IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: YEBOAH CJ (PRESIDING)
PWAMANG JSC
OWUSU (MS.) JSC
AMADU JSC
PROF. MENSA-BONSU (MRS.) JSC

CIVIL APPEAL
NO. J4/44/2022

29TH NOVEMBER, 2022

AUGUSTINE BOGOLOH ..... PLAINTIFF/APPELLANT/APPELLANT

VRS

INTERTEK GHANA LIMITED ..... DEFENDANT/RESPONDENT/RESPONDENT

JUDGMENT

PROF. MENSA-BONSU (MRS) JSC:-

1. This is an appeal from a judgment of the Court of Appeal dated 18th July affirming the judgment of the trial court that dismissed the action. The appellant has brought an appeal to this honourable court seeking to reverse the concurring judgments of the two lower courts.

Facts and Background

2. The plaintiff used to work (from 1986-1993) with a company in Cote d'Ivoire called Caleb Brett. It later became Intertek Testing Services- Caleb Brett (ITS-Caleb Bret). He was employed first as a chemist and later became the General Manager.
3. In 1993, Intertek was sold to Q &Q Contract Service but he continued to work there for another 5 years. While working for Q & Q Intertek, the defendant pleaded with him to reorganise the affairs of the defendant Company, and that his tenure till retirement was assured. He therefore left Q & Q Control Services to join defendant company.
4. On 7th September 1998, he "rejoined" Intertek Ghana Ltd. and was appointed General Manager for French West Africa, He was later promoted Regional Manager of French West Africa, including Ghana (excluding Nigeria) under a new contract till April 2014.
5. In 2011, whilst holding the position of Regional Manager, the defendant transferred him to Ghana and the terms of the transfer were set out in an agreement hereinafter referred to as the 'Ex-Pat Agreement'. This was still within the Region of French West Africa, including Ghana. He claimed that the defendant company agreed that he could work till retirement, or to be sent back to Cote d'Ivoire to continue work till retirement.
6. In a letter dated 1st June, 2016, the defendant wrote to the plaintiff, terminating his appointment without giving him any reasons. His benefits were calculated as "one month's salary in lieu of notice, for redundancy, for outstanding leave and for repatriation." With the period of his appointment calculated from 2011, he was paid the sum of US$121,623.06 as redundancy/severance pay.
7. The plaintiff wrote to the defendant expressing his disagreement with the termination, and that it was a breach of the contract of employment. As required by the laws of Cote d'Ivoire he was given a certificate of employment which indicated that he had worked for defendant from 1998-2016. He, however,

accepted the termination benefits offered. He later requested to be permitted to purchase his official vehicle and the defendant obliged.

8. A month after taking his termination benefits he initiated the instant action against the defendant. In a writ filed on 27th June 2016 against the defendant, which was amended on 26th July 2016, the plaintiff/appellant sought the following reliefs:-

> *"a. A declaration that the termination of Plaintiff's appointment by the Defendant was wrongful in law.*
>
> *b. A declaration that it is wrongful in law for the Defendant to declare the Plaintiff redundant in the light of the Labour Act.*
>
> *c. A declaration that it is unlawful and wrong in law for the Defendant to sever relationship with the Plaintiff without reference to their contract document.*
>
> d. *A declaration and an order that Plaintiff is entitled to all his benefits under the contract document and any other statutory benefits including but not limited to Salary, Leave, Social Security contributions from the date of termination of employment to retirement and also children's annual school fees allowances*.

Or in the alternative

> *e. Accurate and standard computation of redundancy or severance package from 1998 and in addition to the reliefs below.*
>
> *f. Damages for wrongful termination of appointment, wrongful redundancy and wrongful severance.*
>
> *g. Refund of money paid for the service vehicle as it is supposed to be part of his retirement package.*
>
> *h. Costs including legal fees"*

9. In bringing this action, the plaintiff contended that the termination of his contract was unlawful because the company was doing very well and so there was no reasonable basis to declare him redundant, particularly as under the Labour Act (Act 651) of Ghana, he was not to be affected, even if there was a financial basis for declaring redundancies. He also maintained that he had not committed any offence which would make him liable to discipline. He had even earned salary increment in March 2016, and yet less than three months later the defendant purported to terminate his appointment without stating any reasons. He also complained that he was given redundancy/severance pay but that instead of calculating his benefits from 1998 it was calculated from 2011 which, according to him was "completely wrong" (see Exhibit F&F1). He also put in evidence the certificate of employment he was given according to the law of Cote d'Ivoire, and which indicated that he had worked for defendant from 1998-2016, and yet his severance package was calculated from 2011.

10. The plaintiff also claimed that the vehicle he would have been given for free if he had worked till retirement as part of the pension package had to be paid for by him when others proceeding on retirement on equal terms had got it for free.

11. The following issues were set down as issues for trial

    1. *Whether or not Plaintiff was declared redundant.*
    2. *Whether or not the termination of Plaintiff's employment contract was lawful.*
    3. *Whether or not the Plaintiff is entitled to his claims.*
    4. *Whether or not the computation of the Plaintiff's severance/redundancy was accurate*.

12. The trial court dismissed the case, holding, inter alia, that

> *"It is discernible from Exhibits B and C that plaintiff having worked for more than three years, defendant pursuant to statutory provisions terminated the employment contract*

upon payment in lieu of notice. This is very much in accord with Section 17 (1) (a) of the Labour Act and implied into exhibit B thus making the termination lawful. Plaintiff has failed to prove that term(s) of his employment contract have been breached and the court would hold that the termination of plaintiff's employment was not unlawful."

13. Aggrieved by the decision, Plaintiff filed a notice of appeal to the Court of Appeal on 10th August, 2017. His grounds of appeal were that

(a) The judgment was against the weight of evidence on record.

(b) The trial Judge misdirected herself in law.

He gave the following particulars of misdirection

"i. The trial Judge erred in her interpretation of Sections 15, 16 and 17 of the Labour Act, Act 651.

ii. The trial Judge erred in her application of Sections 15, 16 and 17 of Act 651.

iii. The trial Judge erred in her interpretation and application of exhibit B.

iv. The trial Judge erred in applying Section 65 of Act 651.

14. The Court of Appeal dismissed the appeal on 18th July, 2019 and affirmed the judgment of the High Court, holding, inter alia, that

"Clearly the provisions of Section 17 (1) (a) of the Labour Act 2003 is applicable to the facts of the instant case. The plaintiff has consistently insisted that his employment was for life. The submission of counsel is untenable and same is hereby dismissed."

15. Still aggrieved by the decision of the Court of Appeal, the plaintiff/appellant on 14th January 2020, with leave, filed a Notice of Appeal to the Supreme Court with the same grounds of appeal, reproduced verbatim, as he had put before the Court of Appeal.

Grounds of Appeal

(a) The judgment was against the weight of evidence on record.

(b) The trial Judge misdirected herself in law.

He gave the following particulars of misdirection

> *"i. The trial Judge erred in her interpretation of Sections 15, 16 and 17 of the Labour Act, Act 651.*
>
> *ii. The trial Judge erred in her application of Sections 15, 16 and 17 of Act 651.*
>
> *iii. The trial Judge erred in her interpretation and application of exhibit B.*
>
> *iv. The trial Judge erred in applying Section 65 of Act 651.*

16. It must be observed that presenting the same grounds of appeal to both the Court of Appeal and this honourable court without any attempt at modification to suit the second appellate forum smacks of indolence, for the appeal is against the judgment of the Court of Appeal and not the judgment of the trial court. Even though the Court of Appeal had earlier struck down ground **'b(iv)**' of the grounds of appeal, because the appellant himself had abandoned that ground, the appellant, nevertheless, repeated the 'abandoned ground' in his appeal to the Supreme Court. Was he appealing a ground he himself had earlier abandoned and so caused it to be struck out? Again in paragraph 23 of the Statement of Case. the plaintiff/appellant stated that he had abandoned grounds (**bi**) & (**bii**) of the grounds that alleged that the Court of Appeal had misdirected itself ie:

"i. The trial Judge erred in her interpretation of Sections 15, 16 and 17 of the Labour Act, Act 651.

ii. The trial Judge erred in her application of Sections 15, 16 and 17 of Act 651.

17. Having abandoned the two grounds alleging misdirection, he urged this honourable court to strike them out. The two grounds are hereby struck out as per the appellant's request. There will be no need to strike out (**b iv**) since it had previously been struck out by the Court of Appeal, at the plaintiff/appellant's own behest. It can therefore not be resurrected in the present appeal. Clearly there was a lack of due attention and care in the preparation of this appeal.
18. Essentially, then, the only ground of misdirection still standing on the 'particulars of misdirection', and so acknowledged by the appellant is : (**b iii**).

"iii. The trial Judge erred in her interpretation and application of exhibit B.

19. This, then, is the 'particulars of misdirection' supporting the grounds filed, and on which this court will determine the instant appeal, in addition to the omnibus ground of the judgment being against the weight of evidence on record, set out in Ground 2 (**a**).

Ground 2(b)

Was the Labour Act applicable?

20. The High Court had found as a fact that plaintiff /appellant was employed by defendant then, on "further contract" effective 1st July 2011, as "Ex-pat" stationed in Ghana. The plaintiff/appellant who claimed the trial Court and the Court of Appeal both misdirected themselves on the interpretation placed on Sections 15, 16 ,17 and 18 of Act 651 now says in paragraph 31of his Statement of Case

"My Lords Exhibit B is an Ex-Pat Agreement and a careful reading of the entire document will lead to a conclusion that it is out of the realm of Act 65 [sic]. ***It can be gleaned from the entire document that Section 15, 16, 17 and 18 of Act 651 are not in the consideration of the parties and therefore it will be unjust to apply the termination clause in the Labour Act 651 to Exhibit I or B."*** (emphasis supplied.)

21. This submission is tantamount to the plaintiff/appellant shooting himself in the foot. It is not surprising that he indicated he was abandoning the two "grounds of misdirection" involving the meaning of those sections of the Interpretation Act. Surely, after coming to this conclusion, the appellant should have understood that he had defeated the basis of his action against the defendant and that there was no point in pursuing an appeal. But no, he is pressing on and believes that just by his declaration that he was abandoning those two grounds, their effect would cease to be. This position is illogical and cannot be supported by any court.
22. Having declared that the Labour Act was not binding on the parties after all, he took on the trial court and its interpretation of the 'Ex-pat' agreement (Exhibit B).

"(b iii). The trial Judge erred in her interpretation and application of exhibit B.

3.1.3 of Exhibit B provides

"In the event of neither party giving notice to the other party this agreement shall continue with the terms and conditions of this agreement applying on condition that the Employee continues to renew his Ghana work permit.

1.9. Should the Employer decide to not extend the contract in future the Employer will at the Employer cost relocate the Employee and his family back to Abidjan, Cote d'Ivoire and

the Employee will resume his normal duties prior to the Ex pat period. (page 56 or 24A*)".*

23. The submission of the plaintiff/appellant in paragraph 29 of the Statement of Case that the Employer could not terminate the employment in Ghana "*but rather dismiss and send plaintiff back to his home country to continue his work in accordance with the ex pat agreement*" can, at best, be described as bizarre. Which employer would bind himself to keep an employee employed, and even when he dismissed him in one country, would return him to the country of origin and let him continue his work in accordance with the so-called "Ex Pat agreement"? The appellant does not seem to appreciate that ordinarily, "dismissal" is more serious and has more serious consequences for the employee than a "termination". How about if the employee found a better job and decided to move on? Could such an employee who did not wish to continue working for the employer, be compelled to remain and continue working in "accordance with the ex pat agreement"? Does the posture evince any appreciation of the principle of mutuality of contract? It clearly does not.
24. The lack of logic in the plaintiff/appellant's submissions goes from bad to worse when he submits that at paragraph 32

> *"The evidence on record from the Defendant is that a new job contract was offered plaintiff on two occasions but same were rejected by plaintiff, with section 4.9 of Ex-pate being the Defendant's option was to have sent the Plaintiff back to resume his work in Abidjan as stated in the contract and not to terminate the Ex-Pat Agreement contrary to all the agreed provisions. Plaintiff's failure to accept this new contract offered by the Defendant is an external matter and need not influence the interpretation of exhibit B unless same is to elucidate its understanding."*

25. The plaintiff's position is difficult to appreciate since the arrangements under 4.9 of the Ex-Pat agreement were made conditional upon the occurrence of a particular event, i.e. "*should the Employer decide to not extend the contract in future*?" Did this event include when the Employee had refused two offers by the defendant? Was it up to the Employee only, to determine how the contract of employment was to run? Could the Employer not control the work of the company or its employees in any way except according to the dictates of the Employee? We think not.
26. The plaintiff/appellant's submission in paragraph 3 completely concedes the battle to the opponent, for if there has been no misdirection on the part of the Judges in the interpretation of those provisions then his complaint against the judgment is ill-founded, as is also the basis of this appeal. If indeed the application of the Sections in issue "*will defeat the entire purpose of an Ex-pat Agreement and that "There is neither provision for redundancy nor severance in Exhibit B",* then in adopting "severance or redundancy" instead of "Termination" or "dismissal", the Employer had exercised a degree of magnanimity that cannot be disregarded.
27. The plaintiff/appellant's interpretation of the meaning of "Termination" is incorrect. The Employee may resign, but it is trite law that "Termination" and "Dismissal" are two different technical terms, and they do not admit of the interpretation the plaintiff chooses to put on "Termination."
28. The plaintiff cannot blow both hot and cold at the same time. If Act 651 is inapplicable then all of it is inapplicable, and no part of it can be relied on while rejecting other parts. The plaintiff/appellant cites ***Hemans v Ghana National Trading Corporation [1978] GLR 4*** which discusses the effect of a Collective Bargaining Agreement. What does a Collective Bargaining Agreement under Act 651 have in common with an Ex-Pat Agreement which the plaintiff insists, anyway, is outside the scope of Act 651? Nothing.

Ground 2(a)

29. The plaintiff/appellant pleads the omnibus clause and contends that the judgment is against the weight of evidence. While this means that the second appellate court must re-hear the case and consider the entire record of evidence, it also means that, as the long line of authorities have laid down, the burden of the plaintiff in challenging two concurrent judgments is that much higher. The defendant correctly argues that the burden of successfully dislodging the two concurrent findings of fact is squarely on the plaintiff/appellant's shoulders. He cites **Gregory** v **Tandoh IV & Anor** [2010] SCGLR 971; **Mensah** v **Mensah** [2012] 1 SCGLR 391 and **Koglex Ltd (No.2)** v **Fields**) [2000] SCGLR 175 (No.2) at page 177 per Acquah JSC (as he then was). The defendant consequently submits in paragraph 12 that*: "the burden is on the Plaintiff/Appellant/Appellant to specify the flaws in the findings made by the two lower courts in the face of the evidence led."* He then concludes that

> *"The reproduction of his witness statement alone does not discharge this duty of pointing out the flaws in the findings made by the two lower courts in the face of the evidence led at trial."*

30. The defendant also states that the plaintiff was employed in 2011 under the employment contract set down in Exhibit B., but the plaintiff/appellant insists on 1998 as the relevant date. The plaintiff set down alternative reliefs under his claims. Alternative relief "e" stated his claim for "*Accurate and standard computation or severance package from 1998 and in addition to the reliefs below."* The trial court's finding that the contract governing the relationship between the parties had the effective date of 1st June 2011, meant that there was no basis for plaintiff to make claims from 1998.
31. The defendant therefore raises the issue of the effect of the Court of Appeal's acceptance of the trial court's finding that the contract was from 2011. He

maintains that it amounts to the plaintiff/appellant having to dislodge the concurrent findings of two lower courts before the second appellate court. He then cites a number of authorities on the point. However, legitimate as the authorities cited are on the point of "concurrent findings", it has been pointed out in ***Choro-Padoh Kwanimbi Hamza*** v ***Inspector General Of Police & Attorney-General*** **Suit No. JA/32/2020; judgment delivered on 13th July 2022**; that the rule on two concurrent findings is as to "facts" and not as to "interpretation of statutory provisions" before the appellate court. The rule is based on the age-old wisdom that the appellate court must defer to the trial court when it has made findings of fact. This is because the trial court has the opportunity to observe the witnesses etc, and is in a better position to make an assessment of the credibility of the witnesses, as well as other factual circumstances of the trial. It does not mean that when two lower courts agree on a particular interpretation of a statutory provision, then it operates as "concurrent findings" that restrict or bind the second appellate court. Were that the legal position, there would be no point seeking the intervention of a second appellate court after two lower courts had made "concurrent interpretations" of the same provisions.

32. The defendant also rightly points out the self-defeating submissions made by the plaintiff/appellants. At page 19 that "*this case was instituted seeking damages for redundancy and wrongful dismissal all based on the provisions in the same Labour Act.* The defendant cites ***Djin*** v ***Musa Baako*** [2007-2008] SCGLR 686 and further submits in paragraph 17 that

> *"The Plaintiff/Appellant/Appellant has a duty to point out to this Honourable Court how Exhibit "B" has been wrongly interpreted and applied against him or how it should have been interpreted and applied in his favour. To do that, the self same Plaintiff/Appellant/Appellant is categorical that the Labour Act, 2003 on which he relies for his relief and the grounds of appeal is not applicable to Exhibit "B"."*

33. This submission captures the contradiction inherent in the submission of the plaintiff/appellant who undermines the very basis of his appeal by denying the applicability of the Act on which he relies for his reliefs." Indeed, the effect of this submission by the plaintiff/appellant is that he urges this honourable court to look only at the black letter words of the contract and nothing else. With respect, courts of law cannot wear blinkers when administering justice. It was the plaintiff/appellant himself who brought this action "*in the light of the Labour Act*." How then is it that he now maintains that the Act is inapplicable and that only the words of the Contract itself should be read?

34. By way of reliefs, the plaintiff/appellant also seeks an order for a declaration

> *and an order that the plaintiff is entitled to all his benefits under the contract document and any other statutory benefit including but not limited to salary, leave, social Security contributions from date of termination of employment to retirement and also children's annual school fees allowance or in the alternative."*

He also seeks in ground '**g**' of his reliefs

> *"Refund of money paid for the service vehicle as it is supposed to be part of his retirement package."*

35. It is somewhat difficult to appreciate the reasoning of the Plaintiff who is seeking to enjoy "retirement benefits" enjoyed by those who stay on till retirement after he had accepted" severance benefits" which he claims were not covered under the contract he is relying on.

The principle of Mutuality of contract.

36. The plaintiff/appellant claims that he was promised that he would be allowed to work till retirement. However, contracts of employment are subject to the principle of mutuality. As Treitel in 'The Law of Contract' Fourteenth edition Edwin Peel (Ed) at p 1250 explains, "*a party who undertakes to render personal services or to*

perform continuous duties cannot get specific performance as the remedy is not available against him." In **Kobi** v **Ghana Manganese Co. Ltd** [2007-2008] SCGLR 771, some employees of the defendant company organized a demonstration to protest certain anticipated actions of the company. Following this demonstration, letters of termination were issued to some of those who participated in it. They challenged the right of the defendant company to dispense with their services in that manner. The Supreme Court held, per Atuguba JSC at p. 775 as follows:

> *"What I consider to be trite learning on this issue is that a* ***contract of service*** *is not a* ***contract of servitude****. That being so, even if the contract of employment is silent on the question whether it is terminable, the common law implies a right to terminate the same by either side upon reasonable notice to the other*." (emphasis added)

See also: **Aryee** v **SCC** [1984-86] 1 GLR 424 at 431per Adade JSC. In other words, just as one cannot be compelled to work for another, so that other cannot compel the person to remain in his employ. Could the appellant have been compelled to work for defendant respondent till he reached the retiring age? Could the employer have stopped him from resigning if he was minded to leave the organization, by relying on this alleged verbal promise? Clearly not, so he cannot rely on that verbal promise, even if it was made, as a term of the contract.

37. The defendant also submits in paragraph 23 of his Statement of Case,

> "*apart from what the contracting parties agree on as employer and employee, the* ***Labour Act, 2003 (Act 651*****)** *and common law implies [sic] terms and conditions into such relationships to the extent that the provisions of the Act even override express provisions of the employment contract if there are conflicts between the two."*

The defendant submits further in paragraph 30

*"My Lords, there is a sound policy for this rule [in **Aryee** v **SCC** [1984-86] 1 GLR 424 at 426]. It has to do with the courts restraining themselves from interfering with personal liberty of the parties. It would not be wise to compel an employee to work for an employer, he does not want to work for, nor conversely to compel an employer to employ an employee that it does not want to work with.* "

38. The law restated therein is quite correct. See also ***Lt-Col. Ashun v Accra Brewery Ltd [2009] SCGLR 81 per Date-Bah JSC;*** also ***Nartey-Tokoli v Volta Aluminum Co. Ltd. [1987-88] 2 GLR 532 at page 545.***

39. Indeed, in the plaintiff/appellant's own experience with the defendant Company, there had been a selling off to a new buyer previously, which means that his old employer had been replaced by a new employer, so it was entirely possible for the employees to change employers only because the old one had sold off and moved on. Indeed, after working with the new employer for a bit, he was able to "return" to the old employer upon better terms than he previously had, and to move to the new establishment. If he was able to change employers and the business was also able to change hands, how could a promise of keeping him employed have been kept?

40. Would the Law have been fair if it had prevented the plaintiff's move to a new job with better terms by restraining the plaintiff?

41. It was part of the plaintiff/appellant's plaint that the package he accepted was not the right package. This issue came up in ***Ashun v Accra Brewery Limited [2009] SCGLR 81***. In that case, the plaintiff was Chief Security Officer with defendant company. He received a letter telling him that on account of some restructuring being undertaken, his services would no longer be required. He was given a severance package which he accepted. Weeks later, he wrote to the Employer complaining that the severance had not complied with the terms of the Senior Staff Service conditions. He then issued a writ. Trial court granted the claims of plaintiff but refused to award general damages for wrongful termination of

contract. Both parties appealed against the decision and the refusal to award general damages, respectively. The Court of Appeal dismissed plaintiff's appeal and he appealed to the Supreme Court. Held dismissing the appeal per Date-Bah JSC at p. 84

> *"This case with respect is based on a flawed conception of the nature of a contract of employment. A contract of employment is not necessarily a contract till the retirement age…. a contract of employment, though it may be for an indefinite period, does not mean life employment. Claim (d) endorsed on the Plaintiff's writ of summons is, however, based on the fallacious conception that there is an expectation interest in a contract of employment till the age of retirement. …A contract of employment is clearly terminable. Even if it is terminated wrongfully, that does not give the aggrieved party the right to be paid salary till his retirement age."*

At p. 87 the learned Justice also made a statement of law which is equally applicable to the plaintiff/appellant in the instant case.

> *The formulation of the Plaintiff's grounds of appeal betrays a certain lack of appreciation of the contractual principles that should underpin an analysis of this case. Under general contract principles, the plaintiff, by accepting the package offered him entered into a compromise agreement which appeared to extinguish any claims that he had against his employer in respect of the wrongful termination of his employment. At the very least he should have indicated at the time he accepted the package that he was doing so, without prejudice or under protest."*

He then drew conclusions at p.89 which are apposite in the instant case:

"The acceptance by the plaintiff of the redundancy package offered him by the defendant meant that the termination of his employment was not unlawful or wrongful….It was open to the plaintiff to reject it, if he was so minded.

By accepting the package, he made the termination one by mutual agreement. He therefore had no cause of action against the defendant."

Based upon the principles discussed above, the appeal has no merit.

Conclusion

42. The plaintiff was employed on special terms under a contract. In the instant appeal, he himself appeared unsure of what the basis of his appeal was. The confusion exhibited by his grounds of appeal resulted in him claiming benefits under Ghana's Labour Act, Act 651, whilst at the same time disclaiming its applicability and maintaining that it was only the contract between him and the employer that had to be interpreted by the court.
43. The contract was terminated as the employer had a right to do. His claim that he was given a verbal promise of employment for life cannot be sustained in law since that supposed promise violates the principle of mutuality of contract.
44. His benefits were paid to him and he accepted them, even though he wrote to protest. Thus his acceptance represented a compromise of his claims. He even submitted a subsequent request in writing, to be allowed to purchase his official vehicle and this was approved. It does not lie in his mouth to now claim that as he was similarly situated as those who had retired from the company, the same kind of retirement benefits ought to be given to him.
45. He also claimed that he ought to have been given his official vehicle for free as a benefit, as other retired persons were entitled to do, and not have to purchase it. Yet, his own employment was not brought to an end by retirement but by

termination. He was, thus, unjustifiably laying claim to the benefits of a class to which he did not belong.

46. The appeal is unmeritorious and is dismissed in its entirety.

PROF. H.J.A.N. MENSA-BONSU (MRS.)
(JUSTICE OF THE SUPREME COURT)

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(CHIEF JUSTICE)

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