IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2019

CORAM: BAFFOE-BONNIE, JSC (PRESIDING)

GBADEGBE, JSC

PWAMANG, JSC

DORDZIE, JSC

KOTEY, JSC

CIVIL APPEAL
NO. J4/71/2018

21ST MARCH, 2019

CHARLES AFFRAN ... PLAINTIFF/RESPONDENT/APPELLANT

VRS

SG-SSB LIMITED ... DEFENDANT/APPELANT/RESPONDENT

JUDGMENT

KOTEY, JSC:-

This appeal is taken against the judgement of the Court of Appeal, which judgment reversed a judgment of the trial High Court.

By a unanimous decision, the Court of Appeal allowed in part an appeal filed by the Defendant/Appellant/Respondent (hereinafter the Defendant) against the decision of

the High Court entered in favour of the Plaintiff/Respondent/Appellant (hereinafter the Plaintiff).

Facts

A brief background of the events leading to these proceedings would be necessary for a better appreciation of the issues raised in this appeal.

The Plaintiff was the Deputy Branch Manager of the Defendant bank's Tema Fishing Harbour Branch. The Plaintiff was presented with two transfer request letters from Emefs Construction Limited, a customer of the Defendant, for the transfer of £32,400 and £82,364 to a customer of Emefs Construction Limited. The Plaintiff signed against the signatures on the transfer request letters and forwarded them to the International Business Centre (IBC) of the Defendant bank which deals with foreign transfers. After the IBC had completed its processes, it approved the request and duly transferred the said sums of £32,400 and £82,364 to the named beneficiary.

It subsequently transpired that the signature on the transfer request letters was a forgery and the Defendant bank was unable to recover the amounts transferred and thereby lost the £114,764.

The Defendant bank then charged the plaintiff with negligence in the verification of the signature on the transfer request letters. It contended that it was the responsibility of the Plaintiff to verify the signatures on the transfer request letters with the signatures and mandates in the Defendant Bank's Core Banking System (Flexcube), that the Defendant failed to do this diligently, and that this set in motion the sequence of events that led to the wrong transfer and loss of the sum of £114,764.

The Defendant denied it was his sole responsibility, as Acting Branch Manager, to verify the signatures on the transfer request letters. He further contended that he had in fact verified the signatures on the transfer request letter before stamping and signing the transfer request letters.

After an internal (house) process, the Defendant bank terminated the employment of the Plaintiff. The Plaintiff sued the Defendant for wrongful and unlawful termination of unemployment.

The Plaintiff per his Writ of Summons and accompanying Statement of Claim, claimed against the Defendant as follows:

(a) A declaration that the Plaintiff was not negligent or incompetent when he verified the signature on the transfer letter from Emefs Construction Limited.
(b) An order for reinstatement as a Deputy Manager of the Defendant Bank or alternatively payment of accumulated salary from the date of termination of appointment including all the benefits that would have accrued to him if he was still in employment, leave allowance, clothing allowance and any other allowance that would have been entitled to within the period.
(c) Payment of general damages in the sum of One Hundred Thousand Ghana Cedis (GHS 100,000) for wrongful and unlawful termination of employment.
(d) Payment of adequate compensation for embarrassment, pain and loss that the Plaintiff suffered as a result of defendant's actions and inactions.
(e) Interest on all monies that will be adjudged to be due him from the day it became due.
(f) Cost including Solicitors fees.

At the conclusion of the trial, the High Court entered judgement for the Plaintiff. The Court held that the Defendant had wrongfully and unlawfully terminated the employment of the Plaintiff and awarded damages against the Defendant.

The trial High Court held that it was not satisfied that the Plaintiff had been negligent in the verification of the signatures on the transfer request letters and that it was the IBC that had approved and authorized payment.

The Defendant being dissatisfied with the judgement of the trial High Court appealed to the Court of Appeal. The Court of Appeal allowed the Defendant's appeal and set aside the judgement of the High Court.

The Court of Appeal held that on the evidence adduced at the trial it was satisfied that it was the responsibility of the Defendant to verify the signature on the transfer request letters. The Court also held that the Defendant had been negligent in his verification of the signatures on the transfer request letters. The Court further held that the employment of the Plaintiff had not been terminated unlawfully or wrongfully as he had been negligent in the performance of his duty and the termination was in accordance with the terms of his contract of employment and the Labour Act, 2003 (Act 651).

Grounds of Appeal

Aggrieved by the decision of the Court of Appeal the Defendant lodged an appeal to this Court on the following grounds;

a. The decision of the Court dated 14/12/17 was against the weight of the evidence before the Court.

b. The Court of Appeal failed to analyze and evaluate the entire evidence placed before it particularly the established internal procedures for transfer of money and exhibit 'P'.

c. The Court of Appeal erred when it held that the termination was not wrongful.

Decision of Court of Appeal Against Weight of Evidence and Failed to Analyze and Evaluate the Entire Evidence.

Grounds (a) and (b) were argued together. They claim that the decision of the Court of Appeal was against the weight of the evidence adduced at the trial and failed to analyze and evaluate the entire evidence.

These grounds of appeal therefore raise two issues relating to:

i. Verification of the signatures on the transfer request letters, and;

ii. Authorization and approval for payment by the IBC.

Verification of Signature

This issue may be divided into two;

a. Who is responsible for the verification of the signatures on the transfer request letters, Exhibit 'A' and 'A1'?

b. Were the signatures on the transfer request letters Exhibit 'A' and 'A1' properly verified in accordance with existing protocol?

Responsibility for Verification of signature

The Plaintiff admitted receipt of the transfer request. He also admitted stamping and signing the transfer request letters. He, however, sought to down play his role in the verification of the signatures. He described his role as "only a mere acceptance procedure".

This was contradicted by the Defendant who contended that the Plaintiff, as Branch Manager, was responsible for the verification of the signatures on the transfer request letters.

The Plaintiff sought to shift responsibility for the verification of the signature on the transfer request letters from himself to the IBC. This was disingenuous. The Plaintiff failed to indicate what the responsibility of the Branch Manager is when a transfer letter is lodged at his branch. He also failed to indicate what his signature and stamp on the transfer request letters was attesting to. The better evidence from Exhibit 'F', "Operating Procedure For Handling Request For Import By Direct Transfer and Payment" is that the branch manager is responsible for verification of the signature. If the manager is satisfied that the signature on the letter tallies with what is the in

Flexcube he then signs and stamps the transfer request letter and forwards it to the IBC for further action. Verification of the signature is therefore the responsibility of the Plaintiff.

Where, as in this case, the Plaintiff as Branch Manager has verified the signatures on the transfer request letters, the IBC does no further verification of the signature, but proceeds with other approval requirements. The role of the IBC is, by paragraph 6.4 of Exhibit 'F' to "ensure that the signature has been verified by the Branch". In fact, the evidence is that the Flexcube system available at the IBC did not contain the signatures of account holders. It is where a branch manager, does not or is unable to verify a signature, that the IBC will take further action in relation to verification of the signature as per paragraph 6.5 of Exhibit F.

Having regard to the evidence led, we are wholly in agreement with the learned trial judge that the evidence showed that it was in fact the plaintiff's duty to verify exhibits 'A' and 'A1' and not, as he contended, the responsibility of the IBC.

The Court of Appeal found on this matter, at page 14 that;

"The Plaintiff's case that the matter of verifying signatures did not rest with him but with the IBC was contradicted by Plaintiff's document exhibit 'F' the document titled 'Operating Procedure for Handling request for import by Direct Transfer and Payment'. That document was quite unequivocal that the verification of signatures was to be done at the level (Paragraph 6.4). While the IBC staff were to ensure that signatures were correct (Paragraph 6.5 and 6.6), it did not, in the face of clear instructions of paragraph 6.4, relieve the Branch Manager (the plaintiff who was a Deputy Manager was in charge of the Branch at the material time), of his responsibility to do the verification".

On the preponderance of the evidence adduced at the trial, it is our considered view that the trial High Court and the Court of Appeal were right in finding that responsibility for the verification of the signatures on the transfer letters lay with the Plaintiff and not the IBC.

Did the Plaintiff Verify the Signatures on the Transfer Request Letters according to existing Protocol?

The plaintiff gave evidence before the House Committee that Emefs Construction Limited had three signatures in the system when in fact it had only one. The evidence is to the effect that the Plaintiff did not verify the signatures on the transfer letters with the signature in the Flexcube system. The Plaintiff conceded that he used signatures on other letters from Emefs Construction Limited to verify the signatures on the transfer letters, Exhibits 'A' and 'A1'. This was contrary to existing protocol and wrongful.

On the preponderance of the evidence, the Court of Appeal was right in holding that the Plaintiff did not verify the signatures on the transfer request letter according to established protocol.

We therefore dismiss grounds (a) and (b) of the appeal and affirm the decision of the Court of Appeal that it was the responsibility of the Plaintiff to verify the signatures on Exhibits 'A' and 'A1' and that the Plaintiff failed to do so in accordance with existing protocol.

"Wrongful Dismissal" and /or "Unlawful Termination"

Ground C of the grounds of appeal is that "the Court of Appeal erred when it held that the termination was not wrongful. This raises the question of whether the termination of the Plaintiff's employment was "wrongful" and/or "unfair".

Wrongful Dismissal

The trial High Court had held that the Plaintiff's employment was unfairly terminated as it was in contravention of section 62 of the Labour Act, 2003 (Act 651).

The Court of Appeal reversed this finding and held that the termination of the Plaintiff's employment was not wrongful or unlawful but was in accordance with his contract of employment. The Rules and Conditions of Service, Exhibit 'G' provide in Section 12.0

that; "Either party i.e. the employee or the bank may terminate the Contract of Employment by giving the other party a month's salary in lieu of notice". The Court further held that the termination of the employment of the Plaintiff was not in violation of Act 651.

The termination of the Plaintiff's employment was by a letter, Exhibit 'D'. It stated that the Plaintiff's actions amounted to gross negligence and that his employment was being terminated in accordance with section 12 of Exhibit 'G'.

We agree with the Court of Appeal that "the respondent's admission of failure to use the Flexcube , which was the Defendant bank's protocol for the verification of signatures, supported the claim of negligence or incompetence in the performance of his duty as contained in this letter of termination."

We have already held that the Plaintiff was negligent in the performance of his duty to verify the signatures on the transfer request letters. Section 11.4 of Exhibit G, titled "Rules and Conditions of Service" provides that the Bank shall dismiss an employee after the appropriate procedure has been followed. The dismissed shall be as a result of violation and breach of these Rules and Conditions, the Code of Conduct and for just and reasonable cause involving dishonesty, willful refusal to obey legitimate and reasonable instructions, negligence of duty and gross misconduct.

But an employer is not really required to give any reasons for the termination. Once the employer complied with section 12 of the Rules and Conditions of Service by giving either one month's notice in writing or one month's salary as lieu thereof, then the termination is not wrongful. In Kobea & Ors v. Tema Oil Refinery [2003-2004] SCGLR 1033, per Dr Twum JSC at 1039 stated;

"At common law, an employer and employee are free and equal parties to the contract of employment. Hence either party has the right to bring the contract to an end in accordance with his terms. Thus an employer is legally entitled to terminate an employee's contract of employment whenever he wishes and for whatever reasons, provided only that he gives due notice to the employee or pay him his wages in lieu of

the notice. He does not even have to reveal his reasons much less to justify the termination."

The termination of the Plaintiff's employment also complies with the general provisions of the Labour Act, 2003 (Act 651) governing the termination of employment. Sections 15 and 17 of Act 651 provide that;

15. Grounds for termination of employment

A contract of employment may be terminated,

(a) by mutual agreement between the employer and the worker;

(b) by the worker on grounds of ill-treatment or sexual harassment;

(c) by the employer on the death of the worker before the expiration of the period of employment;

(d) by the employer if the worker is found on medical examination to be unfit for employment;

(e) by the employer because of the inability of the worker to carry out work due to

i. Sickness or accident; or

ii. the incompetence of the worker; or

iii. the proven misconduct of the worker.

17. Notice of termination of employment

(1) A contract of employment may be terminated at anytime by either party giving to the other party,

(a) in the case of the contract of three years or more, one month's notice or one month's pay in lieu of notice.

(b) In the case of a contract of less than three years, two weeks' notice or two weeks' pay in lieu of notice; or

(c) In the case of contract from week to week, seven days' notice.

(2) A contract of employment determinable at will by either party may be terminated at the close of any day without notice.

(3) A notice required to be given under this section shall be in writing.

(4) The day on which the notice is given shall be included in the period of notice.

The letter of termination, Exhibit 'D' stated that the action of the Plaintiff amounted to gross negligence and that he was being terminated pursuant to section 12 of Exhibit 'G' which provided that "Either party i.e the employee or the Bank may terminate the contract of employment by giving the other a month's notice or a month's salary in lieu of notice". The termination of the employment of the Plaintiff therefore complied sections 15 and 17 of Act 651.

We therefore affirm the decision of the Court of Appeal that the Plaintiff's employment was not wrongfully terminated.

Unfair termination

The provisions relating to "fair" and "unfair" termination of employment are contained in sections 62 and 63 of Act 651 which provide that;

62. Fair termination

A termination of a worker's employment is fair if the contract of employment is terminated by the employer on any of the following grounds:

(a) that the worker is incompetent or lacks the qualification in relation to the work for which the worker is employed;

(b) the proven misconduct of the worker;

(c) redundancy under section 65;

(d) due to legal restrictions imposed on the worker prohibiting the worker from the performing the work for which the worker is employed.

63. Unfair termination of employment

(1) The employment of a worker shall not be unfairly terminated by the worker's employer.

(2) A worker's employment is terminated unfairly if the only reason for the termination is

(a) that the worker has joined, intends to join or has ceased to be a member of a trade union or intends to take part in the activities of the trade union;

(b) that the worker seeks office as, or has acted in the capacity of, a workers' representative;

(c) that the worker has filed a complaint or participated in proceedings against the employer involving alleged violation of this Act or any other enactment;

(d) the worker's gender, race, colour, ethnicity, origin, religion, creed, social, political or economic status;

(e) in case of a woman worker, due to pregnancy of the worker or the absence of the worker from work during maternity leave;

(f) in the case of a worker with a disability, due to the worker's disability;

(g) that the worker is temporarily ill or injured and this is certified by a recognized medical practitioner;

(h) that the worker does not possess the current level of qualification required in relation to the work for which the worker was employed which is different from the level of qualification required at the commencement of the employment; or

(i) that the worker refused or indicated an intention to refuse to do work normally done by a worker who at a time was taking part in a lawful strike unless the work is necessary to prevent actual danger to life, personal safety or health or the maintenance of plant and equipment.

(3) Without limiting the provisions of subsection (2), a worker's employment is deemed to be unfairly terminated if with or without notice to the employer, the worker terminates the contract of employment

(a). because the ill-treatment of the worker by the employer, having regard to the circumstances of the case, or

(b). because the employer has failed to take action on repeated complaints of sexual harassment of the worker at the workplace.

(4) A termination may be unfair if the employer fails to prove that,

(a). the reason for the termination is fair, or

(b). the termination was made in accordance with a fair procedure or this Act.

Section 64 then provides that;

64. Remedies for unfair termination

(1) A worker who claims that the employment of the worker has been unfairly terminated by the worker's employer may be present a complaint of the commission.

(2) If on investigation of the complaint the Commission finds that the termination of the employment is unfair, it may

(a) order the employer to re-instate the worker from the date of the termination of employment;

(b) order the employer to re-employ the worker, in the work for which the worker was employed before the termination or in any other reasonably suitable work on the same terms and conditions enjoyed by the worker before the termination; or

(c) order the employer to pay compensation to the worker.

"Unfair termination", as distinct from the common law concept of "wrongful dismissal", is therefore a creature of statute, currently the Labour Act, 2003 (Act 651).;

The Plaintiff in this case did not sue for "unfair termination" but "wrongful dismissal". As the Court of Appeal noted, "the plaintiff's suit was grounded on wrongful termination yet the learned trial judge failed to make such a finding, but rather held that his employment was unfairly terminated in that it sinned against S.62 of the Labour Act, 2003 (Act 651)".

We hold that the trial Court erred when it failed to consider whether the Plaintiff's employment had been wrongfully terminated under the terms of his contract of employment. This was required of the trial High Court as an initial first step. This failure was a grievous error. There was no basis for the trial High Court's holding that; "I believe that the Plaintiff's appointment was terminated under section 62".

As we have noted, the letter of termination Exhibit D stated quite clearly that the Plaintiff's employment was being terminated under his contract of employment and pursuant to section 12 of the Rules and Conditions of service, Exhibit G.

The trial High Court's holding that the termination of the Plaintiff's employment was in violation of the Labour Act, 2003 (Act 651) is therefore untenable as this is not an action for "unfair termination".

Furthermore, under section 62 the termination of a worker's employment is fair if the contract of employment is terminated by the employer because the worker is incompetent. We therefore hold that the termination of the Plaintiff's employment was not "unfair" in terms of Act 651 as the Plaintiff was incompetent in the performance of his duty.

Conclusion

In the result, we would dismiss all the Plaintiff's grounds of appeal. The appeal is accordingly dismissed in its entirety as being without any merit.

PROF. N. A. KOTEY
(JUSTICE OF THE SUPREME COURT)

BAFFOE-BONNIE, JSC:-

I agree with the conclusion and reasoning of my brother Prof. Kotey, JSC.

P. BAFFOE-BONNIE
(JUSTICE OF THE SUPREME COURT)

GBADEGBE, JSC:-

I agree with the conclusion and reasoning of my brother Prof. Kotey, JSC.

N. S. GBADEGBE
(JUSTICE OF THE SUPREME COURT)

PWAMANG, JSC:-

I agree with the conclusion and reasoning of my brother Prof. Kotey, JSC.

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

DORDZIE (MRS.), JSC:-

I agree with the conclusion and reasoning of my brother Prof. Kotey, JSC.

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

COUNSEL

GORDON C. AKPADIE FOR THE PLAINTIFF/RESPONDENT/APPELLANT.

NII ARDAY WONTUMI FOR THE DEFENDANT/APPELLANT/RESPONDENT.