IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2017

CORAM: ATUGUBA, JSC (PRESIDING)
DOTSE, JSC
BAFFOE-BONNIE, JSC
BENIN, JSC
PWAMANG, JSC

CIVIL APPEAL
NO. J4/13/2016

20TH DECEMBER, 2017

MRS JANET DOE ..... PLAINTIFF/APPELLANT/APPELLANT

VRS

1. SOCIAL SECURITY AND NATIONAL INSURANCE TRUST
2. THE TRUST HOSPITAL LIMITED ..... DEFENDANTS/RESPONDENTS/ RESPONDENTS

JUDGMENT

DOTSE JSC:-

Chapter 15, verse 8-9 of the Gospel according to St. Luke in the Holy Bible reads as follows:-

> *"Or suppose a woman has ten silver coins and loses one won't she light a lamp and sweep the entire house and search carefully until she finds it? And when she finds it, she will call in her friends and neighbours and say*

"Rejoice with me because I have found my lost coin." Life Application Study Bible – page 1719

This is a judgment in respect of an appeal lodged by the Plaintiff/Appellant /Appellant, hereafter Plaintiff, against the judgment of the Court of Appeal dated 26th March 2015 which was in favour of the Defendants/Respondents /Respondents, hereafter 1st and 2nd Defendants.

FACTS

The facts in this case admit of no controversy whatsoever. They are as follows:-

The 1st Defendant decided to embark on a redundancy exercise in the year 2009. The Plaintiff who was then employed by the 1st Defendant Company opted for the voluntary redundancy. This request was however rejected by the 1st Defendant. In December of 2012, the 1st Defendant decided to proceed with the second phase of the redundancy exercise, this time compulsorily.

The Plaintiff this time round, was affected by the compulsory redundancy exercise and she was laid off and paid three months salary inclusive of the salary she would have earned prior to her compulsory retirement period.

In the interim, the Plaintiff filled out a handing over certificate and disengagement form which she returned to her employer. She was subsequently paid her redundancy package which included a three month contract of employment with the second Defendant, ostensibly to ease the effects of the redundancy.

The Plaintiff however expressed dissatisfaction with the package for a number of reasons. She therefore caused her attorneys to write to the 1st Defendant, her employer, expressing her dissatisfaction with the package. This action by the Plaintiff caused the 1st Defendant to withdraw the whole redundancy package, including the three month contract of employment with the second Defendant, and requested the Plaintiff to return to work for the rest of the twenty-two months prior to her compulsory

retirement. It also asked the Plaintiff to return the money which was paid to her as her exit package.

The Plaintiff however refused to return to work or refund the monies paid into her bank account as her exit package and rather sued for the following reliefs.

"A declaration that the exit package the 1st Defendant offered was unilaterally and arbitrarily determined and sinned against Section 65 of the Labour Act, 2003 (Act 651).

i. A declaration that the conduct of the 1st Defendant violated the economic rights of the Plaintiff.

ii. A declaration that the 1st Defendant discriminated against the Plaintiff by giving a more enhanced exit package of 20% annual basic salary of each year worked to its employees who were below her age group.

iii. A declaration that the termination of the employment contract by the 2nd Defendant was unlawful.

iv. An order directing the 1st Defendant to pay the Plaintiff a minimum of seven months salary for each year for the number of years in active service with the 1st Defendant.

v. Damages for breach of contract against the 2nd Defendant.

vi. Remuneration for the number of days worked under the contract of employment with the 2nd Defendant with interest.

vii. Interest on relief (ii) from 31st December (sic) to date of final payment.

viii. Damages for the breach of the fundamental human rights of the Plaintiff.

ix. Costs "

The Defendants entered appearance together in which the 1st Defendant claimed the following counterclaim against the Plaintiff:-

1st Defendant repeats paragraphs 1 to 33 of the Statement of Defence and Counterclaims against the Plaintiff for the following reliefs:-

a. A declaration that the Plaintiff's refusal and or neglect to report for duty as instructed by the 1st Defendant (her Employers) after the withdrawal of the exit package she (Plaintiff) has protested against, constituted a vacation of post under the terms and conditions of her (Plaintiff) employment.

b. An order for the recovery or refund of all the entitlements totaling GH¢66,066.14 paid into the accounts of Plaintiff under the said exit package.

c. Interest on the said amount of GH¢66,066.14 from the time 1st Defendant notified Plaintiff of the withdrawal of the package till the final date of full refund."

DECISION OF TRIAL HIGH COURT

The learned trial Judge after trial, dismissed the Plaintiff's claims against the Defendants and purportedly found for the 1st Defendant's on their counterclaim.

APPEAL TO COURT OF APPEAL

Feeling dissatisfied with the judgment of the High Court, the Plaintiff appealed the decision of the trial High Court to the Court of Appeal which in a unanimous decision dismissed the appeal on the 26th March 2015. Still undaunted, the Plaintiff filed the instant appeal to the Supreme Court.

GROUNDS OF APPEAL TO SUPREME COURT

But for the decision to comment on the numerous grounds of appeal that the Plaintiff has filed in flagrant breach of the Supreme Court Rules 1996, C. I. 16, we would hot have found it useful to refer to the said numerous and repetitive 18 grounds of appeal that learned counsel for the plaintiff filed in this court. These are:

a) "**That the Court of Appeal erred when it dismissed the Appellant's appeal having held that the Judgment of the Trial Court was against the weight of evidence.**

b) **That the Court of Appeal erred when it held that the Appellant was bound by the exit package given under the re-organisation exercise conducted in 2009.**

c) **That the Court of Appeal erred when it held that although the Labour Act 2003 (Act 651), was relevant for the determination of the rights and obligations of the parties in an employment contract, the underlining law for evaluating the import of the actions of the parties in this suit is the Law of Contract.**

d) That the Court of Appeal erred when it held that the exit package awarded to the Appellant was not arbitrarily and unilaterally determined.

e) That the Court of Appeal erred when it held that the Appellant's failure to respond to the 1st Respondent's withdrawal of the package and for the Appellant to work for the rest of the period left for her retirement constituted the Appellant's acceptance of the exit package.

f) That the Court of Appeal erred when it held that the 2nd Respondent terminated the Appellant's three-month contract because the 1st Respondent had agreed to restore the Appellant to her original contract of employment with the 1st Respondent.

g) That the Court of Appeal erred when it held that the Appellant had shown her willingness to keep working with the Trust Hospital on contract as part of the redundancy package and to keep the monetary part of the package subject to whatever enhancement her Lawyers could negotiate for her.

h) That the Court of Appeal erred when it held that the Appellant's actions communicated only one of two concrete statements:

    i) The Appellant accepted to be laid off, indeed, insists on being laid off and she accepted the redundancy package.

    ii) The Appellant was terminating her employment contract with SSNIT and keeping their redundancy money.

    i) That the Court of Appeal erred when it departed from its own previous decision in the case of **Erisaac Press v. Emmanuel Sallah [2013] 59 GMJ 142**.

j) That the Court of Appeal erred when it departed from the Supreme Court's decision in **Baiden v Graphic Corporation [2003-05] 2 GLR 522**.

k) That the Court of Appeal erred when it failed to consider the Appellant's ground of Appeal to the effect that "the Trial Court erred when it held that the Plaintiff had asserted in her testimony that the decision to disengage her was unilaterally and arbitrarily determined" by ruling that the said ground of Appeal had no value as a point of dispute resolution.

l) That the Court of Appeal erred when it failed to consider the Appellant's

ground of Appeal to the effect that "the meeting of the Standing Negotiating Committee between Management of SSNIT and the Executives of the Industrial and Commercial Workers Union was binding the Plaintiff".

m) That the Court of Appeal erred when it dismissed the Appellant's ground of appeal that "the trial judge erred when he failed to consider the issue of the unlawful termination of the Plaintiff's "Contract Appointment" by the 2nd Defendant".

n) That the Court of Appeal erred when it upheld the trial judge's decision to grant the counterclaim of the Respondents.

o) That the Court of Appeal erred when it failed to consider the Appellant's grounds of appeal that "the trial judge erred when he failed to consider the issue that the 1st Defendant declared the Plaintiff redundant effective 31st December 2012".

p) That the Court of Appeal erred when it failed to consider the Appellant's ground of appeal that "the trial judge erred when he failed to consider the issue that the 1st Defendant did not negotiate a redundancy pay with the Plaintiff or the representatives of the Plaintiff as mandated by law".

q) That the Court of Appeal erred when it failed to state and apply in full the principle enunciated by the Supreme Court in the case of **Ashun v. Accra Brewery Limited (2009) SCGLR 81.**

r) That the Court of Appeal erred when it failed to consider the Appellant's ground of Appeal that "the trial judge erred when he failed to consider the issue that the 1st Defendant discriminated against the Plaintiff in the payment of the redundancy pay"

s) Additional grounds shall be filed upon receipt of the record of Appeal."

FRIVOLOUS, REPETITIVE AND IRRELEVANT GROUNDS OF APPEAL

We are not only surprised but infact dismayed at the above grounds that learned counsel for the Plaintiff filed on her behalf to this court. We consider the said conduct not only as a fishing expedition but also one that is futile as well.

FRIVOLOUS GROUNDS

Embarking on this futile mission was what caused Counsel to file 18 grounds of appeal, most of them vague and repetitive because as hard and herculean as the ill advised task she had undertaken, Counsel then had no choice but to throw everything, as it were at the Court.

Counsel for the Defendants has submitted that the grounds of Appeal sin against Rules 6 (4) and (5) of the Supreme Court Rules CI 16, 1996, as same are vague and disclose no reasonable grounds of Appeal. Rules 6(4) and (5) are in the following terms:-

Rule 6 (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 an 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."*

Rule 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 the evidence, and any ground of appeal or any part of which is not permitted under this rule may be struck out on its own motion or on the application by the Respondent."*

Counsel further supported his submission with the case of ***Nunoofio v Farmers Services Co. Ltd [2007-2008] SCGLR 926,*** where Wood, JSC (as she then was) stated as follows:

"The Court of Appeal was wrong in holding that the termination of the Plaintiff's contract was not wrongful, sinned against Rules 6 (5) of the Rules of this Court."

She stated specifically at page 931 of the report as follows:-

"Not only does the ground of appeal as formulated offend rule 6(5) of CI 16, but no particulars of the errors of law in particular are provided again in flagrant disregard of the rules of court. This flagrant violation of the court rules, which are intended, for good reason to be obeyed to the letter must not be encouraged."

In this respect, it must be reiterated that, learned Counsel for the Defendants makes a sound argument and it will be upheld. The grounds of appeal as formulated in grounds, (d) (e) (g) (h) (k) (l) (m) (o) (q) (r) and (s) are not only vague, repetitive, irrelevant and also lack substance as will soon be established when we undertake a forensic analysis of the said grounds.

Indeed, apart from the grounds of appeal which touches and concerns the grant of the counterclaim, in grounds (n) (a) (b) and (c) the other grounds of appeal filed actually sin against the Supreme Court Rules referred to supra.

For example grounds (b) (d) (e) (g) (h) (k) and (r) are all related to the exit redundancy package and could have been dealt with under one ground of appeal. The remaining grounds of appeal could also have been subsumed under the omnibus ground of appeal, to wit: *"That the judgment is against the weight of evidence".*

In this respect, we wish once again to remind learned counsel that their duties under the Legal Profession Act, 1960, Act 32, is a duty not only to their clients but also to the court as well as to protect their own professional integrity and competence.

We now turn our attention to the following grounds of appeal.

ANALYSIS OF GROUNDS OF APPEAL

The Plaintiff's first ground of appeal was that the Court of Appeal erred when it dismissed the Appellant's appeal having held that the judgment of the trial court was against the weight of evidence. In her written submissions to the court, she argued that the Court of Appeal held that the judgment of the trial court is against the weight of evidence and yet dismissed the Appellant's appeal. We will argue this ground together with ground (n) which is to the effect that the Court of Appeal erred when it upheld the trial court's decision to grant the counterclaim.

This is what the Court of Appeal stated when dealing with Plaintiff's ground in the Court that the Judgment was against the weight of the evidence:

> *"Although I disagree with the Appellant on the substance of her case and her Counsel's submissions that the court ought to have given judgment in favour of the Appellant,* ***I totally agree that the judgment was against the weight of evidence. The judgment is extremely strange. After pronouncing judgment in favour of the Respondent, the subsequent orders went totally awry in relation to both the counterclaims of the Respondent and the claims of the Appellant.*** *The second and third counterclaims prayed for an order compelling the appellant to return the exit package paid to her with interest.* ***The Court made no such orders but in effect, directed that the appellant could keep the moneys (sic) paid into her account, purporting to rely on principles of equity****. In resolution of the appellant's claim that this payment was inadequate,* ***he went further to order the parties to go before the National Labour Commission to determine that issue. Thus effectively, the court dismissed the Respondent's counterclaims, while stating that he had entered judgment for the Respondent.*** *It is important to say that nowhere in her claims did the Appellant pray to be allowed to keep the redundancy package as it stood, or did she seek to go to the negotiating table of the National Labour Commission, but these orders were made ostensibly to protect her in equity. …It is my considered opinion that the learned trial judge seemed to totally miss the legal principles*

required to resolve the dispute that had been waged before him… ***It is in this sense that I agree that the judgment is against the weight of the evidence." Emphasis***

Simply put, all that the Court of Appeal was saying was that the judge ought not to have substituted a whole new case for the parties and gone ahead to make orders completely at variance with what they were seeking in their reliefs. This goes against the well known principle of ***Dam v Addo [1962] 2 GLR*** which states that a judge ought not to propio motu substitute a whole new case for the parties.

However, a through examination of the entire evidence on record would clearly indicate that the learned trial Judge did not adequately consider the Plaintiff's case.

This is so because, if the learned Judges of the Court of Appeal had taken into consideration the Plaintiff's evidence on the matter in the appeal record, and also considered the genesis of the counter claim as indicated in ground (n) of the grounds of appeal, then a different conclusion would have been reached. This is how the Plaintiff testified in the trial High Court on this crucial issue.

"After the accepted form has been filled early on I said my Solicitor wrote to SSNIT about my dissatisfaction with the exit package. So the Trust Hospital Limited, wrote a letter to me that they would not give me contract until my issue with SSNIT was resolved. So I asked my Solicitor again to write to them that the contract is already in existence because I signed everything, the contract has been signed and everything has been done already so upon SSNIT hearing this now they are replying the first letter I wrote to them about the dissatisfaction of my exit package telling me that if I am not able to pick the package then they cannot do anything about it. ***But rather they would let me come back and work.*** *I should bring the monies that has been paid to me. Around 24th December the monies were paid into various bank account. So they asked me to bring the monies they gave me.* ***And some time to bring it back to them and continue working with SSNIT under the conditions and terms***

***which I was working before but to work in the Trust Hospital till I go on my compulsory retirement*."**

It is certain from the above that, 1st Defendant included the Plaintiff in the compulsory redundancy package without her consent. As a matter of fact, as an employee and a citizen of this country, the Plaintiff has rights to evince her contrary opinions about the redundancy package and rightly did so in our view. Furthermore, her conduct in engaging Solicitor's to write to the Defendants complaining about the redundancy package paid to her should not be used against her punitively. From all indications it appears to us that, the Plaintiff had been penalised by the Defendants for daring to question the exit package, and this found expression by the counterclaim that they filed against her.

From all of the above evidence on record, it is clear that, the plaintiff would have gone home with the exit package if she did not complain about it. The question we ask ourselves is what has changed after she challenged the package? She was directed to return the package and resume work. Having failed to resume work, she kept the package and went to court. It is clear therefore that, the Plaintiff was penalised for exercising her rights to go to court. This is untenable. The courts exist to do justice to all manner of persons, and in that regard, substantial justice when the need arises.

In our respectful opinion, the judgment in regards to the portions of the judgment of the Court of Appeal on the issue of the counterclaim are against the weight of evidence. This is so because, from all the available evidence, the Defendants would not have counterclaimed if the Plaintiff had not gone to court.

Furthermore, once the Plaintiff's action has been rightly dismissed and which we hereby confirm, the grant of the 1st Defendants counterclaim is untenable as it has not been proven to our satisfaction.

We therefore allow these grounds of appeal, and hold and rule that the 1st Defendants are not entitled to their counterclaim, whilst generally upholding the dismissal of the Plaintiff's claims.

In our opinion, the resolution of the second ground of appeal, to wit;

> *"That the Court of Appeal erred when it held that the Appellant was bound by the exit package given under the re-organsiation exercise conducted in 2009"*

would substantially dispose off some of the remaining grounds of appeal unless specifically mentioned and dealt with in this delivery.

The Plaintiff under cross-examination reiterated the fact that she belongs to Senior Staff Association. Indeed when the question was put to her thus, she answered in the affirmative.

Q. "So you belong to Senior Staff Association?

A. Yes my Lord"

Earlier on, the Plaintiff also admitted during cross-examination, that dues were deducted from her payslip for this Senior Staff Association.

The above testimonies therefore clearly debunked the Plaintiff's assertions in her evidence in chief that she did not authorise anybody to negotiate any redundancy package for her.

This is because, if we look at Exhibit I, which are the minutes of the Standing Negotiating Committee of the 1st Defendants and the ICU held on the 6th day of December, 2012 which had one Desmond Amoah representing the (SSA) at the negotiations of the redundancy package for employees of 2nd Defendants presents

Under the heading, packages for Affected Staff, the following appears:-

> ***"The Chairman said that the same package that was negotiated and approved by the management, ICU and Senior Staff and used for the***

year 2009 group would be given to them. The difference would arise out of salary changes over the period". Emphasis

The above facts were clearly stated in the unanimous judgment of the Court of Appeal, rendered by Torkornoo JA as follows:-

> *"An examination of exhibits 1 and 2 and the evidence of Mabel Ofori, the respondent's representative found from pages 74 to 97 of Record of Appeal confirm that the exit package given to the appellant was derived from a package that had been arrived at from the commencement of the re-organisation exercise which started in 2009. See paragraph 60 of exhibit I found on page 184 of the Record of Appeal.* ***Thus clearly, this package was not arrived at in an arbitrary manner. It has a historical antecedent that is linked to the commencement of the re-organisation exercise."***

Consider section 65 (4) of the Labour Act page 314 thereof.

EPILOGUE

We began this delivery by reference to the words of the scriptures on what a woman will do when she loses her coin – known as ***"parable of the lost coin".*** Indeed, if the Plaintiff must be considered as having lost her coin which she proceeded to search for, in this case through the court action, no one should blame her for doing that. It must have been her just expectation that she lost something that was worth the while to look for,

In searching for this lost coin, she engaged services of a trained Solicitor to advice her on the issues involved.

Having kicked in the legal principles involved in the ***Ashun v Accra Brewery Limited, [2009] SCGLR 81***, case which explained the rationale for the exception of public law provisions in employment contracts similar to the instant case, learned counsel for the Plaintiff should have done the necessary retreat and concede the point when it became

apparent that the principle would work against the Plaintiff. That is the hallmark of a good and competent legal advisor. In the Ashun case supra, as with this present case, no public law exceptions applied, therefore the principle as espoused in the cases relied upon by the Court of Appeal i.e***. Nartey-Tokoli v Volta Aluminium Co. Limited [1987-88] 2 GLR 532, Hemans v GNTC [1978] GLR 4, G.C.M.B v Agbettoh [1984-86] 1 GLR 122*** applied to the circumstances of the Plaintiff herein. It would therefore serve no useful purpose to give another exposition on the principle stated in **Ashum v Accra Brewery Limited** supra as learned Counsel for Plaintiff would want this court to do. It should be noted that, acting in and representing the best interests of a client should not willy-nilly result into litigation as happened in this case.

CONCLUSION

In the premises, the appeal filed by the Plaintiff against the Court of Appeal judgment of 26/3/2015 fails save that the ground of appeal against the grant of the 1st Defendants counterclaim succeeds.

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

W. A. ATUGUBA
(JUSTICE OF THE SUPREME COURT)

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

A. A. BENIN
(JUSTICE OF THE SUPREME COURT)

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

COUNSEL:

SIKA ABLA ADDO FOR THE PLAINTIFF/APPELLANT/APPELLANT.

BAFFOUR AKOTO WITH HIM JOSEPH HACKSON AND WILSON JONES FOR THE DEFENDANTS/RESPONDENTS/RESPONDENTS.