

IN THE SUPERIOR COURT OF JUDICATURE

IN THE COURT OF APPEAL

ACCRA – GHANA AD - 2023

CORAM: - M. WELBOURNE (MRS), J.A. (PRESIDING)

BRIGHT MENSAH, J.A.

BARTELS-KODWO (MRS.), J.A.

SUIT NO. H1/42/2021

DATE: 19THJANUARY, 2023

IN THE MATTER OF THE LABOUR ACT 2003 ACT 651

BETWEEN

DR. ALBERT WALTER Q. BARNOR == COMPLAINANT/APPELLANT

VRS

NATIONAL TRUST HOLDING == RESPONDENT/RESPONDENT

COMPANY LIMITED

JUDGMENT

WELBOURNE, J.A

The brief facts of the case which have culminated in the instant appeal are that the Appellant was employed by the Respondent from 1996 to January, 2016 in various capacities. In January 2002, through his hard work and diligence he rose to the position of Managing Director ("MD") of the Respondent Company. The relationship between the parties was at all times guided by various contracts. The latest contract was a Management Employment Agreement (MEA) signed between the parties on 3rd October 2012 and intended to have effect on 1st January 2013. The said MEA made provisions for the payment of certain end of service benefits to Complainant when the Complainant retires from the Respondent Company. On 1st January 2016, the Appellant proceeded on retirement from his position as MD. The Respondent failed to correctly calculate and promptly pay out his retirement benefits, both pecuniary and non-pecuniary, in line with the Appellant's employment contract and established company policy. Indeed the respondent issued a cheque with a face value of **GH¢490,258.92** as being the net gratuity due the complainant. The Complainant refused to accept the cheque.

Following the Respondent's failure to heed the Appellant's request for arbitration in line with the terms of his contract, on 22nd March, 2016, the Appellant filed a petition with the National Labour Commission ("the NLC") (found on pages 1 to 4 of the Record) seeking an order for the Respondent to correctly calculate and promptly pay out all pecuniary and non-pecuniary benefits due him.

The Respondent was accordingly invited for its comments after being served with the Petition, whereupon parties were ordered to submit the documents they intended to rely on.

The NLC conducted a hearing and delivered its decision on the 11th day of December 2019 (found on page 136 to 146 of the Record).

I produce the summary of the award for ease of reference.

THE SUMMARY SETTLEMENT AWARD

“It is therefore the decision of the panel that the unilateral amendment of the Management Employment Agreement (MEA) renders the amendment null and void. The Panel orders the Respondent to use the terminal salary of Gh¢28,500.00 for the computation of Claimant’s gratuity.

The Panel further orders that the computation should cover the period beginning 1st September, 1997 to 31st December, 2015. In making this determination, the Panel noted that the period 1st August, 1996 to 31st August, 1997 was covered by a specific contract for a specific performance. The Panel orders that the period covered by the service contract which was signed on 1st August, 1996 should not be included in the computation of Claimant’s gratuity.

Consequently, the Panel orders the computation of the gratuity and outstanding leave days as follows;

A. 2 months basic gross salary times number of years served

Basic salary: Ghs28, 500.00.

Number of years served: 18.3years

Gratuity: $28,500 \times 2 \times 18.3$ =Ghs1,043,100.00

B. Outstanding leave days: 88 days

Basic salary: Ghs28, 500.00

Number of working days /month: 22 days

88 days commuted to cash: $28,500/22 \times 88$ =Ghs114,000.00

Total

=Ghs1,157,100.00

The Claimant's claim for two hundred and eighty-one (281) working days as his leave arrears is, therefore, dismissed.

The Respondent is ordered to reimburse the Claimant's medical expenses in accordance with the approval given in the Board's letter dated 10th March, 2016.

The Respondent is directed to make payment of claimant's total entitlements by cheque written in the Claimant's name and sent to the office of the Executive Secretary of the National Labour Commission within one (1) month of service on Respondent.

The claim for a 3-bedroom executive house to be offered to the claimant at a discount of 25% is dismissed.

The claim for the official car (4WDT PRADO) with registration number GN 8849-15 to be offered to the claimant to buy at a discount of 20% is moot and therefore dismissed.

The claim for the maintenance cost of official car (4WDT PRADO) with registration number GN 8849-15 which the claimant took away and subsequently has to pay at cost dismissed.

The claim for Ghs57,378.76 being a purported interest his Provident Fund investment accrued for the period 1st January, 2016 to 30th June 2016 and his further claim of Ghs31,721.85 being purported interest he claims has accrued on the Ghs57,378.76 from July 2016 to July 2019 is hereby dismissed".

It is against this award that the Appellant has come to this court for redress.

The grounds of appeal filed on the 23rd December 2019 are stated as follows:

Grounds of Appeal

- a. The National Labour Commission erred when its failed to order interest at the prevailing commercial bank rate on the awarded sum.

- b. Further grounds of appeal would be filed upon receipt of the record of Appeal.

These were later amended on 30th March 2021 in the following terms:

- a. The judgment is against the weight of evidence adduced in the course of the trial.

- b. The Commission ought to have averted its mind to and considered the Complainant/Appellant's written response dated the 4th day of December 2019 and the referred attachment therein that disputed any agreement of Eighty-Eight (88) days as the outstanding leave days.

- c. The Commission ought to have averted its mind to the claim for interest on Complainant's s Provident Fund and the evidence led to establish his claim.

- d. The Commission ought to have averted its mind to the fact that Complainant/Appellant in his submissions maintained that it was the company policy and long standing practice for his post duty vehicle to be offered to him at an applicable discount upon his exit.

- e. The Commission ought to have awarded interest on the awarded sums at the prevailing Commercial Bank rate from the time the amount was due till the date of final payment.

The Respondent raised some preliminary legal arguments which I shall discuss, namely, the Issue of the Appeal being a nullity because the Appellant failed to seek the leave of this court.

It is trite that an appeal is a creature of Statute and for that matter a party who intends to invoke the jurisdiction of the court must strictly comply with and or satisfy the law that grants him the right of appeal. The case of **Sandema–Nab vrs Asangalisa and Others [1996-1997] SCGLR 302** is apposite here. The court held at page 308 of the report as follows:

“Now it must be appreciated that an appeal is a creature of statute and therefore no one has an inherent right to it. Where a statute does not provide for right of appeal, no court has jurisdiction to confer that right in a dispute determined under that statute. Similarly where a right of appeal is conferred as of right or with leave or with special leave, the right is to be exercised within the four corners of that statute and the relevant procedural regulations, as a court will not have jurisdiction to grant deviations outside the parameters of that statute”.

The Supreme Court speaking through Amegatcher JSC had this to say about decisions emanating from the Labour Commission and whether or not leave of the Court of Appeal had to be sought in **James David Brown vrs The National Labour Commission and Ahantaman Rural Bank Limited(Civil Appeal No J4 74 2018) [2019] GHASC 43 (judgment dated 19 June 2019)**:

“.... The current appeal clearly does not satisfy the requirements above because it did not emanate from the High Court to the Court of Appeal in the exercise of its original

jurisdiction. An appeal, therefore, could not be filed as of right in this case as the Appellant purported to do. Our understanding of the appellant's submission is that because the NLC under sections 133(4) and 139(2) & (3) of the Labour Act has the powers of the High Court in respect of enforcing the attendance and examining witnesses, compelling the production of documents and privileges and immunities pertaining to proceedings in the High Court, the NLC should be equated to a High Court".

His Lordship went further to say in pages 20-22 of the judgment that:

"As already discussed above, the lawmaker for very good reasons made appeals from decisions of certain tribunals and adjudicatory bodies directly to the Court of Appeal and not the High Court. The implications of that line of reasoning by the appellant would mean that any tribunal or adjudicatory body which is vested with the power of the High Court to summon witnesses and the production of documents or whose decision is appealable to the Court of Appeal automatically assumes the status and power of a High Court. In our opinion, this reasoning is not only absurd but would defeat the manifest intentions of the legislature. To illustrate this point, a reference to clause 2 of Article 280 of the 1992 Constitution is apt. It provides that: "Where a commission of inquiry makes an adverse finding against any person, the report of the commission of inquiry shall, for the purposes of this Constitution, be deemed to be the judgment of the High Court; and accordingly, an appeal shall lie as of right from the finding of the Commission to the Court of Appeal." Evidently, the intention expressed by the framers of the Constitution in formulating this provision is to make a report of a commission of enquiry to "be deemed" to be a judgment of the High Court, and thus have the effect and consequences of it, more particularly for a subsequent appeal to lie as of right to the Court of Appeal. In other words, it is not the fact of an appeal to the Court of Appeal from an adverse finding

*of a commission of enquiry under Article 280 of the Constitution, which makes the report a High Court judgment. It is the specific provisions added to the Article that the report shall be deemed to be a judgment of the High Court. Interestingly, this phrase "shall be deemed to be a judgment of the High Court" was omitted by the legislature in section 134 of the Labour Act, the Legal Profession Act, the Professional Bodies Decree and the Medical and Dental Act already referred to above. It is clear **that if the lawmaker had intended to equate adjudicatory bodies like the Labour Commission to the High Court in the exercise of its functions for an appeal to lie as of right to the Court of Appeal and then the Supreme Court, it would have expressly stated so. In the absence of any such clear provision, the NLC could not be deemed to be a High Court for its decisions to lie as of right from the Court of Appeal to this Court" (our emphasis)".***

We have perused the entire record of appeal and we do not find that any leave was sought by the appellant before filing the appeal.

The NLC being an adjudicatory body lower than the High Court, leave is required.

In the case of **Nii Kojo Danso II vrs The Executive Secretary, Lands Commission; The Executive Secretary, Land Valuation Board; The Attorney General and Joshua Attoh Quarshie**; Civil Appeal No. J4/35/2017 dated 28/11/2017 (unreported), Pwamang JSC made the following pronouncements on the issues of whether or not appeals emanating from the Labour Commission required the leave of the Court of Appeal.

"Category (ii) cases would include determination of an appeal, by the Court of Appeal against a decision of the Labour Commission under section 167(2) of the Labour Act 2003 (Act 651). Here, the appeal to the Court of Appeal is not in respect of a judgment

delivered by the High Court so though it may be a final decision, leave would be required”.

It is our view that on the authority of the cases of **James David Brown vrs The National Labour Commission and Ahantaman Rural Bank Limited** (supra), and **Nii Kojo Danso II vrs The Executive Secretary, Lands Commission; The Executive Secretary, Land Valuation Board; The Attorney General and Joshua Attoh Quarshie**, this court has no other option than to insist on the fact that this appeal ought to have come by way of leave in the first instance.

Accordingly, the appeal is dismissed as a nullity.

There will be no order as to costs.

(SGD)

MARGARET WELBOURNE (MRS.)

(JUSTICE OF APPEAL)

(SGD)

I AGREE

PHILIP BRIGHT MENSAH

(JUSTICE OF APPEAL)

(SGD)

I ALSO AGREE

JANAPARE A. BARTELS-KODWO (MRS.)

(JUSTICE OF APPEAL)

COUNSEL:

- **VANESSA EWURABENA DAVIS FOR COMPLAINANT/APPELLANT**
- **JUSTIN AMENUVOR FOR RESPONDENT/RESPONDENT**