET.
2. The Judges summonses were filed by the Plaintiffs dated 30th January, 2020. Accompanying the summon was affidavits in support dated 30th day of January, 2020 together with the exhibits attached thereto.
3. On the 25th February, 2020, the Counsel for all the Plaintiffs, Mr. Carl Hotobah – During and Ms. Isata Jalloh, Counsel for the Defendant agreed that all the three matters be dealt with simultaneously. In other words, the decision in the matter I.S.S.78/19 shall be binding in the other matters.
4. Germane to this summons, is Paragraph 5 of the said affidavit wherein the Deponent averred that "It is my opinion and belief that the Defence marked CHD 3" fails to disclose a defence to this claim except as to the Damages, if any claimed. This is because Paragraph 4 of the said Defence admits that the Plaintiff were made redundant by the Defendants and goes on to aver (which is denied) that ".....the Defendant and the Plaintiff had negotiated and agreed on certain amounts but the Plaintiffs failed to collect the same and rather instructed his Solicitors to institute the action herein".
5. In succeeding paragraphs, the Deponent proceeded to cite authorities in support of his application.
6. He particularly averred that "It is my opinion that the Plaintiff is entitled to apply for Summary Judgment pursuant to Order 16 Rule 1 of the High Court Rules, 2007.
7. In his oral submission, Mr. Hotobah-During argues that the defence filed failed to disclose any reasonable ground save the amount as to damages.
8. He particularly referred to Paragraph 4 of the defence in which the Defendant admits paragraph 9 of the Affidavit in support, namely that the Plaintiffs were made redundant but agreed with the Defendant to receive certain sums of

money as benefits. Accordingly, he was of the view that the Plaintiffs were entitled to Judgment under Order 16 of the High Court Rules, 2007. He cited the case of **HOME AND OVERSEAS INSURANCE COMPANY LIMITED -V- MENOR INSURANCE LIMITED** (1990) 1 WLR 153 in support of his submission.

9. Mr. Hotobah-During submitted that further and or in the alternative he would rely on Order 21 Rule 17 of the High Court Rules, 2007.
10. In conclusion, Mr. Hotoba-During submitted that the sole issue for determination here is the quantum of the Plaintiff's claim.
11. In response to the Application, Ms. Isatu Jalloh, Counsel for the Defendants filed two affidavits. The first was sworn on the 24th day of February, 2020 and a Supplemental affidavit sworn on the 28th day of February, 2020.
12. The main argument of the Defendants regarding the claim for final judgment was that: "The affidavit in support of the Application does not contain facts which verify the claim for final judgment and entitling the said Plaintiffs to enter final judgment under Order 16 of the High Court Rules, 2007. She further submitted that "the said affidavit contained statements of law contrary to the provisions governing summary Judgment Applications".
13. In the Supplemental Affidavit, the Deponent averred that the Defendant, caused Mr. Abdulai Conteh, a Labour Consultant to calculate the benefits due to the Plaintiffs pursuant to the Commercial Collective Bargaining Agreement relating to the Plaintiff. The said calculation was exhibited as I.J 5.
14. In her oral submission, Ms. Jalloh contended that the Plaintiff's application did not comply with the requirements which must be satisfied for Judgment to be entered into summarily. She referred to the Annual Practice Vol.1 Page 167, Paragraph 14/2 under the rubric "Manner in which an application under Order 16 should be made".
15. According to her, the said affidavit in support contained opinions and not verifiable facts. She referred to the case of NICOL -V- COUNTRY DIRECTOR, CARE INTERNATIONAL (SL) CC.2/07 - Judgment of D.B. Edwards, J (as he then was). She was also referred to the case of AMINATA CONTEH -V- APC SC.CIV.APP. 4/2004.
16. In addressing the contention of counsel for the Plaintiffs that she had indicated to him that they were not opposing the application, Counsel clarified that the Defendant was not denying that the Plaintiffs were made redundant. The issue in dispute was the quantum of their entitlements. If the Plaintiffs had exhibited the calculations and the Court finds in their favour, her clients would have no option but to comply.

17. In his reply, Mr. Hotobah-During submitted that the two cases cited by the Plaintiff were Defendant's counsel were really in his clients interest.

18. The main issue for determination is to determine the quantum of entitlement of the Plaintiff. I am surprised that counsel for the Plaintiff had not provided any guide as to how the computation of the entitlements of the Plaintiffs by the Ministry of Labour and Social Security or a clear evidence of how the entitlements were arrived at.

19. The Deponent has however by a Supplemental affidavit dated the 28th day of exhibited a computation by the Ministry of Labour and Social Security of the entitlements of the Plaintiff. The Plaintiff has not filed any affidavit in reply contesting that computation which is admissible under the Regulation of Labour and Industrial Relations Act, 1971.

20. In view of the existence of Exhibit JJ5 attached to the Supplemental affidavit, this court considers it necessary in the interest of justice to make the following Orders:-

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

- a. Gibril Conteh - Le 4,745,454
- b. Ansumana J. Sowa - Le 12,622,725
- c. Mohamed S. Ansumana - Le 7,090,908

2. Interest thereon on each of these sums at the rate of ten percent from the date of commencement of these actions until the date of judgment.

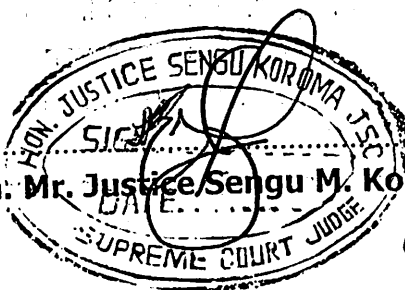
3. Costs to be taxed if not agreed

4. The Judgment herein as agreed by both counsel shall also apply to the following cases:-

- a. **Mohamed S. Ansumana -v- Food Land Supermarket**
- b. **Ansumana J. Sowa -v- Food Land Supermarket**

SIGNED:

Hon. Mr. Justice Sengu M. Koroma, JSC



11/6/2020