IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2018

CORAM: DOTSE, JSC (PRESIDING)

YEBOAH, JSC

BAFFOE-BONNIE, JSC

APPAU, JSC

PWAMANG, JSC

CIVIL APPEAL
NO. J4/41/2017

16TH MAY, 2018

1. GODSON AWORTWI DADZIE ….. 1ST PLAINTIFF/RESPONDENT/APPELLANT
   H/NO. WL 171/1 KASOA
   CENTRAL REGION

2. PHILIP NYATUAME …… 2ND PLAINTIFF/RESPONDENT/APPELLANT
   H/NO 2 GBAWE
   ACCRA

VRS

BARCLAYS BANK OF GHANA LIMITED …… DEFENDANT/APPELLANT/RESPONDENT

BARCLAYS HOUSE
HIGH STREET, ACCRA

JUDGMENT

DOTSE, JSC:-

This judgment is premised upon an appeal lodged by the Plaintiffs/Respondents/Appellants, hereafter Plaintiffs, against the unanimous judgment

of the Court of Appeal dated the 14th day of July 2016 which allowed in part an appeal lodged by the Defendants/Appellants/Respondents against the decision of the High Court, Accra dated the 2nd day of July 2014.

BRIEF FACTS

The facts in this case admit of no controversy whatsoever. Following the dismissal of the Plaintiffs from their employment with the Defendant which they considered as wrongful and unlawful, the Plaintiffs commenced an action against the Defendants in the High Court, Accra claiming the following reliefs:-

a. "A declaration that the Plaintiffs purported dismissal on 12th May 2008 was wrongful and unwarranted.

b. An order upon the Defendants to pay to the Plaintiffs all their end of service and accumulated entitlements.

c. Another order upon the Defendants to pay damages to the Plaintiffs for wrongful dismissal.

d. Any other or further reliefs as the Honourable Court may deem fit."

DECISION OF THE HIGH COURT

After a full scale trial, the learned trial High Court Judge on the 2nd day of July 2014 rendered it's decision in favour of the Plaintiffs herein. The decision of the High Court is stated briefly as follows:-

> *"In our present case, the evidence established that Godson Awortwi Dadzie has worked in the employment of the Defendant bank for 29 years whilst Philip Nyatuame worked for almost 24 years before their unlawful dismissal. Guided by the above stated principle, I hold that each Plaintiff shall be entitled to*
>
> ***(a) all his salaries calculated from the date of his interdiction i.e. 31/01/2008 to the date of judgment***

(b) all his end of service awards calculated from the date of interdiction till date of judgment, and

(c) Payment of three months salary in lieu of proper notice."

"Additionally, the 1st Plaintiff is awarded GH¢20,000.00 general damages for prospective loss of promotion and loss of employment. The 2nd Plaintiff is entitled to GH¢15,000.00."

"The unchallenged evidence is that Philip Nyatuame was a senior staff and was the deputy to the 1st Plaintiff at the Koforidua Branch at the time. He had also worked for 24 years before his summary dismissal. Plaintiffs cost assessed at GH¢6,000.00".

APPEAL AGAINST THE HIGH COURT DECISION TO THE COURT OF APPEAL AND IT'S DECISION THEREIN.

Aggrieved and dissatisfied with the judgment of the High Court, the Defendants herein, therein Appellants appealed against the High Court decision to the Court of Appeal on four (4) grounds of appeal.

However, during the reception of arguments in the Court of Appeal, the Defendants herein abandoned their challenge to the decision of the High Court which declared the dismissal of the Plaintiff's herein, therein Respondents as wrongful and unlawful.

Instead, the Defendants focused their arguments on the computation of the awards of salaries and damages to the Plaintiffs.

On the 14th of July 2016 the Court of Appeal unanimously upheld the appeal of the Defendants herein and accordingly substituted the awards made by the learned trial High Court Judge with an award of two years salary as damages for wrongful dismissal for each of the Plaintiffs herein.

APPEAL TO THE SUPREME COURT

Quite unexpectedly, the Plaintiffs felt aggrieved against the judgment of the Court of Appeal and lodged an appeal against the said judgment to the Supreme Court with the following as the grounds of appeal.

1. The Court erred by failing to properly evaluate the peculiar facts of the Plaintiffs/Respondents/Appellants case when it only awarded Plaintiffs/Respondents/Appellants the equivalent of two years' salary of their pay as at the date of dismissal as general damages.

2. The judgment is against the weight of evidence on record."

STATEMENTS OF CASE OF THE PARTIES

We have perused the statements of case filed for and on behalf of the parties by learned counsel for the Plaintiffs, Seyram Darbi and for the Defendants, Maxwell Korbla Logan respectively.

BY THE APPELLANTS

The Plaintiffs premised their statement of case on the principle that damages follow an action for wrongful termination of employment. In this respect, learned counsel for the Plaintiffs referred to the following cases which form the bedrock of the legal regime in such cases.

1. Bani v Maersk Ghana Limited [2011] 2 SCGLR 796 at 801

2. Klah v Phoenix Insurance Co. Limited [2012] 2 SCGLR 1139 at 1153

3. Ashun v Accra Brewery Limited [2009] SCGLR 81, at 85

4. Nartey-Tokoli and Others v VALCO [1978-88] 2 GLR 532

5. Kobi v Ghana Manganese Co. Ltd. [2007-2008] 2 SCGLR 733

6. Akuffo v Issaka [1966] 1 GLR 773 SC

7. Akorful v State Housing Corporation [1991] 2 GLR 348

8. See also the case of Hadley v Baxendale (1854) Ex. 341 at 354 – 355

It must be observed that, the principle involved in all the above cases is that, in assessing damages for wrongful dismissal, a court must have regard to all the surrounding circumstances and consider what is fair and reasonable. In the view of learned counsel for the Plaintiffs it is wrong to consider any lower or upper limit as the basis for any award. In essence, whilst the courts have used various indicators in awarding the damages in the cases referred to supra, ranging from one year, to 15 months, two years, etc, the guiding principles remain the same, i.e. as espoused in the cases supra. In addition, each case must be considered on its peculiar facts.

On the basis of the above, learned counsel for the Plaintiffs argued that the Court of Appeal did not take into consideration the surrounding circumstances of each case principle but rather just applied the upper limit of two years. Learned counsel therefore urged this court to vary the said awards by considering all the special surrounding circumstances and enhance the awards granted the Plaintiffs by the Court of Appeal.

BY THE DEFENDANTS

The brief but incisive arguments of learned counsel for the Defendants, Maxwell Korbla Logan is to the effect that, whilst a contract of employment is terminable, even if it is done wrongfully, that phenomenon does not entitle the aggrieved party the right to be paid his salary till his retirement age. See case of ***Ashun v Accra Brewery Limited*** already referred to supra.

As a matter of fact, as was conceded to by learned counsel for the Defendants, the issues involved in the determination of this case turns purely on legal arguments.

It is therefore not surprising that most of the cases referred to by leaned counsel for the Plaintiffs had been referred to by the learned counsel for the Defendants as well.

The only case not mentioned supra is that of ***Ghana Cocoa Marketing Board v Agbettoh [1984-86] 1 GLR 122***.

Learned counsel for the Defendants made references to the facts which the Plaintiffs relied upon to found their claim for special circumstances and therefore an enhanced award and debunked such a reliance.

Learned counsel for the Defendants claimed that the Plaintiffs did not show by evidence the efforts if any made by them to mitigate their losses by finding alternative employment.

After a review of all the locus clasicus cases referred to supra in this delivery, learned Counsel for the Defendants concluded that those cases rather re-inforce the contention that the duration of the award of damages is not open ended but always curtailed by the courts as was done in the Ashun v Accra Brewery and Klah v Phoenix Insurance cases supra just to mention a few.

On the basis of the above submissions, learned Counsel for the Defendants urged upon this court to dismiss the appeal.

DECISION OF THIS COURT

We have reviewed the entire record of proceedings in detail. We have also reviewed the judgments of the trial High Court and especially that of the Court of Appeal.

In our very brief elaboration of the reasons why we have taken the decision in this case, it is perhaps important to also consider why the Plaintiffs have mounted this appeal against the Court of Appeal decision. We have already mentioned supra the concerns of the plaintiffs that it was wrong for the Court of Appeal to have limited the award of two years salary as damages for their wrongful dismissal because it is insufficient and does not take into consideration the surrounding and entire circumstances of this case.

What then are these circumstances? In the statement of case of the Plaintiffs, learned counsel therein outlined the following as some of these special circumstances that the Court of Appeal failed to consider.

1. That the Appellants were arrested by the Police and their statements taken.

2. That the suit herein took 5 years to complete in the year 2014.

3. That the Plaintiffs who were fairly senior level staff in the banking industry and who were dismissed on grounds of dishonesty might find it difficult to obtain alternative employment in that industry.

4. That between 2008 when the case was commenced against the Plaintiffs and 2014 when it was concluded in their favour, the Plaintiffs had no chance of obtaining a comparable status of employment in the industry.

5. That the best the Plaintiffs could do under the circumstances might be to settle for a less prestigious and less paying job, assuming they even found one, and finally

6. That there was massive unemployment in the country at all material times.

In evaluating all the above special circumstances, it is certain that most of them if not all are based on conjecture and not on any concrete and verifiable evidence.

As a matter of fact, the proximate facts which gave rise to the Plaintiffs interdiction and subsequent dismissal were such that no serious employer like the Defendants will proceed with the case without the involvement of the Police. This was a case in which the Plaintiffs, despite their long experience in Banking could not detect that cheques presented for payment by the Defendants customer were infact not Bank Drafts and should not have been treated as such. This conduct led to the customer's accounts with the Defendants being overdrawn to the tune of GH¢11.7m. **Even though it was later established that the Plaintiffs could not have detected immediately that this was not possible to have been detected, the recourse by the Defendants to**

the Police was not reckless but a genuine attempt to get to the bottom of the transactions.

The second and fourth special circumstances are such that no evidence had been led to establish that it was the Defendants who contributed to the delay in the adjudication of the suit. Besides, there was also no evidence that the Plaintiffs tried to mitigate their plight but were unsuccessful because of the then on going court proceedings.

The third and fifth special circumstances are also clearly speculative, no evidence having been provided on record to support these assertions.

The least said about the sixth and last special circumstance as that is also speculative and based on conjectural general considerations.

For example, Justice Dr. Date-Bah, speaking on behalf of the Supreme Court in the ***Ashun v Accra Brewery*** case supra sounded the following as a caution to dismissed workers to mitigate their loss in the following terms:

> *"…the duty of mitigation of damages for wrongful dismissal devolves on an employee. Accordingly, he or she has the duty to take steps to find an alternative employment".*

In the instant case, there is absolutely no scintilla of evidence to suggest that the plaintiffs made any such attempts but failed. In conditions such as the instant, the Plaintiffs must be seen to mitigate their losses by not necessarily taking jobs comparable to the scale or levels they were on previously, but one that will indicate the positive and concrete steps they had taken to mitigate and thereby minimise their losses.

Before we end our evaluation and assessment of the grounds upon which the Plaintiffs have lodged this appeal, we feel bound to refer to this court's decision per our very respected brother Atuguba JSC in the case of **Kobi v Ghana Manganese Co. Ltd.** supra, in which he stated thus:-

"Considering the specialised nature of the plaintiffs employment which would make it difficult to obtain alternative employment; the general unemployment problem in the country and the abrupt end of their careers and all the circumstances of the case; and bearing in mind that judicial discretion should not be out of joint with the general trends on the matter ***and the fact that in Ghana, as is well known, the period of award of damages in these matters has ranged between two years and one year (see GCMB v Agbettoh (supra) and Nartey-Tokoli v VALCO (No2) (supra), I would award the Plaintiff three months salary as at 19th May 1999, the date of their wrongful dismissal".*** *Emphasis supplied.*

Almost all the special circumstances mentioned by the Plaintiffs herein had been considered by the Court in the Kobi v G.N.M.C case supra and yet, that Bench did not find it expedient to depart from the settled practice of the courts.

Having reviewed the entire case, we do not see any need to depart from this settled practice and award damages in excess of what the upper limit has been. Indeed no such case has been made by the Plaintiffs to convince us to exercise our discretion in their favour.

CONCLUSION

We will therefore, under the circumstances dismiss the appeal lodged by the Plaintiffs against the unanimous decision of the Court of Appeal dated 14th July 2016, and instead affirm the said judgment of the Court of Appeal of even date.

There will however be no order as to costs.

J. V. M. DOTSE
(JUSTICE OF THE SUPREME COURT)

YEBOAH, JSC:-

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

ANIN YEBOAH
(JUSTICE OF THE SUPREME COURT)

BAFFOE-BONNIE, JSC:-

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

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

APPAU, JSC:-

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

Y. APPAU
(JUSTICE OF THE SUPREME COURT)

PWAMANG, JSC:-

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

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

COUNSEL

SEYRAM DARBI WITH JEMIMA IRRE ARYERE FOR THE 2ND PLAINTIFF/RESPONDENT/APPELLANT.

MAXWELL KORBLA LOGAN WITH SIKA AGGREY FOR THE DEFENDANT/APPELLANT/RESPONDENT.