



IN THE HIGH COURT OF SIERRA LEONE
INDUSTRIAL COURT

IC24/15

MOHAMED MANSARAY **APPLICANT**

AND

PHILIP SANKOH **DEFENDANTS**

REPRESENTATION:

S. BOBANI BROWNE ESQ. **COUNSEL FOR THE PLAINTIFF**

E.T. KOROMA ESQ, **COUNSEL FOR THE DEFENDANTS**

BEFORE THE HON. MR. JUSTICE SENGU KOROMA JA.
RULING DELIVERED ON THE 9TH OCTOBER, 2018.

1. By a Letter dated the 30th October, 2013, the Plaintiff herein wrote to the Commissioner of Labour complaining that his employer, the Defendant herein has failed to pay his end of service benefits after having served him as Security Guard since August, 2004.
 2. In a bid to settle the dispute alleged in the complaint, the Ministry wrote a letter to the Defendant dated 5th November, 2013 inviting him to a meeting on Tuesday 13th November 2013. The said Defendant did not attend meeting. This was followed by another letter of invitation dated 27th November, 2013. A meeting was eventually held on the 2nd December, 2013 in which certain issues were discussed. Though the Defendant dutifully attended all of the subsequent meetings to which he was invited, he did not accept liability.
 3. The matter was therefore forwarded to the Industrial Court by memorandum from the Commission of Labour dated 4th November, 2013. Notice of hearing was sent to the Defendant issued by the Master and Registrar and dated 17th November, 2013.
 4. I am confused at the inconsistency in the dates of the steps taken by the Commissioner of Labour as they were not taken in the order envisaged by the Act or Rules. I observed that even after this summons was issued, there were still communications between the Ministry and the Defendant. This is not the proper way to conduct the regulation of the relationship between the employer and employee and must be avoided. After a matter is referred to the Industrial Court, the Ministry becomes functus officio
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5. This matter first came for hearing on the 9th December, 2015 before the then President of the Court, Hamilton J.S.C. The matter did not make any progress due to the frequent absence of the Defendant and Counsel until the file was assigned to this Court and hearing commenced on the 10th October, 2017.

EXAMINATION OF WITNESSES

6. PW1. The Plaintiff, Mohamed Mansaray testified as PW1. He testified that prior to working for the Defendant; he was an employee of the Solace Security Company (SSC) at Campbell as Security Guard. He was attached to the premises of the Defendant who later convinced him to resign from the security company and work for him.
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7. He started working for the Defendant in 2004 at a Monthly Salary of Le 375,000,00. He worked for the Defendant from 2004 – 2013. According to the PW1, when he resigned from the Security Company and stated working for the Defendant, the latter assured him that he would be entitled to terminal benefits at the end of his service.
 8. The PW1 admitted that he was not issued a letter of employment but had an identity card given by the Defendant to him. After he stated working for the Defendant, the latter stopped using the Security Company. He insisted that he was paid a salary and signed for it in a book.
 9. PW1 informed the Court that there were two of them working for the Defendant.

10. PW2 – Max Allie. PW2 was a former employee of the Ministry and he investigated the complaint by the Plaintiff against the Defendant. He informed the Court that in the course of the investigations, he met with the Defendant four times during what it was established that the Plaintiff worked for the Defendant from 2004 to 2013.

11. PW2 explained that he took over the investigation from one Foud Koroma after the Defendant expressed dissatisfaction over his manner of handling the complaint. PW2 testified that when it was discovered that no progress was been made in the negotiations with the Defendant, the Minister instructed Mr. Foud Koroma to compute the terminal benefits of the Plaintiff. This was done and the computation was forwarded to the Defendant for his necessary action. When the Defendant did not respond, the matter was forwarded to the Industrial Court for redress.

12. PW2 explained that as the Defendant runs a construction company, the terms and conditions of service used to compute the entitlements of the Plaintiff were based on the Building and Construction Trade Group Agreement.

13. Before proceeding, I deem it necessary to comment on the later part of the testimony of PW2 in which he informed the court that he used the Building and Construction Trade Group Agreement to compute the entitlements of the Plaintiff. This is inconsistent with the testimony of PW1 who informed this Court that he was an employee of the Defendant as Security Guard. Nowhere did he testify that he was a Security Guard for a construction company.

14. In view of this, I hold that the Plaintiff is entitled to benefits under the terms of the Trade Group for Security Guards, unless this is a special category for Security Guards under the Trade Group Agreement for Construction workers.

Conclusion of testimony of PW2

15. PW2 concluded his testimony by tendering the following exhibits:

- EXH "A" – Letter of complaints dated 30th October, 2013.
- EXH B1-6 – Letters from the Ministry to the Defendant.
- EXH C – Computation of the entitlements of the Plaintiff.

Cross – examination of PW2

16. PW2 answered that he was a former worker of the Ministry and one of his duties was to settle disputes between employers and employees. He agreed that to establish a written contract of employment, these are times when the contract need not be written.

17. PW2 agreed with Mr. Koroma for the Defendant that there were no minutes of the meeting at which the Defendant admitted accepted liability. He agreed that no letter of appointment was produced by the Plaintiff at the Ministry.

18. PW2 agreed that he computed the terminal benefits based on the terms of the Construction Trade Group Agreement. He denied bringing the wrong person to court.

19. My comment again on this is that if the computation under the Construction Trade Group Agreement is allowed, then the defence Counsel is right to say

that the Ministry was wrong to send the Defendant to Court as it would be the company that should be held liable. But as I have already ruled, the Plaintiff categorically stated that he was employed by the Defendant.

20. PW3: Sallu Mansaray. He knew both parties and had worked together with the Plaintiff for the Defendant. Prior to that; they were Security Guards of the Solace Security Company when a theft occurred at the premises of the Defendant. The two Guards on duty were replaced by the Plaintiff and PW3. When the Defendant found out that they were efficient PW3, he asked them to resign from Solace and work for him which they did in 2004.

21. He confirmed that they were paid Le 375, 000, 00 per Month and were signing for their salaries in a big ledger book.

Cross – examination of PW3

22. PW3 answered that he had known the Plaintiff for about a year. He agreed that the theft at the premises of the Defendant which led to their employment by the Defendant took place in 2006.

23. My comment on this part is that the Defendants Counsel was able to elicit evidence under cross examination that the theft which precipitated their employment took place in 2006. The Plaintiff could not therefore not have been employed in 2004.

24. The witness insisted that the Plaintiff and he were employed by the Defendant. Contrary to the testimony of PW1; he admitted that the Defendant did not provide them with identity cards.

Case for the Defence

25. DW1. The Defendant testified as DW1. He informed the court that he was in the construction business but that the Plaintiff had never been his employee. He recalled August, 2006 when he first met the Plaintiff as an employee of Solace Security Agency which was a company contracted by him. DW1 also recalled that while the Solace Security Agency (SSA) was providing security services on his premises, the windscreen of his Mazda car was stolen. He made a formal complaint to SSA and they replied apologising for the incident.

26. DW1 informed the court that there was an agreement between him and SSA for their services and he was paying the sum of Le 180,000.00 per month for each Security Guard. He tendered some of the receipts of payment to SSA as Exh. E¹⁻¹³

27. DW1 denied employing the Plaintiff as he dealt directly with the security company. He also denied encouraging the Plaintiff to resign from the services of SSA.

28. DW1 recalled that in 2008, the Plaintiff came to him seeking employment but he told him that he had no work for him as a new Security Company, Octopus Security Company (OSC) were now providing him with Security. He testified that when the Plaintiff insisted, he informed him that he was training workers for his Construction Company and could include him in it. Later, when the

Plaintiff came to him seeking accommodation, he also gave him a store to live in and when he found out that the Plaintiff was a tailor, he gave him a sewing machine.

29. Later on, DW1 Continued, he allowed the Plaintiff to train with the other trainees. However, in September, 2013, he asked the Plaintiff to vacate his premises after he found out that he was stealing from him.

Cross examination of DW1

30. The DW1 insisted that the Plaintiff was just worker who came to him through his wife. He agreed that the Plaintiff worked in 2008, 2009 and 2010 – cleaning and laundering clothes – any work that could earn him money for the day. DW1 denied paying the Plaintiff directly.

31. He confirmed giving the Plaintiff shelter at SS camp where he later lived with his six children.

32. DW1 answered that he knew the Plaintiff since August, 2006. The Plaintiff worked for him for a year through SSA but did not know why he stopped working for them.

33. DW2 - Desmond Victor Emmanuel Mackay. The witness was at one time Head of Operations of SSA. He recalled 1st August, 2006 when an incident of theft occurred at the residence of the Defendant. DW2 agreed that the Plaintiff started working with the Defendant at that time.

34. DW1 informed the court that on the 25th day of each month, SSA would send an invoice to the client who would in turn pay by cash or cheque. They in turn would pay the Guard.

Cross examination

35. DW1 agreed that he started working for SSA on 7th March, 2006 and left in June, 2007. He admitted meeting the Plaintiff as a worker there. DW1 however did not have any evidence that he started working for SSA on 7th March, 2006.

36. DW1 admitted that he abruptly resigned from SSA because he was not paid salary for three months.

DW3: Patrick Sankoh.

This witness merely corroborated the testimony of DW2, his father.

ADDRESSES:

Counsel E. T. Koroma for the Defendant.

37. Mr. Koroma for the Defendant submitted that the burden was on the Plaintiff to prove the existence of an employer/employee relationship as the Plaintiff submitted no letter of employment or proof of payment of salary was tendered in evidence. The relationship between the Plaintiff and Defendant was not a direct one.

38. Mr. Koroma referred to the testimony of DW2 who testified that the Plaintiff worked for the SSA which was never controverted.

39. He concluded by submitting that the Defendant owed no legal obligation to pay the Plaintiff any benefits.

Counsel for the Plaintiff

40. Ms. Bobanie- Browne for the Plaintiff submitted that an Employer/Employee relationship need not be in writing. She noted that though the Plaintiff started working for the Plaintiff through SSA, he was later engaged by the Defendant to work for him. This was proved by the testimony of PW2, the Labour Officer, who stated that in the meetings held at the Ministry, the Defendant never denied the existence of an employer/ employee relationship between him and the Plaintiff.

41. Ms. Bobanie - Browne casted doubt on the testimony of DW2, who could not tell when the Plaintiff started working for the Defendant and where he worked. In a similar vein, reliance should not be placed on the testimony of DW3 who would not be expected to betray his father.

42. In reply, Mr. Koroma expressed doubt about the veracity of the testimony of PW2 as no minutes of the meeting were presented.

ISSUES FOR DETERMINATION

43. There are two issues for determination here:

a) Whether an employer/employee relationship exists between the Plaintiff and Defendant.

44. It is noteworthy that the relationship between the employer and the employee is and should be regulated by the contract of employment. In general terms, a contract of employment is an agreement oral or written or by implication, whereby one person called the employee does or agree to work or provide services to another person called the employer for a consideration normally called a wage or salary. It is sometimes referred to as a "contract of service". The Employer and Employee Act, 1960 provides that a contract of Employment need not be in writing.

45. Based on this definition, it is wrong for the Defendant's Counsel to argue that because there was no written evidence of employment, the Plaintiff could not be taken to have been an employee of the Defendant. I therefore agree with Counsel for the Plaintiff on this point. An employment contract can be Oral or may come into existence by implication.

The Plaintiff testified that when working for SSA and because of his hard work, the Defendant encouraged him to resign therefrom and work for him. This was corroborated by PW3 - Sallu Mansaray, who was also employed by the Defendant in similar circumstances. DW1's testimony that the Plaintiff was a casual worker and was taken in out of humanitarian grounds is not convincing. He had initially testified that he only took in the Plaintiff at the insistence of his wife and he was allowed to train with his trainees. However under cross examination, the Defendant stated that the Plaintiff was casual worker. Then came DW3 who testified that he convinced DW1, his father to take in the Plaintiff

on humanitarian ground. Who is to be believed in this case? I have completely ignored the testimony of DW2 as not credible and in any event, irrelevant.

46. For the above reason, I hold that there was an employer/employee relationship between the Plaintiff and the Defendant.

47. Having held that there was an employer/ employee relationship between the parties, the next issue for determination is the quantum of the entitlement of the Plaintiff.

48. The Plaintiff in his testimony informed this court that he started working for the Defendant in 2004.

However, under cross examination and from other testimonies, it was established that the Plaintiff was engaged by the Defendant after the incidence of theft on the 1st August, 2006. In the circumstance, the date of employment shall be deemed to be 1st September, 2006.

49. I note that the Ministry had done a computation of entitlements of the Plaintiff based on date of employment as 2004. For the reason already stated, this cannot be correct.

50. After considering the testimonies of the witnesses herein and perusal of the documents tendered, this court holds that the Defendant is liable to the Plaintiff and order as follows:-

1. That the Ministry of Labour and Social Security recomputes the end of service benefits and other entitlements of the Plaintiff with date of employment as 1st September, 2006.

2. That the Trade Group Agreement to be used shall that of Security Guards not that of the Construction Industry.

3. Interest on the said sum at the rate of 10 percent per annum from the 17th day of November, 2015 to date of judgment.

4. No order as to costs.

51. Matter adjourned to Tuesday, 23rd October, 2018 at 9:30 AM.


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Hon. Mr. Justice Sengu Koroma (J.A.)
President of the Industrial Court