IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: PWAMANG JSC (PRESIDING)
DORDZIE (MRS.) JSC
OWUSU (MS.) JSC
LOVELACE-JOHNSON (MS.) JSC
PROF. MENSA-BONSU (MRS.) JSC

CIVIL APPEAL
NO. J4/70/2021

9TH FEBRUARY, 2022

BENJAMIN DUFFOUR ..... PLAINTIFF/APPELLANT/APPELLANT

VRS

BANK OF GHANA ..... DEFENDANT/RESPONDENT/RESPONDENT

JUDGMENT

DORDZIE (MRS.) JSC:-

Facts

The plaintiff/appellant/ herein, was an employee of the defendant/respondent, Bank of Ghana. I will refer to the parties as plaintiff and defendant hereafter.

The defendant allocated its premises, Block F, 2nd Shippi Close East Cantonments to a number of its staff including the plaintiff for their occupation based on a license

agreement. The plaintiff occupied Flat 3 in the said block F. In the year 2011, the bank needed to redevelop the said property; it therefore gave notice to the occupants including the plaintiff to relocate to an alternative accommodation the bank provided. All other staff of the bank who occupied block F moved out as instructed, except the plaintiff. Repeated warning letters were served on the plaintiff requiring him to move out but he refused. He maintained there was a license agreement between him and his employer, the terms of which he claimed entitled him to remain in the flat. After repeated written warnings and sanctions failed to get the plaintiff out of the flat, the defendant physically removed him from the property.

The plaintiff engaged his employers in various legal tussle. The action culminating in this appeal is one of the many actions instituted by the plaintiff against his employer, the Bank of Ghana.

The trial court

The claims of the plaintiff as endorsed in his amended writ of summons are as follows:

a. A declaration that the conduct of defendant bank is in breach of the license agreement between it and plaintiff.
b. A declaration that the defendant bank has acted in breach of the Senior Staff Rules and Conditions of Service.
c. A declaration that the sanctions imposed on the plaintiff is unlawful, illegal and ultra vires.

   c. (i) A declaration that the ejectment of plaintiff was unlawful and wrong.

   c. (ii) A declaration that the dismissal of plaintiff by defendant bank is wrongful, unlawful, ultra vires, and unconstitutional and therefore null and void.

   c. (iii) An order setting aside the dismissal of plaintiff and re-instating the plaintiff with all his benefit, position, emolument or any conditions that goes with his position.
d. An order setting aside the sanctions imposed on plaintiff.

e. Perpetual injunction restraining the defendant herein, their assigns, workers, servants, independent contractors or any person claiming through them from ejecting plaintiff from his official accommodation contrary to the license agreement, particularly pending the final determination of this suit.
f. General damages
   f. (i) Punitive damages

The defendant denied these claims and counter claimed for the following:

a. A declaration that Plaintiff's occupation of Flat 3, Block F, East Cantonments after the deadline for relocation had elapsed, constituted trespass;
b. Mesne profit from April, 2011 to the date Plaintiff was ejected from the flat
c. Damages for trespass;
d. Special damages of GH¢40,000.00 per day, for each day Plaintiff had resided at flat 3, Block F, East Cantonments as a trespasser thereby delaying the hospital project.
e. Cost inclusive of legal fees.

Plaintiff's case

A summary of plaintiff's case is that he was employed by the defendant bank on 7/7/1997 as officer grade 2. At the time of his dismissal, which was 7/3/2014 his position at the bank was deputy manager. His employment with the defendant was governed by Senior Staff Rules and Conditions of Service (Exhibit B).

He occupied one of the defendant's flats located at 2nd Shippi Close Cantonments. His occupation of the flat was governed by a license agreement (Exhibit C).

In January 2011, the defendant served him with notice to vacate the accommodation and be relocated to a different accommodation provided by the defendant.

According to the plaintiff, the defendant's attempt to relocate him from the flat he was occupying was a breach of the terms and conditions of the license agreement between

them. He therefore wrote a petition to the Governor of the Bank in respect of the attempts to eject him from his official bungalow.

His petition was not considered by the Governor but by the Human Resource Department, which dismissed his petition. Handling of the petition by the Human Resource Department according to the plaintiff is a breach of the provisions of the Senior Staff Rules and conditions of Service.

The plaintiff further contends that the defendant followed up with series of letters warning him to vacate the bungalow and imposed sanctions on him for refusal to vacate. Eventually the defendant forcefully ejected him from his official bungalow and summarily dismissed him from their employment.

Plaintiff maintains that his ejection from his official bungalow and the subsequent dismissal from his employment are wrongful and unlawful, contrary to the provisions of the Senior Staff Rules and Conditions of Service of the bank; the Labour Act, 2003(Act 651) and the 1992 constitution of the Republic of Ghana.

Defendant's case

The defendant's position is that the bank decided to redevelop the property at the center of the controversy between the parties, Block F, East Cantonments into a hospital. It therefore served notices on the occupants of Block F, including the plaintiff to relocate to an alternative accommodation the bank had provided for the affected staff. The letter serving the notice was dated 25January 2011; it directed the occupants to vacate the flat by 31March 2012.

The plaintiff refused to vacate the flat after the specified deadline. Several letters were written to the plaintiff instructing him to relocate but he refused to vacate the flat thereby stalling the redevelopment project.

The plaintiff was served with query to explain his act of refusal to vacate the bank's flat to an alternative accommodation provided by the bank. He failed to provide any reasonable explanation. The defendant therefore had no choice but to remove him from

the flat. The defendant took the stance that plaintiff had no proprietary interest in Flat F. His occupation of the said flat was subject to the defendant's consent, which it could revoke at any time subject to reasonable notice to plaintiff. Plaintiff, after he was relocated to an alternative accommodation at Odorkor, embarked on various acts, which contravene provisions of the Senior Staff Rules and Conditions of Service. He absented himself from work without permission and granted interviews in the media. In the said interviews, he maligned the defendant and its employees thereby bringing the name of the bank into disrepute,

Plaintiff's unreasonable refusal to obey instructions to vacate his flat in block F Cantonment stalled the defendant's redevelopment project and caused the defendant serious financial burden. That apart, plaintiff's conduct amounted to gross misconduct; therefore, he was summarily dismissed. His dismissal is justified, therefore, plaintiff is not entitled to any of the reliefs he was seeking in the writ of summons.

After a full trial, the High Court found that plaintiff occupied Flat 3 Block F as a licensee and could be ejected at any time from the premises provided he was given reasonable notice. The license agreement between him and the defendant was not breached in any way by the defendant when it served him notice to relocate. Plaintiff's ejectment from the flat and subsequent dismissal the court found not to be wrongful. It therefore dismissed plaintiff's claims. The trial court granted defendant's counter claims (a), (c) & (e) and awarded it GH₵ 10,000.00 as general damages and cost of GH₵3,000.00 against plaintiff

Court of Appeal

Aggrieved by the decision of the trial Court, plaintiff appealed to the Court of Appeal. The Court of Appeal affirmed the decision of the trial court and dismissed the appeal in its judgment dated 21st November 2019. The plaintiff made a further appeal to this court on the following grounds of appeal:

Grounds of Appeal

a. The Court of Appeal erred when it held that appellant could summarily be dismissed without notice by virtue of Article 13 (b) of the Senior Staff Rules and Conditions of Service (exhibit "B" and) for willful refusal to obey legitimate and reasonable instructions when the ground for the summary dismissal of appellant is stated in exhibit "W" to be as a result of gross misconduct on the part of appellant.
b. The Court of Appeal erred in affirming the decision of the trial High Court which failed to hold that the appellant could not be summarily dismissed on an undefined offence of gross misconduct.
c. The trial High Court and the Court of Appeal erred in failing to hold that the sanction imposed on appellant by respondent bank in exhibit "K" were not in breach of the provisions of the Senior Staff Conditions of Service (exhibit "B") particularly Article 15 and therefore unlawful.
d. The Court of Appeal erred when it failed to hold that the dismissal of Appellant, a public servant contravenes the provisions of Article 191 of the 1992 Constitution by holding that the appellant was dismissed on a just cause.
e. The Court of Appeal erred by breaching Article 19 (7) of the 1992 Constitution in endorsing the summary dismissal of appellant on the ground of the appellant's refusal to vacate his official residence, when appellant had already been punished for his alleged refusal to vacate his official residence.
f. The Court of Appeal erred in affirming the judgment of the trial court that the summary dismissal of appellant was not in breach of Natural Justice of the (audi alterem partem) rule of fair hearing by virtue of Article 13(b) of the Senior Staff Rules and Conditions of Service.
g. The Court of Appeal erred by ignoring the injunctive order restraining the respondent from dismissing the appellant during the pendency of his case "as not being informed by proper legal principle and wrongful exercise of discretion" when the said order had neither been set aside nor was a subject matter of an

appeal before the Court of Appeal and justified the dismissal of appellant contrary to the injunctive order of the trial court.

h. The judgment is against the weight of evidence.

The reliefs plaintiff seeks in this appeal are to set aside the judgment of the Court of Appeal. Plaintiff further seeks that this court sets aside his dismissal and order his reinstatement to the position he occupied in the bank with his salary and benefits restored.

Consideration of the grounds of appeal

From previous decisions of this court, it is a firmly established principle that, decisions of the trial court and the first appellate court that are concurrent in the findings would not be interfered with by a second appellate court unless the appellant demonstrated; not only in the grounds of appeal but the submissions made in support of the grounds of appeal that specific errors were committed by the lower courts that rendered their decisions totally wrong. Some of these cases are **Koglex Ltd. (N0.2) v Feild [2000] SCGLR 175; In Re Okine & Others [2003-2004] SCGLR 582.**In the case of **Gregory v Tandoh IV & Hanson [2010]SCGLR 971,**this court considered the circumstances in which a second appellate court like the Supreme Court could justifiably interfere with the concurrent findings of fact by the lower courts. The court speaking through Dotse JSC numerated these circumstances as follows: ***"First, where from the record of appeal, the findings are clearly not supported by evidence on record and the reasons given in support of the findings are unsatisfactory; second, where the findings of fact by the trial court can be seen from the record of appeal to be either perverse or inconsistent with the totality of evidence led by the witnesses and the surrounding circumstances of the entire evidence on record; third, where the findings of fact made by the trial court are consistently inconsistent with important documentary evidence on record; fourth, where the first appellate court had wrongly applied the principles of law."***

It is the responsibility of an appellant who is seeking a second appellate interference with the concurrent findings of fact of the trial court and the first appellate court to demonstrate that any of the above named circumstances had occurred. In this appeal, the appellant had alleged error on the part of the Court of Appeal in all the grounds of appeal but failed to specify in particular the areas the first appellate court had erred. One would have expected that in arguing the appeal, counsel for the appellant would convincingly lay bare the alleged errors to enable this court easily identify issues that arise thereof for determination. However, the appellant's statement of case is devoid of any such argument. It is circumstances of this nature that led this court per Gbadegbe JSC to express its frustration in the following words in the case of Nantwi & Nantwi v Amenya [2017-2020] SCGLR 972 at 975 "***We think that the time has come for us as part of our responsibility in decongesting the court to develop a mechanism that would truly bear out the rule of wisdom in judicial proceedings regarding the approach to concurrent findings, by for example, requiring appellants to demonstrate clearly by reference to specific instances of error and or blunder inherent in the findings under attack before us both in the grounds of appeal and statement of case."***

All the grounds of appeal except (d), (e) and (h) vaguely allege errors, following the allegation of errors with narratives making it difficult to ascertain the areas of law the attack is being launched at. Grounds (a) (b) and (c) I would say offend Rule 6(2) (f), (4) & (5) of CI 19. The rules read-

"6***(2) A notice of civil appeal shall set forth the grounds of appeal and shall state-***

(f) the particulars of any misdirection or error in law, if so alleged.

(4) The grounds of appeal shall set out concisely and under distinct heads, the grounds upon which the appellant intends to rely at the hearing of the appeal, without any argument. Or narrative and shall be numbered seriatim;

and where a ground of appeal is one of law the appellant shall indicate the stage of the proceedings at which it was first raised.

(5) No ground of appeal which is vague or general in terms or discloses no reasonable ground of appeal shall be permitted, except the general ground that the judgment is against the weight of evidence; and any ground of appeal or any part of it which is not permitted under this rule may be struck out by the Court on its own motion or on application by the respondent.

Technically grounds a, b, and c are not competent. The court has the discretion to strike them out. Even if the court does not strike them out on technical grounds, I very much doubt if they can succeed on merit.

Grounds (a) & (b) are saying the same thing. Evidence on record proved that plaintiff was well informed about the reasons for his dismissal. The warning letters exhibits K, L and Q. served on plaintiff prior to his dismissal made it clear to plaintiff that his refusal to obey directives of his employer constituted gross misconduct. It is therefore absurd, that in the face of these documentary evidence produced by plaintiff himself in his evidence, he would turn round to allege that his dismissal was without a just cause, or that he was summarily dismissed on undefined offence of misconduct as alleged in grounds (a), (b) and (d) of the grounds of appeal. Exhibit K is dated 12 February 2013 and it reads:

"Warning. We acknowledge receipt of your letter dated January 24, 2013 in response to the query dated January 24, 2013 issued to you for your failure to vacate the premises of Block F, East Cantonments and relocate to the Middle Income Group Housing Estate by December 31, 2012.Your response to the query is unacceptable. Your conduct is a breach of Article 10 (i) of the Senior Staff Rules and Conditions of Service which states that: ***"An officer shall conform to and abide by the rules governing his service in the Bank and shall observe, comply with and obey all lawful orders and directives which from time to time may be given him by any person or***

persons under whose jurisdiction, superintendence or control he may for the time being be placed".

Accordingly, you are warned to desist from willfully refusing to obey legitimate and reasonable instruction, which constitutes gross misconduct in the Bank. (Emphasis mine) In this connection, you are advised to vacate the premises by February 28, 2013, failure of which the Bank will take stiffer action against you. It must be emphasized that the Bank's residential facilities are essentially a welfare scheme that offers temporary accommodation to needy members of staff. It is therefore not a right. It is also governed by a license agreement the terms of which should be mutually observed by the licensor and licensee. Consequently, in line with the Bank's practice regarding "Warning", you will forfeit the annual bonus for 2013, should the Bank decide to award any bonuses for this year.

Your promotion will be frozen for a period of one (1) year.

You will lose the annual salary increment for 2014."

Exhibit "L" is dated 17 February 2014, it is a repetition of the warning in Exhibit K, again reminding plaintiff that his continuous disobeying lawful instructions and directives of his employer amounted to gross misconduct.

Exhibit Q, dated 28 February 2014 is yet another of the letters cautioning plaintiff of the consequences of his behavior. Exhibit Q further adds that his refusal to obey lawful orders and directives of his employer is a misconduct under Part III (ii) K of the Code of Conduct for the staff of Bank of Ghana. Thus, there is sufficient evidence supporting the finding that plaintiff's dismissal is for a just cause. In the circumstances, grounds (a), (b), and (d) of the grounds of appeal have no merit, they are hereby dismissed.

In respect of ground (c), by my understanding of this ground, the appellant is alleging that the sanctions imposed on him by the defendant in exhibit "K" are unlawful. I have fully quoted exhibit "K" supra. The concluding paragraphs of Exhibit K is significant, it says "consequently, in line with the bank's practice regarding "warnings". Warning in

this context to my understanding is a practice of the bank and has nothing to do with Article 15 of the Senior Staff Rules and Conditions of Service regarding warnings.

The undisputed facts of the plaintiff's conduct is that he had grossly misconducted himself and would have been summarily dismissed but the bank had been very magnanimous towards him, relying on a practice of the bank to prompt him to do what was expected of him to avoid dismissal. This is a kind gesture on the part of the defendant. The two lower courts committed no error, for Article 15 of the Senior Staff Rules and Conditions of Service had not been breached in anyway.

It is worth commenting that plaintiff's conduct leading to this action is based on his misconception that the license agreement between him and the defendant gave him the legal right to remain in the flat irrespective of the notice to him revoking the license.

The legal issue that arose from exhibit C the license agreement therefore was whether the licensor could terminate the agreement at will or not. The Court of Appeal made a good exposition of the law on the issue and came out with a sound conclusion, which we endorse.

The Court of Appeal Per Kusi Appiah JA, in dealing with the plaintiff's contention that he had a valid subsisting license agreement with the defendant to stay in the flat; the defendant therefore could not eject him, raised the following questions in the judgment of the court. *"Did the license agreement between the parties herein create any proprietary interest in the land on the licensee? Did the contract license granted the plaintiff create a grantee of an interest in land? Was the license not revocable at the will of the Licensor provided the Licensee is given reasonable time to remove himself and his property after the license is revoked?"* The court continued by saying, *"These are questions the plaintiff ought to have addressed to enable the court place some weight on his version…… Suffice to say that the law is clear beyond argument that a license is a permission given by a proprietor of land or of an interest in land which allows the licensee to do certain acts in relation to the land which would otherwise be a trespass."* The learned jurist then made reference to ***Section 139 of the Land Title***

Registration Law, 1986 (PNDC 152) and the case of Quagraine vrs Adams [1981] GLR 599 where the Court of Appeal held that *"…. A licensee is entitled to a reasonable time in which to remove himself and his property after the license was revoked. This is so whether the license was gratuitous or contractual".*

The Court of Appeal made findings on the issues and held that *"Guided by the above principle of law, I find that the plaintiff was a contractual licensee of the defendant Bank which license conferred no title or interest in the land to him a Licensee. Consequently, the license agreement between the parties herein created merely a personal obligation on the part of the defendant Licensor to allow the plaintiff Licensee to occupy the premises where possible and not indefinitely while in the employment of the defendant bank."*

The first appellate court aptly stated the law on the license agreement plaintiff relied on to remain in defendant's accommodation. The plaintiff was a licensee of the defendant; the license was revoked by the defendant per the letter dated 25 January 2011. His continued stay in the flat after 31 March 2012 was unlawful. Plaintiff's refusal to vacate the flat was very unreasonable particularly when he was offered an alternative accommodation and his continued stay in the flat obstructed the defendant's redevelopment project.

Ground (e) is a clear misconception of article 19(7) of the 1992 Constitution of the Republic of Ghana, the article reads ***"No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted, shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for the offence, except on the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal."***

This suit has nothing to do with any criminal trial involving the plaintiff. Article 19 (7) of the Constitution has no bearing on this case. Ground (e) fails and it is hereby dismissed.

By ground (f) plaintiff contends his summary dismissal was wrongful because he was not given a hearing, in other words the audi alteram partem rule of natural justice was breached. It appears plaintiff lost sight of what summary dismissal entails per the provisions of Article 13(b) of the Senior Staff Rules and Conditions of Service, the document that governs his employment relationship with the defendant. Article 13 (b) provides "The bank may without notice or with salary in lieu of notice dismiss an officer on any of the following grounds:

1. Dishonesty,
2. Fraud,
3. Willful refusal to obey legitimate and reasonable instructions,
4. Gross misconduct,
5. Gross negligence of duty."

Thus, the bank could dismiss the defendant without notice once there is proof of the offences listed in article 13 (b).

There is ample evidence on record that plaintiff willfully refused to obey legitimate and reasonable instructions of his employer, he grossly misconducted himself as well. He was given a query to explain his misconduct. His answer to the query was found to be unsatisfactory, this was drawn to his attention and warning letters were served on him to desist from the misconduct. He paid no head to these warnings. The penalty is summary dismissal. The query was an opportunity given him to explain why he was wilfully disobeying lawful orders of his employer. Subsequently he was notified by several letters to desist from the offending conduct or face dismissal. Plaintiff cannot be heard to complain about not being given a hearing. The bank had a just cause to dismiss him summarily. There is no merit in ground (f) as well and it is hereby dismissed.

Ground (g) is based on misstatement of facts. From the facts on record, I do not find the restraining order granted by the High Court to be an injunction order restraining dismissal of the plaintiff. The order is dated 20 May 2013 and marked exhibit M1. It

restrained the defendant from instituting any disciplinary proceeding against the plaintiff but specifically refused the plaintiff's prayer to restrain the defendant from ejecting him while the case was pending. Plaintiff confirmed this in cross-examination (see page 365E of the record of appeal) The Court of Appeal and the Supreme Court found the defendant to be in contempt of court when the defendant was ejected and dismissed while the case was pending. Both courts however did not make any pronouncement on whether the dismissal was wrongful or not. In fact, the Supreme Court specifically stated that it would refrain from discussing the merits of the plaintiff's summary dismissal. It is therefore very misleading to argue as counsel for the plaintiff did that this court and Court of Appeal have found in the case of Ex Parte Benjamin Duffour that the plaintiff was unlawfully dismissed. If indeed lawfulness or otherwise of his dismissal had been determined in the said case the plaintiff would not have instituted this action.

The Court of Appeal indeed commented that the order restraining the defendant from putting plaintiff before any disciplinary committee pending the determination of a suit before it, by the High Court in an earlier suit was wrong, in that, it sought to introduce new terms into the contract between plaintiff and his employer. The Court of Appeal found that the said order was not based on any proper legal principles therefore amounts to wrongful exercise of discretion on the part of the High Court. If plaintiff found this to be a wrong statement of the law on the part of the Court of Appeal, he has the duty to point out what constitutes the error on the part of the Court Appeal for our consideration. This ground is very vague and ought to fail.

The final ground, (h) is that the judgment is against the weight of evidence. The facts upon which the two lower courts made their findings and came to their concurrent conclusions were not in much contention. In fact, the evidence both documentary and oral upon which findings were made were produced by the plaintiff. That there was a license agreement between the parties, which backed the plaintiff's occupation of Flat 3 Block F Cantonments, was not in controversy. Exhibit C, which is a copy of the said agreement, was tendered by plaintiff. In arguing this ground, the appellant has failed to

point out the evidence that was wrongly applied or not applied at all that led to the appeal being determined against him. On the other hand, it is our view that the trial court and the first appellate court made findings of both fact and law based on the evidence before it. There is sufficient evidence that Exhibit C the license agreement that authorized plaintiff's stay in Flat 3 Block F Shippi Close East Cantonment was revoked upon sufficient notice to him. Irrespective of an offer of an alternative accommodation to him by his employer, plaintiff stayed in the said flat unlawfully for over two years. Such conduct constituted gross misconduct entitling defendant to summarily dismiss plaintiff in accordance with the provisions of the Senior Staff Rules and Conditions of service. This court has no justifiable cause to interfere with the judgment of the first appellate court. The appeal lacks merit, it is dismissed in its entirety, the decision of the Court of Appeal is hereby affirmed,

A. M. A. DORDZIE (MRS.)
(JUSTICE OF THE SUPREME COURT)

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

M. OWUSU (MS.)
(JUSTICE OF THE SUPREME COURT)

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