

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE, INDUSTRIAL AND LABOUR DIVISION 2 HELD IN ACCRA, ON TUESDAY, THE 2ND DAY OF MAY 2023, BEFORE HER LADYSHIP JUSTICE ANANDA J. AIKINS (MRS), JUSTICE OF THE HIGH COURT.

SUIT NO.IL/0095/2018

PRINCE GYIMAH OF
C/O Seidu H/No.H/334/4A TESHIE PLAINTIFF
ACCRA



VRS

ELECTRICITY COMPANY OF GHANA
HEADOFFICE
DEFENDANT



ACCRA

COUNSEL FOR THE PLAINTIFF: VINCENT GARR, ESQ.

COUNSEL FOR THE DEFENDANT: SEYRAM DARBI, ESQ.

JUDGMENT

INTRODUCTION

On the 25th day of July, 2018 the plaintiff sued the defendant, his former employer, for the following reliefs:-

- a) Declaration that his dismissal was unlawful
- b) Damages for wrongful dismissal
- c) An order of the court to be re-instated with his benefits.
- d) Any other relief granted by the court.

The defendant denied liability for all the claims of the plaintiff and described them as frivolous and unmeritorious.

At the close of pleadings the court set down the following as the issues for determination:-

- 1 . Whether or not the defendant company is bound by the judgment of the District Court, Accra, entitled “Republic vs. Gyimah”, Suit No. B7/35/14.”?
- 2 . Whether or not the dismissal of the plaintiff was lawful?
- 3 . Any other issue(s) raised in the pleadings

CASE OF PLAINTIFF

The case of the plaintiff, from his pleadings and witness statement, is that he was wrongfully or unlawfully dismissed by the defendant, his former employer. He said that he was employed by the defendant in the year 2003, precisely on the 12th of May, as a driver and that it was his duty to drive the defendant’s officials on their official duties. The plaintiff was stationed at the Assin Fosu Office of the defendant.

The plaintiff said that in the course of his duties he was called upon to drive one official of the defendant by name Robert Charles Asmah who was a console Operator of the defendant in charge of the Central Region and stationed in Cape Coast. The plaintiff said he drove the said Robert Charles Asmah during his assignment in Assin Fosu and that the said Robert Charles Asmah only gave him (plaintiff) monetary gifts for the errands he run for him.

The plaintiff also said that he was not aware that Asmah was involved in any wrong doing, that is the tampering and falsification of customer electricity metre accounts with the result that such customers, including the plaintiff herein had their metre accounts credited with payments which the said customers had in fact not made to the defendant.

It was also the case of the plaintiff that the defendant wrongfully dismissed him and that there was no basis for the findings that were made against him by the defendant's investigations committee. He was also of the position that since the District Court, Accra acquitted him on a charge of stealing in respect of the transactions carried out by Robert Charles Asmah, this court should declare his dismissal as unlawful or wrongful.

CASE OF DEFENDANT

The defendant on the other hand stated that the dismissal of the plaintiff from its employ was lawful and that it was done pursuant to the Collective Agreement that governed the employment relationship between it and the plaintiff at the time of the dismissal.

The defendant, in its statement of defence denied that the plaintiff was acting in his official capacity as a driver when he decided to run errands for Robert Charles Asmah and also stated that the money the plaintiff received from Robert Asmah was the

plaintiff's share of the proceeds from the falsification and tampering of the meter records of the defendant's customers.

According to the defendant. It queried the plaintiff in respect of the said tampering of records and that it found the response of the plaintiff to be unsatisfactory. It thereafter interdicted the plaintiff and caused him to appear before an investigation committee it set up to unravel the allegations of tampering with and falsification of some of its customers' meter records.

The defendant further claimed that the findings of its committee revealed that the plaintiff did ran unofficial errands for Robert Asmah by receiving monies from some customers of the defendant whose accounts were fictiously and falsely credited with payments they had not made and giving the said monies to Robert Asmah. The defendant further stated that its actions were in line with the collective agreement that regulated the employment relationship that existed between it and the plaintiff.

ANANLYSIS OF ISSUES

ISSUE 1 – Whether or not the defendant company is bound by the judgment of the District Court, Accra entitled Republic Vrs. Gyimah, suit No. B7/35/14?

The plaintiff tendered in evidence the judgment of the District Court, Accra as his exhibit 'E'. A careful read of this judgment shows that the plaintiff was arraigned before the said court on charges of stealing and conspiracy. At the end of the trial, the conclusion of the District Court was that the prosecution had failed to prove the guilt of the accused (plaintiff herein) beyond reasonable. The plaintiff was thus acquitted and discharged by the said Court.

As rightly submitted by the Counsel for the defendant the prosecution of the plaintiff at the District Court was in respect of criminal charges that were brought against the

plaintiff by the State and therefore the decision of the District Court was directed at the State to free the accused person because of its inability to prove the charges that were brought against the accused person. The counsel for the defendant referred the court to the decision of the Supreme Court in *GAVOR v. BANK OF GHANA [2013-14] SCGLR 1081* where the Supreme Court in its decision (holding 2) stated thus,

“(2) Under the common law, the employer had the right to summarily dismiss an employee for proven misconduct. An employee like the plaintiff in the instant case (a senior officer of the nation’s Central bank),to have grossly misconducted himself resulting in huge financial loss of US \$1,500,000.00 could not complain of lack of fair hearing, if he was found clearly culpable by an investigative committee set up to investigate the circumstances leading to such loss. The plaintiff’s own confession that there was “serious lapse of good judgment” leading to the loss of such a huge amount of money was clearly condemnable.”

A careful reading of the entire decision of the Supreme Court makes it clear that the acquittal and discharge of an employee in a criminal prosecution does not exonerate him from disciplinary proceedings conducted by his employer.

In the instant case before me it can also be said that the acquittal of the plaintiff by the District Court, Accra did not exonerate him from the disciplinary proceedings instituted against him by the defendant in line with the Collective Agreement that existed between the parties herein .

My finding of fact on this issue is that the defendant herein is not bound by the decision of the District Court in exhibit ‘E’ because the said decision was actually directed at the State which instituted the criminal proceeding against the plaintiff.

ISSUE 2 – Whether or not the dismissal of the plaintiff was lawful?

The plaintiff tendered his dismissal letter in evidence as his exhibit ‘B2’. In the said letter the plaintiff was found culpable as a party to a scheme which dealt with

falsification and/or tampering with records of the account of the defendant's customers in respect of their metres.

The plaintiff's actions were said to have led to the defendant losing an amount of GH¢81,670.44.

It is also stated in the dismissal letter that the plaintiff admitted before the defendant's investigation committee that he ran errands for Robert Asmah in respect of the falsification and /or tampering of the records or accounts of customers and also admitted that his own electricity metre accounts were fictitiously credited with payments by the said Robert Asmah.

The plaintiff was said by the defendant to have breached Appendix 'C', A (iv, viii and ix) of the Collective Agreement and he was consequently dismissed by the defendant with immediate effect.

This dismissal is what the plaintiff describes as unlawful. However one should not lose sight of the fact that the Labour Act of 2003, Act 651, provides that an employer has the right to terminate his employee on ground of misconduct. (Section 15 (e) (iii)) and also at common law the employer has the right to summarily dismiss an employee for proven misconduct as has been alluded to by the Supreme Court in *GAVOR V. BANK OF GHANA* mentioned supra.

In this instant case the evidence before me is clear that the plaintiff was made to go through the defendant's disciplinary procedure when he was accused of being involved in the falsification of records. The plaintiff was given the opportunity to be heard in his defence. Exhibit 2 tendered by the defendant shows that the plaintiff appeared before the investigation committee and gave evidence before the committee.

The plaintiff's evidence before the committee was that he had on two occasions collected money from some people in Assin Foso and given the money to Robert Charles Asmah who in turn gave him some money for the said errands. He said a

sawmill owner at Assin Fosu whose name he gave as Wofa Yaw gave him an amount of GH¢1,500 to be given to Asmah and when he sent the said amount to Asmah in Cape Coast, Asmah gave him GH¢200.00 out of that amount. On another occasion too, he took an amount of GH¢800.00 from the proprietor of a school called St. Andrews in the same Assin Fosu and when he gave the said amount to Asmah, the latter gave him GH¢100.00 out of it. The plaintiff also admitted that his house was credited twice with electricity payments by Robert Asmah even though he could not produce any genuine receipts for the said payments done on his behalf by Robert Asmah.

There was ample evidence before the defendant's investigation committee as can be seen in exhibit '2' which was also tendered by the plaintiff as his exhibit 'B' that Robert Charles Asmah was fictitiously crediting the accounts of some customers of the defendant with various sums ostensibly to make it appear that those payments had been made by the said customers when in fact and indeed no such payments had been made to the defendant. The said Asmah will then take money from the said customers for his own use. He is said to have done these illegal activities with the help of the plaintiff herein and one other staff of the defendant whose name was given as Clement Appiah.

And indeed the investigation Committee found that Wofa Yaw (the sawmill owner) and one Dr. Asiedu who is said to be the proprietor of St. Andrew's School both of Assin Fosu were among those whose accounts were fictitiously credited by Robert Asmah and the plaintiff collected money from these two persons for the benefit of Asmah.

Even though the plaintiff tried to discredit the report of the investigation committee (exhibit 2) his efforts were not backed by any credible evidence. He claimed exhibit 2 had missing pages and therefore was not credible but the truth of the matter is that the full version of exhibit 2 was filed by the defendant on 17th January, 2020 upon the

orders of this court when the court realised at the case management stage that a few pages of exhibit 2 were missing or omitted when it was initially filed on the 17th July, 2019 as part of the testimony of Francis Nimo Ackonnor the defendant's witness who testified on its behalf. Indeed the claim made by the plaintiff that his mother's name was stated as Mariama Appiah in exhibit 2 was not substantiated because there was no such thing in exhibit 2. Therefore the plaintiff's attempt to discredit exhibit 2 was simply baseless.

The record in exhibit 2 and also in exhibit A1 (the plaintiff's answer to the defendant's query clearly show that the plaintiff on his own and without any compulsion admitted running errands for Robert Asmah on the basis of his friendship with the said Asmah. The plaintiff's driving of Asmah to the premises of St. Andrews school to see the school's proprietor and also to the sawmill of Wofa Yaw were not activities sanctioned by the defendant because Robert Asmah did not go to the said places to do any work for the defendant.

As rightly submitted by the defendant's counsel in his closing address, the plaintiff and the said Robert Asmah were on a frolic of their own, using the defendant's official vehicle to conduct their own private errands or business and the money that were collected from these two people were never paid into the accounts of the defendant. The money was used by Robert and the plaintiff even though the plaintiff claimed he was never aware of any underhand dealings by Robert Asmah.

This court believes that the plaintiff was fully aware of the fraudulent activities of Robert Asmah because the plaintiff acknowledged that his own premises were credited twice with payments by Robert Asmah and yet the plaintiff could not produce any genuine receipts he had received from the defendant for the said payments. Even though he claimed that Robert owed him an amount of GH¢250 yet his metre account was credited with an amount of GH¢340.65 which was in excess of the GH¢250.00 and

he could even not produce any genuine receipt issued by the defendant for the said payment.

On the totality of the evidence before me, I am of the opinion that the culpability of the plaintiff was established by the defendant's investigation committee and the defendant was well within its right as an employer when it applied the sanction of dismissal in respect of the plaintiff in accordance with the provisions in the defendant's Collective Agreement (exhibit3) because the plaintiff's conduct was incompatible with the faithful discharge of his duties. This court thus finds as a fact that the dismissal of the plaintiff was lawful.

CONCLUSION

In the light of the foregoing analysis. It is the opinion of this court that the plaintiff has failed to make a case against the defendant on the balance of the probabilities and therefore he is not entitled to any of the reliefs endorsed on his writ of summons and statement of claim.

The plaintiff's case is dismissed as same is without any merit.

The court awards cost of GH¢8,000 against the plaintiff in favour of the defendant.

(SGD.)

JUSTICE ANANDA J. AIKINS (MRS.)

JUSTICE OF THE HIGH COURT

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