

I.C NO. 57/19

2019

K.

NO. 6

IN THE HIGH COURT OF SIERRA LEONE
INDUSTRIAL AND SOCIAL SECURITY DIVISION
TRADE DISPUTE

BETWEEN:

MOHAMED F. KAMARA - PLAINTIFF

AND

INTERNATIONAL FEDERATION - DEFENDANT
OF RED CROSS

JUDGEMENT DELIVERED THE 1ST DAY OF JULY, 2020

1. This matter was referred to this Court by a memorandum from the Minister of Labour and Social Security dated 4th October, 2019 pursuant to Rule 5 of the High Court (Industrial Court Division) (Procedure) Rules, 2000.
2. The summary of the complaint was that the Plaintiff had worked for the Defendant for a period of Four months out of an Eleven (11) month contract he had signed.
3. The Ministry of Labour and Social Security (MLSS) had prior to referring the matter to this Court held a conciliation meetings between the parties which culminated in a letter from the MLSS advising the Defendant to reinstate the Plaintiff. The Defendant however failed to do so.

THE PROCEEDINGS

4. The Trial commenced on the 18th November, 2019 with the Plaintiff testifying as PW1.

5. PW1 testified that he was employed by the Defendant as Finance Assistant on the 1st November, 2018 and tendered an employment agreement as proof of employment marked Exhibited "A1-5". He also tendered Exhibit B¹⁻² which related to the adjustment of his job grade.
6. PW.1 testified that he was receiving allowances during his employment; evidence of which he tendered as Exhibit 'B¹⁻³'. His Services were however terminated by a letter dated 20th February, 2019 which he tendered as Exhibit "C". When he was served with Exhibit "C", PW1 held a short meeting with the Finance Delegate of the Defendant during which he made it clear to them that his employment letter, gave him a fixed term contract. When the Defendant refuse to pay him for the period of the contract, he made a Complaint at the MLSS.

CROSS EXAMINATION

7. PW.1 answered that his employment was to be for the period November, 2018 to September, 2019 as per Exhibit "A" which he had signed. He agreed that he did not work for the remaining Seven (7) months of the contract. During his period of work, his performance was reviewed only once. The end of Probation evaluation report signed on the 4th February, 2019 and was tendered as Exhibit "D¹⁻²". As a result of the evaluation, PW1's probationary period was extended by One Month.
8. PW1 denied refusing to attend a course on Fraud and Evaluation but agreed that the issue was raised in Exhibit "D". During that period, he agreed having an issue regarding Le733,000/00 which was part of the working advance and should have been retired. He agreed that the issue was raised in an email dated 11th January, 2019 intituled "Working Advance Report". This was tendered as Exhibit "F". PW1 explained that he requested the Defendant to deduct the Le733,000/00 from his salary for January, 2019.



9. PW1 denied that the Defendant informed him at the meeting of 27th February, 2019 that he had not familiarised himself with the processes at the Institution.

PW.2 JOSEPH DURING

10. PW2 is a Senior Labour Officer and he investigated the Complaint.

He started the investigation by inviting the Defendant to a conciliation meeting by letter dated 29th April, 2019. The Complaint was discussed at the meeting and it was established that the Plaintiff was wrongfully dismissed. These findings were communicated to the Defendant with an advice to re-instate the Plaintiff. It was also established that the Plaintiff was owed salary for the month of February, 2019 which the Plaintiff later confirmed had been paid to him.

11. PW2 explained that he did not compute the entitlement of the Plaintiff as he was on contract and the Defendant had been requested to re-instate him.

12. PW2 tendered the various communications between the MLSS and the Defendant marked Exhibit H¹⁻⁵.

CROSS EXAMINATION OF PW.2

13. PW2 did not agree that the Plaintiff was on probation when his services were terminated as the probation period was for a limited time of three (3) Months. The extension of the probationary period was unlawful as reported in Exhibit "D¹⁻²".

14. PW2 agreed being conversant with Article 7.2. of Exhibit 'A' but stated that the employment terms were not sent to the MLSS for attestation. He however promised to find out whether the terms and conditions of service were sent to the Ministry for attestation.

15. The cross examination continued on the next adjourned date at which the PW2 informed the Court that he was not able to check whether the terms and conditions had been attested by the Ministry. He agreed that he did not look at them before referring

the matter to Court.

DW 1 – ESTHER MODUPE NICOL

16. DW1 is the Human Resource and Admin Officer of the Defendant. She confirmed that they had Staff Regulations. These had not been approved by the Ministry though it was sent to them. She tendered the Regulations as Exhibit "J"

CROSS- EXAMINATION

17. DW1 answered that the Plaintiff was hired on fixed term contract with a probationary period. The Probationary period was extended because the supervisors were not satisfied with Plaintiff's work. She however recognised a certificate issued to the Plaintiff for successfully completing the course on Corruption Prevention.

18. Under Re-examination, DW1 stated that the Course was on "Anti-fraud and corruption".

ISSUES FOR DETERMINATION

19. The first issue for determination in this case is whether the Defendant was right to terminate the fixed term contract of the Plaintiff before its agreed expiration period as provided for in Exhibit "A".

20. The second issue is whether the Defendant had the right to extend the probationary period in a fixed term contract.

21. I shall determine both issues together.

22. A good starting point is to look at the principles governing probationary period in employment contracts.

23. A probationary period is a period of time at the beginning of an employment usually specified in the employment contract, during which the employer has the ability to terminate the employment at any time. Probation periods allow both parties to assess the suitability of the candidate and the role, without imposing an obligation on your employer to warn you about your performance prior to deciding to terminate your contract. However if the



employee is terminated during his probation period, the employer must still give him a minimum period of notice.

24. The next question is can the employer extend a probationary period? Common Law principles dictate that a probationary period could only be extended in certain circumstances such as:

- i. where the Original Employment Contract provides for an extension of the probation period; and
- ii. where the employer proposes extension of the probation period and the employee agrees.

25. The fundamental rule is that the Employer cannot unilaterally decide to extend an Employee's probation period unless expressly provided for in the employment contract. In the absence of a probationary period clause in the employment contract, the employer will rely on the usual notice provisions to terminate an employment contract.

26. An extension should be granted only where there are special circumstances justifying such a course and can only be made before the end of the original probationary period.

27. In order to give an employee a full opportunity to meet the required standards, the Manager will usually wait until the end of the probationary period before taking any decision to terminate an employment.

28. I shall conclude on this point by stating that the Manager must set out clearly the reasons why the employer has not successfully completed the probationary period and will give an opportunity to present his or her case including any mitigating circumstances.

29. More germane to this case, regarding fixed term contracts is the case of *NICOL V. COUNTY DIRECTOR, CARE INTERNATIONAL (SL)*
CC: 2/07.



30. In this case, the Plaintiff claimed that the contract of employment entered into by the Defendant was for a fixed term period and that in such circumstances, the employer could not expressly or impliedly impose a period of probation. He submitted that the inclusion of a clause for the employee to serve a period of Six months was itself contradictory and defeated the purpose of the fixed contract. Secondly, the Plaintiff contended that the Human Resource Manual provided that in case of termination while an employee was on probation, a minimum of two weeks' notice must be given.

31. In his judgment, Edwards - J (as he then was) had this to say: "In contracts where the appointment in the establishment would be for an indefinite period, you (employee) are normally required to serve a period of probation but not so for a fixed or definite contracts. It is further my view that by requiring the Plaintiff to serve probation of Six(6) months, the Defendant is attempting to impose a condition precedent right in the middle of the contract when in fact they should be fulfilling their obligation".

32. His Lordship referred to the case of **JESSIE ROWLAND GITTENS STRONGE V. SIERRA LEONE BREWERY**, Civ. App. 7/79 where **LIVSEY – LUKE CJ** had this to say: -

"it does not matter how unfair or high handed the termination was or for how long the employee has served the employer. If the employment acts in accordance with the terms of the contract of employment, he is protected".

Edwards J (as then was) concluded as follows:

33. "In this case (the **JESSIE ROWLAND GITTENS** Case), I hold that the employer will only be allowed to introduce and enforce a probation clause in a fix term contract if it is part of the original employment contract. This takes us to Exhibit "A1-5".



EMPLOYMENT AGREEMENT

34. I Shall refer to the relevant clauses:

Clause 2.

35. 2.1 "Notwithstanding the date of signature of this agreement, your employment with the federation will commence on the 01/11/2018 and shall come automatically to an end on 30/09/2019 unless terminated earlier in accordance with the provisions of the agreement".

Clause 5.

36.5.1 "You or the federation will be entitled to terminate your employment by giving not less than One Month's written notice to the other party. Any continuation of service beyond the expiry date (including the One month period of notice) will be performed at no additional cost to the employer".

37. I must immediately state that the second sentence herein is inconsistent with the Laws of Sierra Leone where in such situation a prorated payment should be made by the employer.

Clause 13

38. 13.2 "This agreement constitutes the sole agreement between the parties regarding the terms and conditions of your employment. Any cancellation or amendment to any part of this agreement must be made in writing and signed by both parties".

39. In addition to this, the Defendant referred to the National Staff Regulations for Sierra Leone Country Office.

40. Clause 1.3.3 of this Regulation provides that:

"The provisions in these Staff regulations are subject to the provisions of the currently valid Labour Laws of Sierra Leone as long as the regulations herein do not offer deviating, lower conditions".



41. 5.6.4: At any time during the probationary period or its extension, either the Staff member, or the federation, may terminate the employment contract without notice and no indemnity will be paid to the staff member.

Clause 13

410. Employment contract of a staff member under probationary period can be terminated under regulation 4.28

4.2.8 has not been located in the Regulations.

10.2.1 Fixed term contracts shall come to an end automatically on Completion of the agreed period of service.

42. 10.6.1: A Staff member's contract may be terminated for unsatisfactory performance provided he or she was given the opportunity to improve his/her performance in accordance with the procedure established in chapter 11.

43. 12.1 These Regulations as updated shall enter into force by 1st August, 2019.

44. The Regulations relied on by the Defendant to make a case for the Plaintiff going through a probation period came into force on the 1st August, 2019 after the contract of the said Plaintiff had been terminated. No Regulations were tendered in evidence by the Defendant to prove that similar Regulations were in force at the time the original contract of service was signed in November, 2018. It follows therefore that at the material time, there were no regulations in force and agreed ~~to~~ by the Plaintiff to fall within the exception aptly articulated by the LTJ in the ROWLAND GITTENS STRONGE'S Case.

45. That is, for probationary period to be introduced in a fix^{ed} term contract, it must have been clearly provided for in the original contract of employment. I agree with the reasoning in that case and hold that the Defendant had not followed the correct

procedure in terminating the fixed contract of the Plaintiff. The Plaintiff was therefore entitled to Judgment in his favour for wrongful dismissal.

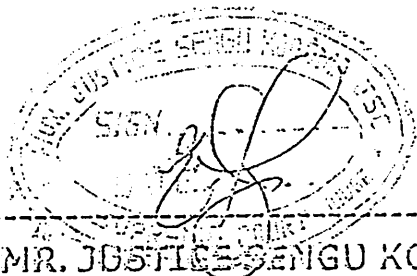
46. I shall briefly comment on the measure of damages for wrongful dismissal. We have held in this Court citing paragraphs 28-002 of MCGREGOR ON DAMAGES, page 1043, Chapter 28, 18th Edition that the "measure of damages for wrongful dismissal was prima facie the amount that the claimant would have earned had the employment continued according to contract subject to a deduction in respect of any amount accruing from any other employment which the claimant, in minimising damages, either had obtained or should reasonably obtained". Where, the amount that would accrue to the Plaintiff had his employment not been interrupted is what would constitute damages for unfair dismissal.

In the circumstance, I order as follows:

1. That the Defendant reinstates the Plaintiff to complete the unfinished period of his contract term as stipulated in the Employment contract within 14 days of the date of this order;
or

Alternatively, the Defendant pays the Plaintiffs all his entitlements for the period March, 2019 to September, 2019.

2. Interest thereon at the rate of 5 percent per annum from the period 4th October, 2019 to date of Judgment.
3. Costs of Le2,000,000/00 to be borne by the Defendant to the Plaintiff



HON. MR. JUSTICE SENGU KOROMA – JSC

PRESIDENT OF THE INDUSTRIAL AND
SOCIAL SECURITY DIVISION