IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT OF JUSTICE

ACCRA – GHANA, AD.2016

CORAM: ATUGUBA, JSC (PRESIDING)

BONNIE, JSC

BENIN, JSC

APPAU, JSC

PWAMANG, JSC

CIVIL APPEAL
NO. J4/21/2016

28TH JULY, 2016

OHENEBA BEDIAKO ESSUMAN - PLAINTIFF/

RESPONDENT/RESPONDENT

VRS

THE CHURCH OF PENTECOST - DEFENDANT/

APPELLANT/APPELLANT

JUDGMENT

PWAMANG, JSC.

The facts of this case have been coherently set out in the statement of claim filed on 24th January, 2011 by plaintiff/respondent/respondent, hereinafter to be referred to as the "plaintiff" so we shall reproduce it in extensor.

1. The Plaintiff is a former employee of the Defendant church.

2. While the defendant is a registered church in Ghana with its headquarters at La.

3. The Defendant at all material times has its primary mission to propagate the gospel and to win souls into the Lord's vineyard. It also undertakes social responsibilities such as establishment of schools and hospitals to meet the educational and medical needs of the communities that operates.

4. In view of Defendant's social responsibilities it has many employees whose conditions of service are negotiated by the employees and also are almost invariably in conformity with the labour law of Ghana.

5. Plaintiff avers that he was first appointed by Defendant Church as Medical Assistant on the 2nd January 1991 and worked continuously for 18 years 4 months before retiring voluntarily on the 30th April 2009.

6. Plaintiff contends that even though all the staff of the clinics of the church are all employees of the church some are on the Ghana Health Service pay roll whilst others are on the pay roll of the church.

7. According to the Plaintiff before year 2006 the salary scale of the clinical staff on the pay roll of the church was higher than that of the staff on the Ghana Health Service pay roll and the church provided the necessary top ups to march their colleagues on the pay roll on the church.

8. Plaintiff says, however, the tide changed in 2006 when the government increased the salary of Ghana Health Service (GHS) employees and consequently affected Pentecost workers on GHS Scale.

9. It is the contention of the plaintiff that the church refused to use the new salary scale to work all benefits that were due employees amidst protestation of the staff.

10. It is the case of the Plaintiff that he attained 15 years in 2006 and in accordance with the conditions of service of the employees of the Defendant he was entitled to five month salary as long service award.

11. Plaintiff avers further that the Defendant unilaterally used year 2005 basic salary of ¢3,087,122 or GH¢308.71 to pay his long service award instead of using the 2006 basic salary of ¢11,815,682.00 orGH¢1,181.57.

12. It is the contention of the plaintiff that the church by using the 2005 salary scale to calculate his long service award he was cheated by GH¢4,364.28

13. Plaintiff further contends that at the time of his retirement in 2009 his rank was Chief Medical Assistant on the salary scale of GH¢19,221.00 per annum or GH¢1,601.75.

14. Plaintiff further says that instead of his end of service benefit being calculated based on his prevailing salary in accordance with Article 2.19 (c) of the church of Pentecost (General Headquarters) Condition of Service for senior staff employees (COP Snr. Staff Condition of Service) the church used its own revised salary scheme to calculate retiring or end of service benefit thus underpaying him by whooping amount of GH¢26,917.32 that is instead of paying him GH¢58,720.14 he was paid GH¢31,802.92

15. Plaintiff further states that the church used its own rate in calculating his leave benefits from 2007 to 2008 to his detriment.

16. It is the contention of the plaintiff that varying his salary to his disadvantage permeated all other benefits due him which included annual bonuses and transfer grant thus depriving him of thousands of Ghana cedis legitimately due him.

17. It is the case of the plaintiff that on the whole he has been deprived of an amount of GH¢45,220.14 comprising anomalies in the computation of long service award annual bonuses, annual leave allowance for two years, transfer grant and end of service benefit.

18. Plaintiff says in all these anomalies he brought to the attention of management but the Defendant refused even to acknowledge receipt of his petitions.

19. It is the case of Plaintiff that when he retired he further wrote to the church but as usual he was not acknowledged by the church.

20. According to the plaintiff as a result of the Defendant's intransigence to correct or rectify the anomalies he asked this counsel to write two letters to the defendant to draw its attention to the anomalies but as usual the defendant did not have the slightest courtesy of affording his lawyer a reply.

21. The plaintiff further states that he was refused the golden hand shake of a deep freezer which is given to all retiring employees.

22. It is the contention of my client that the Defendant should bear the cost of his transportation to his home base at Dunkwa-On-Offin.

23. Plaintiff further avers that the Defendant will never rectify the anomalies that have been brought about as a result of the Defendant varying the salary structure of the plaintiff to his detriment unless he is compelled to do so by this Honourable Court.

24. WHEREFORE the Plaintiff claims as follows:-

(a) Defendant be ordered to use Ghana Health Service Salary Scheme which Plaintiff was enjoying at the time before his retirement to compute all benefits due him including long service award in 2006 Annual Bonus from 2007 to 2008, Annual Leave allowance from 2007 to 2008 transfer grant and end of service benefit i.e. a total sum of GH¢39,855.86 be paid to Plaintiff as arrears that have been occasioned by the use of wrong salary scale to compute Plaintiff's benefit.

(b) Interest at the current bank rate or the sum from the date due to the day of final payment.

(c) Order for award of retiring benefit of Deep freezer and provision of transport for the Plaintiff, his family and luggage to Dunkwa-On-Offin.

The trust of the answer of defendant/appellant/appellant, hereafter to be referred to as the "defendant", to plaintiff's claim was that the salary plaintiff enjoyed from the Ghana Health Services was consolidated and included all his allowances so he was not entitled to any of the benefits contained in the condition of service. Further, it denied plaintiff's claim that he was entitled to have his allowances calculated on the basis of his GHS salary. According to defendant the amount paid to plaintiff was gratuitous and not based on any legal right of plaintiff so it counterclaimed against plaintiff for refund of those payments.

After a brief trial where plaintiff testified and tendered documents without calling any witness and a manager of defendant testified on its behalf and called only one witness, the High Court gave judgment in favour of plaintiff. Being aggrieved, defendant appealed but the Court of Appeal affirmed the decision of the High Court. Defendant has further appealed to this court as the final appellate court on seven grounds.

An appeal is by way of rehearing and the duty of an appellate court is to peruse the whole record of appeal and satisfy itself that the findings and conclusion of the court below are justified having regard to the evidence adduced at the trial and the law applicable. Where an appeal is made against concurrent findings, as in this case, the second appellate court is slow to overturn those findings unless there are compelling reasons. A second appellate court will however overturn concurrent findings where

it finds that the finding are not supported by the evidence led at the trial or where it is proved that the court below misapplied the law to evidence on record.

See Gregory V Tandoh & Anor [2010] SCGLR 971.

We shall consider all the grounds of appeal together. We have carefully reviewed the evidence on record and find that the finding of the trial court and the Court of Appeal that plaintiff as an employee of defendant was entitled to benefits under the conditions of service for senior staff is supported by the evidence on the record. The evidence shows that, despite the fact that plaintiff and similarly placed staff were drawing their salaries from the Ghana Health Service (GHS), defendant related to them as their employer with benefits under the conditions of service for senior staff. We accordingly affirm the dismissal of defendant's counterclaim.

We however think that the finding of the trial court, which was confirmed by the Court of Appeal, that plaintiff is entitled to allowances and benefits calculated on the salary scale of the Ghana Health Service requires to be critically examined.

Paragraph 14 of the statement of claim reproduced above shows clearly that the plaintiff hinged his case on the conditions of service which was tendered in evidence as Exhibit "B". Consequently, the main issue for determination in this case was issue (iii) set out in the issues for trial by plaintiff in the following terms; "Whether or not the plaintiff was entitled to the payment of End of service benefits and other allowances based on his prevailing annual salary". This called for interpretation of the Conditions of Service to, among other things; determine the meaning and scope of the words "basic salary" stated therein to be used in the calculation of the benefits and allowances.

The trial High Court rightly identified this issue but held that "basic salary" in Exhibit "B" can only mean the GHS salary plaintiff was drawing at the material times. Unfortunately the Court of Appeal did not give consideration to the meaning and effect of "basic salary" in the conditions of service which is at the core of the dispute between the parties which ranged from 2006 to 2011 when this suit was filed. The trial judge stated that she was applying the literalist rule of interpretation to construe "basic salary" in exhibit "B". She delivered herself as follows;

"The rules and principles of interpretation per the literal rule requires that words that are reasonably capable of only one meaning must be given that meaning no matter the result. Defendant's argument that if it used Defendant's basic salary scale it would have paid plaintiff had the latter on its payroll cannot be sustained. The provision in the conditions of service is clear and unambiguous. What needs to be used in the computation of the leave allowance and all other allowances which have reference to the employee's salary must be the salary that plaintiff is paid. What then is the Plaintiff's salary? It is the salary he received at the relevant times paid by the GHS and that ought to be used in the computation of his entitlements. Plaintiff thus entitled to the payment of end of service benefit and other allowances based on his prevailing annual salary at the relevant time."

We are unable to comprehend what the trial judge meant by her position that the words "basic salary" in Exhibit "B" were capable of only one meaning. The evidence on record shows that the parties placed different meanings on the term with plaintiff contending that it meant the GHS salary he was drawing and defendant said the GHS salary was Consolidated salary and not basic salary as contemplated by the conditions of service. For instance during cross examination of plaintiff by defendant's lawyer the following ensued;

"*Q. Mr Essuman can you check the last page 12 of the conditions of service. We have B, C, D before we come to the 2 1 (6) d, my Lord with your permission I will read (he reads), I am putting it to you, basic salary here means COP (Church of Pentecost) basic salary.*

A. My lord that is not correct, because I never enjoyed COP basic salary, I only enjoyed that of GHS salary they themselves put on me."

In the face of these contesting positions it was wrong for the trial judge to fail to consider the interpretation placed on the words by defendant and assumed plaintiff's was right without properly construing the words. When two parties place different and conflicting meanings on words in a deed, the court has a duty to construe the words using the tools of interpretation of deeds and justify why one meaning is right and the other faulty.

It certainly is useful to point out that in dealing with the interpretation of deeds the literal and plain meaning rule must always be applied within the context of the deed being construed and not standing by itself alone as the trial judge did in this case.

In **Boateng v Volta Aluminum Co. Ltd [1984-6] 1 GLR 733,** the Court of Appeal was faced with the construction of an employment contract, as we have in this case, and the court adopted the approach applied by Huddleton B in **Wigsell v Corporation of School of Indigent Blind (1880) 43 LT 218** where he said as follows;

> 'In construing covenants, the fulfillment of the evident intention and meaning of the parties to them must be looked at not confining oneself within the narrow limits of a literal interpretation; but taking more liberal and extended view; and contemplating at once the whole scope and object of the deed in which they are contained.'

Again in the case of **Osei v Ghanaian Australian Goldfields Ltd [2003-2004] SCGLR 69,** at page 73 of the report, Wood JSC (as she then was) said as follows in respect of the proper approach to interpretation of deeds:

> "….the intention must be ascertained from the document as a whole, with the words used being given their plain and natural meaning and within the context in which they are used."

The trial judge did not consider Exhibit "B" as a whole neither did she take its context into account in interpreting it so as to ascertain the intention of the parties. This being an employment contract, the proper approach of interpretation is to construe the words "basic salary" within the context of the whole document having in mind the scope and object of the document.

The plaintiff in his statement of case has referred us to the following passage appearing at page 49 of Sir Dennis Adjei's Book; **Modern Approach to the Law of Interpretation;**

> "Interpretation must always have in mind the age-old ratio in construction of documents and deeds which was re-echoed in the case of Osei v Ghanaian Australian Gold Field Ltd. [2003-2004] SCGLR 69. The law governing rules of construction of documents and deeds are that interpretation must be nearly as

close to the mind and intention of the maker. Any construction of a document or deed which will render the meaning absurd, incongruous, unreasonable or unintelligible, or that will create hardship or inconvenience and will not be nearly as close to the mind and intention of the maker should be rejected in the modern day. Judges must examine the document as a whole in order to ascertain the purpose and the mischief the parties sought to cure."

That reference is apt in the circumstances of this case. In our considered opinion, "basic salary" in Exhibit "B" could not have been intended to include the consolidated salary on the GHS salary scheme. When the document is read as a whole it will be realised that no differentiation was made between senior staff who were on the GHS salary scheme and those on defendant's salary scheme and it would be unreasonable and absurd to conclude that the intention was to bind defendant to a salary scheme that it had no control over. It accords with equity to conclude that since commitment was being made by the defendant to its employees, some of whom were not on the GHS salary scheme, the reference of "basic salary" meant basic salary as fixed by the defendant in accordance with provisions of Exhibit "B".

Plaintiff in his statement of case stated that Exhibit "B" came into effect on 7th January, 2007 so it can be presumed that it was a reviewed version of earlier conditions of service. From the record, by 2007 the astronomical level of salaries paid on the GHS salary scheme had hit defendant hard and it refused to use those salaries to calculate allowances that were paid to plaintiff in 2006. It will therefore result in hardship to construe "basic salary" as referring to the consolidated salaries on the GHS salary scheme.

We therefore hold that the proper interpretation to be given to "basic salary" in Exhibit "B" is basic salary determined by defendant for the different levels of senior staff on its payroll.

We could have rested our decision here but, in his statement of case, plaintiff referred to some promotion letters (Exhibit E series) defendant gave him that made reference to the GHS salary scheme as his salary and has argued that that is what the parties intended by basic salary in Exhibit "B". It is Exhibit E2 dated 20th September, 2007 and E3 dated 7th January 2008, that make reference to GHS salary

scheme. Exhibits "E" dated 1st November 2000 and "E1" dated 30th November, 2004 use the term "basic salary". The dates are significant because, from the evidence, the salary levels became an issue between the parties from 2006 when the government raised the GHS salaries very high. To our understanding, what the

two sets of letters portray is rather that the parties always understood "basic salary" to be different from GHS salary hence the change in the term used in communications between them after 2006. If they intended basic salary to be the same as GHS Salary, there would have been no need to change the wording of the letters of promotion from basic salary to GHS salary scheme.

From plaintiff's own pleadings and evidence, starting 2006 defendant refused to use his GHS salary to calculate any allowances due him under the conditions of service so we are unable to find any legal basis in plaintiff's case as pleaded for his position that basic salary ought to mean GHS salary. In the protest letter written by defendant dated 22nd February, 2006, no legal ground was canvassed for petitioning for the GHS salaries to be used in calculating his allowances. If the interpretation placed on basic salary by the trial court were allowed to stand it would mean that those workers of defendant who are on their payroll will be treated less favourably than plaintiff and his group. It will be absurd and unreasonable to presume, through an exercise of what the trial judge called literalist rule of interpretation, that the parties intended such an inequitable outcome. A court of law ought not to interpret a deed so as to result in such absurdity. It is settled law that where the application of the literalist rule of interpretation leads to absurdity and unreasonableness it ought not to be applied.

For the reasons explained above, save for the order dismissing defendant's counterclaim, we set aside the judgments of the High Court dated 28th March, 2011 and of the Court of Appeal dated 24th June, 2015. Appeal allowed in part.

(SGD) G. PWAMANG

JUSTICE OF THE SUPREME COURT

(SGD) W. A. ATUGUBA

JUSTICE OF THE SUPREME COURT

(SGD) P. BAFFOE-BONNIE

JUSTICE OF THE SUPREME COURT

(SGD) A. A. BENIN

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