IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF GHANA
ACCRA, GHANA

CORAM: DATE-BAH JSC (PRESIDING)
ANSAH JSC
DOTSE JSC
BONNIE JSC
AKOTO-BAMFO(MRS) JSC

CIVIL APPEAL
J4/19/2011

30TH MAY 2012

AMBROSE DOTSE KLAH ... PLAINTIFF/RESPONDENT/ APPELLANT

VRS

PHOENIX INSURANCE CO. ... DEFENDANT/APPELLANT/ RESPONDENT

J U D G M E N T

AKOTO-BAMFO (MRS) JSC:

It is important to stress that the efficient conduct of a case includes the drafting of correct pleadings, the marshaling and adducing of the relevant evidence during the trial and the invocation of the correct principles of law. These are well-known basics. If counsel falls short in any of these areas, it

may lead to failure of the action he or she has initiated or, correspondingly, success of an action he or she is defending. In such a situation, it is no use for counsel to turn around and blame the court for allowing technicalities to frustrate its primary and important function of justice. Courts do justice according to law. Accordingly, counsel cannot afford to take their eyes off the details of the law. This case is a classic example of counsel paying insufficient attention to detail resulting in the inevitable loss of the claim which is the subject of this inattention.

On the 30th of June 2009, the appellant herein, Ambrose Dotse Klah, filed a Notice of Appeal in the Registry of this court by which process he served notice that he was dissatisfied with the Judgment of the court of Appeal dated the 18th of December 2008.According to him the object of his dissatisfaction was:

"The part of the judgment which set aside the award of "severance and other awards"

These were his grounds of appeal:

a. **The Court of Appeal erred in setting aside the award of severance award and other benefits having confirmed that the appeal was wrongfully dismissed**.

a. **The Court of Appeal failed in its duty to do justice to the applicant when it failed to**
invoke its general powers to protect the applicant.

c. **The Court of Appeal should have exercised the discretion to order the payment of**
Severance awards having found that the
Defendant/Appellant/Respondent severed
the employment relationship.

d. **The Court of Appeal erred in requiring the Plaintiff/Respondent/Appellant to lead**

exhaustive and elaborate evidence on his “severance and other awards [benefits]”
when what he claimed to be due him was not challenged.

e. **Additional grounds of appeal may be filed upon receipt of the record of proceedings.**

Even though there was an indication that additional grounds would be filed; no such grounds were filed.
In order to appreciate the issues raised, it is necessary to set out briefly the events culminating in to the present appeal.

BACKGROUND

Until the 5th day of March 2005, the appellant was the Chief Accountant of the Phoenix Insurance Company, the respondent in the present appeal. He was employed in 1996 and assigned the post of a Chief Accountant, a position he held until he received the letter of the 5th of March informing him of the decision of management to dismiss him summarily from the employment of the company with immediate effect.
In the ensuing paragraphs of the letter of dismissal, which was marked as exhibit A in the Court of first instance, were set out various acts which management claimed constituted the appellant’s "refractory and unprofessional behavior in the company."
Exhibit A left the appellant in no doubt that flowing directly from the dismissal was the loss of all benefits due him.

Naturally unhappy at this turn of events, the appellant took out a writ of summons in the High Court claiming against the respondent and two of its executive directors jointly and severally these reliefs:

1. **Declaration that the dismissal of the Plaintiff is unlawful.**
2. **GH¢1,000,000,000 General Damages for DEFAMATION and personally disparaging the Plaintiff**.
3. **GH¢3,731,353,000 special Damages for DEFAMATION rendering his employment opportunities as a Chartered Accountant negligible up to and including his Retirement age.**
4. **GH¢701,128,000 SEVERANCE AND OTHER BENEFITS as the Plaintiff's normal Entitlements.**
5. **Perpetual Injunction to restrain the Defendants, their Agents and Servants from publishing the said defamatory words or any similar words against the Plaintiff**.
6) **Legal Cost.**

After a full trial, the learned Judge found that the dismissal was wrongful and proceeded to make these pronouncements and orders:

"In the case the Plaintiff is asking for the payment of normal benefits which he fixed at GH¢701,128,000 being severance award and other benefits. There is no evidence challenging this piece of evidence on record." He then continued later:

"Since the amount found is what he is to earn by virtue of his employment, he needs to be compensated for the trauma that he encountered.

The Court in addition awards GH¢200 million as general damages. I also award costs of GH¢50 million to the plaintiff."

The respondent company registered its protest against the decision by lodging an appeal at the Court of Appeal. The court unanimously dismissed the appeal on all the grounds with the exception of the 3rd ground. It reversed the findings of the learned trial Judge on the severance award and accordingly quashed the orders made.

Not surprisingly, the appellant lodged an appeal against the decision of the Court of Appeal by filing the Notice of Appeal referred to earlier in this judgment.

Even though five (5) Grounds of Appeal were filed, learned Counsel for the appellant argued all the grounds together with an explanation that they were interrelated.

It is evident that the central issue raised in this appeal was the reversal of the order for a severance award in the sum of GH¢701,128,000 in favour of the appellant by the Court of Appeal.

In his Submissions contained in the Appellant's Statement of Case, learned Counsel argued that, the Court of Appeal abandoned its primary and important duty to do substantial Justice by allowing technicalities to hold sway over substance.

In the view of learned Counsel, since the issue of the GH¢701,128,000 was neither set down as an issue for determination in the High Court, nor were the pieces of evidence by the appellant on the issue challenged, the Court of Appeal erred when it reversed the findings of the High Court on the issue. He additionally contended that since there was no dispute, owing to the fact that the severance award was not an issue set down for determination, the appellant was relieved of his duty to call further evidence on the issue. There being no cross examination on the issue, he contended (and the trial Court thus having admitted same) the Court of Appeal erred in reversing same.

In reply, learned counsel for the respondent submitted that since the appellant failed to discharge the burden laid on him to produce evidence to establish the requisite degree of belief in the mind of the Court, as set out

under section II of the Evidence Act 1975, the attack mounted by the appellant was bound to fail.

In paragraph 38 of the Statement of Claim filed on 30/7/2005, the appellant claimed as follows; "38; Plaintiff further says that by reason of Defendant's action he is not likely to get any job befitting his qualification and status as a chartered Accountant, and thus at his age with nine years more to reach his retiring age, the following are his expected losses, i.e.3, 731,353,000 in expected income. WHEREOF: Plaintiff's claim is against the Defendants jointly and severally as per Writ of Summons as follows:

a. **Declaration that the dismissal of the Plaintiff is unlawful.**

b. **GH¢1,000,000,000 General Damages for DEFAMATION and personally disparaging the Plaintiff**

c. **GH¢3,731,353,000 Damages for DEFAMATION rendering his employment opportunities as a Charted Accountant negligible up to and including his Retirement age.**

d. **GH¢7001, 128,000 SEVERANCE AND OTHER BENEFITS as Plaintiff's normal Entitlements.**

e. **Perpetual Injunction to restrain the Defendants, their Agents and Servants from publishing the said defamatory words or any similar words against the Plaintiff.**

f. **Legal Cost.**

Subsequent to this, the respondents filed a Statement of Defence consisting of 41 paragraphs. In paragraphs 39 to 41 appear the following:

"39. Defendants say that in response to paragraph 38, they are not responsible in any way whatsoever for the conduct of Plaintiff's profession,

and he is put to the strictest proof to justify how GH¢3.731,353,000.00 could be his expected income as Chief Accountant.

40. Except as otherwise admitted in this Defence, Defendants deny every material allegation in Plaintiff's Statement of Claim.

41. Defendants finally state that Plaintiff is not entitled at all to the reliefs he seeks, as being avaricious, unmeritorious and founded on falsehoods."

What is the effect of the above?
It is common learning that pleadings are written statements of the parties setting out in summary form the material facts on which each relies in support of his claim or defence; thereby enabling each party to state and frame the issues in dispute between them.

In Hammond v Odoi 1982-83 GLR 1215 at 1235, Crabbe JSC pronounced on the functions of pleadings thus:

"Pleadings are the nucleus around which the case- the whole case- revolves. Their very nature and character thus demonstrate their importance in actions, as for the benefit of the court as well as for the parties. A trial judge can only consider the evidence of the parties in the light of their pleadings. The pleadings form the basis of the respective case of each of the contestants. The pleadings bind and circumscribe the parties and place fetters on the evidence that they would lead. Amendment is the course to free them from such fetters. The pleadings thus manifest the true and substantive merits of the case. And the reply is very much a part of the pleadings."

The Plaintiff is required to formulate the factual grounds upon which he bases his claim or relief and thus define his cause of the action against the defendant. In Accra-Tema City Council v Ntim 1969 CC 62, the crucial role of pleadings was stated in these terms:

"It is the purpose of such pleadings that they should help to define the issues and to indicate to the party who asks for them how much of the range of possible evidence will be relevant and how much irrelevant to those issues. But if an appellate court is to treat reliance on them a pedantry or mere formality I do not see what part they have to play in our trial system."

Traditionally, the Plaintiff is required to conclude the Statement of Claim with a relief or the remedy claimed.
The Statement of Defence, on the other hand, informs the Plaintiff precisely how much of the Statement of claim the defendant admits or denies.
It is obvious that the respondent positively denied the averments in paragraphs 38 of the Statement of Claim as per paragraphs 39, 40 and 41 of the Statement of Defence.
Since a party's pleadings constitute allegations, as opposed to evidence; where an averment is positively denied as in the matter under consideration, it is incumbent upon the party asserting to substantiate those averments by leading evidence thereon; a cardinal rule of pleadings is that the material facts on which the party pleading relies for his claim, but not the evidence by which those facts are to be proved, should be contained in the Statement of Claim. Order 11 (7)(1) of C1.47 provides

"Subject to this rule, and rules 10 to 12, every pleading shall contain only a Statement in summary form of the material facts on which the party pleading relies for the Claim of Defence, but not the evidence by which those facts are to be proved, and the Statement shall be as brief as the nature of the case admits". Whittaker V. Nanka Bruce 1994-95 GLR 784.

We are of the view that the appellant, having pleaded and endorsed his claim for the sum of GH¢701,128,000 and same having been denied; he was under an obligation to lead evidence in proof of those allegations.
It was not sufficient for him to have pleaded without more; he failed to prove the avements contained in the Statement of Claim. Therefore the assertions of learned Counsel that the issues raised in paragraph 38 of the Statement of Claim metamorphosed into admitted pieces of evidence have no basis in law. The appellant failed to discharge the burden placed upon him by virtue of sections 10 and 11 of the Evidence Act, 1975.
Indeed what constitutes proof has been laid down in the celebrated case of Majolagbe v Larbi 1959 GLR 190 at Page 192 relying on Khoury V. Ritcher
"Where a party makes an averment capable of proof in some positive way e.g. by producing documents, description of things, reference to other facts, instances and his averment is denied, he does not prove it by merely going into the witness box and repeating that averment on oath or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances from which the Court can be satisfied that what he avers is true."

Additionally learned Counsel contended that the appellant's evidence on the GH¢701,128,000 was not challenged and therefore constituted admitted facts which the High Court rightly considered but which findings were wrongly reversed by the Court of Appeal.
We take note of the fact that the Court of Appeal adequately dealt with this issue; and rightly concluded that no evidence was led on same. This is what Aduamah Osei J A at page 467 of the Record said on the issue;" In considering the respondent's claim for the said sum, the trial Court stated as follows:
'' In this case plaintiff is asking for the payment of his normal benefits which he fixed at GH¢701,128,000 being severance award and other benefits.

This represents monies he earned for working for the company. There is also no evidence challenging this piece of evidence on record". On the above findings of the learned trial Judge, Aduamah Osei JA delivered himself thus:

"I have gone over the evidence several times and I find nothing on record in support of the trial court's statement that the said sum represents monies the respondent ''earned for working for the company''. There was no such evidence which the appellant was enjoined to challenge.

All the respondent did was to endorse on his writ of summons, as one of the reliefs claimed by him, a claim for "GH¢701,128,000 SEVERANCE AND OTHER BENEFITS, as Plaintiff's normal Entitlement", and to repeat the endorsement at the end of his Statement of Claim.

The repeat of the indorsement at the end of the Statement of claim is prefixed with the words,"WHEREOF; Plaintiff's claim is against the Defendants jointly and severally as per his writ of Summons as follows;

"This is obviously intended to suggest that the reliefs that follow flow from the preceding averments. There is however nothing in the preceding averments on which the claim for the said sum can be based. And even if there were any such averments, there is no evidence on record which establishes, supports, or even explains the claim."

Having perused the Record of Appeal, we cannot but agree with those findings.

It is therefore our considered view that since the appellant made no attempt at substantiating the allegations contained in the Statement of Claim, they remained allegations and not proof. The case of the appellants crumbles and we accordingly dismiss same.

Significantly the learned trial Judge simply stated at page 467 of the Record " In this case Plaintiff is asking for the payment of his normal benefits which he fixed at GH¢701,128,000 being severance award and other benefits. This represents monies he earned for working for the company. There is no evidence challenging this piece of evidence on record".

What was the nature of the award? Was it within the scope of the exercise of its jurisdiction to award general damages or special damages as and when appropriate? If the former; what was the award of GH¢200,000.00? Was it in respect of his Salary for the period in lieu of notice and therefore represented the amount of wages he was prevented from earning as a result of the wrongful act? If the latter; was it pleaded, particularized and proved?

A distinction exists between general and special damages; for whereas general damages arise by inference of law and therefore does not need to be proved by evidence, special damages, a loss which the law will not presume to be the consequence of the defendant's act but which depends in part, on the special circumstances, must therefore be claimed on the pleading and particularized. to show the nature and extent of the damages claimed. The plaintiff must go further to prove by evidence that the loss

alleged was incurred and that it was the direct result of the defendant's conduct. Chahin and sons v. Epope Printing Press 1963 1 GLR 163-173.

This undoubtedly was a contract of employment. The respondent committed a breach thereof.
Where an employer wrongfully dismisses an employee as in the instant case, which was the finding made by the trial Judge and rightly affirmed by the Court of Appeal; the measure of damages is calculated largely on the basis of the principles applicable to actions of breach of contract as enunciated in Hadley v Baxendale 1854 9 Ex .341 and 354-355. "Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such of breach of contract should be such as may fairly and reasonably be considered as either arising naturally i.e., in the usual course of things from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract, as the probable result of a breach of it. "
The principle is to place the injured party as far as money could do so in the position he would have been but for the breach**.** Royal Dutch Airways v Farmex 1989-9 2GLR 623.

Over the years, our courts have enhanced the awards beyond the notice period under the contract.

Hemans V. Ghana National Trading Company 1978 1GLR 4.

Nkegbe V. African Motors Division of the United Africa Company of Ghana Ltd. 1978 1GLR 32.

This development does not detract from the essential nature of a contract of employment which is clearly determinable and does not therefore give the wronged party the right to be paid salary until his retirement, the

exception being contracts affected by Public Law Provisions as demonstrated by the Ghana Cocoa Marketing Board V. Agbettor line of cases. ([1984-86] 1GLR 122.)

We take note of the fact that there was an award of GH¢200,000,000 which was affirmed by the Court of Appeal. Since that issue is not on appeal, we refrain from commenting on same, Suffice it to say that generally a plaintiff is entitled to such damages as would have been suffered by a party acting reasonably after the breach. Therefore in the case of an employee wrongfully dismissed, he is required to make a reasonable effort to secure a comparable job. Ashun v Accra Brewery Ltd 2009 Sc.GLR 81
At page 84, the Supreme Court speaking through Prof. Date-Bah JSC stated "the duty of mitigation of damages for wrongful dismissal devolves on the employee. Accordingly, he or she has the duty to take steps to find alternative employment. In principle then, in the absence of any contrary statutory or contractual provision, the measure of damages for wrongful termination of employment under the common law of Ghana is compensation, based on the employee's current salary and other conditions of service, for a reasonable period within which the aggrieved party is expected to find alternative employment. Put in other words, the measure of damages is the quantum of what the aggrieved party would have earned from his employment during such reasonable period, determinable by the court, after which he or she should have found alternative employment. This quantum is, of course, subject to the duty of mitigation of damages".

In the main, we find no merit in the Appeal. We would accordingly dismiss same.

[SGD] V. AKOTO-BAMFO (MRS)
JUSTICE OF THE SUPREME COURT

[SGD] DR. S. K. DATE- BAH
JUSTICE OF THE SUPREME COURT

[SGD] **J. ANSAH**
JUSTICE OF THE SUPREME COURT

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