Since January 1954 the defendant had been acting under the supplementary lease first to the executors who were his lessors, and then, as from October 5, 1954, to the plaintiff in this action. The executors-lessors could not have repudiated the supplementary lease after they had received rent by virtue of it and the defendant had acted under it. They would be estopped from repudiating the lease and the plaintiff to whom the executors-lessors conveyed their interest in the premises would be bound by that estoppel. *Mackley* v. *Nutting* [1949] 2 K.B. 55 (C.A.); [1949] 1 All E.R. 413.

More than that the plaintiff herself and after she had attained her majority in clear and unambiguous terms endorsed on both the lease and the supplementary lease of her own free will and without any suggestion from anyone, that she agreed with the terms contained in each of these documents. Having thus originally approved these documents she cannot now be heard to say that she does not approve of them and that they must be set aside.

The plaintiff's claim therefore fails and is dismissed out of this court.

The order of the court is that the plaintiff's action is dismissed with costs to be paid by the plaintiff to the defendant—costs to be taxed.

[SUPREME COURT]

Freetown
June 5,
1961

Marke J.

A. J. G. WILLIAMS . . . . . *Plaintiff*

v.

SIERRA LEONE DEVELOPMENT COMPANY . . . *Defendant*

[C. C. 232/58]

Contract of employment—Period of employment—Damages for dismissal.

Plaintiff entered into a written agreement with defendant whereby he was to undergo training as laboratory technician in Scotland for 12 months at a salary of £450 a year payable monthly. The agreement further provided that on completion of his training plaintiff was to proceed to the Marampa Mines in Sierra Leone and take up duties as laboratory technician at defendant's hospital there and that he would sign an agreement for service with defendant in Sierra Leone when called upon to do so.

When he returned to Sierra Leone, no written agreement was signed, but plaintiff worked as a laboratory technician at defendant's hospital under an oral agreement for a salary of £450 a year. By a letter dated April 28, 1958, defendant's Senior Medical Officer terminated plaintiff's employment as from April 30, 1958. Plaintiff brought suit for damages for wrongful dismissal. Defendant counterclaimed for £72 3s. 11d. for money loaned to plaintiff and for stores supplied to him at his request.

Held, for the plaintiff on his claim and for the defendant on its counterclaim.

(1) Plaintiff's summary dismissal was wrongful.

(2) Plaintiff's contract of service was an engagement for an indefinite period subject to reasonable notice.

(3) As damages, plaintiff was entitled to recover his salary for April 1958 as well as three months' salary in lieu of notice.

Cases referred to: *Kallay* v. *United Africa Company Limited*, Sierra Leone Supreme Court, June 17, 1960; Sierra Leone and Gambia Court of Appeal, November 2, 1960; *Fisher* v. *W. B. Dick & Co. Ltd.* [1938] 4 All E.R. 467.

Cyrus Rogers-Wright for the plaintiff.
Charles S. T. Edmondson for the defendant.

MARKE J. The plaintiff claims damages for unlawful dismissal by the defendant company (whom I shall call the company) on the ground that though he was engaged by the company as a laboratory technician, the Senior Medical Officer of the company purported to terminate the plaintiff's employment with the company. The company by paragraph 4 of their filed statement of defence pleaded as follows:

> "4. In reply to paragraph 4 of the statement of claim the defendants say that by letter dated April 28, 1958, they terminated the plaintiff's employment as from April 30, 1958 and that by another letter of the same date they required the plaintiff to vacate premises which he occupied by reason of his employment not later than May 15, 1958. The defendants further say that on or before April 28, 1958 the defendants offered the plaintiff his salary for the month of April 1958 and a month's salary in lieu of notice but the plaintiff refused to accept same."

The defendant counterclaimed the sum of £72 3s. 11d. being amount due the defendant on account of money loaned the plaintiff and for stores supplied him at his request.

The plaintiff in his evidence said that he was induced by the company to leave his employment in the United Kingdom where he was earning £15 a week and enter the company's employment on the terms and conditions set out in Exh. "A."

By Exh. "A" the plaintiff was to undergo a period of training as laboratory technician in Scotland for 12 months at the company's expense, during which period he was to receive a salary of £450 a year payable monthly in arrear. On the completion of the training the plaintiff was to proceed on the company's direction to Marampa Mines, Sierra Leone, and assume duties as laboratory technician at Marampa Mines Hospital. Paragraph 10 of Exh. "A" states:

> "10. It shall be understood that you will sign an agreement for service with the company in Sierra Leone when called upon to do so, the terms of such agreement being in accordance with the general terms and conditions then ruling for African staff."

The only evidence in this case was the oral evidence of the plaintiff and certain exhibits put in evidence by both parties, the company not having called any witnesses.

It seems clear that Exh. "A" was intended by the parties to cover the plaintiff's employment in the United Kingdom and was never intended to be the agreement under which the plaintiff was to be employed in Sierra Leone. Paragraph 10 of Exh. "A" explicitly provides that the plaintiff was to sign an agreement for service in Sierra Leone when called upon to do so.

The plaintiff in his evidence said that in spite of more than one reminder from him to the general manager of the company he was never called upon to sign an agreement as stated in Exh. "A" or any agreement with the company in Sierra Leone. In the absence of anything to the contrary I accept the plaintiff's evidence and find as a fact that this was so.

I find also that the plaintiff entered the defendant company's service in Sierra Leone on an oral agreement that he was to work as laboratory technician at the company's hospital at Marampa and receive a salary of £450 per annum

paid monthly in arrear. I can find from the evidence no agreement oral or written as to the length of the plaintiff's engagement by the company: nor any stipulation as to termination of the contract by either party.

Learned counsel for the company—that is the defendant in this action—in his address to the court argued that the action was misconceived because dismissal was by a person who had no right to dismiss.

It is clear from the evidence that the Senior Medical Officer of the company who purported to dismiss the plaintiff had no power to do so, and it was open to the company, had they wished to do so, to have said so in the pleadings and pursued that line of defence at the hearing. Instead of that the company, that is to say the defendant, elected to adopt as their own the purported dismissal of the plaintiff by their Senior Medical Officer and in paragraph 4 of the statement of defence the company pleaded that, by letter dated April 28,1958, "they" terminated the plaintiff's employment as from April 30, 1958, and that by another letter of the same date "they" required the plaintiff to vacate premises which he occupied by reason of his employment not later than May 1, 1958. The whole action having been conducted on the basis that the company approved the action of their Senior Medical Officer in purporting to dismiss the plaintiff, the company cannot now at the end of the case be heard to say that they reprobated their Senior Medical Officer's action in that regard. The parties to an action are bound by the pleadings which they have filed, after, I presume, most careful consideration of every aspect of the case, and cannot be allowed at this late hour, after the plaintiff had closed his case, to make a departure from such pleadings.

I hold that the plaintiff's summary dismissal was wrongful.

On the question of damages the plaintiff was engaged for a period the length of which was not stated; there was no stipulation as to the length of notice to be given by either party to terminate the contract. On facts similar to those in a previous case—I refer to the case *Kallay* v. *United Africa Company Limited*, Supreme Court, June 17, 1960—I held that this was a yearly contract. But the Sierra Leone and Gambia Court of Appeal disagreed with me, and as long as that decision stands I am bound by it.

I therefore hold that the contract of service of the plaintiff was not an engagement for a year but for an indefinite period subject to reasonable notice.

On the question of reasonable notice the plaintiff says that he is a trained laboratory technician; and in the absence of any evidence to the contrary, I accept what he says. He says further that in spite of several efforts on his part it took him seven months before he could get employment. It is quite plain and I think one cannot shut one's eyes to it, that openings for the employment of trained laboratory technicians are not as yet many in this country and that it would take some months before such a trained man could secure another employment in Sierra Leone.

In *Fisher* v. *Dick & Co. Ltd.* [1938] 4 All E.R. 467 the court held that three months' notice was reasonable in the case of specialised salesman.

That case was followed in *Ade Cole* v. *Freetown City Council* by this court and later followed by the West African Court of Appeal in *Mason* v. *Freetown City Council*. Ade Cole was a bailiff, and Mason a Treasury Clerk of the City Council.

I apply the principle of *Fisher* v. *Dick & Co. Ltd.*, and award the plaintiff his salary for April 1958, and three months' salary in lieu of notice, at £450 per annum.

S. C.

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Marke J.

The plaintiff having admitted the counterclaim there will be judgment for the defendant for £72 3s. 11d.

The order of the court is:

(1) The plaintiff succeeds on his claim.

(2) The defendant to pay the plaintiff one month salary for April 1958 and in addition three months' salary in lieu of notice at the rate of £450 per annum.

(3) The defendants to pay the costs of this action less such costs as may have been occasioned by the counterclaim. Cost to be taxed.

(4) The defendants succeed on their counterclaim.

(5) The plaintiff to pay the defendants £72 3s. 11d.

(6) The plaintiff to pay the defendant the costs on the counterclaim.

(7) Costs to be taxed.

The costs in this action to be on Supreme Court Scale.

Freetown
June 20,
1961

Benka-Coker C.J.

[SUPREME COURT]

REGINA . . . . . *Appellant*

v.

SIAKA STEVENS AND C. A. KAMARA-TAYLOR . . . *Respondents*

[Misc. App. 28/61]

Criminal Law—Trial—Whether defendants could be tried by judge alone—Whether fair trial could be had with judge and jury or judge and assessors—Relevance of affidavit of police inspector—Whether accused were charged with criminal offence at sessions of Supreme Court in Colony—Jurors and Assessors Act (Cap. 38, Laws of Sierra Leone, 1960) s. 41 (a).

Defendants were charged with libel and conspiracy before the Supreme Court. The Attorney-General, pursuant to section 3 of the Jurors and Assessors (Amendment) Ordinance, 1961 (No. 1 of 1961), applied by summons for an order that defendants be tried by a judge alone on the ground that a fair and impartial trial could not be had either with a judge and jury or judge and assessors. The application was supported by the affidavit of a police inspector in which he deposed that the charges of libel and conspiracy arose out of a document issued by the All People's Congress (a political party) and signed by one of the defendants, in which serious allegations were made against two Government Ministers, and that these allegations had caused widespread concern among the general public.

At the hearing, counsel for defendants raised two preliminary objections to the application: (1) that the statements in the police inspector's affidavit were irrelevant and (2) that it did not appear from the summons that defendants were "charged with a criminal offence at any sessions of the Supreme Court held in the Colony," as required by the Ordinance.

Held, granting the application, (1) that the Police Inspector's affidavit was relevant to the question whether a fair trial could be had with a judge and jury or judge and assessors;

(2) that it was "clear . . . that the (defendants) are charged with a criminal offence at a sessions of the Supreme Court in Freetown"; and