



IN THE HIGH COURT OF SIERRA LEONE
COMMERCIAL AND ADMIRALTY COURT DIVISION
FAST TRACK COMMERCIAL COURT

Case No: FTCC 074/12

BETWEEN:

JUNIOR AND SENIOR STAFF MEMBERS OF SIERRA
NATIONAL AIRLINES



-PLAINTIFF

AND

SIERRA NATIONAL AIRLINES LTD
ATTORNEY-GENERAL & MINISTER OF JUSTICE
SIERRA LEONE AIRPORTS AUTHORITY
NATIONAL COMMISSION FOR PRIVATIZATION

-1st DEFENDANT
-2nd DEFENDANT
-3rd DEFENDANT
-4th DEFENDANT

REPRESENTATION

Garber & Co.

O.I. Kanu

Betts & Berewa

-Counsel for the Plaintiff
-Counsel for the 1st, 2nd & 4th Defendants
-Counsel for the 3rd Defendant.

BEFORE THE HON. MR. JUSTICE SENGU M. KOROMA J.
RULING DELIVERED ON THE 17TH AUGUST, 2015

This is an Application by way of Judge's Summons dated 28th day of November, 2014 pursuant to Order 16 and Order 17 of the High Court Rules, 2007 for the following reliefs:-

1. A construction of the contracts, correspondences and regulations pertaining to the employment of 16 supervisory employees of the 3rd Defendant to ascertain their End of Service Benefits and Entitlements.
2. A declaration after due construction of the above documents, that the supervisory officers are entitled to end of term benefits in accordance with the Terms and Conditions of Service for non-unionized staff of Sierra National Airlines.
3. Judgment in favour of the 16 supervisory staff in the sum of Le 395, 764, 644.76.
4. Any further Orders that this Honorable Court may deem fit and just.

The Plaintiffs use the Affidavit of Yusufu S. Deen, sworn to on the 28th day of November, 2014 and that of Maurice R. Garber, Esq. sworn to on the 28th day of November, 2014 and the respective exhibits attached thereto.

The Affidavit of Yusufu S. Deen exhibits the following documents:

- a) A sample copy of the standard termination letter issued to supervisors by the Sierra Leone Airports Authority.
- b) A breakdown of payments due each of the 16 supervisors.

The Affidavit of Maurice R. Garber exhibits the following documents:-

1. Exhibit MRG1-a "Without Prejudice" letter and the reply to it which is MRG2.
2. Letter from the National Commission for Privatization dated 8th June, 2006 addressed to the Sierra National Authority (SNA) with copy to the General Manager of the 3rd Defendant directing that 73 employees from the SNA will be seconded and transferred to the 3rd Defendant on the same terms and conditions as they enjoyed under SNA at the time of the transfer.
3. A sample of the standard contract of employment issued by the 3rd Defendant to all the Plaintiffs seconded/transferred to the 3rd Defendant.
4. Copy of terms and conditions of service of non-unionized staff of SNA.
5. Collective bargaining agreement showing formula applicable to non-supervisory staff.

Maurice R. Garber in paragraph 10 of his Affidavit sworn to on the 28th November, 2014 avers that "there appears to be a good faith dispute between the Plaintiffs and the 3rd Defendant with regards the amounts due these 16 supervisory staff which is ripe for adjudication by the Court as this is the only outstanding point of contention between the parties.

The Summons was initially argued by Ernest Beoku-Betts of Garber & Co. In his submission, learned Counsel relies on the entirety of the affidavits filed in support. He argues that the 16 supervisory officers are entitled to benefits based on the Terms and Conditions of Service for non-unionized staff of Sierra National Airlines. He refers the Court to paragraph 8 of the Affidavit of Yusufu S. Deen in which the deponent deposes that the SNA Terms and Conditions of service for supervisory staff clearly states that they should be entitled to 3 months salary for each completed year of service. Paragraph 9 of the said Affidavit lists the names of those staff entitled to the benefits referred to in paragraph 8. Paragraph 10 refers to the breakdown of the entitlements of each of the 16 supervisors exhibited in Exhibit YSD2. Mr. Beoku-Betts admits that the 3rd Defendant has made some payment in the sum of Le 171,498,818.36 but however their total claim for the supervisors is for the sum of Le 732,632,273.34. There is therefore an outstanding balance owing of Le 561,132,454.98. He submits that the 3rd Defendant has made an offer to pay the supervisors based on Exhibit MRG7 which covers only unionized staff and in particular Junior Staff. Counsel is therefore asking the Court to grant the Orders prayed for. He finally submits that the application is made pursuant to Orders 16 and 17 of the High Court Rules, 2007.

Ms Abigail Suru, Counsel for the 1st, 2nd and 4th Defendants opposes the application on various grounds and refers the Court to the Affidavit in Opposition sworn to by Osman Kanu Esq. on the 19th October, 2012. The said Affidavit raises several issues which require the full attention of this Court:-

1. That the Orders prayed for in the Originating Summons are procedurally wrong and irregular.
2. That paragraphs 1 to 3 of the Originating Summons is suggesting a variation of an earlier Order granted by Honourable Mr. Justice E. E. Roberts J. A (as he then was) dated the 21st day of October, 2011 liquidating the Sierra National Airlines.

3. That a Liquidator has been appointed who is now discharging his duties pursuant to his appointment and under the supervision of the Court.
4. That the Orders prayed for in the Originating Summons are premature and should be dismissed by this Honorable Court as they are predicated on issues that are ongoing or being discharged by the Court appointed Liquidator.

Ms Suru in her submission relies on the entirety of the Affidavit sworn to on the 19th October, 2012 by Osman I. Kanu Esq. She argues that the Plaintiffs ought not to have made the application under Cap 249 of the Laws of Sierra Leone which was repealed when the Companies Act, No 5 of 2009 came into force. She further argues that the subject matter of the application which is basically industrial is outside the jurisdiction of the Commercial and Admiralty Division. Ms Suru concludes that the application and the submissions made are procedurally wrong and should therefore be dismissed.

Mr. Garber for the Plaintiffs in his reply submits that the winding up of Sierra National Airlines commenced before the Companies Act, No 5 of 2009 came into force. He refers the Court to Section 531(8) of the said Act which states that the 2009 Act shall not apply to any company for which winding up has commenced before it came into effect. He further submits that there is a Court Order which directs that the winding up of the Sierra National Airlines be done under Cap 249. To that end, any application made within the context of the winding up has to be under Companies Act Cap 249.

Mr. Garber further submits that the application is made pursuant to the Companies Act which is one of the causes of action within the jurisdiction of the Fast Track Commercial Court. The dispute in this case according to Mr. Garber is not one of mere Employer-Employee relationship. This is a complicated claim by potential creditors against the liquidator and debtors of the company.

Mr. Saquee-Kamanda, Counsel for the 3rd Defendant submits that the terms of employment of the Plaintiffs is governed by that of the Sierra Leone Airport Authority (SLAA) and not Sierra National Airlines (SNA). Therefore Exhibit MRG4-Letter from the National Commission for Privatization (NCP) dated 8th June, 2006 and MRG5-sample of standard contract of employment issued by the 3rd Defendant do not apply. He argues that Exhibit MRG4 is a temporary measure put in place while the winding up process is ongoing. As soon as SLAA took the Plaintiffs into

their employment, they were deemed to be covered by their terms and conditions of service. Mr. Saquee-Kamanda further argues that no evidence has been provided that the 16 workers were supervisors. He submits that the workers were employed on the same terms and conditions of service as SLAA workers, and therefore their terminal benefits were computed in accordance with Terms and Conditions of service of SLAA workers. He specifically refers to Article 66.2 of the Terms and Conditions of Service for SLAA.

Counsel have raised various issues which need to be disposed of before proceeding to look into the merits of the application.

Counsel for the 1st, 2nd and 4th Defendants, Ms Abigail Suru completely raises and argues the following issues:-

- a) That the Plaintiffs ought not to have proceeded under Cap 249 which was repealed by Section 531(1) of the Companies Act, No 5 of 2009
- b) That the application is essentially suggesting a variation of an earlier Order granted by Hon. Justice E. E. Roberts JA (as he then was)
- c) That the matter before the Court is procedurally wrong as it does not fall within the jurisdiction of the Fast Track Commercial Court.

As I stated earlier, the above-mentioned issues should be disposed of first because if the submissions made by Counsel for the Defendants/Respondents are accepted, there will be no need to look into the merits of the application.

1. Can the Plaintiffs proceed under Cap 249

The commencement of winding up is deemed to go back to the date when the petition was presented, or exceptionally, when the company is already in voluntary liquidation, the time of passing of the resolution for voluntary winding up. The retroactive effect of a winding up Order assumes critical importance in relation to the disposition of company property. The overall effect of this is designed to preserve Corporate Assets for the benefit of the general body of creditors by empowering the liquidator to "claw back" company property which has been transferred by the Directors after a petition has been presented and liquidation is imminent-See COUTTS &-CO-vs STOCK (2000)1 WLR 906 -Per Lightman J. This is given statutory force by Section 531(8) of the Companies Act, No 5 of 2009 which provides as follows:-

"the provisions of this Act with respect to winding up shall not apply to any company of which the winding up has commenced before the commencement of this Act; and the company shall wound up in such manner and with the same incidents as if the Act had not been passed, and for the purpose of the repealed Act, the provisions of the repealed Act shall be deemed to remain in force."

Indeed the first Order of His Lordship Honourable Justice E. E. Roberts JA (as he then was) states that "the said Sierra National Airlines limited be wound up by this Court under the provisions of the Companies Act, Cap 249 of the Laws of Sierra Leone, 1960".

Section 357(1) of the Companies Act, 2009 also provides that where a resolution has been passed to wind up a company, the winding up of the company shall be deemed to have commenced at the time of passing of the resolution. By reason of the foregoing, I hold that the present action can properly be brought under Cap 249.

a) That the Application is essentially suggesting a variation of an earlier Order granted on the 21st day of October, 2011.

I again disagree with Counsel for the 1st, 2nd and 4th Defendants on this issue. The Order referred to herein was granted pursuant to a petition for members voluntary winding up. It specifically mentions the SNA as the company in liquidation. The relationship between SNA and the 3rd Defendant (the target of this application) is as a result of an instruction given to the 3rd Defendant by the 4th Defendant by letter dated 8th June, 2006. As a result of that letter, the remuneration of the transferred staff became the responsibility of the SLAA. The present application is therefore strictu facto against SLAA to fulfil its obligations to the Plaintiffs. There has been an admission by Counsel for the Plaintiffs and that of the 3rd Defendant that steps have had been taken to settle the dispute and as a sign of good will, some payments have been made by the 3rd Defendant to the Plaintiff. I am however mindful of the provisions of Section 359 of the Companies Act No 5 of 2009 which provides for action or proceedings to be stayed after the grant of a winding up Order. This provision does not apply to the instant case for the reasons already given.

b) That the matter does not fall within the jurisdiction of the Fast Track Commercial Court.

Counsel for the 1st, 2nd and 4th Defendants argues that industrial actions are not listed under the Fast Track Commercial Court Rules as a matter within the jurisdiction of this Court. Counsel for the Plaintiffs in reply argues that this is not an employer and employee dispute. This is a complicated claim by potential creditors against the liquidator and debtors of the company. I am inclined to agree with the Plaintiffs. The Court has granted a petition for the winding up of the company and the 3rd Defendant has entered into negotiations with the Plaintiffs and some payments have been made. All of these have taken place within the context of the provisions of the Companies Act. It will therefore be reasonable to conclude that the action falls within the jurisdiction of the Fast Track Commercial Court. I further note that there has been no application to set aside the action for irregularity as required by Order 2 Rules 2(1) and (2) of the High Court Rules 2007. This application was filed in 2012. No attempt was made to set it aside but rather Counsel filed an Affidavit in Opposition in which the issue of jurisdiction was raised. With respect to learned Counsel, filing of an Affidavit in Opposition is not sufficient. Counsel should have averted their minds to Order 2 Rule 2 sub-rule 2 which provides that "an application under this rule may be made by summons or motion and the grounds of the objection shall be stated in the summons or motion. In any event, Order 2 Rule 1 sub-rule 3 provides that "the Court shall not wholly set aside any proceedings or the writ or other originating process by which they have begun on the ground that the proceedings were required by any of these Rules to be begun by originating process other than the one employed."

Having held that the Plaintiffs are properly before this Court, I shall now proceed to look at the Orders prayed for in the Originating Summons:-

1. Construction of the contracts, correspondence and regulations pertaining to the employment of 16 supervisory employees of the 3rd Defendant to ascertain their End of Service Benefits and Entitlements;

I am surprised that Counsel for Plaintiffs has not stated or at least guided the Court as to the documents to be constructed leaving the Court to determine which of the exhibited documents are relevant. Be that as it may, I will endeavor to construct those documents that may appear relevant. I say this because the principle is clear that the construction to be determined by the Court should be stated or formulated in clear, careful and precise terms so that there should be no difficulty or obscurity, still less any ambiguity about what is the question about to be determined (ALLEN-v-GULF OIL REFINING LTD (1980) Q. B. 179 and

this is all important since the determination will be final. The question arises as to which of the following exhibited documents are relevant?

- a) Exhibit 'YSD 1'-Termination of contract.

This appears to be a standard termination of contract letter. The most relevant part of this letter can be found in the second paragraph which states that "Your contract with the Sierra Leone Airport Authority will expire on Wednesday 31st March, 2010."

- b) Exhibit 'YSD 2'-Breakdown of Payments due supervisory staff.

Counsel for the Defendant argue that the Plaintiffs have not provided any evidence that the "16 supervisory staff" were actually supervisors. This is an important point raised by Counsel for the 3rd Defendant.

- c) Exhibit 'MRG4' -Letter from the National Commission for Privatization dated the 8th June, 2006 to SNA particularly item "c" thereof which states as follows:-second handing staff named in the attached list to SLAA on the same terms and conditions governing their current employment on the ground handling business under your management(Emphasis mine).

- d) Exhibit 'MRG5-Standard SLAA contract of employment for supervisors, particularly Article 11.1 paragraph 2 thereof.

- e) 'MRG6-SNA Terms and Conditions of Service for non-unionized staff, Article 9.71 thereof.

- f) 'MRG7'-Collective Bargaining Agreement applicable to non-supervisory staff.

After perusing the above mentioned documents, it is my view that the most relevant here are the letters from the National Commission for Privatization dated 8th June, 2006, the SNA Terms and Conditions of Service, the standard termination of contract letter issued by the SLAA, and the standard contract of employment issued by the SLAA.

Counsel for the Plaintiffs is asking this Court for a construction of the above documents as provided for in Order 17 of the High Court Rules 2007. The said construction will have the effect of finally determining the issue of whether the said supervisory staff are entitled to terminal benefits under the SNA terms and conditions or that of SLAA "without a full trial of the action". This Order provides an alternative procedure to that provided by Order 5 Rule 4 by way of Originating Summons for the construction of a document or some other question of law.

However, before the Court determines any question of construction, Order 17 Rule 3 expressly requires that one of two conditions should be fulfilled, namely:

- a) That the parties have had the opportunity of being heard on the question; or
- b) That the parties had consented to an Order or Judgment on such determination.

I hold that the first of these conditions has been fulfilled in the instant case.

Having held that this application is properly before this Court and the conditions laid down by Order 17 Rule 3 have been fulfilled, I shall now proceed to construct the relevant documents.

- a) Letter from the National Commission for Privation dated 8th June, 2006.

As I stated earlier, the Plaintiffs have not clearly stated which of the documents exhibited the Court should consider except the vague and unhelpful request of "A construction of the contracts, correspondence and regulations pertaining to the employment of t16 supervisory employees of the 3rd Defendant to ascertain their End of Service Benefits." The National Commission for Privation was established by Act No 12 of 2002 for the purpose of privatizing and reforming of public enterprises; for the amendment of certain laws relating to public enterprises, and to provide for other related matters. Part 111 Section 10 sub section 1 provides amongst others that the NCP shall take over the management of all public enterprises. Section 11 of the said Act provides that the NCP shall have the power to develop..... a code of practice for the good governance of public enterprises.....but especially for the operation of the public enterprise named in the first schedule. It is important to note that both SNA and SLAA are listed in the said schedule which gives the NCP supervisory control over them thus authenticating their authority to issue the letter referred to herein.

The relevant part of the said letter is paragraph 3 which states "second immediately 73 members of your ground handing staff named in the attached list to SLAA on the same terms and conditions governing their current

employment on the ground handling business under your management. The operative words here are "SECOND" and "THE SAME TERMS AND CONDITIONS GOVERNING THEIR CURRENT EMPLOYMENT."

Secondment in employment contracts is where an employee temporarily transfers to another job for a defined period of time to the mutual benefit of all parties. Who will be the "employer" of the seconded staff? The main idea behind a secondment arrangement is that the person who has been seconded will remain the employee of the original employer.

The other part of the paragraph directly contradicts the use of the word "second" or "secondment". Looking at the said letter as a whole, the SLAA is being directed to take over the ground handling activities of SNA thereby effectively removing that component of their operations from them. Paragraph (a) of the said letter is clear on that. It follows that the inclusion of the word "second" is wrong as this was an instruction from their supervisory body to transfer 73 staff from SNA to SLAA. Secondment presupposes that the staff would eventually return to SNA and their salaries emoluments etc will be paid by SNA. This will not be possible as the SNA is in for the process of winding up.

The relevant part therefore is "the same terms and conditions governing their current employment." This to me means that though the staff are transferred to SLAA, the terms and conditions of SNA will be applied in their case. It is trite law in employment relations that the Terms and CONDITIONS of Service of staff should not be altered to their disadvantage except expressly negotiated and agreed upon. My conclusion therefore is that the computations of the terminal benefits of the said staff should be governed by the Terms and Conditions of Service of SNA.

What do the Terms and conditions of Service of SNA say? The relevant provision is Article 9.7.1. It provides that "An employee who leaves the service of the company shall be entitled to end of service benefits as follows:- 4-8 years-Three months basic salary for each completed year of service".

-All payments shall be made to the nearest year of service and the basic year shall be 1984.

The SLAA Terms and Conditions of Service on the other hand provides in Article 55 as follows:-

1-5 years-45 days

6-10 years-66 days

Over 10 years-90 days.

It is clear that the SNA has a better retirement package than SLAA probably because of the nature of their operations. This may have led the NCP to insist on including the aspect relating to "current terms of employment".

b) The SLAA standard job contract agreement provides in Article 11.1, paragraph 2 "your basic salary, payroll and non-payroll allowances remain the same as at the time of taking over on 12th June, 2006." This establishes that the Terms and Conditions of Service of the said supervisory staff should be the same as at the date of their transfer. That is, the Terms and Conditions of service of SNA.

B. The second prayer is for a declaration that after due construction of the above averments, that the 16 supervisory officers are entitled to end of term benefits in accordance with the Terms and Conditions of Service for non-unionized staff of Sierra National Airlines.

Order 17 may in an appropriate case be applied in respect of claims for a declaration. A declaratory judgment, sometimes called declaratory relief is conclusive and legally binding as to the present and future rights of the parties involved. In other words, the parties involved in a declaratory judgment may not later seek Court resolution of the same resolution of the same legal issue unless they appeal the judgment. In view of this, the Court must be very careful in granting such reliefs. Though the Court holds that supervisory staff of SNA transferred to SLAA are entitled to the terminal benefits due non-unionized staff of SNA, the Plaintiffs have not provided this Court with evidence that the said 16 employees were supervisors. It will therefore not serve the course of justice at this stage to declare that the said "16 staff" are entitled. As I have earlier said, the legal effect of such a declaration dictates that there must be a high degree of certainty as to parties entitled.

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1-5 years-45 days

6-10 years-66 days

Over 10 years-90 days.

It is clear that the SNA has a better retirement package than SLAA probably because of the nature of their operations. This may have led the NCP to insist on including the aspect relating to "current terms of employment".

b) The SLAA standard job contract agreement provides in Article 11.1, paragraph 2 "your basic salary, payroll and non-payroll allowances remain the same as at the time of taking over on 12th June, 2006." This establishes that the Terms and Conditions of Service of the said supervisory staff should be the same as at the date of their transfer. That is, the Terms and Conditions of service of SNA.

B. The second prayer is for a declaration that after due construction of the above averments, that the 16 supervisory officers are entitled to end of term benefits in accordance with the Terms and Conditions of Service for non-unionized staff of Sierra National Airlines.

Order 17 may in an appropriate case be applied in respect of claims for a declaration. A declaratory judgment, sometimes called declaratory relief is conclusive and legally binding as to the present and future rights of the parties involved. In other words, the parties involved in a declaratory judgment may not later seek Court resolution of the same resolution of the same legal issue unless they appeal the judgment. In view of this, the Court must be very careful in granting such reliefs. Though the Court holds that supervisory staff of SNA transferred to SLAA are entitled to the terminal benefits due non-unionized staff of SNA, the Plaintiffs have not provided this Court with evidence that the said 16 employees were supervisors. It will therefore not serve the course of justice at this stage to declare that the said "16 staff" are entitled. As I have earlier said, the legal effect of such a declaration dictates that there must be a high degree of certainty as to parties entitled.

I agree with the Plaintiffs that summary judgment should be given in this case. At the heart of Order 16 of the High Court Rules, 2007, is rule (3) thereof which provides that unless (1) the Court dismisses the application, or (2) the Defendant satisfies the Court (a) that there is an issue or question in dispute which ought to be tried, or (b) that there ought for some other reason to be a trial, the Court may give judgment for the Plaintiff-The Plaintiffs have satisfied this Court that summary judgment ought to be given in their favour. However, as I held in respect of a declaratory judgment, this Court has not been provided with evidence that the list of staff exhibited as "YSD2" contain those of supervisors. It follows that this Court cannot at this stage give summary judgment.

In the circumstances, I hereby Order as follows:-

1. That on construction of the letter from the National Commission for Privatization to the Managing Director, Sierra National Airlines dated 8th June, 2006; Standard Job Contract Agreement of the Sierra Leone Airports Authority dated 16th June, 2006; the Terms and Conditions of Service for non-unionized staff of Sierra National Airlines, supervisory staff of the Sierra National Airlines transferred to Sierra Leone Airport Authority are entitled to End of Service Benefits provided in Article 9. 7. 1 of the SNA Terms and Conditions of Service.
2. That all supervisory staff of the Sierra National Airlines transferred to the Sierra Leone Airport Authority by letter from the NCP dated 8th June, 2006 are entitled to End of Term Benefits in accordance with the Terms and Conditions of Service for non-unionized staff of the Sierra National Airlines.
3. That the Court cannot at this stage give Summary Judgment in favour of the "16 supervisory staff" in the sum of Le 395,764,644.76 as they have not been identified as the persons entitled thereto nor how the corporation made.
4. No Order as to costs.



Hon. Justice Sengu M. Koroma J.