IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2017

CORAM: ADINYIRA, JSC (PRESIDING)

DOTSE, JSC

BAFFOE-BONNIE, JSC

GBADEGBE, JSC

AKOTO-BAMFO, JSC

CIVIL APPEAL
NO. J4/11/2017

29TH NOVEMBER, 2017

BENJAMIN ARYEE & 691 ORS.	**……**	**PLAINTIFFS/RESPONDENTS/ APPELLANTS**
VRS		
COCOA MARKETING COMPANY	**……**	**DEFENDANT/APPELLANT/ RESPONDENT**

J U D G M E N T

ADINYIRA, JSC:-

This an appeal filed on 13 March 2015 against the judgment of the Court of Appeal dated 26 February 2015. The facts briefly are that Benjamin Aryee and 691 others, the Plaintiffs/Respondents/Appellants (Plaintiffs) were employed sometime in May 2002 by the Cocoa Marketing Company, the Defendant/ Appellant/ Respondent (Defendant) to

work as cocoa carriers, tarpaulin handlers, cleaners and to sew cocoa bags. The basis of the Plaintiffs' claim, was that even though they had worked continuously for over 4 years as employees of the Defendant at its Tema branch, the Defendant had treated them as casual workers and had paid them wages instead of salaries, and had also conducted its affairs with them in a manner that denied them their economic rights under the 1992 Constitution and contrary to the terms of a Collective Bargaining Agreement (CBA) that the Industrial and Commercial Workers Union (ICU) had negotiated on their behalf with the Defendant on 1January 2005. They claimed that eventually, their employment with the Defendant had on the 31st of December, 2006, been terminated in a manner inconsistent with their status as junior staff or employees of the company.

The Defendant denied the Plaintiffs were its employees and claimed the Plaintiffs were casual workers engaged by their gang leaders on a daily basis, depending on the availability of work. The Defendant added that none of the Plaintiffs worked continuously for over 6 months as alleged. The Defendant claimed it exercised its right under the CBA not to continue with the CBA after its expiration on 31 December 2006.

The writ of summons that was filed in the Human Rights Division of the High Court, Accra, on the 23rd of December, 2009, was amended on the 11th of July, 2012, by which, the Plaintiffs claimed against the Defendant as follows:

> (a) Damages for breach of the plaintiffs' economic rights guaranteed under article 24(1) of the 1992 Constitution and discrimination against the plaintiffs contrary to article 17 of the 1992 Constitution.
>
> (b) A declaration that each plaintiff having worked for the defendant for a period of over six (6) months was deemed in law to be a permanent employee of the defendant at the date of the plaintiffs' wrongful termination by the Defendant on 31st December, 2006.
>
> (c) Damages for wrongful termination of employment.

(d) Interest at the commercial bank rate on all monies found due and owing from the defendant to the plaintiffs from the date of the wrongful termination of plaintiffs' employment, that is 31st December, 2006 up to and inclusive of the date of final payment.

(e) Any other relief as may be found due to the plaintiffs as the Court may deem fit.

(f) Costs inclusive of legal fees.

The trial Court determined that the Plaintiffs were employees of the Defendant, and that they were permanent employees and not casual workers. The trial court held further that the Defendant had breached the Plaintiffs' economic rights, and that their employment was wrongfully terminated by the Defendant.

Having made the above findings, the trial Court entered judgment for the Plaintiffs on all their claims and proceeded to award damages as follows:

(a) Six times the remuneration paid to each plaintiff immediately before the termination as damages for wrongful termination.

(b) Payment of accommodation allowance from May 2002 to December 2006 to each and every plaintiff as damages for breach of their economic rights;

(c) Payment of repatriation allowance to each and every plaintiff as damages for breach of their economic rights**.**

The trial Court further ordered that: "…the aggregated sum payable to each plaintiff shall bear interest at the prevailing bank rate, calculated on simple interest basis, from 1st January, 2007 up to and including the date of final payment**".**

Not satisfied with the judgment of the trial Court, the Defendant appealed to the Court Appeal on several grounds. The Court of Appeal in considering the appeal was of the

view that the real issues in contention were whether the Plaintiffs were employees of the Defendant Company and whether they were permanent or casual workers.

The Court of Appeal upheld the trial judge's primary finding that the Plaintiffs worked as employees of the Defendant and not as independent contractors hired by their gang leaders; as contended by the Defendant. Then the crucial issue left for the Court of Appeal to determine was whether the Plaintiffs were casual or permanent employees.

The Court of Appeal after considering the Labour Act, 2003 (Act 651).and the CBA held the Plaintiffs were casual workers and not permanent employees and therefore their contract was determinable at will and consequently, the Defendant was not liable to the Plaintiffs for wrongful termination of their employment. The Court of Appeal accordingly allowed the appeal and set aside the judgment of the High Court.

The Plaintiffs being dissatisfied filed ten grounds of appeal to this Court as per their amended notice of appeal filed on 18/11/2016 pursuant to the order of the Supreme Court granted on 17/11/2016. These are:

1) The Learned Justices of the Court of Appeal erred when they held that the appellants have failed to prove that the appellants were deemed to be permanent employees of the respondent pursuant to the provisions of the Labour Act, 2003 (Act 651).
2) The Learned Justices of the Court of Appeal with respect, misconstrued section 78 of the Labour Act, 2003 (Act 651).
3) The learned justices of the Court of Appeal erred when their Lordships held that the appellants had by the collective bargaining agreement between the parties contracted to be casual workers of the respondent until the appellants retire.
4) The learned Justices of the Court Of Appeal misconstrued the provisions of the collective bargaining agreement between the parties
5) The Learned Justices of the Court of Appeal erred when they held that from Relief (b) indorsed on the plaintiff's writ of summons the plaintiffs considered themselves employed initially as non-permanent workers.
6) The Learned Justices of the Court Of Appeal erred when they held that looking at the plaintiffs in terms of Act 651; the plaintiffs were

persons who were initially engaged as seasonal or intermittent workers.

7) The Learned Justices of the Court of Appeal erred when they held that by virtue of Plaintiff's pleadings, the plaintiffs cannot deny that that they were employed initially as casual workers within the meaning of Act 651.
8) The learned Justices of the Court of Appeal erred when they held that at the time of negotiation of Exhibit A, that is the collective agreement, the plaintiffs were casual workers.
9) The Learned Justices of the Court of Appeal erred when they held that as at the date of termination, the plaintiffs were casual workers.
10) The judgment of the Court of Appeal is against the weight of evidence

Counsel for the Plaintiff grouped these grounds into 3 parts for argument. Apart from the general ground that the judgment was against the weight of evidence; two critical issues arise from the numerous grounds of appeal and submissions made by both lawyers. These are:

1. *Whether the Plaintiffs were casual workers under the terms of the Labour Act*
2. *Whether by the terms of the Collective Bargaining Agreement the Plaintiffs were permanent workers*

Submissions by Plaintiffs

Counsel submits that the case of the Plaintiffs was not one of a claim for conversion from casual workers to permanent employees but that from the date of their employment to the date of their termination they were permanent employees within the meaning of the Labour Act, 2003, (Act 651). Counsel submits further the Court of Appeal erred in misconstruing the provisions of the CBA and contends that the execution of the CBA confirmed the permanent status of the Plaintiffs and that they were not causal workers.

Submissions by Defendant

Counsel for the Defendant on the other hand submits that the Plaintiffs were casual workers and unlike temporary workers they could not be converted to permanent workers after working continuously for six months or simply by signing a CBA. He contends further that because the Plaintiffs were daily rated and their bonuses and overtime were calculated on daily basis they were casual workers.

Counsel for the Defendant made extensive reference to Exhibit L and our only comment is that both the trial and appellate courts rightly ignored that exhibit as it bore no relevance to the claim of damages for wrongful termination before them.

Consideration of the issues

It is trite law that where in an appeal it is contended that the judgment is against the weight of the evidence the appellate court is bound to examine the entire record to determine whether the findings made by the Court of Appeal in setting aside the judgment of the trial court are reasonably supportable. Accordingly, in determining the two issues set out above we intend to review the entire record.

***The issue as to whether the Plaintiffs were casual employees under* Section 78 of Act 651**

The Court of Appeal in construing section 78 of Act 651 said per Adumua Osei J.A. said at page 515 of the record of appeal that:

> "And as far as section 78 of Act 651 is concerned, if I may restate my view on it, it regards a worker as a casual worker when he is engaged on work which is seasonal or intermittent, and when the work he is engaged on is not for a period of more than 6 months, and when his remuneration is calculated on a daily basis. The section does not provide for the automatic conversion of such a worker into a permanent worker after his services have been utilised continuously for more than 6 months. It tells who a casual worker is by reference to his terms of engagement; it does not provide for his prospects. The conclusion

> I draw is that there is no legal basis for the declaration made by the trial Court in respect of relief (b)."

This call for our interpretation of a "casual worker" under section 78 of Act 651 which is defined as:

> "a worker engaged on a work which is seasonal or intermittent **and** not for a continuous period of more than six months **and** whose remuneration is calculated on a daily basis". [Emphasis ours]

From the definition there are three (3) characteristics of a casual worker:

a. the work engaged in is seasonal or intermittent **and**
b. not for a continuous period of more than six months **and**
c. whose remuneration is calculated on a daily basis [Emphasis by us]

The word "**and**" in the definition is conjunctive and neither disjunctive nor mutually exclusive; so all three characteristics should be present to be able call a person engaged in that type of employment a casual worker.

Earlier at page 514 of the record of proceedings, their lordship in determining whether the Plaintiffs were permanent employees said:

> "By relief (b) indorsed on their writ of summons, the Plaintiffs were seeking from the trial Court a declaration that each of them had worked for the defendant for a period of over 6 months and that, having done so, each of them was deemed in law to be a permanent employee of the defendant as at 31st December, 2006. When the trial Court entered judgment for the Plaintiffs **"on all their claims",** therefore, the trial Court was, among other things, declaring that the Plaintiffs had worked for the Defendants for over 6 months and that for that reason, even though they were not permanent workers of the Defendant in fact, the law regarded them as such. But as I have observed above, the Plaintiffs have not been able to state the source of the law that acknowledges a non-permanent

> employee as a permanent employee for the reason that he has worked for over 6 months. Neither did the trial Court cite any such law in its judgment. My own research has not led me to any such law.

With all due respect to their lordships of appeal this conclusion is erroneous having regard to the evidence on record that the Plaintiffs worked continuously for more than 6 months, taking into account the meaning of a casual worker under section 78 of Act 651.

.Even though "the section does not provide for the automatic conversion of such a worker into a permanent worker after his services have been utilised continuously for more than 6 months" as opined by their lordships, it is our considered view that when a worker initially employed as a casual worker and his services is used continuously for a period exceeding 6 months such a worker, is legally under the Labour Act a permanent worker, and thus entitled to all the incidence and protection provided for a permanent worker under the Labour Act.

At any event even if cocoa was a seasonal crop as suggested by the Defendant, the Plaintiffs were not harvesting cocoa on the farms so that their services would be intermittent and seasonal. The Plaintiffs were carriers, loaders etc of dried cocoa beans transported to the Tema harbour for storage into warehouses and unto vessels for export when required.

We take judicial notice of the fact there are two cocoa seasons in Ghana. This aside, there was undisputed evidence that the Plaintiffs worked for a continuous period of more than six months and the work they did was constantly available; as there was always work at the Tema Ports either for them to offload cocoa bags from trucks and stack them into warehouses or move cocoa bags from the warehouses into containers or vessels for export. They did other jobs like mending tarpaulins, sewing cocoa sacks and cleaning.

We are satisfied by the evidence on record that the work the Plaintiffs did, was not intermittent but continuous. We do not think by calculating the remuneration of the Plaintiffs by daily rates alone, is sufficient to term them as casual workers as the other aspects of casual work as defined in section 78 of Act 651 were absent from the work that the Plaintiffs were engaged in.

Upon evaluation of the record of proceedings, we find that these Plaintiffs were engaged continuously for a period exceeding 6 months by the Defendants.

Accordingly upon a proper and purposeful interpretation of the said section 78 of Act 165; we hold that the Plaintiffs are in law not casual workers but were permanent workers and as such entitled to all the protection provided by the labour laws for permanent workers.

In our opinion, to hold otherwise will lead to injustice and also to defeat the protection of workers from exploitation by employers as provided under constitutional and statutory provisions and international labour conventions. Further, such a construction will offend the provisions of section 10(4) of the Interpretation Act, 2009 (Act 792), which mandatorily enjoins the court to construe or interpret a provision of the Constitution or any other law in a manner:

(a) that promotes the rule of law and the values of good governance,
(b) that advances human rights and fundamental freedoms,
(c) that permits the creative development of the provisions of the Constitution and the laws of Ghana, and
(d) that avoids technicalities and recourse to niceties of form and language which defeat the purpose and spirit of the
(e) Constitution and of the laws of Ghana."

We therefore hold that the there is sufficient evidence on record to support the findings of the trial judge that the Plaintiffs were not casual workers but permanent employees

in terms of the Labour Act, Act 651and we will not disturb that finding but set aside the Court of appeal decision on same. The appeal based on this issue therefore succeeds

. ***The issue as to legal effect of the Collective Bargaining Agreement***

Counsel for the Plaintiff submitted that the execution of the CBA and the provisions therein confirmed the permanent status of the Plaintiffs.

Counsel for the Defendant relied heavily *on* ***Dzaisu and Others v Ghana Breweries Ltd*** *[2007- 2008]* SCGLR 539**;** and **Agbesi *and Others v. Ghana Ports & Habours Authority*** [2007-2008] SCGLR 469 to buttress his arguments that the Plaintiffs were engaged as casuals and their position did not change by virtue of the signing of a CBA or being engaged by the Defendant for period exceeding six months as their service was not continuous.

This submission by Counsel for the Defendant is with due respect misplaced as the facts in the appeal before us are clearly distinguishable from ***Dzaisu*** **supra.** The undisputed facts in the ***Dzaisu*** case were that, the plaintiffs were casual workers and were engaged on daily basis at the gate of the company's premises as and when work was available; they were not members of the ICU of TUC of Ghana Breweries Ltd and therefore they were not covered by the CBA in existence***.*** Furthermore article 3 (e) of the CBA expressly stated that: *Apart from casual employees,* no person shall be engaged for more than six months on temporary basis and after six (6) months such person shall be deemed to have become permanent" [The emphasis is ours]. The said article 3 (e) of the CBA was co-terminous with the wording and legal position of section 75 (1) of the Labour Act on temporary workers. So the terms of the CBA expressly excluded the casual workers in ***Dzaisu*** **supra** from the agreement.

Unlike the workers in ***Dzaisu,*** the Plaintiffs herein were the employees and members of the ICU and on whose behalf the ICU (General Secretary) signed the CBA with Defendant. It was expressly stated in the CBA that "Employees" shall apply to all who

classified on classifications specified in this agreement as Cocoa Carriers/ Cocoa Loader/ Sew Bags/ Tarpaulin Handlers.

The Defendant admitted in cross examination that the Plaintiffs worked with them from May 2002 to December 2006 and that none of these Plaintiffs were dismissed until their employment was terminated.

In ***Agbesi supra*** it was not in dispute that the CBA expressly provided for conversion from a casual worker to a permanent worker after working satisfactorily and continuously for a period of 154 days and they were in Court for its enforcement. The situation in ***Agbesi supra*** is also distinguishable from the case before us, as the Plaintiffs before this Court were not seeking conversion to permanent status, their complaint was that from the nature of their work and the continuous period they worked and by the terms of conditions they enjoyed under the CBA, the Defendant ought to have considered them as permanent or in their own words "**deemed in law to be permanent workers**."

When the Court of Appeal was invited to infer from certain provisions of the CBA that the Plaintiffs were permanent employees it was rejected in these words:

> "When I read Exhibit A, I do not find in it any provision that necessarily makes the Plaintiffs or any of them permanent workers. Where a worker is engaged and paid on a daily basis, a provision in his conditions of employment that he would be granted 15 working days of annual leave upon completing 12 months of continuous service could mean that he would be granted such leave if, continuously for twelve months, his casual services were engaged by the Defendant. The provision on annual bonus could be read in the same light; and so could the provision on retiring age. The provision on retiring age could simply mean that upon reaching the retiring age provided for by existing statutory regulations, the worker can no longer offer his services to the Defendant for consideration.

> … As the judgment of the trial Court shows, the trial Court honoured the invitation to draw that inference. I do not however think the trial Court was right in doing so and I will certainly not honour the invitation extended to me in this appeal."

With due respect, the learned justices of appeal misconstrued the provisions of the CBA. In our considered opinion, the proper approach to determine the intention of the parties in the construction of the CBA is by the objective approach. This is by taking into account the entire document, the effect on the parties, the conduct of the parties and the surrounding circumstances. See ***PY Atta & Sons Ltd v Kingsman Enterprise Ltd*** **[2007-2008] 2SCGLR 946** where Brobbey JSC noted at page 965 that:

> No one can tell the intentions of parties. Even the devil, it is said, does not know the state of a man's mind. In conflicting situations like those in the instant case, the process of determining the intentions of the parties should be objective. "Objective approach" in this context, implies the meaning that the words in the document will convey to a reasonable person seized with the facts of the case. In such exercise, the entire document, the effect it has on the parties, the conduct of the parties and the surrounding circumstances will have to be taken into account. The principles were aptly summed up as follows in ***S.A. Maritme et Commerciale of Geneva v Anglo- Iranian Oil Ltd*** [1954] 1 WLR 492 at 496:
>
> > The construction of written instruments is a question of mixed law and fact. The expression 'construction' as applied to a document includes two things: first, the meaning of the words and secondly their legal effect or the effect which is to be given to them

We are persuaded by the weight of authority and reasoning in this approach and would apply it in this case. Articles 7, 21, and 22 of the CBA provided for annual leave with

allowance, compulsory retiring age, and the requirement that an employee gives notice of his intention to resign from the service and all of which were intended for the benefit of the Plaintiffs. These benefits by their nature are not applicable to casual workers but to permanent workers because a contract of casual employment is from day to day and terminates automatically at the close of each day's work as in ***Dzaisu supra.*** A casual worker is not required to give notice to his employer if he/she decides to terminate his contract of employment.

The Plaintiffs contended they worked continuously for twelve months in each year to qualify for annual leave and annual allowance under the CBA and the witness for the Defendant reluctantly admitted during cross-examination that the Plaintiffs qualified to go on annual leave and were paid leave allowances and worked continuously until the CBA and their appointment were terminated.

Reading the CBA as a whole and considering the evidence available on the record and in terms of the Labour Act, it is legitimate for us to conclude and to hold that the Plaintiffs worked as permanent employees of the Defendant.

From the foregoing we hold that the Court of Appeal misconstrued the provisions of the CBA and thereby erred in holding that the Plaintiffs were casual workers. The appeal succeeds on this ground.

Under the terms of the CBA, the Defendant was at liberty to terminate the CBA. However under Act 651 section 105 (3), the expiration or as in this case the termination of a CBA does not terminate the contract of employment which unless otherwise stated in the agreement its provisions continues to apply until new terms are negotiated.

By section 17(1) of Act 651, the Defendant was required to give the Plaintiffs appropriate notice before the termination of their contract of employment. Each Plaintiff had served a period of four and half years, thus under section 17(1) (a) of Act 651, the Plaintiffs were entitled to either one month notice or one month's pay in lieu of notice.

We therefore hold that the termination of the contract of employment by the Defendant without notice was wrongful. The Plaintiffs are therefore entitled to damages.

The claim for damages for breach of the plaintiff's economic rights and discrimination in their relief (a) was based on the fact that they were not paid salaries. We are of the view that the since the Plaintiffs by the CBA agreement were to be daily- rated there is no substance in this complaint. We will therefore dismiss relief (a) and the award of damages granted in that regard. We accordingly affirm the Court of Appeal's decision to dismiss same.

From the forgoing we will allow the appeal in part and set aside the judgment of the Court of Appeal and restore that of the High Court as varied.

Each Plaintiff is awarded as damages for wrongful termination of employment; six times the remuneration paid him as at 31 December 2006.

The amount due is subject to interest at the prevailing bank rate calculated at simple interest from 1st January 2007 to the date of final payment.

S. O. A. ADINYIRA (MRS)
(JUSTICE OF THE SUPREME COURT)

V. J. M. DOTSE
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