

THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA-AD 2019

CORAM: DOTSE, JSC (PRESIDING)
YEBOAH, JSC
APPAU, JSC
PWAMANG, JSC
MARFUL-SAU, JSC

CIVIL APPEAL
NO. J4/29/2018

12TH JUNE, 2019

KENNETH DEGBOR PLAINTIFF/APPELLANT/RESPONDENT

VRS

ATLANTIC PORT SERVICES DEFENDANT/RESPONDENT/APPELLANT

JUDGMENT

APPAU, JSC:-

The respondent herein was the plaintiff in the trial High Court. He sued the appellant herein who was his employer as defendant, claiming three (3) major reliefs plus other ancillary ones. The major reliefs were: **i.** *a claim for the liquidated sum of GHc327,486.47, which he described as outstanding balance of arrears of unpaid salaries and allowances during the period of plaintiff's wrongful interdiction and voluntary retirement package;* **ii.**

interest on the said sum from 26th September 2011 till date of payment and; iii. damages for wrongful interdiction. The ancillary reliefs were: iv. An order to set aside a purported re-imposition of plaintiff's earlier wrongful interdiction and; v. a declaration that plaintiff lawfully and effectively retired from defendant's employment upon the attainment of fifty-five (55) years on 24/12/2012.

Plaintiff lost in the trial High Court but on appeal, the Court of Appeal reversed the decision of the trial High Court and entered judgment in his favour in respect of some of his reliefs. His employer the defendant is now before us praying us to also reverse the Court of Appeal and restore the judgment of the trial High Court. The parties (i.e. appellant and respondent) shall hereinafter, maintain their titles as pertained in the trial High Court; i.e. defendant and plaintiff respectively.

Facts of the case:

(a) Plaintiff's case

The gravamen of plaintiff's case was that he was employed by the defendant on 1st December 1999 until he voluntarily retired as a senior management staff on 23rd December 2012. Somewhere in the year 2007, whilst on leave, he received a letter on 14th November 2007 informing him that an anomaly had been detected in his salary so he was going to be paid fifty per centum (50%) of his salary pending investigations into the alleged finding. He received this half salary for only two months; i.e. October and November 2007. He didn't receive any salary again until 14th January 2008 when he received a letter that he had been interdicted. He fought his interdiction and sent a

petition to the National Labour Commission against the defendant. On 26th September, 2011, whilst his petition before the National Labour Commission was pending, he received a letter from the defendant signed by the Managing Director, re-instating him on the ground that the allegation against him which led to his interdiction, had been found to be without substance. The letter stated further that all his arrears of salary and other allowances from the time of his interdiction to the date of re-instatement must be worked out and paid to him. Plaintiff tendered in evidence this letter of re-instatement during the trial without any objection from the defendant.

According to plaintiff, when his arrears of salary and other allowances during the period of his interdiction was worked out, it came to one hundred and twenty thousand, nine hundred and ninety-four Ghana cedis, seventy-seven pesewas (**GHc120,994.77**). Out of this sum, forty-two thousand, five hundred and twenty-four Ghana cedis and nineteen pesewas (**GHc42, 524.19**) was paid to him but the balance of seventy-eight thousand, four hundred and seventy Ghana cedis, sixty-eight pesewas (**GHc78,470.68**) had remained unpaid. After his re-instatement, he worked for over a year with the defendant with full benefits. On 11th September 2012, he gave formal notice to the defendant of his intention or decision to retire from his employment on 24th December 2012 by which time he would have reached the voluntary retiring age of fifty-five (55) years. He therefore requested for the payment of the balance of **GHc78, 470.68**, which was outstanding and his retirement benefits for the period of his employment, all of which he calculated as amounting to **GHc327,486.47**. The defendant agreed to pay him something so they commenced negotiations on the figure. However, in the course of negotiations, he noticed

that his lawyer who was representing him at the negotiations was also acting for the defendant in other cases. As a result of this conflict of interest position of his lawyer, he was not getting a good deal from his lawyer so he withdrew from the negotiations and dispensed with the services of his lawyer. Not long after, he received a letter dated 8th November 2012 from the defendant purporting to revoke his unconditional re-instatement that took place more than a year ago on the 26th of September 2011. He was again requested to meet a Disciplinary Committee of the defendant to be investigated over charges leading to his interdiction in 2008. Whilst all these developments were taking place, the defendant wrote to the plaintiff in a letter dated 26th November 2012 offering to pay some amount to him as his entitlement package upon his voluntary retirement on 24th December 2012. Plaintiff said this offer did not bear any relationship with his lawfully earned entitlements under the Conditions of Service of Management Staff of the defendant, which was applicable to him. He therefore took this action to claim what legitimately belonged to him.

(b) Defendant's case

Defendant admitted that plaintiff was its employee who held the positions he alleged to have occupied in the defendant company. Though defendant admitted that plaintiff was interdicted in 2008, it denied that plaintiff received no salary during the period of his interdiction. Defendant's evidence on record did not however show that plaintiff did receive any salary during the period of his interdiction. Defendant again denied ever reinstating the plaintiff after the interdiction. Defendant's contention was that the Managing Director who signed the re-instatement letter did not do so with the approval of the Board

of Directors of the defendant. They even accused the plaintiff for being the author of the re-instatement letter because of his closeness with the then Managing Director of the defendant. However, defendant did not lead any evidence whatsoever to support this allegation of plaintiff's authorship of his re-instatement letter. According to defendant, when plaintiff was interdicted, the defendant's Board of Directors constituted a committee to investigate the allegations against plaintiff but plaintiff ignored their invitations to appear before the Committee. Contrary to its evidence, defendant admitted paying plaintiff the sum of **GHc42, 524.19** but denied that it was part of his entitlements or arrears of salary. Defendant explained that it paid that amount to plaintiff to alleviate him from certain financial constraints. Notwithstanding its claim that it never accepted plaintiff's voluntary retirement, defendant admitted that it met with plaintiff to negotiate some retirement settlement for him but before they could append their signatures to the agreement, plaintiff withdrew from same and thereafter served them with the writ of summons. Defendant concluded that it never approved of plaintiff's voluntary retirement so plaintiff was not entitled to any retirement benefits.

The decision of the trial High Court

The trial High Court, on 15th July 2016, dismissed plaintiff's action in its entirety. The trial court was of the view that plaintiff was not entitled to the sum claimed because:

1. He could not prove that he was lawfully re-instated by the defendant after his interdiction on 14/1/2008;

(2) His voluntary retirement was not duly accepted by the defendant since he was never re-instated after his interdiction so he did not qualify to be paid retirement benefits;

(3) He did not establish or prove that he was entitled to the sum claimed as arrears of salary and end-of-service benefits.

Appeal before the Court of Appeal

The plaintiff appealed against the trial court's decision to the Court of Appeal in a notice of appeal filed on 21/07/2016. The notice contained five (5) grounds of appeal. The Court of Appeal, however, determined the appeal on the omnibus ground that the judgment of the trial court was against the weight of evidence on record, which was the first ground of appeal in the notice of appeal. This was because the plaintiff centred his arguments on this general ground, which invariably, encapsulates all the other grounds of appeal. Guided by the notorious principle of procedural law which has been fortified by case law in authoritative decisions like *Tuakwa v Bosom [2001-2001] SCGLR 61*; *Djin v Musah Baako [2007-2008] SCGLR 686*; *Abbey v Antwi [2010] SCGLR 17* and *Oppong Kofi & Ors v Attibrukusu III [2011] 1 SCGLR 176* that; an appeal is by way of re-hearing, particularly when the omnibus ground is one of the grounds of appeal, the Court of Appeal fully considered the totality of the evidence on record as if it was hearing the case afresh and came to the conclusion that the decision of the trial High Court was not supported by the evidence on record.

The Court of Appeal held, contrary to the decision of the trial High Court that, plaintiff's re-instatement was lawful since the act of the Managing Director of the defendant was sanctioned by the provisions of the Companies Act, 1963 Act 179. Also, his voluntary retirement was accepted by the defendant that was why the defendant started negotiations for the payment of retirement benefits to him. The Court of Appeal held further that plaintiff was able to establish that he was entitled to the sum claimed since the defendant, apart from a bare denial in its statement of defence, neither challenged plaintiff during cross-examination on the said amount, nor led any evidence to controvert that claim as made in plaintiff's witness statement to the trial court. The Court of Appeal therefore allowed plaintiff's appeal and granted him all the reliefs claimed with the exception of damages and impliedly relief 6, which is embodied in relief 1.

Appeal before the Supreme Court

The defendant is praying us to reverse the Court of Appeal and restore the trial court's judgment in a notice of appeal filed on 27/04/2017. Though the notice of appeal contained seven (7) grounds of appeal, the defendant chose to argue only four of the grounds; i.e. 1, 2, 3 and 4 in its statement of case filed on 21/11/2018. The defendant argued ground 3 separately and thereafter, lumped grounds 1, 2 and 4 together and argued them as one ground. These grounds are:

- 1. The judgment is against the weight of evidence adduced at the trial;*
- 2. The learned justices erred having found and held that the ultra vires action of the defendant/appellant managing director by having written a letter to recall*

plaintiff/respondent without the consent and knowledge of the board of directors of the defendant is binding on the defendant/appellant;

3. *The learned justices with respect erred having accepted the calculation of the plaintiff/respondent without any cogent proof thereof even with the calculation having been challenged by the defendant/appellant in its pleadings, evidence as well as in the address filed on record and;*

4. *The learned justices fell in error having failed to avert their mind on the failure of the plaintiff/respondent to appear before a 4-man committee appointed to investigate malfeasance leveled against the plaintiff/respondent*

Issues for determination by the Supreme Court

The key issues raised in this appeal, judging from the submissions made by the parties in their statements of claim, have been the same issues raised all along in the pleadings of the parties. These fundamental issues are:

- i. Whether or not plaintiff was ever re-instated with full benefits after his interdiction by the defendant on 14/01/2008;
- ii. If the answer is yes; whether or not the said re-instatement was lawful;
- iii. Whether or not plaintiff did voluntarily retire from the services of the defendant on 24/12/2012;
- iv. Whether or not plaintiff is entitled to the payment of retirement benefits and arrears of salary and allowances upon his re-instatement after his interdiction and;

- v. Whether or not plaintiff was able to prove that he was entitled to the sum of GHc327, 486.47 as claimed.

On ground 3, defendant's contention was that plaintiff did not lead any evidence to prove that he was entitled to the sum of **GHc327, 486.47** so the Court of Appeal erred in granting him that relief. With regard to grounds 1, 2 and 4 which defendant argued together, its main contention was that the Court of Appeal erred in concluding that plaintiff's re-instatement was lawful when it was not sanctioned by the Board of Directors of defendant. Therefore, having failed to establish that he was lawfully re-instated, plaintiff was not entitled to any end of service benefits or entitlements and therefore not entitled to the sum claimed. The above is the epitomized version of the case argued by the defendant before us. It has been the same game all along as the plaintiff disagreed with the defendant and has prayed for the dismissal of the appeal.

The views of the Supreme Court

We wish to state on record that both parties called no witness. Plaintiff testified alone and supported his testimony with documents. Defendant also testified through its director by name Peter Biney whose testimony, invariably, supported plaintiff's case to a large extent. Whilst he admitted that the defendant's Managing Director did write to the plaintiff to reinstate him almost four years after his interdiction and that plaintiff did in fact work as staff of the defendant after his said reinstatement, his contention was that the Managing Director did so without the Board's approval. We have seriously considered the submissions made by both parties in the appeal and we do not think this case has opened

any new pages in the law, which require a lengthy discussion in this judgment. In fact, the defendant has not been able to demonstrate to our satisfaction that the Court of Appeal erred in reversing the decision of the trial High Court. We agree totally with the Court of Appeal that plaintiff's claim that he was reinstated after his interdiction in 2008, is amply supported by the evidence on record. Defendant did not lead any evidence to support its contention and the finding by the trial court that plaintiff's reinstatement was not sanctioned by the Board of Directors of the defendant. The Court of Appeal took pains to digest the provisions of the Companies Act, 1963 [Act 179]; particularly sections 137 to 143 and section 193 and we cannot agree more with the expositions made by the Court of Appeal and the conclusions it arrived at with regard to those provisions and their application to the case in point. We also do agree with the Court of Appeal that plaintiff actually retired voluntarily from the employment of the defendant, having duly notified it in a letter to that effect, which decision defendant impliedly accepted or approved of, judging from the steps defendant took to broker amicable retirement benefits for plaintiff. With regard to the sum of **GHc327, 486.47**, which plaintiff said was the total of his accumulated arrears of salary and retirement benefits/emoluments, defendant did not challenge in any way plaintiff's testimony as to how he arrived at this figure in conformity with the conditions of service of defendant's senior management personnel. Having failed to challenge this figure in positive terms, the law did not require plaintiff to offer any further proof. We therefore endorse the Court of Appeal's finding that plaintiff was entitled to this amount as the sum total of his arrears of salary after his reinstatement and retirement benefits from the date of his employment in 1999 to the date of his

voluntary retirement in December 2012. We order that interest on this amount in accordance with the Court's (Award of Interest and Post Judgment Interest) Rules, 2005 [C.I. 52] be calculated beginning 24th December 2012 to date of payment. We accordingly dismiss the appeal.

Y. APPAU
(JUSTICE OF THE SUPREME COURT)

DOTSE, JSC:-

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

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

YEBOAH, JSC:-

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

ANIN YEBOAH
(JUSTICE OF THE SUPREME COURT)

PWAMANG, JSC:-

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

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

MARFUL-SAU, JSC:-

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

**S. K. MARFUL-SAU
(JUSTICE OF THE SUPREME COURT)**

COUNSEL

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