IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF GHANA
ACCRA- GHANA, A.D.2014

CORAM: ADINYIRA (MRS), J.S.C. (PRESIDING)
OWUSU (MS), J.S.C.
DOTSE, J.S.C.
YEBOAH, J.S.C.
AKAMBA, J.S.C.

CIVIL APPEAL
NO.J4/39/2013

21ST MAY 2014

EMMANUEL C. PLANGE & 437 ORS …. PLAINTIFFS/RESPONDENTS/ RESPONDENTS

VERSUS

GHANA COMMERCIAL BANK LTD. ….DEFENDANT/APPELLANT/ APPELLANT

AND

BENJAMIN A. BOATENG & 72 ORS ….PLAINTIFFS/RESPONDENTS/ RESPONDENTS

VERSUS

GHANA COMMERCIAL BANK LTD.…DEFENDANT/APPELLANT/ APPELLANT

JUDGMENT

SOPHIA ADINYIRA (MRS), J.S.C.

Facts

The Plaintiffs are all former employees of Ghana Commercial Bank the Defendant herein in the two suits having been employed and worked for the Defendant at various periods of time between 1961 and 2002. In 1976 the Defendant established a scheme known as the Ghana Commercial Bank Special Pension Scheme. In this judgment we shall simply refer to it as the Scheme. The rules regulating the operation of the Scheme were approved by the Board of Directors of Ghana Commercial Bank pursuant to Regulation 35(1) of the Ghana Commercial Bank Regulations which have been scheduled to section 13 of the Ghana Commercial Bank Decree of 1972 (NRCD 115). Under this Scheme the Defendant undertook to make payments of money to its employees who upon satisfying conditions stipulated in the rules of the Scheme were to proceed on pension.

The Scheme was a non-contributory scheme. It was to be financed and resourced from the profits of the bank and no employee was required to make any contribution to the Scheme. To qualify for a withdrawal or enjoyment of the benefits under the scheme, paragraph 3 of the Rules of Ghana Commercial Bank Special Pension Scheme, Exhibit A1 herein, provides as follows.

> "3. CATEGORIES OF EX-STAFF WHO QUALIFY
>
> *(a) Members of staff who at the time of compulsory or voluntary retirement have served the bank for a minimum period of 15 years shall qualify. In this context the compulsory retiring age for both male and female employees shall be 60 years. There shall be a voluntary retiring age of 45 years for both male and female employees.*
>
> *(b) Members of staff who resign or whose service are terminated also qualify for pension provided they have served for period of 15 years and have attained the minimum age of 45 years.*
>
> *(c) Members of staff who are required by the Government to serve in other Institutions and at the time of leaving the service of the Bank have served the minimum period of 15 years should qualify under the scheme, the pension rights of such qualifying staff shall, however be frozen until the staff has attained the voluntary retiring age.*

In December 1990, the Defendant abrogated the Scheme. By the amended writs of summons in both cases the Plaintiffs set out the same reliefs namely:

> *"(1) Declaration that the Plaintiffs are eligible to participate in and enjoy the benefits of the Ghana Commercial Bank Special Pension Scheme set up by the Defendant for the benefit of its employees.*

(2) Declaration that it is unjust, discriminatory and inequitable for the Defendant to confer the benefit on the other ex-staff whiles denying the Plaintiffs the same benefit and the same is contrary to and offends Articles 17(2) 24(1) and 37(6) of the Ghana Constitution 1992.

(3) An order of specific performance directed to the Defendant to compute and pay to the Plaintiffs their Special Pension benefits under the Ghana Commercial Bank Special Pension Scheme with interest thereon to date of final payment.

(4) Any or other reliefs as the justice of the case will require."

The case of the Plaintiffs is that of the existence of a contract between them and the Defendant. Plaintiffs contended that they were entitled to certain payments upon leaving Defendant's service and after duly satisfying the conditions stipulated in the Scheme for such payments. The Plaintiffs contended further that under the Scheme, Defendant could not abrogate the Scheme which had guaranteed them some financial entitlements upon satisfying the conditions stipulated in the Scheme. Plaintiffs argued that Defendant's contention that it had terminated the Scheme is untenable. The Plaintiffs further anchored their case on the Constitution of the Republic per Articles 17(2), 24(1) and 37(6). There was a further argument that since the Defendant had earlier made payments under the Scheme to some of its employees, the Plaintiffs were also entitled on equitable grounds to equal treatment with their former co-workers who enjoyed the benefit of the Scheme.

The Defendant denied the Plaintiff's claim and pleaded that the special pension scheme had since 1990 been abrogated by the defendant bank to the knowledge of the Plaintiffs and they are not entitled to their claims. Defendant insisted that having abolished the Scheme on 18th December 1990, those of the Defendant's employees who had served for 15 years and had attained the minimum age of 45 years and had retired prior to the abolition date of 31/12/1990 from Defendant's service were qualified for any payment. Defendant argued that the Scheme was non-contributory and payments made under the Scheme were completely ex-gratia and being noncontributory, payments could only be made contingent upon availability of funds. Defendant raised the issue about the staleness of the action on the basis that the Scheme was abolished in 1990. The Defendant contended that Plaintiffs had all left Defendant's employment by the year 2000 and that since the actions were based on a contract their rights under the contract had by the time the suits were commenced had been extinguished by statute.

The issue for trial and judgment of the High Court

The High Court having taken evidence arrived at the conclusion that:

"The main issues for determination are whether or not the special pension scheme instituted by the Defendant had been abrogated. Secondly whether or not the Plaintiffs

herein have knowledge or are aware that the special pension scheme had been abrogated and thirdly whether or not the Plaintiffs are entitled to their claim".

On the first and second issues the High Court found as a fact that the Defendant abrogated the Scheme and this was brought to the notice of all those who cared to know through the publication of the annual financial statements of the bank. The High Court however was of the view that the abrogation of the Scheme was illegal by virtue of section 24 of the Social Security Decree of 1972 (NRCD 127.

With regards to the reliefs claimed by the Plaintiffs the High Court held in both suits that:

"Considering the conditions set out in paragraph 3c (sic) of Exhibit A1 herein, I hold that all the plaintiffs who served the defendant bank for at least 15 years and had attained at least the age of 45 years at the time that they left or retired from the employment of the Defendant are eligible to draw benefits under the special pension scheme."

The judge dismissed the action of 113 plaintiffs in Suit No AHR/10/2007 and that of 24 plaintiffs in Suit No AH/10/200724 respectively for the reason that by their own showing as evidenced by the schedule attached to their amended statement of claim they have, at the time of the leaving the employment of the Defendant, not attained the minimum age of 45 years as required under paragraph 3c (sic) of the rules of Exhibit A1 herein.

The Judge dismissed the second relief of the Plaintiffs in both suits on the grounds that there was no evidence in the testimony of the Plaintiffs to support the allegation of discrimination.

The Plaintiffs whose action was dismissed cross-appealed, but their appeal was summarily dismissed. The Defendant being dissatisfied also appealed to the Court of Appeal which affirmed the decision of the High Court. Undeterred by the concurrent decision of the two courts the Defendant launched this appeal before the Supreme Court on the grounds that:

1. The court below erred when it held that Plaintiffs/Respondents/Respondents action was not statute barred.

2. The court below erred in its interpretation of section 24 of the Social Security Decree, 1972, (NRCD 127) and in upholding the interpretation by the High Court of section 24 of NRCD 127.

3. The court below erred when it held that the order for specific performance made by the High Court should be upheld.

4. The judgment is against the weight of evidence

It must be borne in mind in this appeal that the Court of Appeal unanimously affirmed the judgment of the trial court on all the facts and concurred in its judgment. The longstanding principle that has been applied by this court is that we must allow concurrent judgments to stand in the absence of compelling reasons such as if the appellant demonstrate convincingly that the findings were not supported by the evidence or applicable laws. See cases as *Achoro v. Akanfela [1996-97] SCGLR 209; Obrasiwa II v. Otu [1996-97]SCGLR 618; Tuakwa v. Bosom [2001-2002] SCGLR 61; Lagudah v. Ghana Commercial Bank [2005-2006] SCGLR 388;* and *Tandoh IV & Hanson [2010] SCGLR 971*.

Instances where concurrent findings or decisions may be interfered with were summed up by Acquah JSC (as he then was) in *Koglex Ltd v. Field (No 2) [2000] SCGLR 175* at page 185 as follows:

i. Where the said findings of the trial court are clearly unsupported by the evidence on record; or where the reasons in support of the findings are unsatisfactory: see *Kyiafi v Wono [1967] GLR 463;*

ii. Improper application of a principle of evidence: see *Shakur Harihar Buksh v Shakur Union Parshad [1886] LR 141 A7*; or where the trial court has failed to draw an irresistible conclusion from the evidence; see *Fofie v Zanyo [1992]2 GLR 475 at 490*;

iii. Where the findings are based on a wrong proposition of law: *Robins v National Trust Co. Ltd [1927] AC 515*, wherein it was held that where the finding is so based on an erroneous proposition of law, that if that proposition is corrected the finding disappears; and where the findings is inconsistent with crucial finding on the record.

The ground of appeal relating to the interpretation of section 24 of the Social Security Decree, 1972, (NRCD 127)

On the question of the abrogation of the scheme the Court below held that:

> *"I find from exhibit 5 that on 18th day of December 1990, at 10:45am the Board of Directors of the Defendant bank met and took a decision to abrogate the special pension scheme established by the Defendant which was then in operation. I also find from exhibit 6 that on 29th day of January 1991, at 9:40am the Board of Directors of the Defendant bank met and among others adopted the minutes of the meeting held on 18th December 1990".*

The finding of fact by the Court that the Plaintiffs were adequately informed of the termination of the scheme is borne out by this specific finding of fact that:

> *"Again I find from the evidence on record, particularly the exhibit 4 series that the said abrogation of the special pension scheme was brought to the notice of all those who cared to know through the publication of the annual financial statements of the bank.*

Exhibit 4 series are copies of the financial statements of the bank spanning the period 1992 to 2000. In each of these financial statements, there is a note to the effect that the special pension scheme has ceased to exist since December 1990".

The trial Judge having made primary findings that the Scheme was terminated by the Defendant and that the Plaintiffs were sufficiently informed of the scheme's termination, went on to hold further that the abrogation of the Scheme was illegal by virtue of section 24 of the Social Security Decree of 1972 (NRCD. The Court of Appeal affirmed these findings.

The submissions by the Defendant on this ground of appeal particularly relates to the finding of the High Court that the abrogation of the Scheme was illegal by virtue of section 24 of the Social Security Decree of 1972 (NRCD 127), and as a result the abrogation was of no effect. Upon this reasoning the High Court held that the Plaintiffs were entitled to benefit under the Scheme upon their retirement. This is what the High Court said:

"The evidence placed before me in respect of the alleged abrogation shows that it was the Board of Directors of the Defendant bank that met on the 18th December, 1990 to accept a proposal for the abrogation of the pension scheme established by the Defendant. However, under section 24 of NRCD 127, the winding up of the scheme is supposed to be done on the directions of the Commissioner. The Defendant failed to adduce evidence to show that in purporting to abrogate the scheme it did so upon the directions of the Commissioner. I am of the opinion that once the alleged abrogation was not done upon the directions of the Commissioner as required by law the said abrogation cannot be legally cognizable. It is of no effect in law. It is a nullity, it implies therefore that the pension scheme established by the defendant, has in law and in fact, not been abrogated or wound up as alleged by the defendant."

Different interpretations were put on section 24 (4) and (5) of NRCD 127 (which was the applicable law then; was replaced in 1991 by the Social Security Act, 1991, PNDCL 247 and subsection 3, 4, and 5 were removed from section 21 that dealt with existing schemes) by the parties and the courts below. It is therefore necessary to examine them in the context of its setting in Section 24. Section 24 of NRCD provides:

"24. (1) The existence of a pension, provident fund or gratuity scheme in respect of workers to whom this Decree applies shall not exempt the employer of such worker or such workers from the provisions of this Decree and such employer shall be responsible for deducting contributions from the pay of such workers and paying them along with his own contributions to the fund or any prescribed person at the rates laid down in the provisions of this Decree, except that contributions in respect of persons who are not citizens of Ghana shall be subject to orders issued by the Commissioner.

(2) Notwithstanding the provisions in any scheme referred to in subsection (1), of this section the employer concerned may amend the written provisions of the scheme, with the

prior approval of the Board of Trustees referred to in subsection (4) of this section or in the absence of such approval, with the consent of the Commissioner so as to adjust the benefits provided therein to enable the payment of the contributions payable under this Decree.

(3) nothing in this section shall be construed so as-

(a) to authorize the amendment of a scheme, whereby the employer's rate of contribution, if any, under the scheme and the rate of his contribution under this Decree are reduced below those to which the worker would have been entitled if this Decree did not apply to him; or

(b) to require an employer to contribute to his scheme any amount if the rate of his contribution under that scheme was not more than that prescribed under this Decree except where such payment is required by his obligation under subsections (2) and (3) (a) of this section.

(4) Subject to the preceding provisions of this section, the existing scheme may not be wound up but each such scheme may continue as a supplementary scheme, with appropriate amendments to its written provisions, subject to the following conditions:-

(a) the assets including moneys relating to such scheme, shall vest in a board of trustees consisting of an equal number of representatives of the workers and the employer concerned, and of a representative appointed to such board by the Commissioner if he is of the opinion that the working of such scheme is not in the interest of the members;

(b) the moneys of the scheme shall be invested in such securities and other investments as may be indicated in general directives by the Commissioner;

(c) the Commissioner, may with due regard to the interests of members of the scheme issue such directives as appear to him appropriate regarding the investments of the funds of the scheme already made out of Ghana but before the directives are made operative, the trustees shall be given a full opportunity to make any representation in respect of the proposed directives;

(d) no changes shall be made in the scheme without the written approval of the Commissioner; and

(e) the employer in respect of such a scheme shall send to the Board set up under section 4 of this Decree such returns as may be required and shall afford every facility to inspectors of the fund referred to in section 10 of this Decree to inspect the accounts relating to such a scheme.

(5) In the event of the failure of the employers or the trustees to observe these conditions or in case Government is satisfied that the working of the scheme has continually been against the interests of its members, the Commissioner may after giving one month's notice to all parties concerned and after considering on merits any representations made in that behalf issue suitable directions including, in the last resort, that the scheme shall be wound up, that all accumulated balances to the credit of the members of the scheme shall be sent to the Board."

As said earlier different interpretations were put on section 24 (4) and (5) of NRCD 127 by the parties and the two courts below. Although the Plaintiffs supported the interpretation of the High Court, it invited us to set aside the findings of the High Court as affirmed by the Court of Appeal that the Defendant abrogated the Scheme and also informed the employees. In considering the evidence on record, we find that there is sufficient evidence to support the concurrent findings under attack by the Plaintiffs.

Reverting to the ground of appeal, it is necessary for this Court to construe the meaning and intent of the whole provisions of section 24 of NRCD 127. We propose to adopt *the literalist, ordinary, plain or grammatical meaning* in our interpretation of the said section. Reference is made to **Republic vs. High Court Accra, Ex parte Hesse [2007-2008] SCGLR 1230** where the application of the literal rule in interpretation and construction of statutes was discussed by the Supreme Court. Her Ladyship Georgina Wood CJ held as follows:

"I have examined the case law on statutory interpretation and observed that on the construction of statutes, the literalist, ordinary, plain or grammatical meaning, should be adhered to if it clearly advances the legislative purpose or intent and does not lead to any outrageous consequences. This rule of construction may fitly be described as the subjective purpose rule, with this rule being invoked only where objective-purpose rule leads to mischief or injustice".

Before we embark on the task of finding the full import of S24, a brief excursion into the history of pension schemes in Ghana is appropriate here. The earliest pension scheme was established by the British Colonial Ordinances (Pensions Ordinance No. 42, Chapter 30) popularly referred to as Cap 30 for public servant, namely, certified teachers, university lecturers and government workers. Vast majority of Ghanaian workers were not covered by Cap 30. The Social Security Act, 1965, Act 279 was therefore enacted to create a contributory social security scheme for payment of superannuation, invalidity, survivors and other benefits for workers in both public and private establishments. It was compulsory for every employer to make special deductions from the remuneration of his or her employees and the employer's own contribution into a Social Security Fund set up under the Act. The law recognized the existence of pension, provident fund or gratuity schemes in respect of workers to whom the Social Security Act applies. NRCD 127 was the successor of Act 279. Section 24 deals with existing schemes.

There is no definition of the term 'existing scheme' in NRCD 127. It is rather found in the Social Security Regulations, 1973, L.I.818 where 'existing scheme' is defined as: *"any scheme existing on the last day of July, 1972 or any scheme started after that date."*

The Defendant submits that by this definition, its Scheme which was commenced in 1976 was an existing scheme within the meaning of NRCD 127 and not a supplementary scheme or additional scheme for it to be regulated by section 24of the Decree. We do not think the Defendant's interpretation is correct for the following reasons. The SSNIT pension scheme as established under NRCD 127 is compulsory for all employers and employees. By section 24 (1) the existence of any other scheme whether pension, provident fund or gratuity scheme does not exempt the employers of such worker or such workers from the provisions of NRCD 127. Subsections (2) enables an employers to adjust the benefit provided under existing schemes to enable the payment of contributions payable under the Decree; and subsection (3) forbids employers from doing anything to affect the compulsory contribution to be made to the Social Security Fund. Under subsection (4) employers had the option to either wind up or continue with their own private schemes subject to conditions laid down in subsection 4 (a) to (e). The sanction for a breach of these conditions is provided in subsection (5)

The plain ordinary meaning of the words '*the existing scheme may not be wound up but each such scheme may continue as a supplementary scheme, with appropriate amendments to its written provisions',* suggests that the NRCD 127 applies to schemes that were in existence before the setting up of the Social Security Fund. However the definition of 'existing schemes' as provided in L.I. 818 include private schemes set up after NRCD 127 came into force, it follows logically that any scheme set up by an employer before or after July 1972 is supplementary to the SSNIT Pension Scheme which by law is compulsory for both the employer and employee to make contributions at rates fixed by law. In the management of such private schemes, employers and trustees of such schemes are to comply with the conditions set out in section 24. We therefore hold that upon the proper interpretation of the term 'existing scheme' in section 24, the Scheme set up by the Defendant in 1976 was supplementary to the compulsory pension scheme set up under the Social Security Act and as such was to be managed and subject to the provisions of section 24 of NRCD 127.

The crux of the issue before us then is the construction to be placed on section 24 (4) and (5). The Defendant in this appeal repeats his argument before the Court of Appeal that by virtue of the private and contractual nature of the Scheme, it could be wound up without reference to the Commissioner under NRCD 127.The Court of Appeal preferred the view of the Plaintiffs that the winding up of the scheme is required to be done on the directions of the Commissioner, a finding the Defendant has appealed against.

The opening part of 24(4) states*: "Subject to the preceding provisions of this section, the existing scheme may not be wound up but each such scheme may continue as a supplementary scheme, with appropriate amendments to its written provisions, subject to the following conditions".*

Indeed a plain reading of 24(4) leaves no doubt in our minds that the intent and purpose of this subsection is to set out conditions on which an existing scheme may be run as a supplementary scheme to the compulsory scheme established under NRCD 127. These conditions are set out in 24 (4) (a), (b) (c) (d) and (e). We note that no provision was made to regulate the voluntary winding up of an existing scheme which by contrast with the Social Security Fund was purely private and contractual.

The Plaintiffs were of the view that the winding up of a private pension scheme was within the competence of the Board of Trustees and the Commissioner and the same was governed by section 24 (5) of NRCD 127.24(5).The Plaintiffs contend that: "any all representations for winding up a private pension scheme ought to be made or referred to the Commissioner who may act as appropriate and issue directives accordingly."

With due respect to counsel we find this submission incorrect in view of the wording of Section 24 (5) which provides:

> *(5) In the event of the failure of the employers or the trustees to observe these conditions or in case Government is satisfied that the working of the scheme has continually been against the interests of its members, the Commissioner may after giving one month's notice to all parties concerned and after considering on merits any representations made in that behalf issue suitable directions including, in the last resort, that the scheme shall be wound up, that all accumulated balances to the credit of the members of the scheme shall be sent to the Board.* [Emphasis mine]

Section 24 (4) sets out conditions to be followed in running an existing scheme supplementary to the Social Security Fund; and section 24(5) sets out procedures to be followed by the Commissioner in winding up a scheme where there is a breach of these conditions by an employer/Trustees; or where the scheme is not being run in the interest of workers. Section 24(5) sets out the procedure to be followed by the Commissioner before, as a last resort, give directives for the scheme to be wound up and that all accumulated balances to the credit of the members of the scheme shall be sent to the Board. The purpose of sending accumulated balances to the credit of members to the Board is to protect contributions made by employees in a contributory scheme; which is inapplicable in a non-contributory scheme as the Defendant's.

It is plain that Section 24 (5) does not apply to situations where an employer voluntarily decides to wind up its own private scheme. Accordingly we hold that the winding up of the Scheme by the Defendant was not in contravention of NRCD 127. Accordingly we find unsupportable the finding by the High Court that:

> "*…once the alleged abrogation was not done upon the directions of the Commissioner as required by law the said abrogation cannot be legally cognizable. It is of no effect in law. It is a nullity, it implies therefore that the pension scheme established by the*

defendant, has in law and in fact, not been abrogated or wound up as alleged by the defendant".

This conclusion by the court that the Scheme had not been abrogated is with due respect illogical and inconsistent with the earlier primary finding of facts by the court, that the Defendant's Board of Directors have actually abrogated the Scheme and published it in subsequent financial statements.

We accordingly hold that the High Court erred in holding that Scheme continued to be in existence despite its abrogation. The Court of Appeal therefore erred in affirming this finding and this Court can justifiably set it aside. We accordingly set aside this finding. We however have to mention that the Board of Directors was not insensitive to the effect this abrogation would have on the retiring benefits of its employees. So the Board recommended increase in salaries of the employees to enhance the contributions payable to the Social Security Fund.

What is the effect of the termination of the Scheme as regards master servant relationship between the parties? Since the scheme was a term of the service condition of the employees, and therefore contractual, the termination is considered a breach of a term of contract. And we so hold.

The ground of appeal relating to whether the Plaintiffs' action was statute barred.

This ground is tied up with the Plaintiffs' claim for specific performance. The remedy for breach of contract is either a claim in damages or in appropriate cases for specific performance.

The Plaintiffs' action was instituted on 28 October 2006, 16 years after the termination of the Scheme. There was a concurrent finding of fact by the courts below that the Plaintiffs were entitled to specific performance a relief which is not affected by section 4 (1) (b) of the Limitation Act which bars an action founded on simple and quasi contracts after the expiration of six years from the date of the accrual of a cause of action.

So the question here is: at the time the Defendant abrogated the Scheme in December 1990 were the Plaintiffs herein entitled to pension under the Scheme and therefore had a cause of action that entitled them to ask for specific performance? Section 3 of the rules, Exhibit A1, specifically states that the Scheme applies to the category of staff members who have served for at least 15 years and have gone on compulsory retirement or voluntary retirement. [Emphasis mine] Accordingly at the time of the breach, it is only retired staff members who have accrued rights under the Scheme that are legally entitled or competent to mount a claim for specific performance after the termination of the Scheme. By section 6(1) of the Limitation Act such a claim is not affected by section 4 of the Act.

The Plaintiffs by their own showing retired in the year 2000 or thereabout and so as at 31 December 1990 when the breach occurred, the Plaintiffs were not pensioners but still in active service. The general rule in contract is that the cause of action accrues not when the damage is suffered, but when the breach takes place. See *Chitty on Contracts Vol. 1 General Principles para 158; Howell v Young [1826]3 B & C 259 at 265*.

In this case the Plaintiffs' cause of action if any accrued from 31 December 1990 (the effective date of the termination) and not from the time of their retirement in 2000 or thereabout. Accordingly the Plaintiffs can neither maintain an action to participate in and enjoy the benefits of the Scheme set up by the Defendant for the benefit of its employees at that time; nor could they compel the Defendant to compute and pay to them pension benefits under the abrogated Scheme with interest thereon to date of final payment; upon their retirement in 2000 or thereabouts as the Scheme was non-existent having been abolished by the Defendant in 1990. In the circumstances of this case and from the conditions set in rule 3 of the regulations of the Scheme the Plaintiffs even if they had a cause of action they had no remedy founded in specific performance.

The only remedy available to the Plaintiffs, if any, at the time of the breach was a claim for damages for breach of a service condition or perhaps an action for re-instatement of the Scheme. This being a claim founded on contract it ought to be mounted within six years from the date of the breach. The period of limitation under the Limitation Act runs from the date on which the cause of action accrued, and in this case, 31 December 1990. Unfortunately the cause of action is caught by section 4 (1) (b) of the Limitation Act which states:

4. *Actions barred after six years.*

(1) A person shall nor bring an action after the expiration of six years from the date on which the cause of action accrued, in the case of

(a) ...

(b) an action founded on simple contract

(c) an action founded on quasi-contract

Waiver by Defendant of rights under the Limitation Act

The Court of Appeal considered the Defendant's conduct subsequent to the abrogation of the scheme to be inconsistent and concluded that the Defendant has waived its rights under the Limitation Act. The Plaintiffs submit that: Notwithstanding the alleged abrogation of the special scheme by the Defendants in 1990, the Defendant did not conduct itself with any consistency regarding requests for payments of entitlements by its ex-employees which were founded on the special pension scheme and also failed to give any straightforward indication or rebuttal to any enquiry by an ex-employee regarding a demand made on the scheme.

This submission is based on two correspondences and a pay voucher they tendered as exhibits attached to an affidavit in opposition to the Defendant's motion at the High Court to dismiss the Plaintiffs action on the grounds that the action was statute barred. The application was dismissed. The Defendant unsuccessfully tried to have the issue considered by the High Court in its judgment.

The Defendant submits before us that the exhibits or evidence relied on by the Plaintiff were not helpful to Plaintiffs' case. We have considered the evidence on record and we find no evidence to support the findings by the Court of Appeal that the Defendant was willing to settle with Plaintiffs for payment under the scheme. Payments made so far were made to employees whose right to payment accrued before 1990; and also ex-gratia awards to those who were affected by retrenchment or redundancy of some employees in the Bank. These negotiations on the redundancy were done with the labour union as the labour laws required. Also the correspondence between the Plaintiffs and the Defendant before the issue of these two suits did not in any way indicate the Defendant accepted liability. Accordingly we hold that the Court of Appeal erred in concluding that the Defendant by its conduct waived its rights under the Limitation Act. We set this aside.

From the foregoing we hold that the judgment of the Court of Appeal was against the weight of evidence.

Accordingly the appeal succeeds and the judgment of the Court of Appeal is set aside. The Plaintiffs' action in both suits is dismissed.

(SGD) S. O. A. ADINYIRA (MRS)

JUSTICE OF THE SUPREME COURT

(SGD) R. C. OWUSU (MS)

JUSTICE OF THE SUPREME COURT

(SGD) J. V. M. DOTSE

JUSTICE OF THE SUPREME COURT

(SGD) ANIN YEBOAH

JUSTICE OF THE SUPREME COURT

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