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

CORAM: WOOD (MRS), CJ (PRESIDING)
BROBBEY, JSC
DOTSE, JSC
YEBOAH, JSC
GBADEGBE, JSC

CIVIL APPEAL
NO. J4/3/2010
11TH AUGUST, 2010

WILLIAM G.K. THOMPSON	**-**	**PLAINTIFF/ RESPONDENT/ RESPONDENT**
VRS		
TOTAL GHANA LIMITED	**-**	**DEFENDANT / APPELLANT APPELLANT**

J U D G M E N T

YEBOAH, JSC:-

This an appeal from the judgment of the Court of Appeal dated 31 July 2008, which affirmed the previous decision of the trial High Court, Accra.

The respondent herein, who commenced the action as plaintiff at the High Court, Accra was at the time material to the action The Retail Network Development Manager of the appellant's company. He had been in this official position for sixteen years and was a Senior officer. In November of 2005, the Acting Manager Director of the appellant's company,informed him that some

employees of the company had been arrested and that the respondent should go to the Police Station at Legon to give a statement to the Police. It turned out that two mechanics who were employees of the company at East Legon filling Station had been arrested. The respondent gave a statement to the Police and reported later to the Police Station on subsequent days.

On the 1st of November 2005, the respondent was at work when the Acting Managing Director of the appellant company handed a letter to him which sought to suspend him as an Officer of the company. In the course of the trial, this letter was tendered in evidence as Exhibit 'B'. The reason canvassed in Exhibit 'B' for the respondent's suspension was that he had been implicated in the ongoing police investigations. The respondent contended that the Police did not make any adverse findings against him and did not charge him with any offence. It was further contended by the respondent at no point in time did the appellant company invite him to confront him with any allegations of impropriety before he was suspended. The respondent's Solicitor wrote to the appellant company to reconsider the decision to suspend the respondent as according to the Solicitor, the decision sinned against the basic rules of natural justice. The appellant justified the decision to suspend the respondent.

Following the response from the appellant company, the respondent caused the action herein to be commenced against the appellant seeking among other reliefs a declaration that his suspension from the employment was null and void and of no effect.

The matter proceeded to a full scale trial at the end of which the learned trial Judge of the High Court, Accra made a determination in favour of the respondent. The appellant, claiming to have been aggrieved by and dissatisfied with the judgment of the trial court lodged an appeal there from to the Court of Appeal. In its judgment, the Court of Appeal held that the appeal was without merit and consequently dismissed same. The instant proceedings are as a result of the exercise by the appellant of its statutory right to appeal to this court from

the decision of the Court of Appeal. In its appeal, the appellant quite naturally seeks a reversal of the decision of the Court of Appeal in its favour and in particular, an order dismissing the claims of the appellant as formulated in the writ of summons herein.

Before us, the appellant has challenged the decision that is on appeal on several grounds. In our view, since the action arises from a contract of employment, the fundamental issue to be decided in the matter herein is whether the letter of suspension earlier on referred to in the course of this judgment was justified under the contract between the parties herein? This requires us to examine the reasons contained in the said letter of 1 November 2005. Since the appellant was the author of the said letter, it was incumbent upon it to prove that the allegation on which the suspension was based was true.

Unfortunately, at the trial before the High Court, the appellant relied only on bare allegations to sustain a charge which was in its nature criminal. The appellant neither called the police who were alleged to be investigating the complaint, nor the persons who had according to them, made statements that implicated the respondent. The proceedings held in the course of the trial on 26 January 2007 that appears at page 136 of the record of appeal has the following entry that we consider decisive against the appellant on the burden of proof that it assumed having regard to its defence to the action herein.

"BOADU: We have subpoenaed the IGP and served Hearing Notice on them but they have not come to help us. We cannot ask that they be arrested so we are closing our case.

BY COURT: Defendant having announced the closure of their case counsel should file addresses on or before 8th February 2007 and plaintiffs counsel his address on or before 19th February 2007. Adjourned to 22nd February for mention."

We think that by its conduct, the appellant may be said to have admitted the respondent's claim that the allegations made against him were untrue. In the peculiar context of this case, there was, in or thinking, an obligation on the part of the appellant to provide credible evidence to the trial court that would render the allegation on which its suspension of the appellant was based more probable than the version of a denial which was the pivot of the appellant's case. By the operation of the relevant rules of the Evidence Act the burden of leading evidence and in particular sections 11 (4) and 14 the appellant left the trial court with no option than coming to the conclusion that the allegation made against the appellant that had informed his suspension was untrue. We refer to the said sections as follows:

"11 (4) In other circumstances the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence.

14 Except as provided by law, unless and until it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence he is asserting."

See Brown v Rolls Royce Limited [1960] 1 ALL ER 577.

The above conduct of the appellant can only be construed to mean that it did not have the evidence to support the allegation. It being so, we are surprised that the appellant invites us to come to a different conclusion on the matter than that which was reached on the admitted evidence by the Court of Appeal and indeed the trial Court. It is interesting to note that in its bid to prove the allegation against the respondent, the appellant introduced in Evidence Exhibit 1, a report by the Legon Police that is headed:

"Re-Malpractices at the A & C Shopping Mall Total Filling Station at East Legon".

The said document that was admitted in evidence, despite objections from counsel for the appellant, in our view not only offends against the hearsay rule contained in section 118 of the Evidence Act, 1975 NRCD 323 but was prejudicial to the case of the appellant within the intendment of section 52 of the same legislation and ought not to have been received in evidence at all. Consequently, we proceed to expunge from the evidence although we observe that neither the trial court nor the Court of Appeal acted upon it in reaching their verdict in the matter herein. ***See Tormekpey v Ahiable [1975] 2 GLR 432.*** Delivering the opinion of the Court, Anin JA quoting with approval from Phipson on Evidence (10th Edition) at page 855, paragraph 2053 said at page 434 thus:

"If inadmissible evidence has been received (whether with or without objection), it is the duty of the Judge to reject it when giving judgment, and if he has not done so, it will be rejected on appeal, as it is the duty of courts to arrive at their decision upon legal evidence only."

See also the case of ***Bonsu v The Republic [1999-2000] 1 GLR 199***.

Since the allegation on which the respondent's suspension was based was not proved, the effect is that the appellant acted rashly and unfairly towards the respondent and renders anything founded on it without justification and unlawful.

We think that the reasonable inference to make from the failure of the appellant to provide the crucial evidence that was needed to sustain it suspension of the respondent is that the allegation never existed and consequently the suspension was without foundation. This being so, we do not think it is necessary to inquire into the other issues raised in the appeal such as the issue of fairness and or the denial of the respondent the right to be heard before suspending him. In our view, no useful purpose would be served by a consideration of those points as there is no foundation in the allegation.

For the above reasons, we dismiss the appeal herein and proceed to affirm the decision of the Court of Appeal.

ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

G. T. WOOD (MRS)
CHIEF JUSTICE

S.A. BROBBEY
JUSTICE OF THE SUPREME COURT

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

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