

IN THE HIGH COURT OF SIERRA LEONE
(EMPLOYMENT AND INDUSTRIAL DIVISION)

BETWEEN:

MRS. FRANCES ANSUMANA

- PLAINTIFF

AND

THE SIERRA LEONE NATIONAL SHIPPING

- 1ST DEFENDANT

THE MANAGING DIRECTOR

- 2ND DEFENDANT

SIERRA LEONE NATIONAL SHIPPING

COMPANY LIMITED

COUNSEL

I. I. Mansaray Esq. for the Plaintiff

T. E. Bundor Esq. for Defendants

JUDGEMENT DELIVERED THIS 29TH DAY OF JUNE 2022 BY HONOURABLE MRS.
JUSTICE JAMESINA E. L. KING J.A

BACKGROUND

1. The Plaintiff instituted a Writ of Summons dated 21st October 2019 against the Defendants for the following:
 - i. Damages for Wrongful Dismissal of the Plaintiff, by the Defendants.
 - ii. Payment of the sum of Le650,437,762/00 (Six Hundred and Fifty Million, Four Hundred and Thirty-Seven Thousand, Seven Hundred and Sixty-Two Leones) due and owing the Plaintiff as end of service benefits, leave allowances, redundancy and/or termination compensation and other emoluments or entitlements.
 - iii. Interest on the said sum above at the rate of 25% pursuant to section 4 of the Law Reform, (Miscellaneous Provisions) Act, Cap. 19 of the Laws of Sierra Leone 1960.
 - iv. Any further or other relief(s), that this Honourable Court may deem fit and just, in the circumstances.

v. Costs of the Action

2. The Defendants filed an appearance and defence to the Plaintiff's claim. The Defence is dated 22nd November 2019 and the Defendants denied owing the Plaintiff the amount of Le650,437,762.00. The Plaintiff filed a reply.
3. By an Order of this Court dated 16th December, 2020 the Plaintiff's application was granted for payment by the Defendant of the sum of Le118,734,662.20, interest thereon and costs of Le7,500,000 which the Defendants complied with. This was based on the Defendants' admission in their defence.
4. The rest of the Plaintiff's claim proceeded to trial after directions were granted. A comprehensive court bundle was compiled with all the documents and witness statements relied on. In support of her case, the Plaintiff testified and called one expert witness Idrissa Dumbuya, an official at the Ministry of Labour and Social Security. The Plaintiff in addition to her testimony relied on her witness statement which was duly admitted to be part of her evidence in chief. Idrissa Dumbuya in addition to his testimony, also relied on his witness statement and report with computation of the benefits and entitlements due the Plaintiff.
5. The Defendant's Counsel cross examined both witnesses. The Defendant did not call a witness even though it filed two witness statements in respect of Ahmed Saybom Kanu Managing Director of the 1st Defendant and the 2nd Defendant in this matter and Sahr K.F. Davowah. It is important to note that this Court granted several adjournments at the instance of the Defendants to give them an opportunity for their witnesses to testify in support of their defence. In the absence of the Defendants' witnesses, their witness statements and other documents included in the court bundle are not part of the evidence in this Court. Both Counsel for the parties submitted written closing addresses which were considered by the Court.

EVIDENCE

EVIDENCE IN CHIEF OF PW1 – FRANCESSE DOWU ANSUMANA

6. The Plaintiff, Francesse Dowu Ansumana testified that she was now self-employed. She worked at the 1st Defendant. Her signed witness statement was received as part of her evidence pursuant to an application made pursuant to Order 30 Rule 1 (9) of the High Court Rules. She was employed by the 1st Defendant on 26th March 1990 and in support of her case she produced several letters and other

documents including those relating to her appointment, acceptance and confirmation of appointment, the 1st Defendant Revised Conditions of Service as well as letters relating to the termination of her employment, complaints to the Ombudsman and from her lawyers. Owing to her devotion and diligent service, whilst working in the 1st Defendant Company she served in the following offices: Accounts Clerk (1990-1993), Cashier (1993 -1997), Secretary to Finance Manager (1998 – 2007), Communication Secretary (2008 – 2009), Accounting Assistant (2010 -2011), Acting Clearing and Forwarding Manager. She was eventually confirmed as Clearing and Forwarding Manager on 30th May 2012.

7. She was recalled from her annual leave by letter dated 1st June 2018 and later sent on an indefinite leave by an internal memo from the Managing Director Ahmed Saybom Kanu dated 19th September 2018. The Defendant invited her to appear before a Special Assessment Committee whilst on leave, but she could not do so at the time, because she was sick. Her employment was terminated by letter dated 26th April 2019. She hired the services of an employment consultant who computed her redundancy and end of service benefits.
8. As a clearing and forwarding manager she was covered by the terms and conditions of service; Exhibit R1 -55. These terms and conditions of service governed the relationship between herself and the Defendant Company. She worked for 29 years and subsequently made redundant by the Company. She stated that the action of the 1st Defendant to render her redundant was not in line with the terms and conditions of service having worked for 29 years, it was painful when she learnt about the decision. She rendered her whole life working for the Company and was a widow wholly responsible for her family and it really hurts. Looking at what she went through working for the Company with all her strength to be rendered redundant in a dishonourable way, was very painful, up till today, it is just by the grace of God.
9. Whilst working as clearing and forwarding manager, she was able to achieve a lot of things; the Company signed about 5 – 6 contracts with U.N Agencies, CRS and HIV AIDS Secretariat. The last one was signed with the current director with cement factory. She said she was very important in these contracts as she used to explain, cajole and talk to the customers to have trust in the Company. They used to clear for all the U.N. Agencies, government ministries, department and agencies and it was successful. She therefore asked the court to grant her prayers

in the Writ. She confirmed that she had been paid Le118,734,662.20 and this should be deducted from the Le650 million prayed for.

10. She further stated that prior to receipt of Exhibit K rendering her redundant she was not given any notice by the Company. She was invited to meet with the Special committee set up to assess the performance of staff to give them an update on her department. It was on 3rd January 2019. She was not feeling well and had to see her doctor. She wrote a letter to them to allow her 1 -2 weeks after which she will be physically fit to meet with the Committee. She called the Human Resource person Esther Kuyateh, she was the Administrative Manager. After she completed her treatment she wrote a letter to the 1st Defendant and told them she was now fit and ready to meet the Committee. About a week, Mrs. Esther Kuyateh called her and told her that the Managing Director asked her to meet with the committee at a certain date. Before the date, she called to confirm her visit to the assessment committee. Mrs. Kuyateh told her that the Managing Director said she should not come, so she did not have an opportunity to meet with the Committee. She produced both the letter of invitation to the Special Committee and her reply.

CROSS EXAMINATION OF PW1

11. The Defendant Counsel cross-examined the Plaintiff on various issues, firstly on whether the 1st Defendant is a government institution. The Plaintiff responded that the 1st Defendant is a company, that she was paid by the Company not by government and that her salary is not from the consolidated fund. She agreed that it was herself and others that were laid off. She denied that she was invited to collect end of service benefits from the 1st Defendant. She confirmed that she was part of the management structure of the 1st Defendant Company.

12. She also confirmed that she was aware of the Revised Conditions of Service Exhibit R1 -55 and that all staff worked in line with it. She was not aware of the signature of Management signifying approval of Exhibit R 1-55 for it to be used by all staff. She was not aware that Management brought in a consultant on an assessment process as she was at home on an indefinite suspension, and that was why she was sent a letter to meet with the assessment committee. She replied to Management asking for 1- 2 weeks and sent a medical report. She told Management she will be available at their earliest possible time, and was waiting for the Defendant to give her a specific date.

13. Asked whether during the period she worked she received queries from Management, she responded that she did. She also responded that she was aware of a letter of complaint from Guma Valley Water Company dated 23rd April 2013. She did respond to the query letter in connection with Guma Valley Water Company. After she could not attend the meeting of the assessment committee she received a call from the Human Resource Manager who told her she should attend the interview with the Committee, but she needed the approval of the General Manager and would get back to her. After some days the Plaintiff called the Human Resource Manager about the interview, and was told that the General Manager said that she should not attend the interview, as it was not necessary. She did not get any further communication with the General Manager.

14. Asked whether she was called to receive Le118,734,662.20 from the Defendant, the Plaintiff responded that she was called by the Company Secretary but it was not for the purpose to receive the aforesaid amount. She was called to go for a discussion of a payment plan for the said amount and she told them to see her lawyer as the case was with him. Asked whether the call was made before the matter was sent to court, she responded that it was after the matter was in court that she got that call. In response to the number of persons laid off she said she did not know. On the issue of the restructuring, she said she did not know because she was sent on leave and cannot tell what was happening at that particular time. Whether she was aware of the special assessment committee being sent to assess the institution, she responded that she was only aware when the Defendant wrote a letter to her, but she was not at the office. The witness was not re-examined.

EVIDENCE IN CHIEF OF PW2 – IDRISSA DUMBUYA

15. The next witness, Idrissa Dumbuya told the Court that he was a civil servant, a senior labour and employment officer attached to the Ministry of Labour & Social security. He has worked at the Ministry for 7 years. He recalled making a witness statement signed and dated 1st February 2021 which was received as part of his evidence in chief pursuant to the High Court Rules. He was given relevant documents to do the computation. They were the terms and conditions of Defendant, the letter of termination and letter of confirmation. He identified these documents in the Court Bundle. He stated that it was the Plaintiff who was

terminated. Exhibit R1-55 the Revised terms and conditions of service handed over to him guided his computation.

16. Mr. Max Allie prepared a report found at page 54 of the Court Bundle which was given to him. After Mr. Alie's death the witness told the Court that his services were hired by the Plaintiff to compute her benefits and other entitlements. Upon receipt of all the aforesaid documents he computed the redundancy and other benefits of the Plaintiff and he identified them at pages 136 & 137 of the court bundle and tendered as Exhibit V1 – 2 which were authored by him. Exhibit V1 - is a cover note forwarding the computation and explaining how he arrived at it. In his opinion as stated in the letter, the termination amounted to redundancy. Exhibit V2 is the computation he did and the total amount the Plaintiff is entitled to is Le644,466,600.

17. The principal document he used for the computation is the Company's terms and conditions of service Exhibit R1 – 55 handed over to him. The formula in it is the basic salary used to compute end of service benefits, 2 ½ month's salary for 29 years. Leave allowance for 1 year 25% of the gross annual basic salary and also rent allowance owed from January – April 2019. He referred to Exhibit R 1 -55 at page 86 of the court bundle and to Article 36 on redundancy. His reference to Article 27.6 is a "misreference", an error which should read Clause 36.6 at page 88. It shows the formula for computation of redundancy benefits and it is consistent with the formula used in his computation irrespective of the said error.

CROSS-EXAMINATION OF PW2

18. Under cross examination by the Defendant's Counsel, the witness responded that when he took over from the late Mr. Alie, he had already prepared what he had computed. He did not consult the institution when he received the letter to assist in computing the benefits. It was not the policy when they receive letters from affected persons to consult the institution as that only applies in matters the Ministry is doing conciliation. He did meet with the Plaintiff in his office upon receipt of the letter to continue the computation. He could not recall whether the Plaintiff told him that the 1st Defendant had computed her end of service benefits. In his opinion "ongoing restructuring" in Exhibit V1 was a reference from the termination letter. He referenced it to show why their computation was based on redundancy. The restructuring giving rise to people losing their jobs is

redundancy. Even the terms and conditions is clear on restructuring as it defines redundancy.

19. Asked whether he believed it was necessary for him to visit the institution as a Senior Labour Officer, he replied no. He saw the computation Mr. Alie had done Exhibit Q at page 54 and the total amount was Le650,437,762. In Exhibit V2 the total is Le644, 466,600 and he agreed that the figures vary and he did thoroughly go through the documents handed over to him. He did not agree that Mr. Alie's computation and that of his did not capture the true picture of what was due the Plaintiff.

20. Asked whether he was aware of any policy or law governing the 1st Defendant end of service benefits, he responded that he was aware of the Revised Conditions of Service Exhibit R 1- 55. Asked whether it was part of his policy that when a person applies for computation the person is asked various questions in relation to his previous work, the witness responded that if there are points not clear and further clarity is required, he can ask further questions. His engagement with the Plaintiff was to have clarity to ensure that no entitlement is left out, he did not ask specifically about her work. The witness was asked whether in his opinion as Snr. Labour Officer he did believe that asking and visiting the 1st Defendant was relevant, he responded in the negative.

21. The witness was not re-examined and that was the case of the Plaintiff.

22. The matter was adjourned several times for the Defendants to present their case and their case was closed with directions given to both parties Counsel to file written submissions, make oral submissions which they complied with and the matter was reserved for judgment.

Analysis

The Law

23. The Plaintiff's claim is for damages for wrongful dismissal as set out in the Writ and she bears the burden of proof in respect of her claim on a balance of probabilities. The Plaintiff's first burden is to prove a breach of the relevant terms and conditions of the contract of employment. It is only after that, that the question of damages would arise.

24. On a claim for wrongful dismissal, the principle has long been established by a number of authorities that an employer must comply with the terms stipulated

in the contract of service for the termination or dismissal of the employee; otherwise he terminates the employment at his own peril. He will then be held to be in breach and the dismissal will be wrongful. If the terms of the employment provide for termination by written notice or salary in lieu of such notice or such payment of salary must be contemporaneous with the act of termination. Only when the employer acts in accordance with the terms of the contract of employment will he be protected. See *Jessie Rowland Gittens Stronge vs. Sierra Leone Brewery Civ. App 7/79 unreported*, *McClelland v. Northern Ireland General Health Services Board 1957 WLR 594*, *Bank of Sierra Leone v. Ahmad T. Alghali S.C. Civ. App. No. 2 /2005*

25. It is well settled that a successful plaintiff in an action for wrongful dismissal is entitled to general damages for breach of his contract of employment, the measure of damages to be awarded varies according to the circumstances of the particular case. If the Service Agreement provided for 3 months' notice of termination, the measure of general damages will ordinarily be 3 months' salary and other entitlements if applicable. The measure of general damages is therefore what the Plaintiff was entitled to at the time of termination and interest thereon. See *Jessie Rowland Gittens Stronge vs. Sierra Leone Brewery supra* and also the case of *Addis v. Gramophone Company Limited (1909) A.C. 488 H.L.* and *Standard Chartered Bank Ltd V Mrs. Frances Forewa SC Civ App. No.2/2005*.

26. The above are the principles of law which are applicable to determine the employment contract between the Plaintiff and the 1st Defendant.

What were the terms and conditions governing the Plaintiff's employment with the 1st Defendant?

27. Based on the evidence, it is not in dispute and it is established that the Plaintiff had an employment contract with the Defendant and the terms of the contract as at the time of termination was Exhibit R 1 – 55 found at pages 55 – 108 of the Court Bundle. It is also not in dispute that the Plaintiff's employment with the Defendant started on 12th March 1990 and was terminated on 30th April 2019 whilst she was the Clearing and Forwarding Manager.

28. In the Defence filed, the Defendants admits owing the Plaintiff end of service benefits in the sum of Le118,734,662.20 and averred that despite several attempts to have her collect same proved futile. It also averred that the Plaintiff was paid pursuant to Section 30 of the Finance Act No. 26 of 2018 and the said

sum computed within the provisions of the law., referring to methods of employment in state owned companies and other agencies.

29. This Court notes that the letter from the Defendant confirming her appointment as Account clerk dated 12th July 1990 Exhibit C, at page 29 of the court bundle makes reference to an enclosed copy of the Company's Conditions of Service. In both examination in chief and under cross-examination, the Plaintiff maintained that Exhibit R 1- 55 were the terms and conditions of service governing the relationship between herself and the Defendant Company.

30. I will now look at the Sierra Leone National Shipping Company Revised Conditions of Service Exhibit R 1- 55 tendered in evidence by the Plaintiff. The introduction in this document states inter alia as follows:

"The following regulations govern the establishment, appointment and several Conditions of Service of non-unionised staff of the Sierra Leone National Shipping Company (SLNSC) which was incorporated under the Companies Act (Cap 249) on 13th June 1972.

However, Cap 249 has been repealed and replaced by Companies Act No. 5 of 2009.

These Conditions of Service shall be applicable to all Senior Staff, Managers, Junior or other members of staff (even the unionised staff) of the Sierra Leone National Shipping Company Limited as will be specified in their letters of appointment and are issued without prejudice to the Sierra Leone Labour Regulations of the joint industrial council...."

31. Counsel for the Defendant submitted in paragraph 14 of his written closing address that the Defendant worked in line with what is captured in Article 22.4 of the Sierra Leone National Shipping Company's Revised Conditions of Service (Exhibit R 1 -55), which dwells on an employee who has been employed by the Government of Sierra Leone. For ease of reference, I will set out Article 22.4 which states as follows:

"22.4 A member of Senior staff whose services are dispensed with or who resigns or who is called upon to resign from the services of the company other than through summary dismissal shall receive end of service benefits according to the category he or she belongs".

32. I carefully reviewed Exhibit R 1- 55 to understand Counsel for the Defendant's submission about categories and employees employed by the Government of

Sierra Leone. My attention was drawn to Article 7 on "Types of Appointments" which states as follows:

"The Board and Management of Sierra Leone National Shipping Company SLNSC shall offer appointment of staff in one of the following categories: -

- a) Permanent under;*
- b) Contract Appointments (where necessary);*
- c) Special Terms, e.g. temporary appointments, secondments for appointment which include special agreements intend to safeguard any existing pension rights."*

33. The above does not make reference specifically to employees employed by government as suggested by Counsel for the Defendant. In any event, the Plaintiff was appointed by the 1st Defendant as evidenced by the confirmation of appointment letter from the 1st Defendant dated 12th July 1990.

34. Counsel for the Defendant further submitted that the defendant Company has complied by paying end of service benefits and three months' payment in lieu of notice for her 29 years' service. He further stated that the sum paid to the Plaintiff was based on the computation method for end of service as laid down in section 30, erroneously referred to in Counsel's written submission as section 29 of the Finance Act 2019 which states thus:

"Public servants and other employees of central government shall be entitled to end of service benefits on disengagement from Government services and the amount of such benefit shall be one month's gross salary for every year served computed on the basis of the last paid salary".

35. He submitted that the 1st Defendant being 100% owned by the government of Sierra Leone is a public entity, as such every employee is a public servant and therefore governed by section 29 supra which covers the computation method of end of service benefits for all public servants.

36. Counsel for the Plaintiff addressed the issue in his submission strongly contending that the Plaintiff was not a public servant and the Finance Act is inapplicable to her employment. He cited a number of legislation to support his position some of which will be referred to later in this decision.

37. In view of the foregoing I hold that the Plaintiff's terms and conditions of employment at the time of termination was governed by Exhibit R 1 - 55

Is the Finance Act part of the terms and conditions of service of the contract of employment of the Plaintiff?

38. It is obvious that the provision of the said Act quoted above applies only to public servants and other employees of the central government, and the Plaintiff is neither a public servant nor an employee of the central government. The 1st Defendant is a company limited by shares incorporated in Sierra Leone.

39. Exhibit R 1-55 which is not disputed by the Defendants sets out clearly the status of the 1st Defendant Company and does not state that its employees are public servants or employees of the central government. Public servants certainly do work in the public service. I will refer to the 1991 Constitution, Act No. 6 of 1991.

Section 171 of the Constitution defines “public service” as follows:

“public service” means, subject to the provisions of subsections (3) and (4), service of the Government of Sierra Leone in a civil capacity...”

40. Exhibit R 1 – 55 states as follows:

“The following regulations govern the establishment, appointment and several Conditions of Service ... of the Sierra Leone National Shipping Company (SLNSC) which was incorporated under the Companies Act (Cap 249) on the 13th June 1972”

41. Even if the Government of Sierra Leone is one of or the only shareholder(s) of the 1st Defendant, the 1st Defendant being a company, is separate and distinct from and independent of the said Government. The 1st Defendant can sue and be sued in its corporate name. Section 30 of the Finance Act 2018 should not and cannot legally amend or affect the employment contract entered into between the 1st Defendant company and the Plaintiff. The principle that a company is in law different from its subscribers and shareholders is well settled in *Salomon v. Salomon & Co. Ltd* (1895-99), and in *Farrar v Farrar Ltd* (1888) 40 Ch.D 395. In Sierra Leone, the separate legal personality principle has also been noted with approval in the Supreme Court (unreported) case of *Eric James (trading as James International) v. Seaboard West Africa Limited* in which at page 31 -32 the Learned Justice Dr. Ade Renner Thomas stated thus:

“Since as far back as 1879 when the House of Lords pronounced its decision in the all too familiar case of Solomon v Solomon & Co. Limited AC 22 (HL) it has generally been accepted as trite law that once a company is legally

incorporated it must be treated like any independent person with its rights and liabilities separate to itself"

42. Based on the above, this Court is of the view that the Finance Act is inapplicable and computing the end of service benefits of the Plaintiff using its provisions is a breach of the Plaintiff's contract of employment as she is neither a public servant nor was she working for the central government. She worked for the 1st Defendant which is a separate and distinct legal entity from the government of Sierra Leone. According to the evidence adduced only the Revised Conditions of Service Exhibit R 1-55, a document of the 1st Defendant as employer applicable to all of its employees including the Plaintiff is binding on both parties. Thus the Defendants defence in paragraphs 9 & 10 that the Plaintiff is only entitled to end of service benefits in the sum of Le118, 734, 662.20 which was computed pursuant to section 30 of the Finance Act No. 26 of 2018 is untenable, unsupported and cannot succeed. This is the reason why the Plaintiff had to proceed with her claim to trial notwithstanding the fact that she received the said sum of Le118, 734, 662.20 based on the admission of the Defendants and pursuant to an order of this Court.

Was the Plaintiff wrongfully dismissed by the Defendants as claimed?

43. The evidence is that, whilst the Plaintiff was on annual leave by letter dated 1st June 2018 the Plaintiff was recalled. On 19th September 2018 the 2nd Defendant by an internal memorandum requested the Plaintiff to proceed on leave effective 24th September 2018. Whilst on leave the Plaintiff was invited to meet with a Consultant tasked with assessing the 1st Defendant Company's operations.

44. By a letter dated 3rd January, 2019 the Plaintiff informed the 1st Defendant Company that she could not attend the meeting as scheduled as she was unwell and undergoing medical treatment. The Plaintiff promised to notify the 1st Defendant Company when she was available for the meeting, which she did, but the meeting did not hold. See Exhibits S, T and U on pages 138 – 140 of the Supplemental Court Bundle. After the Plaintiff recovered from her ill health she wrote to the 1st Defendant that she was now well and ready to meet the Committee. About a week later, Mrs. Esther Kuyateh called her and told her that the MD asked her to tell her to meet the committee at a certain date. The Plaintiff

called to confirm her visit to the assessment committee and Mrs. Kuyateh told her that the MD said she should not come.

45. The Plaintiff received a letter from the 1st Defendant Company dated 26th April 2019 informing her of her termination effective 30th April 2019. Relevant portions of the said letter Exhibit K reads thus:

" I am under instructions to inform you that your employment with the Sierra Leone National Shipping Company will end as of 30th April 2019. This is as a result of on-going restructuring based on the recommendation of a special assessment Committee"

46. I will now review the specific provisions of Exhibit R 1- 55^{of} the Revised Conditions of Service vis a vis the Plaintiff's claim. In Article 5, the Clearing and Forwarding Manager is listed among the officers who are the Senior Management Staff of the Company.

Notice or Payment in lieu of notice

Article 22.5 of the Revised Conditions of Service Exhibit R 1-55 states as follows

"In the event of termination or resignation, the Senior Staff member shall be entitled to receive end of service benefits of this Conditions of Service and shall be entitled to receive notice of payment in lieu of notice as follows.... 3 months' notice or payment in lieu of notice for services over 20 years"

47. The Plaintiff having worked for the Defendant Company for 29 years was entitled to 3 months' notice or salary in lieu of notice on termination. The Plaintiff was not given the requisite 3 months' notice or payment in lieu of notice as provided in Article 22.5 above and she did not receive payment of salary in lieu of notice at the time of termination and this constituted a breach of the terms of employment. As a result of the breach and based on the Gittens Stronge case, the Plaintiff is thus entitled to general damages which under this limb will be 3 months' payment in lieu of notice and interest thereon from the date of termination until judgment. Based on Exhibit V2 on page 137 of the Court Bundle, and Plaintiff's basic salary of Le3,649,044 the three months' payment in lieu of such notice, the Plaintiff is entitled to is Le10,947,132.

Redundancy

48. Article 36.1 of the Revised Conditions of Service states as follows:

“Redundancy is defined as the involuntary loss of employment through:

- i. No fault of the employee but by reason that the company has ceased or intends not to carry on its business or part of it for which the employee was employed, or has ceased or intends to cease operating business at the particular place at which the employee was employed.*
- ii. A change in the method of operation or administration of its business or any part thereof which results in either reduction of the workforce requirement of the company or a change in the type of skills, qualification or experience which an employee must possess to perform the duties required of them.”*

49. From the evidence adduced, it is abundantly clear that the Plaintiff's termination was precipitated by an assessment of the operations of the 1st Defendant Company. A consultant was hired by the 1st Defendant to conduct the assessment from 2015 – 2018 and a restructuring process commenced wherein staff were invited to meet with the Consultant. The Plaintiff was invited to do so but this did not materialize as she was unwell. She secured another date for a meeting with the consultant and when she called to confirm the date, was told that there was no need for the meeting. Based on the letter of termination, it was clearly stated that the termination was as a result of the restructuring based on the recommendation of a special assessment Committee. I also find that the restructuring did not only affect the Plaintiff but other employees as evidenced in the letter of 9th October 2019 from the Office of the Ombudsman on the termination of other members of staff of the Defendant Company.

50. Idrissa Dumbuya an expert in labour and employment who is a Senior Labour and Employment officer in the Ministry of Labour and Social Security for over 7 years told the Court that the termination of the Plaintiff amounted to a redundancy. His conclusion was drawn from the contents of the termination letter, the facts that the restructuring gave rise to people losing their jobs and the definition of redundancy in the Revised terms and Conditions of the 1st Defendant. He prepared Exhibit V1-2 forwarding the computation of the Plaintiff's entitlement on that basis. His evidence remained uncontroverted and his evidence was credible and convincing as an expert witness.

51. In *R v. Silverlock* 1894 2 Q.B. 766 a solicitor who studied handwriting for 10 years was admitted as a handwriting expert, although he had not acquired his knowledge of handwriting in the course of his profession and though he had no formal qualifications.
52. Based on Article 36 and the evidence adduced including that of the expert, I find that the situation that led to the Plaintiff's termination was as a result of a redundancy situation that arose in the 1st Defendant Company as contemplated in Article 36.1, notwithstanding that the 1st Defendant did not declare the Plaintiffs and other employees redundant. Even though the employer the 1st Defendant did not declare a redundancy, but if the situation as proved by the evidence is such as contemplated in Article 36, the court can find that it existed and the Plaintiff will be entitled to the rights and benefits conferred by Article 36.
53. I also find that the redundancy was an involuntary loss of employment through no fault of the Plaintiff. Though the word "restructuring" in the termination letter does not appear in Article 36 but in the instant case the restructuring embarked upon brought about a change in the administration of the 1st Defendant's business which resulted in a reduction of six affected staff namely the Plaintiff, Mr. Albert Koko Hubbard, Mr. Mohamed Bassiru Karim, Mr. Abdulai Lansana, Mohamed Kombay and Mrs. Antonia Smith as per letter dated 22nd May 2019 from the affected staff to the Ministry of Labour (Exhibit L 1-2). Furthermore, the restructuring involved an assessment conducted which resulted in a change in the type of skills, qualifications and experience an employee must possess to perform the duties required of them.
54. The question is what is the Plaintiff entitled to on a redundancy? Article 36.3 and Article 36.6 of the Revised Conditions of Service provide as follows:
- "36.3 When a situation involving redundancy occurs or is considered likely to occur in the Company, the Company shall inform the employees to be affected and shall give them notice of termination not less than (2) months prior to the effective date."
- "36.6 In the event of an employee being declared redundant he/she shall receive redundancy compensation. Such redundancy compensation shall be as follows:- over 10 to 20 years 2 1/2 month's salary for each completed year of service."*

55. The 1st Defendant's failure to give the requisite notice to the Plaintiff who had worked for 29 years as provided in Article 36.3 above amounted to a breach of the terms of employment, and in such a situation the Plaintiff is entitled to payment of 2^{1/2} months' salary in lieu of redundancy notice. The expert witness computed Exhibit V2 on that basis. In addition, the Plaintiff in accordance with Article 36.6 cited above is also entitled to redundancy compensation

End of Service Benefits

56. Article 22.4 of Exhibit R 1-55 provides as follows:

"A member of Senior Staff whose services are dispensed with or who resigns or who is called upon to resign from the services of the company other than through summary dismissal shall receive end of service benefits according to the category he or she belongs".

57. The Plaintiff's services were dispensed with and she was not summarily dismissed. In the circumstances she is entitled to end of service benefits as provided by Article 22.4 and in line with the expert computation done by PW2, contained in Exhibit V2.

Annual Leave and Rent Allowance

58. Article 26.2 (a) of Exhibit R 1- 55 provides thus: *"a) A member of staff shall be provided with a leave allowance in each year at an approved rate of 25% of the current basic salary"*. The expert in Exhibit V2 computed the Plaintiff's annual leave allowance as per the said Article 26.2 (a).

59. On rent allowance, Article 29.7 of Exhibit R 1-55 provides that rent and meal allowance will be reviewed by Management from time to time. The Plaintiff has not specifically claimed rent allowance and this may be in the general emoluments and entitlements claimed. Article 29.7 does not give an indication of the rent allowance or a formula for its determination as it is reviewed by Management from time to time. The expert opinion evidence adduced by Idrissa Dumbuya as contained in Exhibit V2 has computed the Plaintiff's rent allowance for the period from January to April 2019 (4 months) to be Le4,500,000.

60. However, no evidence has been adduced on the basis for the computation for a rent allowance which would have been a justifiable basis for the calculation. In the absence of evidence to substantiate this calculation, I am reluctant to find

that the Plaintiff is entitled to this amount of Le4,500,000. After careful review I noted a document immediately after page 108 in the court bundle which is a pay slip of the Plaintiff for March 2017. In this pay slip, the rent is stated as 627,264. The basic salary is 3,475,280. It is apparent that from March 2017 there has been a slight increase of the latest salary of the Plaintiff which according to Exhibit V2 is Le3,649,0944. I therefore assume that the rent allowance should have also increased. In the absence of the formula the expert used to calculate the rent allowance, this Court will be guided by the rent for March 2017 to determine what is due the Plaintiff as rent allowance.

61. I take due note of the evidence relating to her entitlements as provided for in Exhibit R 1- 55 some of which this Court cannot determine particularly those not specifically claimed and formula for computation not stated in R 1- 55 or in any other document produced to the Court. The Plaintiff's basic salary as a Clearing and Forwarding Manager was Le3,649,044. She was engaged in March 1990 and terminated on 30th April 2019 having served for 29 years.

62. It is important to set out the entitlements due the Plaintiff in Exhibit V2 prepared by the Plaintiff's witness from the Ministry of Labour and Social Security, Idrissa Dumbuya computed in accordance with Exhibit R 1-55, the Revised Conditions of Service which states as follows:

"ENTITLEMENTS

- | | |
|--|-----------------------------|
| 1. Redundancy Notice - 2 Months Salary in lieu (Article 27.3) | |
| Le4, 279,044 x 2 months | Le8, 558,088 |
| 2. Redundancy Compensation – 2 and half months salary for each completed year and services (Article 27.6) | |
| Le10,697,610 x 29 years | Le310,230,690 |
| 3. Leave Allowance for 1 year 25% (Article 20.2) | Le10, 947,132 |
| 4. End of Service Benefits/Gratuity - 2 and half months salary for each completed year of service - (Article 21.4) | |
| Le10,697,610 x 29 years - | Le310,230,690 |
| 5. Rent allowance from January to April 2019 (4 months) - (Article 21.4) | |
| | Le 4,500,000 - |
| Total | <u>Le644,466,600</u> |

In words: Six Hundred and Forty-Four Million, Four Hundred and Sixty-Six Thousand, Six Hundred Leones”

63. The Plaintiff's original claim in the Writ of Summons was based on Mr. Max-Alie a Labour Consultant report. His computation was tendered as Exhibit Q and the evidence is that he is now deceased. The total claim was for Le650,437,762. This document was given to Idrissa Dumbuya who reviewed the computation and prepared another computation which the Plaintiff is now relying on. I note the sums computed are the same under the various headings except for leave pay of Le5, 971, 162 which was included in the computation of Max Alie. This was not included in the computation of Mr. Dumbuya and this accounts for the difference.

Interest

64. The Plaintiff in her Writ prayed for interest of 25% on the sum of Le650,437,762.00 pursuant to Section 4 of the Law Reform (Miscellaneous Provisions) Act Cap 19 of the Laws of Sierra Leone 1960. I note that Counsel in his written submissions based on decided cases to wit: *Patrick Caulker v. Sierra Rutile C.C. 671/90 1990* and *Ansumana M. Foray v Sierra Rutile* on wrongful dismissal, urged the Court to award interest at the rate of 45% per annum.

65. Section 4(1) provides as follows:

“4. (1) In any proceedings tried in any court of records for the recovery of any debt or damages, the court may, if it thinks fit, order that there shall be included in the sum for which judgment is given at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any period between the date when the cause of action arose and the date of judgment.....”

66. This Court has the discretion to award interest on the sums claimed by the Plaintiff. Such interest is awarded not as compensation for the damages done but is awarded to a plaintiff for being kept out of money which ought to have been paid to him. See *Jefford and Another Gee (1970) 1 AER 1202*. In the instant case the *Stronge v Brewery supra* decision supports the view that damages for wrongful dismissal would be the sums due the Plaintiff upon termination and interest thereon.

67. The Plaintiff's employment was terminated on 30th April 2019 and as at that date, she was entitled to payment of her end of service benefits, redundancy

compensation, redundancy notice and all other benefits owed to her. However, the Plaintiff was deprived of her aforesaid entitlements which prompted this action. Since then, save for the Le118,734,662.02 paid by the 1st Defendant Company pursuant to Court Order dated 16th December 2020, the Plaintiff has not received any further payment from the Defendant. She is therefore entitled to interest from 30th April 2019 to the date of judgment on any sums which is due her.

68. On the issue of costs Counsel for the Plaintiff has asked for considerable costs to the Plaintiff, having regard, inter alia, to the length and complexity of proceedings, conduct of the Defendants filing fees, transportation expenses and Solicitor's fees.

The Defence

69. Regarding the Defendants' defence and written submissions, I have addressed the issue of the Finance Act on which the Defendants claimed to have used to calculate the end of service benefits computation which is inapplicable to the Plaintiff for the reasons set out above. The Defendants' witnesses did not testify but I note that in the written closing address, Counsel tried to counter the Plaintiff's case by alleging serious misconduct on her part. Suffice it to state that this piece of submission will be discountenanced as no evidence was led to that effect as no witness of the Defendant testified to substantiate this allegation. The Plaintiff's evidence remained unshaken during cross-examination regarding her claim. She admitted to receiving a query in relation to Guma Valley Water Co. which she responded to but the details were never in evidence.

70. Counsel for the Defendants invited the Court to look at page 12 of the SLNSC's Comprehensive Staff Assessment Report in box 4 of paragraph 2 where it clearly outlines the reason for sacking the said Plaintiff. However, this document was not in evidence as none of the Defendants witnesses testified and it was not referred to or relied on by the Plaintiff.

71. Furthermore, a party is bound by his pleadings and serious misconduct was not pleaded in the Defence. The letter of termination is quite explicit; the Plaintiff was not summarily dismissed but terminated following the restructuring assessment embarked upon by the 1st Defendant through the Special Assessment Committee.

72. There is no evidence that the Plaintiff was provided with the requisite notices or payments in lieu thereof provided for in Exhibit R 1-55 under the specific Articles highlighted above. There was no evidence of incompetence and incapacity on the part of the Plaintiff as alluded to in the written closing address. On the contrary, the Plaintiff evidence is about her “devoted and diligent service”, whilst working in various offices of the 1st Defendant from an accounts clerk in 1990 rising through the ranks until her termination as Clearing and Forwarding Manager on 30th April 2019.

73. Both the 1st Defendant the employer, and the 2nd Defendant the Managing Director were sued as liable for the Plaintiff’s claim. As stated earlier, the contract of employment was between the 1st Defendant and the Plaintiff. I do not find the 2nd Defendant liable as he was not the employer and his actions taken was not in his personal capacity but as an agent on behalf of the 1st Defendant. It is my view that it is the 1st Defendant who is liable in respect of the Plaintiff’s wrongful dismissal and shall pay all of the amounts found due to the Plaintiff. The claim in respect of the 2nd Defendant should therefore be dismissed.

Conclusion

74. Having regard to the evidence, the pleadings and documents submitted, having considered the written and oral submissions of both Counsel for the parties, I am convinced that the Plaintiff has succeeded to prove her case on a balance of probabilities.

75. I hold that she was wrongfully dismissed by the 1st Defendant and therefore entitled to damages which is Le 644,466,600.00 which should have been paid to her on her termination as specifically set out in Exhibit V2 and in paragraph 62 above, less Le118, 734, 662.20 paid earlier and an adjustment of the rent allowance from Le Le5, 971, 162.00 to Le2,509,056 based on rent paid in March 2017.

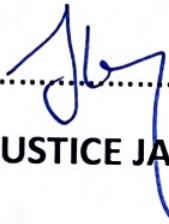
76. She is also entitled to interest and costs. In awarding costs, I also take into consideration that the sum of Le7,500,000 had been paid as costs based on an earlier order of this Court.

77. In view of the foregoing, there shall be judgment for the Plaintiff for damages for wrongful dismissal by the 1st Defendant and I make the following orders:

- i. The 1st Defendant shall pay the Plaintiff the sum of Le522,269, 831.80 (Five Hundred and Twenty-Two Million, Two Hundred and

Sixty-Nine Thousand, Eight Hundred and Thirty-One Leones, Eighty cents) as balance due and owing the Plaintiff in respect of end of service benefits, leave allowances, redundancy and/ or termination compensation and other emoluments or entitlements.

- ii. Interest on (1) above at the rate of 25% per annum from 30th April 2019 until judgment pursuant to section 4 of the Law Reform, (Miscellaneous Provisions) Act, Cap. 19 of the Laws of Sierra Leone 1960.
- iii. Costs to the Plaintiff in the sum of Le22,500,000 to be paid by the 1st Defendant.
- iv. The claim against the 2nd Defendant is dismissed.



HON. MRS. JUSTICE JAMESINA E. L. KING J.A.