IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA-AD 2020

CORAM: GBADEGBE, JSC (PRESIDING)

AMEGATCHER, JSC

OWUSU (MS), JSC

LOVELACE-JOHNSON (MS), JSC

KULENDI, JSC

CIVIL APPEAL

NO. J4/62/2019

2ND DECEMBER, 2020

NATIONAL LABOUR COMMISSION …….. APPLICANT/APPELLANT/RESPONDENT

VRS

FIRST ATLANTIC BANK LIMITED …….. RESPONDENT/RESPONDENT/APPELLANT

JUDGMENT

KULENDI, JSC:-

On the 25th day of March 2020, the Appellant herein filed a Notice of Appeal, against the judgment of the Court of Appeal which judgment was delivered on 14th February, 2019. In the said judgment, the Court of Appeal upheld an appeal by the National Labour Commission (the Respondent herein) against the refusal of the High Court to grant an application for an order to enforce the decision of the Respondent.

BACKGROUND:

The background to the proceedings that has brought about the instant appeal can be summarized as follows:

By letters dated 27th August, 2015, the employment relationship of two workers of the Appellant bank was severed. The letter, although addressed to the two workers individually, had the same content. The letter, which may be found at page 10 of the Record of Proceedings reads in part as follows:

> *"REDUNDANCY"*
>
> *This comes to inform you that owing to the significant changes that have occurred in the demands, skills and competencies required for the delivery of its current objectives, the bank is no longer able to deploy you in any role.* ***You are accordingly declared redundant with effect from September, 1st 2015.***
>
> *In accordance with article 65 of the Labour Act, 2003 (Act 651) the* ***bank will submit proposals for the negotiation of a redundancy package with the Union of Industry Commerce and Finance Workers (UNICOF)***
>
> *Your statement of accounts, indicating your entitlements and liabilities will be communicated to you in due course, together with a redundancy package resulting from the negotiations.*
>
> *We thank you for the services rendered to the Bank during the period of your employment and wish you success in your future endeavors."*

The "redundant workers" were members of the Union of Industry, Commerce and Finance Workers Union (hereinafter called "the Complainant").

On 21st April, 2016, the Complainant, being the labour representative of the affected employees made a formal complaint to the Respondent after several attempts by them to negotiate the redundancy package with the Appellant had failed. The complaint submitted to the Respondent which may be found at page 8 of the Record of Proceedings.

On 12th May, 2016, the Respondent wrote to the Appellant for response to the Complaint and the Appellant duly filed its response with the Respondent on 27th June, 2016.

This may be found at page 17 of the Record of Proceedings. It reads in part as follows:

> *"1.0 REDUNDANCY-FACTS OF THE MATTER*
>
> *We wish to confirm that Messrs. John Adoe and Bernard Bright-Davies were, on September, 1st 2015 declared redundant and formally communicated to by the Bank. …*
>
> *Subsequent to this, the redundancy was effected and UNICOF in a letter dated October, 5th 2015 presented proposals for a redundancy package to be negotiated on behalf of the two named redundant persons. The proposals were duly received by the Bank and several informal discussions held with representatives of UNICOF to agree on an appropriate timetable to carry out negotiations.*
>
> *We wish to reiterate, as we have done on the many occasions that we have met informally with UNICOF's representatives, that this Bank is committed to honouring its obligation in the redundancy decision. The delay in doing so has been due to circumstances beyond our control, which circumstances we are working assiduously to bring under control to enable us resume negotiations on the redundancy package and finally honour our obligations to the two named individuals.*
>
> *We further wish to render sincere apologies to the Commission, UNICOF and the two individuals involved for this delay and give our firm commitment to have this resolved as soon as possible.*

"Having regard to all of the above, we wish to state our position on each of the reliefs sought by UNICOF as follows:

1. Negotiations on redundancy package

We commit to having this done within the shortest possible time, but are unable to indicate a specific time frame in view of the fact that our Board of directors whose consent is required in obtaining approval for the negotiated package reside outside the country. Concluding decisions with them outside of a formally convened meeting would therefore take a little more time than it would with those resident in Ghana…"

At a hearing on 28th September, 2016, the Appellant and the Complainant appeared before the Respondent and the following, contained at page 27 of the Record of Proceedings, ensued:

"COMMISSION: Let us hear you

COMPLAINANT: just this morning, the Respondent approached us for an enterprise level negotiation. However, we have some issues making it difficult for us to oblige them in that respect.

COMMISSION: If they have indicated a willingness to meet to resolve the matter, then what is the difficulty?

COMPLAINANT: The issue has been pending for a while now.

COMMISSION: Why are you here?

COMPLAINANT: Our Clients were declared redundant and for over a year, attempts to negotiate their redundancy package have proved futile hence our decision to petition you. Attempts were made through writing yet no response came from the Bank. In respect of one of the Complainants, (Bernard) he took a mortgage while in employment but following the redundancy, the repayments have not been forthwith and the bank is on the verge of repossessing the house.

COMMISSION: what is your response?

COUNSEL FOR RESPONDENT: The main issue is because the claimants brought us here for their redundancy package…

COMMISSION: Have you declared them redundant?

COUNSEL FOR THE RESPONDENT: Yes

COMMISSION: Why have you not paid them?

COUNSEL FOR RESPONDENT: We have a few internal issues which we discussed with the union. We admit that is has taken long but we begged that they give us some time to resolve the internal so we can conclude on everything.

COMMISSION: is the package not worked out before the decision was taken to make them redundant?

RESPONDENT: there were a few internal issues.

COMMISSION: Are you ready to pay them their package?

RESPONDENT: Yes but we are yet to negotiate the package yet (sic) even though the union made a proposal to management.

COMMISSION: How many years did you work?

COMPLAINANT: 19 years and 16 years respectively

COMMISSION: Begin and conclude negotiations in one week."

By a letter dated 5th October 2016, the Appellant wrote to inform the Respondent of the outcome of negotiations over the Redundancy package. The letter read in part as follows:

"…You will recall that at the previous session, the bank was given a week to confirm the proposed package for Bernard Davies and John Adoe. ***We have worked on proposal for which Executive Management is yet to approve. Unfortunately our Managing Director had been unavailable***

to approve the proposal. *We are hereby requesting an extension of time to Friday 7th October 2016 to enable us submit our proposal."*

The Complainant and Appellant thereafter met the Respondent on 26th October, 2016 and the following, which can be found at page 32 of the Record of Proceedings transpired at the said meeting:

"Commission: Unicof, what is the matter

Complainant: *The last time we appeared, we came with an issue of redundancy payment. Management declared our Union members redundant from September, 2015. We brought the matter before the commission and directed that management and the Union meet to resolve the matter. We reported within one week and had two standing negotiating meetings, the last one we had was two weeks ago where management asked for some time to consult the Board and return to us.*

Virtually we agree on all the matters with exception of the multiplier for the severance award: we were at 4 months for each year served while management was at 1 month. We were open for discussions so they went to discuss with the Board and came back with the same one month for each year. We felt that it is a ploy to delay us further Therefore we entreat the Commission to take a look at the matter and have a determination.

Commission: *Counsel, your response*

Representative for Respondent: *As he rightly said, we met and submitted their proposal to the Board but my Lord, the Board has settled on one month for each year served and they are not ready to go further.*

Commission: *And. they are also not prepared to accept the one month so, there is a deadlock. So, the Commission would determine the matter. Have you ever declared some workers redundant?*

Representative for Respondent: *I don't have that information.*

Commission. *In addition to what has been agreed upon between the Union and Management during the negotiations, the Commission decides that, each of the complainants would be paid redundancy pay of three months for each year of service. Thank you very much for coming, you would receive that in writing if you are not happy you can go to Court.*

Conclusion *We would give our ruling in this matter. In addition to whatever has been agreed upon, the commission decides that each complainant would be paid three (3) months' salary for each year of service."*

The Respondent subsequently applied to the High Court to enforce its decision pursuant to Section 172 of the Labour Act, 2003 (Act 651). The Appellant opposed the application for an order for the enforcement on the ground, among others, that the matter in relation to which the Respondent made its determination did not in fact and in law constitute a dispute concerning redundancy pay and thus section 65 of the Labour Act,2003 (Act 651) was not applicable.

The High Court dismissed the application by the Respondent for the enforcement of its decision against the Appellant. In delivering its ruling, the learned Justice of the High Court held at page 53 of the Record of Proceedings as follows:

> *"From the affidavit evidence before me, was there redundancy? The conditions precedent for Redundancy have not been proven.*
>
> *The Applicant thus erred in deciding the matter under section 65 of Act 651 even though the Respondent submitted itself to it. The decision cannot be justifiably enforced in law. I refer to holding 3 of GIHOC REFRIGERATION & HOUSEHOLD PRODUCTS LTD. (NO. 1) V HANNA ASSI (NO. 1)[2007-2008] 1 SCGLR 4.*
>
> *Accordingly, the Application is refused with not order as to costs."*

Dissatisfied with the above ruling of the High Court, the Respondent appealed to the Court of Appeal per a Notice of Appeal filed on 2nd June, 2017 and on grounds which may be found at page 55 of the Record of Proceedings.

The Court of Appeal in a unanimous decision upheld the appeal by the Respondent, holding at page 122 of the Record of Proceedings as follows:

> *"We will uphold the appeal in its entirety. As sought for by the appellant in its notice of appeal we hereby reverse the judgment of the lower Court and order the respondent to pay the entitlements of the two ex-employees in terms of the relief claimed by the appellant at the trial Court, that is to say:*

1. *The respondent shall pay all the monthly net salaries of the two workers from 1st September, 2015 to date of this decision and also pay their SSNIT contribution for the workers;*

2. *The Respondent shall pay to the workers;*

a. *GH¢ 2,000 as golden handshake*

b. *GH¢ 3,000 as repatriation*

c. *GH¢ 5,000 as bonus*

3. *That the Respondent shall pay to the two workers three months gross salary for every year of service from the date of their respective appointments of the two workers to the date of the decision.*

4. *The Respondent shall pay to the two workers any accrued benefits such as provident fund (however called) and accrued leave.*

5. *That all the payment ordered herein shall begin attracting interest at the commercial bank rate from 1st day of November, 2016 to date of final payment.*

As a consequential order, all orders hereby made shall be complied with within a month from today."

The Appellant, dissatisfied with the judgment of the Court of Appeal, has brought this present appeal.

GROUNDS OF APPEAL

From the Notice of Appeal filed by the Appellant on 25th March, 2020, the grounds of appeal which may be found at page 125 of the Record of Proceedings are as follows:

a. That the Court of Appeal erred in law in holding that the National Labour Commission properly invoked and exercised its jurisdiction under section 65(5) of the Labour Act, 2003 (Act 651), when such jurisdiction was not properly invoked and exercised.

b. That the Court of Appeal erred in law in interpreting the redundancy pay provisions under section 65(2)(b) of the Labour Act as applicable to a person whose employment had been terminated under circumstances not involving a close down, arrangement, or amalgamation, when such situations were not contemplated by the Labour Act, 2003 (Act 651)

c. That the Court of Appeal erred in affirming the National Labour Commission's award of redundancy pay to the interested parties although the conditions precedent for the award of redundancy pay had not been met.

d. That the Court of Appeal erred in law, in affirming the National Labour Commission's award of interest on the sums ordered in its decision, when the National Labour Commission has no jurisdiction to award same.

e. That the judgment of the Court of Appeal is against the weight of evidence.

PRELIMINARY ISSUES:

Before turning to discuss the above grounds of appeal, we wish to address two preliminary issues raised by the Respondent in its Statement of Case filed on 31st January, 2020. The said issues are as follows:

1. That the appeal is a nullity, having been filed without leave of the Court of Appeal, or in the alternative, the Special leave of this Court, the case having commenced at the National Labour Commission, a tribunal lower than the High Court ; and

2. That the grounds of appeal, except ground e, are argumentative and sin against Rule 6(4) and (5) of the Supreme Court Rules, 1996 (C.I 16). (As amended by C.I 24, 1999).

On the first preliminary issue of whether or not the failure to obtain leave of the Court of Appeal and in the alternative, the special leave of this Court, renders the instant appeal a nullity, it is worth

having regard to Article 131 of the 1992 Constitution as well as Section 4 of the Court's Act, 1993 (Act 459).

Article 131 (1) and (2) of the 1992 Constitution states as follows:

> "131. (1) an appeal shall lie from a judgment of the Court of Appeal to the Supreme Court –
>
> (a) ***as of right in a civil or criminal cause or matter in respect of which an appeal has been brought to the Court of Appeal from a judgment of the High Court or a Regional Tribunal in the exercise of its original jurisdiction; or***
>
> (b***) with the leave of the Court of Appeal, in any other cause or matter, where the case was commenced in a Court lower than the High Court or a Regional Tribunal and where the Court of Appeal is satisfied that the case involves a substantial question of law or is in the public interest.***
>
> (2) Notwithstanding clause (1) of this article, the Supreme Court may entertain an application for special leave to appeal to the Supreme Court in any cause or matter, civil or criminal, and may grant leave accordingly.

Section, 4(1) of the Courts Act, 1993 (Act 459) also states as follows:

> *"In accordance with article 131 of the Constitution, an appeal lies from a judgment of the Court of Appeal to the Supreme Court*
>
> ***(a) as of right, in a civil or criminal cause or matter in respect of which an appeal has been brought to the Court of Appeal from a judgment of the High Court or a Regional Tribunal in the exercise of its original jurisdiction;***
>
> ***(b) with the leave of the Court of Appeal, in a cause or matter, where the case was commenced in a Court lower than the High Court or a Regional Tribunal and where the Court of Appeal is satisfied that the case involves a substantial question of law or it is in the public interest to grant leave of appeal;***

(c) as of right, in a cause or matter relating to the issue or refusal or writ or order of habeas corpus, certiorari, mandamus, prohibition or quo warrant.

(2) Notwithstanding subsection (1), the Supreme Court may entertain an application for special leave to appeal to the Supreme Court in a cause or matter, including an interlocutory matter, civil or criminal, and may grant leave accordingly."

The obligation placed on an Appellant who appeals a decision that originated from the decision of an inferior body or a Court or tribunal lower than a High Court, to seek leave of the Court of Appeal before filing an appeal to this Court is a statutory as well as a constitutional one. If an appellant fails to seek leave prior to filing an appeal to this Court, where leave is required, the appeal shall be a nullity. This Court has held in a plethora of cases that the Courts will not encourage violations of statute, let alone of the Constitution. (see the cases of NETWORK COMPUTER SYSTEMS (NCS) LTD VRS INTEL SAT GLOBAL SALES AND MARKETING(2012) 1 SCGLR 218, MARTIN ALAMISI AMIDU VRS. THE ATTORNEY GENERAL & 2 ORS, UNREPORTED, SUIT NUMBER, 71/15/12 DATED 1TH JUNE 2013, REPUBLIC VR.S HIGH COURT, KUMASI, EX PARTE BANK OF GHANA & ORS (SEFA & ASIEDU INTERESTED PARTIES) (NO.1); REPUBLIC V. HIGH COURT KUMASI, EX PARTE BANAK OF GHANA & ORS (GYANFI & OTHERS INTERESTED PARTIES)(NO.1)(CONSOLIDATED)(2013- 2014) 1 SCGLR 477. KROBO VRS. AMOSA[SUIT NO/; J4,56,2014, UNREPORTED, 21ST APRIL, 2016, REPUBLIC V. HIGH COURT ACCRA (FAST TRACK DIVISION) EX PARTE GHANA LOTTO OPERATORS ASSOCIATION (NATIONAL LOTTORY AUTHORITY, INTERESTED PARTY) 2009 SCGLR 372, OKORE ALIAS OWUSU & ANORTHER VRS. THE REPUCLIC 1974 2GLR, 272 AZU CRABBE C.J

The policy rationale for the need to seek leave of Court to appeal is to weed out frivolous and unnecessary appeals as well as achieve finality to litigation within a reasonable time.

From the evidence before us, the instant appeal is not one which originates from the decision of the Respondent (i.e. an inferior tribunal). The original decision that triggered the Appeal to the Court of Appeal is the decision of the High Court dated 10th March, 2017 whereby the High Court refused an application by the Respondent for an order to enforce an award by the Respondent in

favour of the interested parties. The original cause or matter that precipitated the Appeal to the Court of Appeal was therefore the ruling of the High Court aforesaid refusing to grant an order for the enforcement of a determination and award by the Respondent herein. This is clearly borne out by the Notice of Appeal that was filed in the Registry of the High Court on 2nd June, 2017 for transmission to the Court of Appeal the Court of Appeal on. The said Notice of Appeal reads in part as follows:

> *"PLEASE TAKE NOTICE that the Applicant/Appellant herein being dissatisfied with the decision more particularly stated at paragraph 2 herein of the High Court (Labour and Industrial Division II) Accra contained in the judgment of Her Ladyship Justice Laurenda Owusu dated the 10th day of March, 2017 hereby appeals to the Court of Appeal on the grounds set out in paragraph 3 and will at the hearing of the appeal seek the reliefs set out in paragraph 4."*

According to the Respondent's, its Appeal to the Court of Appeal emanated from a dissatisfaction with the decision of the High Court (Labour & Industrial Division II) the decision of the High Court dated 10th March, 2017.The Respondent first Appeal to the Court of Appeal is not therefore one that originated from a decision of an inferior tribunal. The appeal, without doubt emanated from the said decision of the High Court. It is the course or matter that went before the High Court (the right of enforcement of the award by the Respondent Commission) that occasioned the ruling of the High Court, which then became the subject matter of appeal to the Court of Appeal and not the Labour Commission's ruling. Therefore, this appeal, being one relating to a course, matter and case that commenced in the High Court, falls squarely within the class of appeals which lie as of right and for which no leave is required.

Consequently, the instant case is clearly distinguishable from the case of James David Brown vs. National Labour Commission & Anor, Civil Appeal No.: J4/74/2018, 19th June 2019 wherein this Court, per Amegatcher JSC reasoned as follows:

> *"In ordinary parlance, leave implies praying to the Court to grant permission to file the appeal. The issue for determination boils down to this: does a further appeal to the Supreme Court from the Court of Appeal with respect to a matter emanating from the Labour Commission require leave of the Court or is it an appeal as of right?*

The answer is in Article 131(1) (b). Leave of the Court of Appeal arises in circumstances where a civil or criminal cause or matter started in a Court lower than the High Court and the Court of Appeal is satisfied that the case involves a substantial question of law or is in the public interest. The decisions of the NLC in this matter is a civil matter and, therefore, satisfies the first precondition. Since our opinion above is conclusive that the NLC is not a High Court, but an adjudicatory body lower than the High Court, the second requirement would also have been satisfied."

The above ratio is thus inapplicable to this case. This is because, in the Brown case (supra), the Appellant therein appealed from the decision of the National Labour Commission to the Court of Appeal. It was therefore the decision of the National Labour Commission which was under attack on appeal. In the instant case however, the appeal originates from the ruling of the High Court and it is the decision of the High Court that was under attack on Appeal and not that of the Respondent Commission. Consequently, the argument that this appeal originate from a cause or matter commenced in a court lower than the High Court is untenable and fails.

The instant appeal therefore falls under article 131(1) (a) of the 1992 Constitution which states that "***an appeal shall lie from a judgment of the Court of Appeal to the Supreme Court as of right in a civil or criminal cause or matter in respect of which an appeal has been brought to the Court of Appeal from a judgment of the High Court or a Regional Tribunal in the exercise of its original jurisdiction***"

We therefore find that the instant appeal is not a nullity, same being an appeal which, pursuant to article 131(1) (a) of the 1992 Constitution, lies as of right and as such does not require leave of the Court of Appeal or special leave of this Court to be filed.

The second preliminary issue borders on a contention by the Respondent that grounds (a), (b), (c) and (d) of the Appellant's grounds of Appeal are argumentative and sin against Rule 6 (4) and (5) of the Supreme Court Rules,1996 (C.I 16).

Specifically, Rules 6 (4) and (5) of the state:

"(4) The grounds of appeal shall set out concisely and under distinct heads the grounds upon which the appellant intends to rely at the hearing of the appeal, without any argument

or narrative and shall be numbered seriatim; and where a ground of appeal is one of law the appellant shall indicate the stage of the proceedings at which it was first raised.

(5) No ground of appeal which is vague or general in terms or discloses no reasonable ground of appeal shall be permitted, except the general ground that the judgment is against the weight of evidence; and any ground of appeal or any part of it which is not permitted under this rule may be struck out by the Court on its own motion or on application by the respondent."

However, upon our perusal of grounds (a), (b), (c), and (d), we are of the view that whilst grounds (a), (c), and (d) are argumentative in their formulation by the manner of the use of the word "when", which, in the circumstances, by necessary implication, is an introduction of argumentation in the grounds of appeal, ground (b) is not. This is more so when the Appellant fails in ground (a) to set out the particulars, details, specifics and/or elements of the impropriety in invoking and/or exercising the Court of Appeal's jurisdiction under section 65(5) of the Labour Act,2003 (Act 651).

Similarly, the Appellant fails to particularize or set out the details, elements, specifics or nature of the errors allegedly committed by the Court of Appeal with respect to its award of redundancy pay in ground (c) and/or with respect to the award of interest in ground (d) of the Appeal.

Consequently, grounds (a), (c) and (d), in our view, all sin against rule 6(4) and (5) of C.I 16 for want of particulars, coupled with the introduction of argumentation, we accordingly strike out grounds (a), (c) and (d) of the grounds of Appeal. In this regard, see the earlier judgment of this Court, dated 5th February, 2020 in the unreported Suit No.: J4/12/2018[2020] entitled: ACHIAMPONG VRS. OBAAPAYIN ABA YAA (SUBST FORARABA ADAMWOMA) & ORS. In this case, this Court, per her Ladyship Dordzi (Mrs.) JSC in striking out offending grounds of appeal under rule 6(4) and (5) of C.I 16 opined as follows:

"The ground in my view is argumentative and narrative. Above all, it failed to particularize the errors of law alleged … accordingly, the said grounds which are in violation of the rules of this court will be struck out for non-compliance".

In contrast, ground (b) of Appeal, even though the formulation uses the word "when", it nevertheless, sets out a sufficiently concise basis of the Appellant's challenge to the decision of the Court of Appeal. It provides details, particulars, and specific grounds for the Appellant's contention that section 65 (2) (b) of the Labour Act, 2003 (Act 651) is inapplicable to a person whose employment had been terminated under circumstances not involving a close down, arrangement or amalgamation.

We are of the view that the Appellant sufficiently sets out the particulars of the grounds upon which it intends to rely prior to the needless introduction of an element of argumentation by recourse to the word "when".

Consequently, we are satisfied that ground (b) aforesaid is distinguishable from grounds (a), (c) and (d) and accordingly, from the circumstances of the case of ACHIAMPONG VRS. OBAAPAYIN ABA YAA (SUBST FORARABA ADAMWOMA) & ORS (supra), in the circumstance, the prayer that we strike out ground b of the Appeal fails.

DISCUSSION OF GROUNDS (b) and (e):

We now proceed to address remaining grounds of the appeal being (b) and (e) seriatim.

Ground (b) of the Appellant's appeal is as follows:

b. ***"That the Court of Appeal erred in law in interpreting the redundancy pay provisions under section 65(2)(b) of the Labour Act as applicable to a person whose employment had been terminated under circumstances not involving a close down, arrangement, or amalgamation, when such situations was not contemplated by the Labour Act, 2003 (Act 651)."***

Under this ground of appeal, we are called upon to define the scope of redundancy and to determine whether the class of persons who are made redundant pursuant to section 65(1) of Act

651 are entitled to be paid redundancy pay as pertains to persons made redundant pursuant to sections 65(2) of Act 651.

In the case of BAIDEN V. GRAPHIC CORPORATION, [2005-2006] SCGLR 154 the Supreme Court held in Holding 1 as follows,

"…redundancy ha[s] a statutory meaning. Thus, in terms of section 65(1) of the new Labour Act, 2003 (Act 651), redundancy might result when an employer contemplated the introduction of major changes in production, programme, organisation, structure or technology of an undertaking that were likely to entail termination of employment of workers in that undertaking."

Also in KOBI V GHANA MANGANESE CO LTD [2007-2008] 2 SCGLR 771 AT 789, Ansah JSC (as he then was) defined redundancy under the prevailing Ghanaian law as follows:

> **"The collective agreement did not define the terms 'termination' and 'redundancy' though it made provisions for them. Speaking generally, the two terms have different meanings and connotations; for by this ordinary meaning, to 'terminate' is to put an end to, bring to an end; or, to conclude. In a cause or matter affecting employment, it means to sever an employer-employee relationship. A 'redundancy' would arise where major changes in mode of production, programmes or activities of a company were likely to result or resulted in reduction of the needed labour force and there was excess labour."**

Section 65 of Act 651 states as follows:

> *"65 Redundancy*
>
> *(1) When an employer contemplates the introduction of major changes in production, programme, organization, structure or technology of an undertaking that are likely to entail terminations of employment of workers in the undertaking, the employer shall*
>
> *(a) provide in writing to the Chief Labour Officer and the trade union concerned, not later than three months before the contemplated changes, all relevant information including the reasons for any termination, the number and categories of workers likely to be affected and the period within which any termination is to be carried out; and*

(b) ***consult*** *the trade union concerned on measures to be taken to avert or minimize the termination as well as measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.*

(2) Without prejudice to subsection (1), where an undertaking is closed down or undergoes an arrangement or amalgamation and the close down, arrangement or amalgamation causes (a) severance of the legal relationship of worker and employer as it existed immediately before the close down, arrangement or amalgamation; and (b) as a result of and in addition to the severance that worker becomes unemployed or suffers any diminution in the terms and conditions of employment, the worker is entitled to be paid by the undertaking at which that worker was immediately employed prior to the close down, arrangement or amalgamation, compensation, in this section referred to as "redundancy pay".

(3) In determining whether a worker has suffered any diminution in his or her terms and conditions of employment, account shall be taken of the past services and accumulated benefits, if any, of the worker in respect of the employment with the undertaking before the changes were carried out.

(4) the amount of redundancy pay and the terms and conditions of payment are matters which are subject to negotiation between the employer or a representative of the employer on the one hand and the worker or the trade union concerned on the other.

(5) Any dispute that concerns the redundancy pay and the terms and conditions of payment may be referred to the Commission by the aggrieved party for settlement, and the decision of the Commission shall subject to any other law be final."

The Respondent is a creature of statute. Therefore, its jurisdiction to entertain complaints and adjudicate on same cannot be capricious, it must be borne out of statute. This has been reiterated by this Court in the case of REPUBLIC v HIGH COURT, ACCRA; EX PARTE EASTWOOD LTD AND OTHERS [1995-96] 1 GLR 689

In this case, Hayfron Charles Benjamin citing Timitimi v Amabebe (1953) 14 WACA 374 at 376 held as follows:

"In the first place want of jurisdiction is not to be presumed as to a Court of superior jurisdiction; nothing is out of its jurisdiction but that which specially appears to be so. On the other hand, an inferior Court . . . is not presumed to have any jurisdiction but that which is expressly provided."

Also, in the case of REPUBLIC V. AKROKERE SUB-TRADITIONAL COUNCIL; EX-PARTE CARR AND OTHERS [1980] GLR 925–93, it was held that: *"These judicial committees of traditional councils, being inferior Courts created by statute, are restricted in their judicial functions by the statutory provisions conferring jurisdiction on them. They cannot arrogate to themselves jurisdiction over matters upon which the parent statute is silent."*

The jurisdiction of the Respondent in determining redundancy pay is well captured in section 65(5) of Act 651, which states that: *Any dispute that concerns the redundancy pay and the terms and conditions of payment may be referred to the Commission by the aggrieved party for settlement, and the decision of the Commission shall subject to any other law be final."*

Section 65 of Act 651 is captioned: REDUNDANCY. Although the whole of section 65 deals with Redundancy, it is only section 65(2) (4) and (5) that make specific references to the term Redundancy pay. The said sections read as follows:

"65(2) Without prejudice to subsection (1), where an undertaking is closed down or undergoes an arrangement or amalgamation and the close down, arrangement or amalgamation causes (a) severance of the legal relationship of worker and employer as it existed immediately before the close down, arrangement or amalgamation; and (b) as a result of and in addition to the severance that worker becomes unemployed or suffers any diminution in the terms and conditions of employment, the worker is entitled to be paid by the undertaking at which that worker was immediately employed prior to the close down, arrangement or amalgamation, compensation, in this section referred to as "redundancy pay".

65 (4) the amount of redundancy pay and the terms and conditions of payment are matters which are subject to negotiation between the employer or a representative of the employer on the one hand and the worker or the trade union concerned on the other.

65(5) any dispute that concerns the redundancy pay and the terms and conditions of payment may be referred to the Commission by the aggrieved party for settlement, and the decision of the Commission shall subject to any other law be final."

From the language of section 65(2) above, it appears that the payment of 'Redundancy pay" is inescapable when redundancy is occasioned by one of three things. They are: 1. Redundancy occasioned by the closing down of the undertaking; 2. Redundancy occasioned as a result of the undertaking undergoing an arrangement; and 3. Redundancy occasioned by the entity undergoing an amalgamation. Where the legal relationship of an employer and employee is severed as a result of a close down, arrangement or amalgamation, the express language of section 65(2) mandates that "Redundancy pay" be paid to the affected employees.

Does the language of section 65(2) forbid the payment of "redundancy pay" in instances where the legal relationship of the worker is terminated as a result of the introduction of major changes in production, programme, organization, structure or technology of an undertaking? We think not. This is clearly gleaned from the language of section 65(1) of Act 651.

Section 65(1) of Act 651 states as follows:

"(1) When an employer contemplates the introduction of major changes in production, programme, organization, structure or technology of an undertaking that are likely to entail terminations of employment of workers in the undertaking, the employer shall

(a) provide in writing to the Chief Labour Officer and the trade union concerned, not later than three months before the contemplated changes, all relevant information including the reasons for any termination, the number and categories of workers likely to be affected and the period within which any termination is to be carried out; and

(b) consult the trade union concerned on measures to be taken to avert or minimize the termination as well as measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment."

We are of the age old opinion of this Court that a Statute must be read as a whole in order to arrive at a true meaning and intend of the lawmaker. Consequently, we are of the view that both sections 65(1) and 65(2) of Act 651 and indeed the all of section 65 as well as Act 651 must be read together. Reading all of section 65 of Act 651 leads to the inescapable conclusion that both 65 (1) and (2) deal with Redundancy. Under both subsections, the worker's employment is terminated as a result of some form of major changes in production, programme, organization, structure or technology of an undertaking, or the close down, arrangement or amalgamation of the undertaking. The only point of diversion between Redundancy occasioned under section 65(1) and 65(2) is that, in respect of Redundancy under section 65(2) the employer is mandatorily required to pay the employee Redundancy pay.

Under section 65(1) however, the form of compensation for the worker is left in the hands of the employer and the terminated employee or empolyee's union to negotiate. The compensation need not necessarily be "redundancy pay". It may take the form of the payment of "redundancy pay" nonetheless. It may also take the form of other measures taken to ensure that the redundant employee is given an alternative employment within the same entity or another. It appears to us that where the employer is unable to find a suitable employment for the employee in the same undertaking or another, the only other means of cushioning the employee against the adverse effects of the termination or redundancy may be the payment of monetary compensation which is variously referred to as "severance pay" or "Redundancy pay". In the case of the redundancy occasioned under section 65 (1), the undertaking continues to exist and operate. There is also no change in ownership. The only difference may be that as a result of the major changes in production, programme, organization, structure or technology of an undertaking, the competencies of the employee may no longer be relevant in the area of work for which the worker was originally employed. It is our considered opinion that in cases where, after the restructuring, the employee is given alternative employment within the same undertaking, it still amounts to termination since the contractual relationship, duties and obligations in respect of which the employee was initially employed would have been altered as a result of the major changes in production, programme, organization, structure or technology of an undertaking. (See sections 12 and 13 of the Labour Act, 2003 (Act 651). However, depending on the negotiation between the

employer and the employee or the employee's labour union, the finding of alternative employment for the potential ex-employee may suffice to mitigate the adverse effects of the constructive termination on the employee.

Therefore, any attempt to define the term "redundancy pay" under Ghanaian law to limit the scope of redundancy to include only redundancy occasioned under section 65(2) without due regard to section 65(1) will not, in our view, achieve the legislative intent of section 65 of Act 651.

It is a time honored principle of statutory interpretation to always read the statute as a whole to give effect to legislative intent. For when a statute is read piecemeal, it is often taken out of context and its meaning lost.

Adade JSC (as he then was) in the case of TAKYI v GHASSOUB [87-88] 2 GLR SC., observed that:

> *"… Where a doubt arises in the construction of part of a section of a statute, it is necessary to read the section as a whole, or in appropriate cases, the statute itself, for assistance."*

This position of the law has been variously restated by this Court in the cases of ABABIO v. THE REPUBLIC [1972] 1 GLR 347 and GTP v. ANKUJEAH [2000] 2 GLR 473, among others.

Upon a holistic perusal of the Labour Act, 2003, Act 651, one comes to the irresistible conclusion that the whole of Section 65 of the Labour Act, 2003, deals with redundancy.

For instance, reference to other provisions of the Labour Act does not make a distinction between sections 65 (1) and (2) of Act 651. Rather, section 65 of Act 651 is referenced as a whole anytime the Act mentions Redundancy. For purposes of illustration, we shall make reference to Section 62 of Act 651 on fair termination.

Section 62 of the Act provides:

> *"62. A termination of a worker's employment is fair if the contract of employment is terminated by the employer on any of the following grounds: (a) that the worker is incompetent or lacks the qualification in relation to the work for which the worker is employed; (b) the proven misconduct of*

the worker; ***(c) redundancy under section 65;*** *(d) due to legal restriction imposed on the worker prohibiting the worker from performing the work for which he or she is employed."*

Therefore, where terminations occurs as a result of the introduction of major changes in production, programme, organization, structure or technology of a company, close down, arrangement, amalgamation of the company, such terminations are deemed to amount to redundancy.

It is also worth pointing out that section 65 of Act 651 is titled: REDUNDANCY.

An interpretation of redundancy pay that does not encompass section 65 (1) of Act 651 would be one which admits to technicalities at the expense of the attainment of the legislative intent.

Section 10 (4) of the Interpretation Act, 2009 admonishes the Courts to construe statute in a manner that avoids technicalities and recourse to niceties of form and language which defeats the purpose and spirit of the laws of the Constitution and the Laws of Ghana.

The said section states:

"s10 (4) Without prejudice to any other provision of this section, a Court shall construe or interpret a provision of the Constitution or any other law in a manner

(a) that promotes the rule of law and the values of good governance,

(b) that advances human rights and fundamental freedoms,

(c) that permits the creative development of the provisions of the Constitution and the laws of Ghana, and

(d) that avoids technicalities and recourse to niceties of form and language which defeat the purpose and spirit of the Constitution and of the laws of Ghana.

It would in any event be unconscionable to imagine that the lawmaker intended that only Redundancy occasioned under section 65 (2) would attract redundancy pay. Having examined the language of section 65(1) of Act 651, we have come to the view that section 65(1) is rather expansive

in its prescription of what an employer may do to cushion the employee against the adverse effects of the termination occasioned by redundancy. The prescription in our view may be the payment of redundancy pay or the provision of alternative employment or even both, depending on the agreement reached between the Labour Union of the employee and the employer.

It is our considered opinion that section 65(1) is a novelty introduced in Act 651. Such a provision did not exist in the Labour Decree, 1967 (NLCD 157), which was repealed with the coming into effect of the Act 651. Under the NLCD 157, redundancy pay, therein described as "severance pay" was payable when a company or entity underwent a close down, arrangement or amalgamation. The provisions of section 34(1) (2) and 35 of NLCD 157 is *in pari-materia* with section 65(2) of Act 651.

Sections 34(1) (2) and 35 of NLCD 157 states as follows:

> *"34. (1) where an organisation is closed down or where an organisation undergoes an arrangement or amalgamation and the close down , arrangement or amalgamation causes a severance of legal relationship of employee and employer between any person and the organization as it existed immediately before the close down, arrangement or amalgamation, then, if as a result of and in addition to such severance that person becomes unemployed or suffers any diminution in his terms and conditions of employment, he shall be entitled to be paid by the organization in whose employment he was immediately prior to the close down, arrangement or amalgamation, compensation, in this Decree referred to as "severance pay".*
>
> *(2) In determining whether a person has suffered any diminution in his terms and conditions of employment under sub- paragraph (1) of this paragraph account shall be taken of the past services and accumulated benefits (if any) of such person in or in respect of his employment with the organization before it was closed down or before the occurrence of the arrangement or amalgamation.*
>
> *35. The amount of any severance pay to be paid under paragraph 34 of this Decree as well as the terms under which payment is to be made shall be matters for negotiation between the employer or his representative and the employee or his representative"*

It is worthy of note that the terms of sections 34 (1)(2) and 35 of NRCD 157 above were substantially retained in Act 651 at 65(2)(3) and (4). It is therefore our considered opinion the section 65(1) of Act 651 was thus intended to expand the scope of the redundancy provisions of our laws. It is for this reason that section 65(2) is prefixed with the words "without prejudice to subsection (1)"

The language of section 65(2) also lends credence to the fact that Redundancy pay may result due to terminations under section 65(1) of Act 651. The said section did not limit the reference to redundancy pay to only section 65(2). It broadened the applicability of "Redundancy Pay" to the entire section 65. It states:

> *"…the worker is entitled to be paid by the undertaking at which that worker was immediately employed prior to the close down, arrangement or amalgamation, compensation,* ***in this section referred to as "redundancy pay****".*

Where a worker becomes redundant as a result of the introduction of major changes in production, programme, organization, structure or technology of an undertaking, the law is clear that the employer shall contact the Labour Union of the employee and engage in consultations on measures taken to reduce the adverse impact of the redundancy on the worker. Where the employer and the employee or the labour union of the employee are agreeable on the payment of monetary compensation as the means to mitigate the adverse effects of the termination, such monetary compensation is what section 65 of Act 651 describes as "Redundancy pay". All disputes regarding the payment of Redundancy pay come under section 65 (5) of Act 651. Therefore, the Respondent will be exercising proper jurisdiction when it determines the quantum of Redundancy pay where the parties are unable to agree by themselves, the amount of money to pay as Redundancy pay.

In the instant case, no question ever arose as to whether or not the ex-employees of the Appellant were entitled to "Redundancy pay". In fact, from the letter of severance written to the ex-employees, the Appellant disclosed that it was unable to find the ex-employees any suitable role with the Appellant bank. The letter read in part as follows:

> *"REDUNDANCY"*

This comes to inform you that owing to the significant changes that have occurred in the demands skills and competencies required for the delivery of its current objectives, ***the bank is no longer able to deploy you in any role. You are accordingly declared redundant with effect from September, 1st 2015.***

In accordance with article 65 of the Labour Act, 2003 (Act 651) the ***bank will submit proposals for the negotiation of a redundancy package with the Union of Industry Commerce and Finance Workers (UNICOF)***

Your statement of accounts, indicating your entitlements and liabilities will be communicated to you in due course, together with a redundancy package resulting from the negotiations.

We thank you for the services rendered to the Bank during the period of your employment and wish you success in your future endeavors."

From the above letter, the Appellant was clear in its mind that the ex-employees were being terminated pursuant to section 65 of Act 651 which section deals with Redundancy. The Appellant was clear in its mind that it could not find any other suitable role for the ex-employees in the Appellant bank. Again Appellant was also clear on the measures it was going to take to mitigate the adverse effects of the termination or redundancy, that is, the payment of "Redundancy package" to be negotiated with the Union of which the ex-employees were members. The proceedings before the Respondent as well as all the correspondence exchanged between the Complainant and the Appellant and the Respondent all patently suggest that the parties were agreeable on the payment of Redundancy package to the ex-employees.

It is patently evident that the ex-employees of the Appellant were terminated under section 65 of Act 651. This has always been the song sang by the Appellant in all of its correspondence and the representations made at the hearings held by the Respondent between the Appellant and the Complainant. The entitlement of the ex-employees to the redundancy package was never disputed by the Appellant at the hearing before the Respondent. In fact, most of the components of the Redundancy package were agreed between the Appellant and Respondent themselves.

To our minds therefore, the facts of this case bear overwhelming evidence of the fact that the Respondent rightly assumed jurisdiction over the matter and determined it.

The term "Redundancy" is explained in Halsbury's Laws of England, 4th Edition, 2000, Vol. 16 Para 667, as follows:

"An employee who is dismissed is taken to be dismissed by reason of redundancy if the dismissal is attributable wholly or mainly to the fact that

1. *His employer has ceased or intends to cease to carry on the business for which the employee was employed by him;*

2. *His employer has ceased or intends to cease to carry on that business in the place where the employee was so employed;*

3. *The requirements of that business for employees to carry out work of a particular kind have ceased or diminished or are expected to cease or diminish; or*

4. *The requirements of that business for employees to carry out work of a particular kind in the place where they were employed have ceased or diminished or are expected to cease or diminish."*

The above definition of redundancy in the Halsbury's Laws of England is drawn from section 139 of the Employment Rights Act" 1996 of the United Kingdom. It is worthy of note that per section 135 (a) of the Employment Rights Act, 1996, C18, "An employer shall pay a redundancy payment to any employee of his if the employee is dismissed by the employer by reason of redundancy." Payment of redundancy pay, is not restricted to any class of redundant employees.

Redundancy laws may mean differently in different jurisdictions. In Kenya, Redundancy is defined under the Kenyan Employment Act, 2007(Cap 226) as follows:

> "redundancy" means the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous and the

practices commonly known as abolition of office, job or occupation and loss of employment;"

Per Section 40 (1) of the Kenyan Employment Act, all persons made redundant are by statute entitled to Redundancy pay, (in their Act referred to as severance pay. The said section says:

"An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions the employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days' pay for each completed year of service".

Section 20 of the Nigerian Labour Act, Act (Cap L1 LFN 2004) defines the term "*redundancy*" to mean an involuntary and permanent loss of employment that is caused by an excess of manpower"

Under the Nigerian Labour Law, all persons declared redundant pursuant to the Labour Act are entitled to Redundancy pay. Section 20 of the Nigerian Labour Act states:

"20.(I) In the event of redundancy-

(a) the employer shall inform the trade union or workers' representative concerned of the reasons for and the extent of the anticipated redundancy;

(b) the principle of "last in, first out" shall be adopted in the discharge of the particular category of workers affected, subject to all factors of relative merit, including skill, ability and reliability; and

(c) the employer shall use his best endeavours to negotiate ***redundancy payments*** *to any discharged workers who are not protected by regulations made under subsection (2) of this section.*

(2) The Minister may make regulations providing, generally or in particular cases, for the compulsory payment of redundancy allowances on the termination of a worker's employment because of his redundancy.

(3) In this section "redundancy" means an involuntary and permanent loss of employment caused by an excess of manpower."

In Ghana, the law that was applicable on redundancy was the Labour Decree, 1967 (NLCD 157) as Amended by the Labour Amendment Decree, 1969 (NLCD 342). The said law has been repealed by the Labour Act, 2003 (Act 651). The repealed law defined redundancy and the redundancy pay, to include instances of closure, arrangement or amalgamation. The repealed Act, like its

counterpart laws on redundancy in some other common law jurisdiction, did not discriminate against any class of redundant workers.

We have made reference to the above redundancy pay provisions of to demonstrate that like the repealed NLCD 157, hardly do laws of these other nations discriminate when it comes to payment of redundancy pay to all class of occasions under which the law deems redundancy to have occasioned. Of course, the Ghanaian parliament is autonomous and our laws are tailored to suit our own socio-economic and politico-economic aspirations. We are therefore aware of the need to interpret the provisions of our statutes to give effect to the legislative intent, which intend must be synchronized with the underlying aspirations of the Ghanaian people gleaned from our Constitution.

We hold that Redundancy pay under section 65(2) (b) and sections 65(4) and (5) of the Labour Act as applicable to a person whose employment had been terminated under circumstances not involving a close down, arrangement, or amalgamation, is also applicable to persons who are made redundant by virtue of the introduction of major changes in production, programme, organization, structure or technology of an Undertaking.

Consequently, the second ground of appeal fails and is hereby dismissed.

Appellant's last ground of Appeal, ground (e), is that, the judgment of the Court of Appeal is against the weight of evidence.

Dotse JSC in the case of Abbey & Others v. Antwi [2010] SCGLR 17 at 34, in his erudite judgment postulated:

> *"It is now trite learning that where the appellant alleges that the judgment is against the weight of evidence, the appellate Court is under an obligation to go through the entire record to satisfy itself that a party's case was more probable than not. As was held by their Lordships in Tuakwa v Bosom [2001-2002] SCGLR 61 (Per Sophia Akuffo JSC),*

"An appeal is by way of re-hearing, particularly where the Appellant alleges in his notice of appeal that the decision of the trial Court is against the weight of the evidence… In such a case, it is incumbent upon an appellate Court, in a civil case, to analyse the entire Record of Proceedings, take into account the testimonies and all documentary evidence adduced at the trial before arriving at its decision, so as to satisfy itself that on a balance of probabilities, the conclusions of the trial judge are reasonably or amply supported by the evidence".

In the case of Djin v Musah Baako[2007-2008] SCGLR 686 this Court, per Aninakwah JSC (as he then was) opined that:

"It has been held in several decided cases, and the authorities are many, that where an appellant complains that judgment is against the weight of evidence, then he is implying that there were certain pieces of evidence on the record which if applied in his favour could have changed the decision in his favour, or certain pieces of evidence have been wrongly applied against him. The onus is on such an appellant to clearly and properly demonstrate to the appellate Court the lapses in the judgment being appealed against."

Again this Court speaking through Aryeetey JSC in the case of Agyenim-Boateng vs. Ofori &Yeboah (2010) SCGLR 861 at page 867 held that:

"…The appellate Court can only interfere with the findings of the trial Court where the trial Court : (a) has taken into account matters which were irrelevant in law; (b) has excluded matters which were critically necessary for consideration; (c) has come to conclusion which no Court properly instructing itself would have reached ; and (d) the Court 's findings were not proper inferences drawn from the facts…However, just as the trial Court is competent to make inferences from its specific findings of fact and arrive at its conclusion, the appellate Court is also entitled to draw inferences from findings of fact by the trial Court and to come to its own conclusions".

Her Ladyship Sophia Akuffo JSC (as she then was) in Tuakwa V Bosom [2001-2002] SCGLR 61, rehashed this position of law and stated as follows,

"…an appeal is by way of a re-hearing particularly where the appellant … alleges in his notice of appeal that, the decision of the trial Court is against the weight of the evidence. In such a case,

although it is not the function of the appellate Court to evaluate the evidence for the veracity or otherwise of any witness, it is incumbent upon an appellate Court , in a civil case, to analyze the entire Record of Proceedings, take into account the testimonies of all documentary evidence adduced at the trial before it arrived at its decision, so as to satisfy itself that on a preponderance of the probabilities, the conclusions of the trial judge are reasonably or amply supported by the evidence."

More recently, in a judgment dated 3rd April, 2019 in Suit No.:J4/04/2019 entitled: Atuguba and Associates vrs Scipion Capital (UK) Ltd. and Another, this Court, per Amegatcher JSC reasoned as follows:

"It has long been the practice among some legal practitioners to shirk the responsibility imposed on them to formulate specific grounds of appeal stating where trial judges erred for the consideration of the appellate court. The omnibus ground has been a hideout ground. The responsibility in even minor appeals is shifted to the appellate judges to comb through the records of appeal, review the evidence and identify the specific areas the trial judge erred before coming out with the court's opinion on the merits or otherwise of the appeal. The situation is worrying where no viva voce evidence is proffered and a judge is called upon to exercise judicial discretion, such as in applications for injunction, stay of execution, amendment, joinder, judicial review, and consolidation, just to mention a few. In our opinion, though the rules allow the omnibus ground to be formulated as part of the grounds of appeal, it will greatly expedite justice delivery if legal practitioners formulate specific grounds of appeal identifying where the trial judge erred in the exercise of a discretion. A proper ground of appeal should state what should have been considered which was not and what extraneous matters were considered which should not have been. We believe this approach will better serve the ends of justice and lessen the use of the omnibus ground particularly in interlocutory matters and in the exercise of judicial discretion.

The court's position on the use of the omnibus ground is not new in our jurisprudence. There is a long list of decisions in which this court has decried the misuse of the omnibus ground of appeal. In the case of Brown v Quashigah [2003-2004] 2 SCGLR 930 at 941 this court held that appellants must invoke the rule of practice for appeals argued by way of re-hearing by filing appropriate grounds of appeal, distinguishing the so-called omnibus ground, namely, that the judgment was against the

weight of the evidence at the trial, from misdirection or errors of law, challenge to jurisdiction or capacity, etc. In Re: Suhyen Stool; Wiredu & Obenwaa v Agyei & Ors [2005-2006] SCGLR 424, a chieftaincy matter from the Judicial Committee of the National House of Chiefs, this court disapproved the unhelpful practice of throwing in an omnibus ground of appeal as a backup, even where there had been little difference in the evidence or the facts as submitted by both parties to the suit. Again in the case of Asamoah v Marfo [2011] 2 SCGLR 832 the judgment that was delivered was a default judgment in which no evidence was taken. This court found it strange for counsel for the appellant to appeal against the judgment for being against the weight of evidence and dismissed that ground as unmeritorious. In the recent decision of this court in the case of Fenu & Ors v The Attorney-General & Ors [2019] 130 GMJ 179 the court held that the omnibus ground is usually common in cases in which evidence was led and the trial court was enjoined to evaluate the evidence on record and make its findings of fact in appropriate cases. In interlocutory appeals where no evidence was led such ground of appeal is misconceived."

It is worrying that parties and counsel continue to throw the omnibus ground at the court without due regard to the guidelines issued in the cases. These rulings of the court were not delivered for the fun of it. They were meant to be read by all Supreme Court practitioners and be used as a guide in formulating grounds of appeal filed in this court. It is about time counsel and parties alike appearing before this court took decisions, directions and guidelines issued by it seriously and complied strictly with them."

Consequently, the burden on the Appellant in this case to properly set out, particularise, detail, specify and demonstrate the lapses, omissions, failures, misdirection, wrongful evaluations, irrelevant matters and considerations of the evidence complained about in the judgment cannot be overemphasised. This the Appellant has woefully failed to do.

Appellant's argument on this ground of Appeal is rather scanty to say the least. The entire plaint of the Appellant under this ground of appeal is as follows:

"My Lords, as has been argued above, for an employee to be entitled to redundancy pay, there ought to be the existence of a close down, arrangement or amalgamation. We have similarly demonstrated above, that looking at the record, there was no evidence of a close down, arrangement or

amalgamation. There was therefore no dispute concerning redundancy pay. It is therefore our submission, my Lords that this appeal should succeed."

Needless to say, this falls far short of the criteria repeatedly laid down by this Court in the cases above.

The Appellant's failure notwithstanding, we have carefully evaluated the evidence on record, and the proceedings that eventuated in the determination of the Respondent as well as the High Court. There were, in fact, no material facts in dispute in the application before the High Court. We are therefore unable to agree with the Appellant that some piece of evidence on record has been misapplied against the Appellant.

The redundant employee per section 65(1) (b) is entitled to some sort of measures to cushion him or her against the adverse effects of the termination of his/her employment. Thus, from the factual basis of the letter of termination it was clear that the employees were made redundant with the assurance of the receipt of a redundancy pay. In fact, the proceedings at the Respondent Commission show that the parties submitted to the authority of the Commission to determine the redundancy pay. The parties agreed on all other aspects of the redundancy packages themselves. The only issue in respect of which there was no meeting of minds was the "multiplier for the severance award". In that respect, whilst the Complainant demanded four months' salary of each year served, the Appellant offered one month salary of each year served. The Respondent, being seized with the statutory jurisdiction under section 65(5) of Act 651 properly adjudicated on the quantum of Redundancy pay as well as the terms and conditions of payment including interest. The final ground of Appeal of the Appellant fails and same is also dismissed *in limine*.

We therefore affirm the decision of the Court of Appeal and order that Appellant pays the entitlements of the two ex-employees in terms of the relief granted by the Court of Appeal. That is to say:

1. The Respondent shall pay all the monthly net salaries of the two workers from 1st September, 2015 to date of this decision and also pay their SSNIT contribution for the workers;

2. The Respondent shall pay to the workers;

a. GH¢ 2,000 as golden handshake

b. GH¢ 3,000 as repatriation

c. GH¢ 5,000 as bonus

3. That the Respondent shall pay to the two workers three months gross salary for every year of service from the date of their respective appointments of the two workers to the date of the decision.

4. The Respondent shall pay to the two workers any accrued benefits such as provident fund (however called) and accrued leave.

5. That all the payment ordered herein shall begin from 1st day of November, 2016 to date of final payment.

We also affirm the consequential order given by the Court of Appeal that all orders hereby made or affirmed shall be complied with within a month from today.

E. YONNY KULENDI

(JUSTICE OF THE SUPREME COURT)

N. S. GBADEGBE

(JUSTICE OF THE SUPREME COURT)

N. A. AMEGATCHER

(JUSTICE OF THE SUPREME COURT)

M. OWUSU (MS)

(JUSTICE OF THE SUPREME COURT)

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