IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: PWAMANG JSC (PRESIDING)

DORDZIE (MRS.) JSC

TORKORNOO (MRS.) JSC

HONYENUGA JSC

KULENDI JSC

CIVIL APPEAL

NO. J4/27/2018

15TH JUNE, 2022

JOHN MICOCK …… PLAINTIFF/RESPONDENT/APPELLANT

VRS

RED SEA HOUSING SERVICES GH. LTD. …… DEFENDANT/APPELLANT/ RESPONDENT

JUDGMENT

DORDZIE (MRS.) JSC:-

FACTS

The plaintiff/Respondent/Appellant herein (plaintiff) was an employee of the Defendant Respondent/Appellant (Defendant). He was employed on a two year fixed term contract; the contract document is Exhibit A and it is dated 9 February 2009.Eight months in to this employment relationship, the defendant deemed it fit to terminate the contract. And contrary to the terms of the contract that, each party could terminate the contract upon 90 days notice, the defendant, on 7th October 2009 without notice served the plaintiff with termination letter, (exhibit C), terminating his appointment. In exhibit C the defendant spelt out the benefits it intended to pay plaintiff as follows "You shall receive full contract entitlements in accordance with Ghana labour law which includes:

1) End of Service Benefits if applicable
2) Base salary payment in lieu of 30 days notice
3) Any accrued remunerations held in your Red Sea ledger account that has not been previously paid, if applicable."

Subsequently the parties negotiated and came to agreement on entitlements or benefits due plaintiff. The total benefits the parties finally agreed on came to

USD 39,595.00. The details of which are in a document entitled Final Settlement (Exhibit D). Defendant deducted an amount of USD2,700 from this figure, being monies belonging to the company in plaintiff's custody, which plaintiff claimed was stolen. The total amount paid to plaintiff came to USD 36,895.00. In acknowledgment of receipt of this money as final settlement of his benefits plaintiff swore to these facts in a document entitled 'Release And Quitclaim' (Exhibit 1). The contents of exhibit 1 are as follows:

"RELEASE AND QUITCLAIM

KNOW ALL MEN BY THESE PRESENTS:

That I, JOHN LOGAN MICOCK of legal age, holder of Canadian Passport No. BA 539935 and resident of #7712 Huntridge Crescent NE, Calgary, Alberta, Canada, after duly sworn to in accordance with law, depose and state;

1. That I received from RED SEA HOUSING SERVICES GHANA LTD. all my entitlements, receipt of which is hereby acknowledged to my complete and full satisfaction.

2. That by virtue of those presents, I hereby waive, release, acquit and/or discharge the aforesaid company (Red Sea Housing Services Ghana Ltd.) of any and all claims, demands, damages, actions or causes of action on account of and/or arising or which may hereafter arise in connection with my application.

3. I hereby state that this release and quitclaim was read and understood by me and that there is no understanding of agreement, verbal or written, of any kind, for any further/future consideration whatsoever, implied or explicit, expected or to come to me in money, in kind, or in any other form. In making this release I am not relying on any statement or promise other than what is stated herein.

4. That I hereby execute this Release and Quitclaim (Full and Final Settlement) with all my knowledge or my rights under the premises and this may be the reason of and for matter related to my application with said company and the Ghana Labor Law on Termination on probation period.

IN WITNESS WHEREOF, I have hereunto affixed my signature this 12 day of October 2009."

On the 19th of October 2009, the parties executed another document related to the severance agreements of the parties. It is entitled 'letter of understanding'. It is in evidence marked exhibit 3. The contents of exhibit 3 are reproduced below:

"LETTER OF UNDERSTANDING

This letter hereby confirms the following agreement between Mr. Mark Sumner and Mr. John L. Micock during their meeting on 12 October 2009 in the presence of Mr. Ray Mc Clain:

- That Mr. John L. Micock will move all his personal belongings out of #48 Avodire Crescent, Platinum Place on or before 26 October 2009.
- That all his personal belongings will be stored at a warehouse/storage area of his choice. Wherein, at the time of ship out which would be no later than February 2010, Mr. John L. Micock will advise Red Sea and a 40' container will be provided for this purpose.
- That the shipping cost difference (to Calgary or to a destination of his choice which is of lesser cost) between a 40' container & 20' container will be paid for by Mr. John L. Micock.
- That Mr. John L. Micock will hand over the white pickup truck (FZB 102Z) to Red Sea on or before 26 October 2009. And will be personally responsible of the truck's condition while in his possession before the handover."

About ten months after the above depositions, the plaintiff issued a writ in the High court, Accra (Labour Division) claiming the following reliefs:

a. Declaration that the nature and circumstances of Plaintiff's termination amounts to unfair termination.
b. A further declaration that the reasons assigned for the termination of the Plaintiff's employment amounts to redundancy.
c. Damages for unfair termination.

d. An order of the court to compel the Defendant to pay to the Plaintiff 6 months' salary for each completed year of service with the Defendant Company upon being declared redundant.
e. An order of the court compelling Defendant to pay to the Plaintiff an amount of $10,466.00 being wrongful deductions made from his entitlements, a return air ticket for his spouse, unpaid medical bills and repairs of Plaintiff's vehicle.
f. A declaration that the said publication of Plaintiff's image in the Thursday 15October 2009 edition of the Daily Graphic amounts to libel.
g. An order of the court to compel the Defendant to pay to the Plaintiff an amount of GH₵100,000.00 as general damages for libel and cost of the suit herein.

The High Court dismissed plaintiff's claims for libel. The court found that the publication was not made with malice and therefore not libelous. Apart from that plaintiff got another job with a Company called WDP soon after his employment with the defendant was terminated; therefore, he did not suffer any damages. The trial High Court however entered judgment for the plaintiff in respect of the rest of the reliefs. Details of the orders of the court are as follows: "In conclusion I enter judgment for the plaintiff as follows:

a. It is hereby declared that the termination of the plaintiff's employment by the Defendant is unfair and unlawful.
b. The Defendant is as a result ordered to pay to the plaintiff 12 months' salary as general damages for unlawful termination of his employment,
c. It is further declared that the reasons assigned for the termination of Plaintiff's employment amounts to redundancy. The Defendant is as a result ordered to invite the plaintiff for negotiations within one month for the payment of redundancy pay to the plaintiff in accordance with the Labour Act.

d. The Defendant is ordered to pay to the plaintiff an amount of $2,302.00 being an airfare of $1,802 in respect of Plaintiff's spouse and $500.00 being Plaintiff's medical expenses incurred by him but the Defendant has refused to pay.
e. The Defendant is ordered to pay to the plaintiff costs of GH¢4,000.00."

Dissatisfied with the judgment of the High Court the defendant appealed to the Court of Appeal. The Court of Appeal in its judgment dated 14 July 2016, allowed the appeal on the ground that the High Court lacked jurisdiction to entertain a cause of action based on unfair termination of employment.

The plaintiff is in this court praying the court to set aside the decision of the Court of Appeal and restore the High Court judgment dated 26th of April 2013

Grounds of Appeal

The grounds upon which the appeal is based are:

a. The judgment is highly against the weight of evidence.
b. The learned justices erred when they held that the trial court exercised jurisdictional irregularity and for that matter lacked jurisdiction to determine matters of unfair termination.
c. The Court of Appeal erred when it failed to appreciate the fact that other reliefs sought by the Plaintiff/Respondent/Appellant in the cast of reliefs 'b' and 'd' conferred jurisdiction on the High Court and same was appropriately determined by the trial court.
d. The Court of Appeal erred when it misapplied the ruling and imports of the case of Hanna Asi (No.2) and held that the principles therein could only benefit a Defendant who had not counter claimed, as against a party who has initiated an action as a Plaintiff.

e. The Court of Appeal erred when it failed to appreciate the fact that the High Court by holding the Termination of Plaintiff/Appellant's employment as unlawful did so because of the overwhelming evidence that pointed to same and thereby invokes the justice of the case and also gave proper meaning to order 1 R2 of C.1.47.

f. The court of Appeal erred when it failed to recognised the fact that the 1992 Constitution conferred original jurisdiction in all civil matters in the High Court and the very wording of S. 64 (1) of Act 651 did not oust the original jurisdiction of the High Court in determining matters of unfair termination.

g. The Court of Appeal erred and run into error of judgment when it made a blanket statement that the High Court not having jurisdiction on matters bothering on Unfair Termination as the 1st relief, lacked the jurisdiction to determine the other reliefs claimed by the Plaintiff/Appellant.

h. The Court of Appeal erred when it concluded that, apart from the 1st reliefs which asked for declaration that the nature and circumstances of the Termination amounts to Unfair Termination, none of the claims or reliefs in the writ of summons constitute a separate and independent cause of action.

i. The Court of Appeal erred when it confused "substitution of a party's case" with "substitution of party's relief" and erroneously held that the trial court breached the principle espoused in the case of Dam v. Addo.

j. The Court of Appeal erred when it stated that the High Court erred in applying Hanna Asi case because the Plaintiff applicant herein neither pleaded nor gave evidence to show that his Termination was unlawful, in the face of overwhelming documentary evidence before the Court to that effect.

k. Additional Grounds of Appeal may be filed upon the receipt of the record of

Consideration of the Appeal

In my opinion, apart from grounds (a), (g) and (h) of the grounds of appeal canvassed by the appellant, the rest of the grounds cannot be sustained. My reasons for saying so are demonstrated below.

The judgment of the Court of Appeal the subject matter of this appeal is dated 14th of July 2016. The decision of the court in the said judgment reads: "The law as it stands now and as enunciated by the Supreme Court in the case of Bani v. Maersk Ghana Ltd. (supra) is that the courts of this country have no jurisdiction to adjudicate complaints of unfair termination of employment. That is the preserve of the National Labour Commission. In consequence since the plaintiff's action was founded on unfair termination of his employment by the defendant company, the trial High Court had no jurisdiction in the matter. As rightly pointed out by the learned trial judge himself, the plaintiff was at the wrong forum and his action into to should have been thrown out.

In conclusion, for the above reasons, we allow the appeal. The judgment of the court below together with all the consequential orders are hereby set aside for lack of jurisdiction." (See page 389-390 of the ROA)

The case of ***Bani v Mearsk Gh. Ltd. [2011]2SCGL 796*** upon which the Court of Appeal based the above decision was decided on 30 March 2011. The Supreme Court then held the view that Sections 63 and 64 of the Labour Act, 2003 (Act 651) which specify the rights of the employer and remedies available to him for unfair dismissal should be construed to mean the courts' jurisdiction is excluded in cause of action based on unfair dismissal.

Sections 63 and 64 of Act 651 read:

"63. Unfair termination of employment

(1) The employment of a worker shall not be unfairly terminated by the worker's employer.

(2) A worker's employment is terminated unfairly if the only reason for the termination is

(a) that the worker has joined, intends to join or has ceased to be a member of a trade union or intends to take part in the activities of a trade union;

(b) that the worker seeks office as, or is acting or has acted in the capacity of, a workers' representative;

(c) that the worker has filed a complaint or participated in proceedings against the employer involving alleged violation of this Act or any other enactment;

(d) the worker's gender, race, colour, ethnicity, origin, religion, creed, social, political or economic status;

(e) in the case of a woman worker, due to the pregnancy of the worker or the absence of the worker from work during maternity leave;

(f) in the case of a worker with a disability, due to the worker's disability;

(g) that the worker is temporarily ill or injured and this is certified by a recognised medical practitioner;

(h) that the worker does not possess the current level of qualification required in relation to the work for which the worker was employed which is different from the level of qualification required at the commencement of the employment; or

(i) that the worker refused or indicated an intention to refuse to do a work normally done by a worker who at the time was taking part in a lawful strike unless the work is necessary to prevent actual danger to life, personal safety or health or the maintenance of plant and equipment. (3) Without limiting the provisions of subsection (2), a worker's employment is deemed to be unfairly terminated if with or without notice to the employer, the worker terminates the contract of employment

(a) because of ill-treatment of the worker by the employer, having regard to the circumstances of the case, or

(b) because the employer has failed to take action on repeated complaints of sexual harassment of the worker at the workplace.

(4) A termination may be unfair if the employer fails to prove that,

(a) the reason for the termination is fair, or

(b) the termination was made in accordance with a fair procedure or this Act.

" 64. Remedies for unfair termination

(1) A worker who claims that the employment of the worker has been unfairly terminated by the worker's employer may present a complaint to the Commission.

(2) If on investigation of the complaint the Commission finds that the termination of the employment is unfair, it may

(a) order the employer to re-instate the worker from the date of the termination of employment;

(b) order the employer to re-employ the worker, in the work for which the worker was employed before the termination or in any other reasonably suitable work on the same terms and conditions enjoyed by the worker before the termination; or

(c) order the employer to pay compensation to the worker."

On 26 July 2017, this court departed from the position it took in the Bani v Mearsk case that, by virtue of the above quoted sections of Act 651, the jurisdiction of the courts had been taken away in unfair termination of employment cases and that it is the Labour Commission that can give the remedies section 64 of the Labour Act provides.

In the case of ***The Republic v High Court, Accra; Ex parte Peter Sangber-Dery (ADB Ltd. Interested party) [2017-18]1 SCLRG 552,*** this court held a different view that the rights of the employer, the breach of which constitute unfair termination as stated in Section 63 of Act 651 are taken from the Human Rights provisions of the 1992 Constitution found particularly in Articles 24, 26 and 29. These rights existed and were enforceable by the High Court prior to the passing of Act 651. The court held that Bani v Maersk was decided per incuriam because the court did not take into account rights of employees that existed under statute and decisions of the court before the passage of Act 651.

On 14 July 2016 when the Court of Appeal decided the appeal in this suit, the decision of this court in Bani v Mearsk was the prevailing law. The Court of Appeal was bound by that decision at the time. The position of the prevailing law at the time was what it went by. Therefore, the Court of Appeal was not in error as grounds (b)(c) and (f)of the grounds of appeal imply. These grounds are not valid grounds and they are hereby dismissed.

Similarly grounds (d), (e), (i) and (j) are based on the High Court's decision that plaintiff's claim was a claim for unlawful dismissal. The claims of the plaintiff as endorsed on his writ of summons, which I quoted earlier, are based on his allegation that he was unfairly dismissed and he asked for remedies for unfair dismissal. The trial judge strangely went on a journey of his own, contrary to any rule of procedure to set down an issue based on facts which he could only ascertain on hearing evidence before him as an issue for legal argument; leading to a ruling that the action was that of unlawful dismissal. The trial court's conclusion that the action before it was an action for unlawful dismissal is therefore patently wrong. No useful purpose would be served in considering grounds of appeal that back such error. Grounds, (d), (e), (i) and (j) are also hereby dismissed.

The Court of Appeal dismissed the appeal on jurisdictional grounds without going into the merit of the claims of the plaintiff, which are within the jurisdiction of the High Court. The appellant's complaint on that is contained in grounds (g) and (h). The respondent in its statement of case concedes this error on the part of the Court of Appeal. We would uphold these two grounds of appeal

Having stated the position of the law in the case of Sangber-Dery (supra), the High Court, we must say had jurisdiction in deciding the matter. We would therefore proceed to consider the claims of the plaintiff in its totality by way of reviewing the evidence adduced at the trial.

The case for the plaintiff

The summary of the facts averred by the plaintiff in his statement of claim in support of his claims which are not in contention are that he was engaged by the defendant company as a Marketing and Development Manager on 9th of February for a fixed term

of two years. The contract of engagement was well documented and that, the contract was explicit on the fact that, in the event of the termination of the contract, the employer shall pay him the Plaintiff a gratuity in accordance with local labour laws. According to plaintiff, on the 7th day of October 2009, he received a letter of termination of his employment contract from the Defendant. The said letter of termination stated that, his employment contract was being terminated for reasons that, there was a global economic downturn and since there was no major project in sight, the Defendant no longer required his service.

The facts averred by the plaintiff that are in contention are that, the position he occupies in the Defendant Company and the nature of services he renders are such that, his job couldn't have been affected by any alleged global downturn at all. His termination on the reasons assign in the letter terminating his appointment dated 7 October 2009 was a hoax and same amounts to unfair termination. He further contended that, assuming but without admitting that, the termination of his employment contract was due to economic downturn, he will be a redundant employee and upon termination shall be entitled to severance award negotiated by the parties in accordance with the Ghanaian labour laws. However, even though the Defendant purported to terminate his employment on grounds of redundancy, no negotiated severance award was paid to him.

It is the further contention of the plaintiff's that immediately after the termination of his employment, he was compelled to sign a release and quitclaim to enable him receive certain sums of money as settlement claim. He refused to sign same initially, but was told in his face that no money shall be made available to him until same was signed. His condition at that time was such that he was putting up with an imbecile son who needed regular attention and care which calls for money. He was also to relocate into a

different accommodation upon the said termination and needed money to hire a place. He was therefore placed under extreme duress to append his signature to the release and quitclaim to enable him receive moneys as final settlements of his claim. Plaintiff also contended that apart from Defendant's refusal and or failure to negotiate and pay to him severance payment in accordance with Ghana Labour Law, he was entitled to 3 months' pay in lieu of notice in accordance with the terms of the contract but he was paid for only one month. As regards his claim of USD 10,466.00 endorsed on the writ of summons, plaintiff gave a break down as follows: a) $1,802.00 as a return air ticket fare for his spouse which was not paid to him at the of termination of his employment. In paying him his final benefits, the defendant wrongly deducted$2,700.00). c) An amount of$500.00) he spent on his medicals to the notice of the Defendant was also not paid to him. d) According to plaintiff whilst in the defendant company and with the consent of the defendant he used his private vehicle for official duties. In the cause of using his vehicle, it suffered a major breakdown, which was later fixed at a cost of $6,264. The defendant however refused to pay for the repairs of the vehicle.

The summary of relevant evidence plaintiff adduced at the trial is that, he is a Tanzanian by birth and a naturalized Canadian Citizen. He was therefore engaged by the defendant as an expatriate. He was informed about the termination of his contract with the defendant on 7 October 2009 and was given one week to vacate his official residence and hand over the company's vehicle. His wife had left for Canada three weeks prior to this event. He denied that the defendant negotiated any severance pay with him and maintained that it was only the usual package the company provides when an employee was terminated that was stated in the termination letter that was shown to him. When his counsel showed him exhibit D he admitted that the company offered to pay him USD 39,595.00 but he received USD 36,875.00. The company made a deduction of USD 2,700.00; this forms part of the USD 10,266.00 in his claims. That

amount of money belonged to the company but was in his custody. It was stolen when his car was broken into at the car park of Accra Shopping Mall. Other breakdowns of the $10,266.00 he gave as: $500.00 payment he made for surgery at the Korle Bu Hospital but was not given a refund, USD 1,550 for the wife's airfare. Under the terms of his engagement, his wife was entitled to an airline ticket but that was not paid. USD 6,500 for the repair of his car, which he used on his duties of the company. The Release and Quitclaim document, the contents of which I quoted earlier on was tendered through the plaintiff during cross-examination as exhibit 1. Head mitted that he signed the agreement exhibit 1 in his official residence on the 20 the October 2009 in the presence of Mr. Raymond Mc Clain, an employee of the defendant and he the plaintiff's driver. He admitted that Mr. Mc Clain did not compel him to sign the document however he said signing the document "was evidence to getting the money that was due me". Further admissions plaintiff made in his evidence in cross-examination are that 1) He signed follow up documents with the defendant after signing exhibit 1, the 'Release and Quitclaim. Exhibit 3 was therefore tendered through him to confirm that assertion. Exhibit 3 is entitled 'Letter of Understanding' and begins in the following words "This letter hereby confirms the following agreement between Mr. Mark M. Summer and Mr. John L Micock during their meeting on 12th October in the presence of Mr. Ray Mc Clain". Exhibit 1 was signed by plaintiff on 12th of October. The opening paragraph of exhibit 3 presupposes that there was a meeting where the terms of severance agreement were discussed and agreed to by the parties. Exhibit 3 is a further documentation and signing of terms agreed to. 2) Plaintiff admitted that per clause 7 of the contract of employment the company would purchase an economy airline ticket for him but would not pay him money for a ticket. Which means his claim for a payment of money for the wife's air ticket is contrary to the terms of the agreement. 3) He further admitted that he was paid monthly allowance for the use of his personal vehicle for company duties. Exhibit 4 confirms that he was paid USD 1,250 monthly allowance for the use of his

personal vehicle. 4) He further admitted that he was responsible for the safety of the company's money that was in his custody that is the USD 2.700 that he claimed was stolen.

Defendant's case

In answer to contentious facts in the plaintiff's averments the defendant in their statement of defence averred that by the provisions of the Labour Act Plaintiff is not due anything more than he had already received. In respect of the agreements signed by plaintiff, he read and understood the agreements before voluntarily appending his signature to them. In answer to plaintiff's averment that at the time he signed the severance agreements with the defendant he was under pressure for money to find accommodation to relocate from defendant's accommodation; the defendant maintained that could not be true because on the day Plaintiff signed exhibit 1 he had packed and boxed his personal items and belongings and was ready to vacate the property provided by the defendant. Defendant further averred that Plaintiff began working for another company, WDP, in less than a week of his departure from the employment of the defendant and the said company was a client of the defendant. Defendant further averred that it was upon mutual agreement that a total ofUSD 36.875.00 was paid to the Plaintiff. The defendant denied the USD10, 466 claim being made by the plaintiff and further averred that plaintiff was offered air ticket for his departure but he rejected it.

The assistant Contract Administrator of the defendant company testified on its behalf. According to him, the termination of plaintiff's contract is fair and he is not entitled to any of his claims. Plaintiff signed the final settlement agreement at his own free will and he is bound by it. The company did not provide airline ticket for plaintiff's wife because she left the country three months prior to termination of plaintiff's appointment.

(Plaintiff confirms the departure of his wife before his contract was terminated in his evidence in chief). The witness further stated that it is the company's policy not to pay money in lieu of air ticket; therefore, the plaintiff was not entitled to a reimbursement for the wife's airfare. Plaintiff himself did not leave Ghana but got employment with one of defendant's clients one week after his appointment with defendant was terminated. The witness further testified about the lack of diligence on the part of the plaintiff, which had resulted in financial loss to the company. The plaintiff's performance at his job always fell below the expected target. The explanation plaintiff gave at the company's meetings was that his low performance was due to global economic downturn. Therefore, the company gave global economic downturn as reason for terminating his appointment. For the various monies claimed by plaintiff apart from refund for the wife's air ticket, the witness explained that: Plaintiff was negligent when he claimed he left USD2,700, which was the company's cash in his custody in his car, which he parked at Accra Mall. Apart from that, he did not report the theft to the police promptly; he made a report of the alleged theft to the police the following day. He must take responsibility for the loss; the company therefore was right in deducting it from his entitlement. For his claim for payment of USD500 medical bills, he was not given a refund because company policy require that he obtained pre-approval, and for the kind of medical treatment he had he was requested to submit a discharge report but he failed to obtain any. Exhibit 2 series was tendered to confirm the requirements from the company's medical insurance provider. Which requirements plaintiff failed to meet hence his failure to get a refund for the medical bill. According to the witness, plaintiff's claim of USD6,246 for major repair of his car is not tenable because he was paid monthly car maintenance allowance and given fuel, he was therefore responsible for the repair of his vehicle.

For the claim for libel, the witness explained that it is the company's policy to publish information on the plaintiff's relationship with the company. Because of the plaintiff's position and the nature of his job, it was necessary the company notified the public that the plaintiff was no longer in their employment. The publication protects the company from any liability in case plaintiff conducts any business in the name of the company. The publication was therefore not made with any malice.

Issues for determination

From the pleadings and evidence recounted above two issues fell out for determination in this appeal and these are:

a) Whether the plaintiff has any cause of action against the defendant.
b) If he has, has he succeeded in proving his claims

In respect of issue (a)the reason why plaintiff would have no cause of action against the defendant are twofold. Firstly, exhibit, 1 the document entitled 'Release and Quitclaim' speaks for itself. I have quoted the contents of the said document earlier in this judgment. It is a document plaintiff made on oath. Plaintiff has admitted in cross-examination that he voluntarily executed the document; therefore, plaintiff's averments that he was compelled to sign the document could not be the truth. In the circumstances sections 24 (1), 25 (1) and 26 of the ***Evidence Act, 1975 N.R.C.D 323*** which deal with conclusive presumptions are applicable in this case. These sections read:

.24 Conclusive presumptions

(1) Where the basic facts that give rise to a conclusive presumption are found or otherwise established in the action, evidence contrary to the conclusively presumed fact may not be considered by the tribunal of fact.

25. Facts recited in written instrument

(1) Except as otherwise provided by law, including a rule of equity, the facts recited in a written document are conclusively presumed to be true as between the parties to the document, or their successors in interest.

26. Estoppel by own statement or conduct

Except as otherwise provided by law, including a rule of equity, when a party has, by that party's own statement, act or omission, intentionally and deliberately caused or permitted another person to believe a thing to be true and to act upon that belief, the truth of the thing shall be conclusively presumed against that party or the successors in interest of that party in proceedings between

(a) that party or the successors in interest of that party, and
(b) ***the relying person or successors in interest of that person.***

It can be conclusively presumed from the above quoted sections of the Evidence Act, that the facts recited in exhibit D and those deposed to in exhibit 1, the documents executed by the parties in this case are the truth and the plaintiff is bound by the contents; he is estopped from denying the facts in these documents. This court in a number of cases had considered the principle of conclusive presumptions as provided by sections 24 to 26 of the Evidence Act and its effect by one's statement or conduct. See the cases of ***African Distributors Co Ltd. v Customs, Excise and Preventive Services [2011]2 SCGLR 955;Eastern Alloys Company Ltd. V Chinaro Gold [2017-2018]1 SCLRG 308***

It is trite that for a statement to operate as estoppel it must be clear and unambiguous. Paragraphs 2 and 3 of exhibit 1, plaintiff's sworn statement specifically stated **"That by**

virtue of those presents, I hereby waive, release, acquit and/or discharge the aforesaid company (Red Sea Housing Services Ghana Ltd.) of any and all claims, demands, damages, actions or causes of action on account of and/or arising or which may hereafter arise in connection with my application.

I hereby state that this release and quitclaim was read and understood by me and that there is no understanding of agreement, verbal or written, of any kind, for any further/future consideration whatsoever, implied or explicit, expected or to come to me in money, in kind, or in any other form. In making this release I am not relying on any statement or promise other than what is stated herein."(Emphasis mine)

The plaintiff by exhibit 1 clearly made the defendant believe that by him accepting payment of the amount of USD 36,895.00. which per exhibit D was thefinal settlement between the parties, the defendant had discharged all its obligations towards plaintiff, in terms of 'any or all claims, demands, damages, actions or cause of action.' Plaintiff is therefore estopped from making any claims whatsoever against the defendant.

With plaintiff's statement in exhibit 1, it is unconscionable for the plaintiff to bring this action against the defendant. Plaintiff is bound by his depositions in exhibit 1 and is estopped from laying any claims against the defendant.

Secondly, Plaintiff's contract of employment undoubtedly is a fixed term contract. Section 66 of the Labour Act, 2003 Act 651 specifically excludes fixed term contract employees from remedies provided under section 64 of the Act. It also excludes fixed term employees from making claims under redundancy.

Sections 63, 64, 65 and 66 fall under part VII of the Act

Section 63 provides the circumstances that the termination of employment is deemed unfair.

Section 64 provides remedies for unfair termination

Section 65 deals with circumstance of redundancy

Section 66 specifies the categories of workers that provisions of part VII of the Act does not apply to. Section 66 reads:

"66. Exceptions

The provisions of this Part do not apply to the following categories of workers:

(a) workers engaged under a contract of employment for a specified period of time or specified work;

(b) workers serving a period of probation or qualifying period of employment of reasonable duration determined in advance; and

(c) workers engaged on a casual basis.

The plaintiff's employment contract has a fixed term of two years; the remedies for unfair termination or redundancy under the Labour Act are not applicable to him. He is therefore precluded from bringing any action against his former employers based on unfair termination and redundancy.

On the above stated position of the law, we hold the view that the plaintiff has no cause of action against the defendant.

The second issue is related to plaintiff's other claims which are the claim of $10,466.00, the claim of 3 months' salary in lieu of notice and his claim for libel. In evaluating the evidence on record, plaintiff had not succeeded in proving any of the above claims against the defendant. For the $10,466.00 claim, I have highlighted his admissions in cross-examination, which establishes that he is not entitled to any claim under that

heading. On the 3 months' pay for which he said he was paid only one month, it is not in contention that by the terms of the contract plaintiff was entitled to 90 days salary in lieu of notice instead of the 30 days pay he received. However, the subsequent negotiations resulting in exhibit D and exhibit 1 settled all issues between the parties and he is not entitled to any other monies apart from what he had received based on the mutual agreement he signed.

I agree with the trial court's finding on the issue of libel, and do affirm the decision of the trial court dismissing that claim. My view however on all other findings of fact made by the High Court is that they were made without considering the evidence on record particularly the evidence of the defendant. The decision of the High Court is therefore not supported by the evidence on record. The High Court further erroneously applied the law.

The appeal is allowed in part

Consequently, we uphold the judgment of the Court of Appeal dated 14th July 2016 but for the reasons explained above which are different from the reasons the Court of Appeal stated for their decision. Accordingly, the appeal against the judgment of the Court of Appeal is hereby dismissed.

A. M. A. DORDZIE (MRS.)

(JUSTICE OF THE SUPREME COURT)

G. PWAMANG

(JUSTICE OF THE SUPREME COURT)

G. TORKORNOO (MRS.)

(JUSTICE OF THE SUPREME COURT)

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