IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2023

CORAM: DOTSE JSC (PRESIDING)

LOVELACE-JOHNSON (MS.) JSC

AMADU JSC

PROF. MENSA-BONSU (MRS.) JSC

KULENDI JSC

CIVIL APPEAL

NO. J4/75/2021

17TH MAY, 2023

1. **FREDRICK ABBAN**
2. **MICHAEL APPIAH**
3. **ABUBAKARI KYEREE**
4. **SAMUEL HANSON**
5. **NANA KRAPIM BAFFOE**
6. **ANTHONY MANU**
7. **CLEMENT AMPIAH**
8. **CHRISTIAN TEI**
9. **JONATHAN DONKOR**
10. **OPKOTI SOWAH**

PLAINTIFFS/APPELLANTS/ RESPONDENTS

VS

TAKORADI FLOUR MILLS

COMPANY LIMITED …. DEFENDANT/RESPONDENT/APPELLANT

JUDGMENT

MAJORITY OPINION

AMADU JSC:-

INTRODUCTION:

(1) The ascription of a ***"worker"*** or ***"employee"*** at the workplace or in an employment respectively, carries with it various legal incidents. The employed is placed in a status of benefit in terms of being entitled to be remunerated for work done or enjoy such entitlements that come with the contract of employment. Statutorily also, the employer is mandated to contribute to the social security benefits of the employee to the appropriate state agency. Conversely, the worker or employee may be liable for any breach of the contract of employment. Correspondingly, the employer is advantaged with the use of the employee for purposes of the employment as defined per the contract of employment. However, the employer could be vicariously liable for any negligence committed by the worker/employee in the course of his/her employment. In all of these situations, the law is will not necessarily infer the relationship merely upon allegations, but rather on clearly defined circumstances.

(2) My Lords, in this appeal, we are confronted with a situation, where the parties are disputing the status of the Plaintiffs/Appellants/Respondents (hereinafter referred to as "the Plaintiffs") in the Defendant/Respondent/ Appellant's *(hereinafter referred to as "the Defendant")* company. That is to say, whether Plaintiffs are permanent workers of the Defendant or independent contractors? Whiles Plaintiffs claim to

be permanent employees of Defendant, and thus, entitled to SSNIT contributions from Defendant, Defendant argues *contra*, that the Plaintiffs are not their employees. Thus, closely observed, the key issue that arises from this contest is, whether the Plaintiffs are first and foremost, workers/employees of the Defendant company. If they are, then, are they casual employees or permanent employees? A determination of the later distinction may positively implicate the incidents associated with such employment status.

BACKGROUND AND FACTS

(3) On the 10th of March 2014, Plaintiffs invoked the jurisdiction of the High Court, Sekondi, per a writ of summons for reliefs as endorsed on the said writ against the Defendants. The original writ, was subsequently amended on the 3rd day of December 2015. In the amended writ of summons, the Plaintiffs claimed the following reliefs against the Defendant:

"(a) An order that the Plaintiffs and the loaders of Takoradi Flour Mills Co. Ltd. are permanent employees of the Defendant and not casual employees/or independent contractors of the Defendant.

(b) An Order directing the Defendant to pay the SSNIT contributions of the Plaintiffs and the Loaders of Takoradi Flour Mills Co. Ltd from the time the Plaintiffs and the Loaders were engaged by the Defendant.

(c) An Order that the "situation Report on Loaders of Takoradi Flour Mills Company" dated 16th February, 202 and written by the Regional Labour officer is void and of no legal effect and same ought to be set aside.

(d) An Order that the Compensation/redundancy benefits must be paid to the Plaintiffs and the Loaders before the Defendant could outsource the

loading and offloading of the Defendant goods to the Plaintiffs and the Loaders."

THE PLAINTIFFS' CASE

(4) Plaintiffs and others (all referred to as loaders) were engaged by Defendant to load and offload the goods of the Defendant. According to the Plaintiffs, it was the Defendant who fashioned the mode of the loading and offloading, to wit: putting the Plaintiffs and the loaders into various group/gangs with a leader for each group. Some of the Plaintiffs have worked with Defendant for a period between 10 to over 30 years. According to the Plaintiffs, per the arrangement, Defendant was to pay some minimum amount of money per bag of flour, provide medical treatment, foods, and also transportation to the Plaintiffs and loaders to and from work. The Defendant will also provide coffin for any of them who passed on.

(5) Plaintiff averred that, dissatisfied with the mode of engagement, they petitioned the Regional Labour Office, and without following the dictates of the Labour Act, 2003 (Act 651) the Labour office solely went ahead, dealt with the matter and issued a **"*Situational Report on Loaders of Takoradi Flour Mills Company*"** dated 16th February, 2012 which said report stated the following :

(a) There is no employment Relationship between the Defendant and the Plaintiffs.

(b) There is a Service/Contract relationship between the Defendant and the Plaintiffs.

(c) That Defendant does not owe the Plaintiffs any outstanding SSNIT contributions.

(d) That the Defendant is not obliged to pay SSNIT contribution on behalf of the Plaintiffs.

(6) It is the case of the Plaintiffs that, since the Regional Labour Officer did not adhere to the dictates of Act 651, the situational report is void and without any legal basis. According to the Plaintiffs, the holding in the situational report that there was no employment relationship between the Plaintiffs and Defendant was not supported by correspondence between the Plaintiffs and Defendant on a number of occasions where Defendant admitted Plaintiffs were casual employees and labourers. Further the Plaintiffs asserted that, having been in the employment of Defendant for a period between ten and thirty years, they cannot be seriously described as casual employees.

(7) Plaintiffs further claimed that, when the Defendant received the situational report, the Defendant then, decided to outsource the loading and offloading of its goods to the Plaintiffs and the loaders and so, Defendant went ahead to prepare a ***"Memorandum of Understanding between Takoradi Flour Mills Limited and Independent Loaders Association (Group)"*** and asked the Plaintiffs and the loaders to sign same. Plaintiff became suspicious upon receipt of the Memo aforesaid as there was no mention of redundancy payments or compensation benefits to them despite the long years of work with Defendant. The Defendant's default in this respect, compelled the action.

THE CASE OF THE DEFENDANT.

(8) By way of defence, the Defendant challenged the propriety of the action, contending, that not all the persons listed as Plaintiffs had actually consented to the action being pursued on their behalf. Defendant contended further that, the Plaintiffs have no authority to commence the action on behalf of all the loaders

they claim to represent. For the Defendant, the Plaintiffs are not its employees. Defendant's case is that, the status of the Plaintiffs had already been determined by the Regional Labour Officer in an arbitration between the parties. Defendant averred that, the loaders group themselves into gangs; appoint their own gang leaders and payments for work done were effected to the gang leaders who in turn pay the members. The Defendant argued that, they have no contract with the Plaintiffs to make them its workers or employees; and that they do not exercise any control over the Plaintiffs' work affairs.

THE ISSUES SET DOWN FOR TRIAL AT THE HIGH COURT

(9) At the close of pleadings, the Trial Court set down for determination, the following issues:

"a Whether or not the Plaintiffs were engaged by the Defendant as casual employees or labourers.

b. Whether or not after working continuously for the defendant for more than six months, the Plaintiffs are permanent employees by virtue of section 75 of the Labour Act, 2003 (Act 651)

c. Whether or not the defendant ought to pay the SSNIT contributions of the Plaintiffs and the Flour leaders.

d. Whether or not the Regional Labour Officer acted contrary to the Labour Act, 2003, Act 651.

e. Whether or not the situational Report on Loaders of Takoradi Flour Mills Company dated 16th February, 2012 written by the Regional Labour Officer is void.

f. Whether or not the plaintiffs are entitled to their claims.

g. Any other issue arising out of the pleadings."

(10) Despite these issues set down for trial, the Trial Court, rightly set down a pertinent issue, which is, whether the Plaintiffs qualify as workers/employees of the Defendant company by reason of the evidence adduced?

THE JUDGMENT OF THE TRIAL COURT

(11) In a judgment delivered on the 8th of March, 2018, the trial court dismissed the Plaintiffs' action holding that the Plaintiffs were not workers/employees of the Defendant company. Consequentially, the court stated, that the defendant was not liable to Plaintiffs for any arrears of social security.

(12) In dealing with the matter, the trial court, found it expedient, to first, ascertain the meaning of an ***"employee".*** Relying on definitions from the **Black's Law Dictionary**, the court observed that, the control test, stands out in the factors informing whether one was an employee. That is, the employer must be in control of the affairs of the employee at the work place. Based on this, the court pronounced as follows:

> ***"For a person to be declared as an employee of another, he must as a matter of necessity, have control of the working contract and conditions of the employee. This condition is very crucial and it is the very basis of all kinds of employment situations; permanent, casual, temporary etc. In all these kinds of employments, the bottom line (sic) is contractual relationship and control. In the instant case, can the plaintiffs be said to be under the control of the defendant company? The evidence on record is that the plaintiffs as loaders were under the gangs, they determined when to come to work, how many hours per day to work and how many bags to load per day. From this state of affairs, it is very clear, as the defendant company stated; that it had no direct control over the mode of employment and work terms of the plaintiffs. No matter the description of ones, employment, the employer as***

a matter of necessity must be in a position to dictate the terms of employment of the employee, and he must be able to control the conditions of work of the employee. Again, an employer must be able to discipline its employees, but in this situation, it is clear that the plaintiffs are not under any disciplinary measures for example, committees of enquiry, major and minor punishments of any form. How can one be said to be an employer of another person whose days and hours of work he has no control of? In my view, the plaintiffs' situation is pathetic, but they do not qualify to be described as workers/employees of the defendant company as defined by the Labour Act so as to cause the defendant company to pay the social security responsibilities. The defendant company is not enjoined by any law to pay social security contributions on behalf of the plaintiffs; neither does the defendant owe the plaintiffs any arrears of social security deductions/payments. The plaintiffs have woefully failed to discharge the burden of proof imposed on them in respect of issues [a, b, and c] as set down. In my humble view, the Plaintiffs are the employees of the gangs/gang leaders who engage them and I see those gangs as employment agencies/independent contractors that have loading contracts with the Defendant company."

(13) The Trial Court further held, that the Plaintiffs cannot justify their alleged employment status with the Defendant on the basis of Defendant withholding taxes. The court, rightly in our view reasoned that, the law mandates an employer who pays income to someone for work done to deduct the tax element from it before the payment.

(14) The Trial Court further found that, the situational report had no binding effect on the parties and was merely advisory intended to bring to the fore, the situation of the Plaintiffs to help their re-organisation. The court therefore, discarded the issues pertaining to the situational report. Finally, the Trial Court found as improper, the Plaintiffs' commencement of the action not on their own behalf but also, on behalf of all the gang members. Relying on an Exhibit 5, trial the court agreed with the contention of the defence that, the Plaintiffs had not properly invoked the jurisdiction of the court to be able to maintain the action as a class action.

APPEAL TO THE COURT OF APPEAL

(15) Dissatisfied with the judgment of the Trial Court, the Plaintiffs, by Notice of Appeal field on 6th June, 2018, appealed against same to the Court of Appeal. In a judgment delivered on the 29th of January, 2020, the Court of Appeal allowed the Plaintiffs' appeal in part. Their Lordships at the Court of Appeal were of the opinion that, the Plaintiffs, were permanent employees of the Defendant. The Court of Appeal however observed that, the Plaintiffs had failed to mitigate their losses, following their dismissal nonetheless, awarded the Plaintiffs all their entitlements accorded by the Defendants to its permanent workers up to the dates of their respective dismissals without prejudicing those dismissals. The Court of Appeal thus ordered as follows:

> ***"Since the Labour Act came into force in 2003 based on which the casual workers who have been in the employment of the same employer for six months or more are to be treated as permanent workers, it is hereby ordered that with effect from the effective date of the Labour Act, the Appellants are to be granted all the working conditions accorded by the respondent to its permanent workers up till the dates of their respective dismissals, without prejudice to the legal status of the said dismissals. This is because,***

whether or not the dismissals were lawful, once they were prevented from entering the factory premises to perform their loading jobs, they owed themselves the duty to mitigate their losses by looking for alternative employment."

(16) The Court of Appeal found that, the 1st -10th Plaintiffs worked with the Defendant for periods ranging from 9 years to 25 years, and as such, Section 75(1) of the Labour Act ought to apply to them making them permanent workers.

(17) It is conceivable that, the Court of Appeal was also persuaded by Exhibits "E" and "F" and concluded that, the Defendant had recognised the Plaintiffs as casual workers, and cannot renege from same. Exhibit "E" is a letter from the Defendant's company to the Regional Officer of the Industrial and Commercial Workers Union, and dated 13th July 2004. In that letter, the Plaintiff had stated that, the loaders provided casual loading services. Exhibit "F" on the other hand is a letter from the Defendant dated 30th August, 1995 addressed to the Leader of the Flour Loading Gang on the payment of income Tax. The Company had stated that casual employees and labourers who received their income or wages through the company were liable to pay income Tax.

(18) According to the Court of Appeal, the claim of the Defendant Company that, the Plaintiffs were independent contractors is not borne by the evidence on record and same were mere allegations without more and that, the Defendant had failed to demonstrate the ingredients making the Plaintiffs independent contractors.

(19) The Court of Appeal also critiqued the situational report of the Regional Labour Officer reasoning that, he had usurped the authority of the National Labour Commission. For the Court of Appeal, what he sought to do, was actually the

preserve of the National Labour Commission, which Commission had not also, delegated its duties.

(20) The Court of Appeal further held that, the Trial Court erred in non-suiting the entire suit, instead of non-suiting the Plaintiffs with the representative action since they had a constitutional right to be heard.

APPEAL TO THE SUPREME COURT

(21) Aggrieved by the decision of the Court of Appeal, the Defendant appealed against same per Notice of Appeal dated the 7th day of April, 2020 where the following grounds of appeal were formulated and set out:

a. ***"The Court of Appeal erred in holding that the plaintiffs were to be considered as permanent workers of the Defendant company and failed to correctly draw the legal distinction between contract for service and contract of service.***
b. ***The Court of Appeal erred in holding that all the 10 plaintiffs had sanctioned the institution of the action at the High Court.***
c. ***The judgment is against the weight of evidence led at the Trial Court.***
d. ***The costs awarded were excessive in view of the fact that the appeal was dismissed in part.***
e. ***Additional grounds of appeal may be filed upon receipt of the full record of appeal.***

No additional grounds were filed notwithstanding the indication in the notice of appeal by the Defendant to so do.

THE LAW ON CIVIL APPEALS

(22) An appeal it is settled, is by way of re-hearing. This is particularly the case, where an Appellant contends that, the judgment appealed against is against the weight of evidence led at the trial. The Appellant by such allegation, implies that, there

was an improper evaluation of the evidence led at the trial which has occasioned him/her a miscarriage of justice or that, the Court below misapplied the law to the evidence leading to erroneous conclusions, not justified in law. In such situation, this court, is mandated to somaticize the entire record and assess whether the findings and conclusions reached by the court below reflect a proper evaluation of the evidence and application of the relevant law.

(23) While primary findings of facts are ordinarily the preserve of the Trial Court, an appellate court is not prohibited from disturbing same, if there are special circumstances warranting such disturbance, such as, where the findings made are just erroneous deductions from the evidence or application of the law to the evidence; or they are simply perverse and ought not to be allowed to stand.

ANALYSIS

(24) We shall evaluate the ground of appeal in the same manner as submitted by Counsel in their statements of case to the court and begin with, Grounds A and C which are as follows:

A. THE COURT OF APPEAL ERRED IN HOLDING THAT THE PLAINTIFFS WERE TO BE CONSDIERED AS PERMEANENT WORKERS OF THE DEFENDANT COMPANY AND FAILED TO CORRECTLY DRAW THE LEGAL DISTINCTION BETWEEN CONTRAT FOR SERVICE AND CONTRACT OF SERVICE.

C. THE JUDGMENT IS AGAISNT THE WEIGHT OF EVIDENCE LED AT THE TRIAL COURT

(25) As already observed, when an appellant argues an appeal, based on the *omnibus* ground of appeal that, the judgment is against the weight of evidence on record, the Appellant implores the court to engage in a re-hearing of the entire appeal and

assess whether the evidence led at the trial was properly evaluated; the relevant and necessary laws correctly applied to the evidence, and the conclusion arrived at are consistent with the law and the evidence adduced at the trial. Such appellant, is under an obligation to also, point out the errors alleged to have occasioned the mis-evaluation of the evidence led at the trial for us to reconsider same. Thus, upon satisfaction, this court as an appellate, and indeed a final appellate court will review the entire evidence and if the finding of any of the courts below were improperly arrived at, we are duty bound to correct and reverse same.

(26) My Lords, a critical scrutiny of the evidence, vis-à-vis the applicable, law exposes the main issue, in this matter to be whether the Plaintiffs are first and foremost, employees of the Defendant Company? It is upon a finding, that the Plaintiffs are workers/employees of the Defendant company, that a consideration may be had to whether the said employment is either casual/permanent or otherwise.

WHO IS AN EMPLOYEE/WORKER?

(27) As a sequel to disposing of the appeal, it is important to introspect the term ***"employee"*** or ***"worker".*** As noted in the introductory paragraph, being a worker of an employer carries with it, both rights and duties. The instant case is a reflection of an assertion of some of those rights/entitlements. Under Section 10 of Act 651, the rights of a worker include the right to :

> ***(a) "work under satisfactory, safe and healthy conditions;***
>
> ***(b) receive equal pay for equal work without distinction of any kind;***
>
> ***(c) have rest, leisure and reasonable limitation of working hours and period of holidays with pay as well as remuneration for public holidays;***

(d) form or join a trade union;

(e) be trained and retrained for the development of his or her skills; and

(f) receive information relevant to his or her work."

(28) Indeed, these rights or entitlements of workers are grounded under the 1992 Constitution. Article 24 of the Constitution provides:

(1) "Every person has the right to work under satisfactory, safe and healthy conditions, and shall receive equal pay for equal work without distinction of any kind.

(2) Every worker shall be assured of rest, leisure and reasonable limitation of working hours and periods of holidays with pay, as well as remuneration for public holidays.

(3) Every worker has a right to form or join a trade union of his choice for the promotion and protection of his economic and social interests.

(4) *Restrictions shall not be placed on the exercise of the right conferred by clause (3) of this article except restrictions prescribed by law and reasonably necessary in the interest of national security or public order or for the protection of the rights and freedoms of others."*

(29) The terms **"employee"** or "**worker"** carry the same import in labour law, and as such, shall be used interchangeably. Undoubtedly, the terms, arise in an employment situation or a workplace environment. Thus, there is a relationship, substantially contractual between an employee/worker with the employment or workplace. In literal exposition, an employee may be said to be one, engaged as a member of an employment to perform task of that employment. There should thus, be an engagement, by way of a contract, whether oral, implied or written. That is, although the general position is that, the employment contract must be in writing, the court in appropriate situations, can glean the employer -employee relationship from the conduct of the parties, such as, if the employer, consistently

effects salary payments to the employee; or where the employee reports to work consistently at particular times at the direction of the employer; or the employee is subjected to the internal disciplinary procedures in the employment; the employer further sees to the payment of such statutory contributions like SSNIT contributions on behalf of the employee and generally participate in all such activities in the workplace. In such a situation, even if, there is absent, any written agreement, the conduct of the parties can easily infer the relationship, and thus, equity will not allow the strict rigours of the law to obviate this recognition.

(30) Indeed, the definition of an employee is not monolithic, as various tests have been developed to ascertain who qualifies, as a worker of a particular employer or employment. Very interestingly, the Labour Act, 2003 (Act 651) does not use the term **"employee"** but rather **"worker".** The Act adopts the term **"employee"** in only one situation under Section 131 (2) thereof, which provides, that ***"An officer of a trade union or any other person shall not during normal working hours confer with an employee on trade union matters while the worker is on the premises of his or her employer without the consent of the employer."*** In this single situation even, it will be observed, that the draftsman used the word employee interchangeably with **"worker".**

(31) The Act defines a **"worker"** under Section 175, the interpretation section as ***"a person employed under a contract of employment whether on a continuous, part-time, temporary or casual basis. An "employer",*** is also, defined under the Act as ***"any person who employs a worker under a contract of employment"***. It will thus appear that, the enactment makes a contract of employment, a *sine qua non* to deciding whether one is a worker or not. Thus, to be a worker, then, you should have been engaged under a contract of employment by an employer either on a permanent basis, part-time or temporal.

(32) The next interrogation then is, what is a "***contract of employment.***" This has been defined under the Act as a **"*contract of service whether express or implied, and if express whether oral or in writing*."**

(33) Therefore, in determining whether or not the Plaintiffs are workers of the Defendant, it is important to determine whether the Plaintiffs have been engaged in a **contract of service**, and it matters not, that the said contract is express or implied; oral or written.

(34) A **contract of services,** is normally distinguished from a **contract for services.** A person engaged in a contract of service, is an employee of the employer whereas, in the later situation, the person may be practicing a profession or a vocation independent of the employment of another. In a contract of service, the person's work is integrated in the business and thus, is a crucial part of the operations whereas, in a contract for service, although the person may be discharging or executing certain tasks to the benefit of the business, it is only, or merely accessory to the business and cannot be said to have been integrated in the business. The person is thus, an independent contractor and cannot be ascribed an employee/worker of the business. In the case of **STEVENSON VRS MACDONALD (1952) 1 T.L.R. 101 ,** Lord Thankerton gave the pointers for the existence of a contract of service as follows:

(i) the master's power of selection of his servant

(ii) the payment of wages or other remuneration

(iii) the master's right to control the method of doing the work

(iv) the master's right of suspension and dismissal.

(35) Similarly the court held in the case of **SHORT V J. & W HENDERSON LTD [1946] 62 TLR 427,** that for a contract of service to be deemed in existence, then, the

employee should have agreed to provide his work and skill to his employer in return for a wage or other remuneration; the employee should agree, either expressly or impliedly, to be directed as to the mode of performance of the work by the employer consistent with the contract of employment.

(36) Observably, the degree of control of the employee by the master is a crucial determinant of whether the workman is an employee. The employer shall thus, control how and the manner the employee goes about his work. Bramwell L.J defined an employee in **YEWENS V NOAKES [1880] 6 QBD 530** as ***"anyone who was subject to the command of the master as to the manner in which he shall do his work."*** Similarly in **KUSSASI V GHAN CARGO HANDLING CO. [1978] 1 GLR 170,** the court settled the test as ***"Does the alleged master have power of controlling his acts and dismissing him for disobedience"?***

(37) The jurisprudence in tax law, also contribute significantly to this determination. The authorities are settled that, the determination of whether one is in a contract of service and thus, employment is contingent on whether the person works in an office or employment; receives emoluments and the emoluments are derived from the office or employment. Rowlatt J in **GREAT WESTERN RAILWAY CO. V BATER [1920] 3 KB 266** explained an **"office"** to mean a "***subsisting, permanent, substantive position which has an existence independence of the person who filled it, which went on and was filled in succession by successive holders.***" The House of Lords in approving of this description in **EDWARDS V CLINCH [1981] 3 ALL ER 543** pointed out however, that the emphasis on permanency and temporal have fallen in disuse in recent terms.

(38) As observed by Lord Wilberforce, "***For myself, I would accept that a rigid requirement of permanence is no longer appropriate, nor vouched by any decided case, and continuality need not be regarded as an absolute qualification. But still,***

if any meaning is to be given to office in this legislation, as distinguished from employment or profession or trade or vocation(these are various words used in order to tax people on their earnings) the word must involve a degree of continuance (not necessarily continuity) and of independent existence; it must connote a post to which a person can be appointed, which he can vacate and to which a successor can be appointed"

(39) Thus, as aforesaid, the degree of control by the employer over the work person gives the clearest inference, that the work person is an employee. The absence of such control or discontinuity with the relationship may deviate from the characterisation of one as an employee or worker. As was observed by Rowlatt J in **DAVIS V BRAITHWAITE [1931] 2 KB 628 at 634 : *"It seems to me quite clear that a man can have a profession and an employment at the same time in different categories. A man may have the steadiest employment in the world by day and may do something different in the evening and make some money by the exercise of a profession or a vocation. I cannot doubt that would be so even if it were in the same sphere, I do not see why we should not have both an employment as well as a profession. For instance a musician who holds employment can at the same time follow his profession privately…I think that whatever she does and whatever contracts she makes are nothing, but incidents in the conduct of her professional career."***

(40) With a respect to emoluments, being a worker or an employee must come with such emoluments like salaries, wages, such other payments or benefits either in kind or cash and these emoluments should have been derived from the employment. In the words of Upjohn J in the case of ***HOCHSTRASSER V MAYES*** **[1959] CH. D 22** ***"Not every payment made to an employee is necessarily made to***

him as a profit from his employment. Indeed in my judgment the authorities show that to be a profit arising from the employment, the payment must be made in reference to the services the employee rendered by virtue of his office. And it must be something in the nature of a reared of services past, present or future."

(41) This statement was approved by the House of Lords on appeal. Viscount Simmonds L.J noted, *"**In his hands the benefit is not a reward for services- a distinction which is in abundance in the vernacular…described by saying that the employment in such a case is causa sine qua non of the benefit but not the causa causans**."* See ***HOCHSTRASSER V MAYES*** **[1960] AC 376**

(42) From the analysis of the relevant law so far, two tests stand out to determining whether the Plaintiffs in the instant suit are employees or workers of the Defendant. These are the integration and control tests. The questions to be asked, is, whether the Plaintiffs were so integrated in the business of the Defendant? And/or did the Defendant exercise adequate level of control in the manner the Plaintiffs did their work? As already noted, the mere fact, that the work-person's work is beneficial to the employer does not necessarily make the person an employee. If the person's' work is only incidental or an accessory, he is just an independent contractor. Further, considering the nature of the work being engaged in, if the employer exercises sufficient level of control in the manner and mode of its performance; generally supervise the work and the persons of the alleged employees in conforming with the ethics of the business, same can lead to the inference of the person being an employee.

(43) From the pleadings of the parties and the evidence led at the trial, the following facts are not disputed :

a. ***There is no official letters appointing the loaders from the defendant company as its employees/workers.***
b. ***Those who load the flour at the defendant's premises work in groups of 'gangs'.***
c. ***The loaders, attend when as and when they please.***
d. ***They are paid at the end of the money based on the number of loads by each person***
e. ***Most of the loaders have been in the employment for over ten years.***

(44) The evidence before the court which is not challenged by the Plaintiffs are that, the loaders attend work as and when they deem fit. In fact, on days some of them cannot attend work, they could allow their children or other persons to perform their duties for them. It will be wholly incongruous, for the Plaintiffs to be allowed to sustain their claim on the basis that their earnings from Defendant are subjected to tax at the instance of the Defendant. That is a sanction of law, whether you are employed or an independent contractor. Once a person earns a chargeable income, same is taxable. We find it difficult to make a finding, of the existence of a an employer-employee relationship in a situation where the employer has no control over when the alleged employee attends work or discipline the employees. All these necessary factors are absent. We therefore cannot but agree with the trial court with it's exposition that : ***"[t]he evidence on record is that the plaintiffs as loaders were under the gangs, they determined when to come to work, who many hours per day to work and how many bags to load per day. From this state of affairs, it is very clear, as the defendant company stated; that it had no direct control over the mode of employment and work terms of the plaintiffs. No matter the description of ones employment, the employer as a matter of necessity must be in apposition to dictate the terms of the employment of the employee, and must***

be able to control the conditions of work of the employee. Again, an employer must be able to discipline its employees, but in this situation, it is clear that the Plaintiffs are not under any disciplinary measures for example, committees of enquiry, major and minor punishments of any form. How can one be said to be an employer of another person whose days and hours of work he has no control of? "

(45) Further, the Plaintiffs who claim to be commencing the action on behalf of all the loaders had one of the very people they commenced the action on his behalf testify against them in favour of the Defendant. In his witness statement dated 13th March, 2017, DW1, Kojo Nimako -a gang leader testified *inter alia* that :

> ***2. I am a member of a number of groups we call gangs who work at Takoradi Flour Mill Ltd as loaders. We are not employees of the defendant company since we do not clock in to work as all the other junior staff do. This is because it is the leaders of our gangs who employ us and we, individually can choose what days we want to work.***
>
> ***3. Actually we even allow our children or other persons to lift the flour on our behalf when we cannot come to work on some occasions.***

(46) This testimony stood unchallenged and same operates as an admission against the Plaintiffs and goes to affirm, that the Plaintiffs are not employees of the Defendant.

(47) The Learned Justices of the Court of Appeal were swayed by Exhibits "E" and "F" in their conclusion that, the Defendant acknowledged the Plaintiffs as its workers, albeit casual workers. Exhibit E was a response letter from the Defendant's Company regarding payment of Union dues. Defendant's operations manager stated in the letter as follows :

> ***"We write to acknowledge receipt of your two letters dated 12th July, 2004 on the above Loaders.***

The Loaders in question provide casual loading services to the Takoradi Flour Mill Limited for which they are paid a price rate (currently 230 a bag) on monthly basis; according to their monthly output.

If they deemed it expedient to form a group and join your Union when it is incumbent upon that orgnisation who registered them to appoint their officers and check your Union dues and levies from their income and pay them over to you.

We are in the meantime inviting the officers involved for discussions on the matter and trust that they will make suitable arrangements to meet your demands (our emphasis)

(48) With all due respect to the Learned Justices of the Court of Appeal, how this could lead to the conclusion that, the Plaintiffs are workers of the Defendant Company is difficult to comprehend. It appears that, the court was persuaded by the expression **"casual loading services"** in the letter to conclude, that the Defendant did acknowledge Plaintiffs as their employees. A holistic reading of the latter will show that, the Defendant was rather, distancing itself from any affairs regarding whether the Plaintiffs would want to join a union and rather redirected the ICU to the **"organisation which registered them"**. That finding therefore, by the Court of Appeal that, Defendant acknowledged the Plaintiffs as workers is with utmost respect to the Learned Justices erroneous as same fly in the face of the evidence.

(49) Additionally, Exhibit "F" cannot also be construed as an acknowledgment or admission, that the Plaintiffs are workers of defendant. The exhibit only underscores the law that, incomes earned by the Plaintiffs were subject to tax. The Exhibit is a letter dated 30th August 1995 and addressed to the Leaders, Flour loading Gang. The material part of Exhibit F reads :

"***PAYMENT OF INCOME TAX***

Management wishes to inform you that from now onwards all casual employees and labourers who receive their income or wages through the company will pay Income Tax in accordance with the tax laws of the country.

Management is by a copy of this letter instructing the Factory Accountant to start deducting income taxes from all earnings of short term workers and pay them to Internal Revenue Service as the Law directs…"

(50) Which of the descriptions emphasised in Exhibit "F" ***"casual employees and labourers"*** are the Plaintiffs claiming to be an acknowledgment of their status as being employees of the Defendant Company? It is our considered opinion that, the terminologies aside, a court of law faced with an issue of this nature, is not to rest the determination solely on how one of the parties has purportedly described the other, but must consider the entirety of the activity engaged in the parties; the conduct of the parties and most importantly ascertain whether the work person is integrated in the business of the employer or the employer exercises control over the work being done.

(51) Where a person is not an employee of an employer principally because of the absence of all the necessary factors making that person employee, yet, the employer refers the person as an employee or casual as the case may be, that alone is insufficient to making one employee. Descriptions without more do not render one an employee of another. We therefore find and hold that, the failure by the Court of Appeal to assess the whole circumstances of the business of the Defendant vis-à-vis the activities of the Plaintiffs misdirected them in relying on Exhibit "F" to conclude that, the Plaintiffs were employees of the Defendant. We reverse the said finding as being erroneous.

(52) Having considered the appeal on the crucial issue of whether or not the Plaintiffs are in the first place, workers of the Defendant Company, for which we have made the finding that they are not, the tags of casual, or permanent employees are inconsequential and we do not find it necessary to revisit the issue. We are aware that, the Supreme Court has had the occasion of making such distinction in the case of **BENJAMIN ARYEE & 691 ORS. VRS COCOA MARKETING COMPANY, CIVIL APPEAL NO.J4/11/2017 DATED 29TH NOVEMBER, 2017.** However, in that case, there was no issue at all on whether the Plaintiffs therein were workers or employees of the Defendant Company. The principal issue which the Supreme Court determined in that case was whether being workers, the Plaintiffs were either casual or permanent workers of that Defendant Company. In the instant case, as we have found from the evidence on record, the Plaintiffs have never been employees or workers of the Defendant Company, however described and therefore cannot have the benefit of a determination of whether they were casual or permanent workers for *ex nihilo nihili fit.*

(53) **CONCLUSION**

From the foregoing, we hold that per the evidence adduced at the trial court, the Plaintiffs are not workers or employees of the Defendant Company. At all times, they acted as independent contractors. The Defendant Company cannot, therefore, be liable to them on the benefits associated with it's workers or employees. On this ground alone, the appeal wholly succeeds and it is hereby allowed. The other grounds of appeal are moot and merely academic.

(54) In the result, the judgment of the Court of Appeal which held that the 1st to 10th Plaintiffs having worked with the Defendant Company for a period between nine (9) to twenty five (25) years have acquired the status of permanent workers of the Defendant Company, pursuant to Section 75 (1) of the Labour Act 2003 (Act 659)

is set aside. The judgment of the Trial High Court is hereby restored.

I.O. TANKO AMADU

(JUSTICE OF THE SUPREME COURT)

A. LOVELACE-JOHNSON (MS.)

(JUSTICE OF THE SUPREME COURT)

PROF. H. J. A. N. MENSA-BONSU (MRS.)

(JUSTICE OF THE SUPREME COURT)

E. YONNY KULENDI

(JUSTICE OF THE SUPREME COURT)

DISSENTING OPINION

DOTSE JSC:-

This is an appeal by the Defendants/Respondents/Appellants (hereinafter referred to as the Defendants) against the judgment of the Court of Appeal dated 29th January 2020,

which was in favour of the Plaintiffs/Appellants/Respondents (hereinafter referred to as the Plaintiffs).

PREAMBLE

I commence this judgment by referring to the Supreme Court decision of ***Benjamin Aryee & 691 others v Cocoa Marketing Company Ltd [2017-2018] 1 SCGLR 147 (Adaare's Report)*** at holdings 1 and 2 where the Court unanimously held allowing the appeal against the judgment of the Court of Appeal in part as follows:-

1. "the word "and" in the definition of a casual worker in Section 78 of the Labour Act, 2003 (Act 651), is conjunctive and not disjunctive. Consequently, the three characteristics of a casual worker mentioned in the provision are neither disjunctive nor mutually exclusive. All the three characteristics viz: (i) the work engaged in is seasonal or intermittent; (ii) not for a continuous period of more than six months, and (iii) the remuneration is calculated on a daily basis, **should be present, for a person engaged in that type of employment to be a casual worker.** In the instant case, the fact that the remuneration of the Plaintiffs was calculated on daily rates alone, was insufficient to have made them casual workers, as the other characteristics of casual worker as defined in Section 78 of the Labour Act, 2003 (Act 651) were absent from the work that the Plaintiffs were engaged in.
2. **Where a worker is initially employed as a casual worker and his services are used continuously for a period exceeding six (6) months, such a worker is under the Labour Act 2003 (Act 651), a permanent worker and thus entitled to all the incidents and protection provided for permanent workers under**

the Labour Act, 2003 (Act 651). The Court of Appeal was therefore wrong when it found out that the Plaintiffs in the instant case were not permanent workers but casual workers of the defendant and that finding would be set aside.

per curiam: In any event , even if cocoa was a seasonal crop as suggested by the defendant, the Plaintiffs were not harvesting cocoa on the farms, so as to render their services intermittent and seasonal. **The Plaintiffs were carriers, loaders etc of dried cocoa beans transported to the Tema Port for storage into warehouses and unto vessels for export when required.** We take judicial notice of the fact that there are two cocoa seasons in Ghana. This aside **there was undisputed evidence that the plaintiffs worked for a continuous period of more than six months and the work they did was constantly available; as there was always work at the Tema Port, either for them to off load Cocoa bags from trucks and stack them into warehouses or move cocoa bags from the warehouses into containers or vessels for export. They did other jobs like mending tarpaulins, sewing cocoa sacks and cleaning." Emphasis**

With the above statement from the Supreme Court, Coram:-*Adinyira JSC, president, Dotse, Baffoe-Bonnie, Gbadegbe and Akoto-Bamfo JJSC's* as a guide, let me posit the facts of the instant appeal with those in the ***Benjamin Aryee & Others v Cocoa Marketing Board Limited*** case supra.

FACTS OF THE APPEAL

According to the Plaintiffs were engaged by the Defendants to do the loading and offloading of the goods of the Defendants.

It was the Defendants who solely and without reference to the Plaintiffs fashioned out the mode by which the Plaintiffs were doing the loading and offloading. This was done by putting the loaders into various gangs with a gang leader for each group. Plaintiffs

state that they have worked with the Defendants for between 10 years to over 30 years and that the Defendants were responsible for the payment of money per bag of flour to the loaders, providing medical treatment, food and also transportation of the loaders to and from work. The Defendants also provided coffin for any of them who passed on. It is the case of the Plaintiffs that because they were not satisfied with the mode of engagement with the Defendants, they lodged a complaint at the Regional Labour Office and unfortunately for them the Regional Labour Officer without conforming to the Labour Act issued a Situational Report which was to the effect that there was no employment relationship or contractual relationship between the Defendant Company and the Plaintiffs. The said Report also stated that Defendant Company was not obliged to pay the SSNIT contribution of the Plaintiffs. Plaintiffs aver that the Situational Report issued by the Regional Labour Officer is not supported by law and there are correspondence between the Defendants and Plaintiffs in which Defendants admit that they are casual employees. It is again the contention of the Plaintiffs that having worked with the Defendant Company for a continuous period of 10 to 30 years, they cannot be said to be casual employees or labourers of the Defendant Company. Plaintiffs state that upon receiving the Situational Report, the Defendant Company then decided to outsource the loading and offloading of its goods to the Plaintiffs and the loaders and prepared a Memorandum of Understanding (MOU) to be executed by the Plaintiffs and the loaders. When the Plaintiffs examined the MOU, they noticed that there was nothing in respect of redundancy payment or compensation benefits to them so they submitted copies of the MOU to their lawyer who wrote to the Defendants regarding their concerns but the Defendants failed to make any positive response. The plaintiffs upon these facts issued a writ in the High Court, Sekondi for themselves and on behalf of all the loaders of the Defendant Company seeking the following reliefs;

a. an order that the Plaintiffs and the loaders of Takoradi Flour Mills Co. Ltd are permanent employees of the Defendants and not casual employees or independent contractors of the Defendants.
b. An order directing the Defendants to pay the SSNIT contributions of the Plaintiffs and the loaders of Takoradi Flour Mills Co. Ltd from the time the Plaintiffs and the loaders were engaged by the Defendants.
c. An order that the "Situational Report on loaders of Takoradi Flour Mills Company" dated 16th February, 2012 and written by the Regional Labour Officer is void and of no legal effect and same ought to be set aside.
d. An order that compensation / redundancy benefits must be paid to the Plaintiffs and the loaders before the Defendant could outsource the loading and offloading of the Defendants goods to the Plaintiffs and loaders.

Upon service of the Writ of Summons and Statement of Claim on the Defendants, they entered appearance through their lawyers and filed further and better particulars requesting for a full list of all the Plaintiffs since the Writ states that the Plaintiffs were suing for themselves and the other loaders. In answer to the further and better particulars filed by the Defendants, the Plaintiffs responded by stating that if they are successful, then every loader of Defendants will benefit from the judgment.

The Defendants then proceeded to file their Defence and raised an issue to the title of the suit. The Defendants contended that the Plaintiffs are not workers of the Company and this matter has been arbitrated upon by the Regional Labour Officer and a valid Situational Report has been issued in that respect. The Defendants case is that the Plaintiffs themselves appoint their own gangs and each gang has a leader and it is the Plaintiffs who choose the number of persons for each gang. Defendants therefore contended that there is no employment relationship between the Defendant Company

and the individual gang members. The Defendants further asseverated that the whole action is an abuse of the process of the court and same must be dismissed.

HIGH COURT DECISION

After the trial of the matter, the trial judge gave judgment for the Defendants by holding that the Plaintiffs are not employees of the Defendant Company and went further ahead to dismiss the action by non-suiting the Plaintiffs. The Plaintiffs then appealed to the Court of Appeal whereby the appeal was upheld in part in their favour.

APPEAL BY DEFENDANTS TO SUPREME COURT AGAINST COURT OF APPEAL DECISION

The Court of Appeal it must be noted allowed in part the appeal lodged by the Plaintiffs. It is against this Court of Appeal decision that the defendants have appealed to this court with the following as their grounds of appeal:-

a. The Court of Appeal erred in holding that the Plaintiffs were to be considered as permanent workers of the Defendant Company and failed to correctly draw the distinction between contract for service and contract of service.
b. The Court of Appeal erred in holding that all the 10 Plaintiffs had sanctioned the institution of the action at the High Court.
c. The judgment is against the weight of evidence led at the trial court.
d. The costs awarded were excessive in view of the fact that the appeal was dismissed in part.
e. Additional grounds of appeal may be filed upon receipt of the full record of appeal.

It must be noted that no additional ground(s) of appeal was filed. Also ground D of the grounds of appeal was not argued in the written submissions, this is deemed to have been abandoned and same is accordingly struck out and will not be considered.

ARGUMENTS BY LEARNED COUNSEL FOR THE DEFENDANTS

Learned Counsel for Defendants, Ekow Kum Amua- Sekyi argued grounds A and C together. Under this submission, learned counsel argued that the Plaintiffs and the loaders were never employed by the Defendants. They were not engaged by the Defendants and as such cannot be referred to as employees of the Defendants. It is their case that the Court of Appeal wrongly relied on letters written by officers of the Defendants to come to the conclusion that the Plaintiffs are employees of the Defendants when there is nothing in these letters to show that the Plaintiffs are employees of the Defendants. These loaders are not known individually to the Defendants for they are employed by their gang leaders and paid through the same gang leaders. Learned Counsel for the Defendants further submitted that the mere fact that one does some work for a company or organization for which you are paid regularly does not automatically make you a permanent employee of the company. Lawyers and Auditors were cited as an example of persons who work for companies for some number of years and are paid based on the work they do with taxes deducted from such incomes but that does not turn them into permanent employees. Relying on the case of ***Alex Aboagye/Moses Essien & ors Vrs Attorney-General/Official Liquidator (2016) G.M.J 149***, it was submitted that the test for ascertaining whether a person is a permanent employee or an independent contractor is to show that the terms of the contract is embodied in a letter of appointment. From this case, it is clear that the Plaintiffs do not have any letter of appointment, they come to work as and when they like and they lifted flour they could, and got paid as per the number of bags lifted. They can therefore not be described as employees of the Defendant Company. It must be noted that the Court of Appeal also erred when it relied on Section 75(1) of Act 651. Section 75(1) of Act 651 talks about a temporary worker who is employed, however the Plaintiffs were never employed by the Defendant Company and cannot fall into this category.

It is trite learning that an appeal is by way of re-hearing and this principle of law has been held in a long line of cases. See for example ***Achoro v Akanfela [1996-97] SCGLR 209, Adwubeng v Domfeh [1996-97] SCGLR 661, Obeng v Assemblies of God [2010] SCGLR 300, Gregory v Tandoh IV v Hanson [2010] SCGLR 971***. In sum, where a trial court's findings on material facts in issue are inconsistent with the facts as deduced from the record, then as was stated in ***Gregory v Tandoh & Hanson*** supra, the 1st and 2nd appellate courts can depart because in that case the findings of the trial court would be perverse. And that is what I find in the instant case.

From my review of the records, the crux of this matter is the issue relating to who the Plaintiffs are and that is whether or not the Plaintiffs are permanent employees of the Defendant Company.

After a careful perusal of the record of appeal, I am of the opinion that the Court of Appeal rightly held that the Plaintiffs are employees of the Defendants. There is ample evidence on record to support the fact that the Plaintiffs are not independent contractors as the Defendants claim. Exhibit F is a letter written as far back as 30th August, 1995 to the Leader of the Flour Loading Gang. In the said letter the loaders were referred to as casual employees and labourers. It is also clear from the letter that it was the Defendants who are responsible for the payment of income or wages of the loaders since they receive their income through the Company. From this letter also, it is clear that the loaders are employees of the Defendants. On the contrary, the Defendants insist the Plaintiffs were casual employees. In fact they even chose to call them short term workers. From this piece of evidence, having worked with the Defendants for a continuous period of more than 6 months under these conditions there is no doubt that the Plaintiffs were employees of the Defendants.

Not only that, there are several pieces of evidence on record which the Court of Appeal rightly found to constitute an employment relationship between the parties. In the

analogous case of ***Benjamin Aryee & 691 Ors. vrs Cocoa Marketing Company Ltd. supra*** the Plaintiffs therein were employed by the Defendant Company to work as cocoa carriers, cleaners etc. After working continuously for 4 years the Defendant Company still treated them as casual workers and paid them wages instead of salaries. Subsequently their employment was terminated and they sued for the enforcement of their rights as permanent employees. The Defendant Company therein, in their defence stated that the Plaintiffs are not employees of the Company and that they were engaged by their gang leaders on a daily basis depending on the availability of work.

The court in arriving at its decision rejected the claims of the Defendants therein and held that the Plaintiffs are permanent employees of the Defendants. The Court interpreted the meaning of casual workers as defined in Section 78 of the Labour Act 2003, (Act 651) to mean a worker who is engaged on a work which is seasonal or intermittent and works for a continuous period of more than six (6) months is entitled to the protection and incidents provided for permanent employees under the Labour Act, (2013) Act 651.

Similarly in this case, the Court of Appeal was right in overturning the decision of the trial Court that the Plaintiffs were not employees of the Defendants as there is ample evidence on record to show that the Plaintiffs were employees of the Defendants. It is clear from the evidence on record that the Plaintiffs were not engaged on a seasonal basis, they worked for a continuous period of more than six (6) months and their remuneration was calculated on a monthly basis. They are therefore not casual workers of the Defendants.

Interestingly the Defendants now call the Plaintiffs and the loaders independent contractors. If Defendants claim Plaintiffs are independent contractors then the Plaintiffs should have been paid after each work done but that is not the case here. The position as

deduced from the record of appeal is that their salaries are computed at the end of the month and income tax deducted before they are paid, meaning the Defendants expect them to come for the whole month before they can receive their salary and this has been the situation spanning between 10 to 30 years. Not only that, the Plaintiffs also enjoy free breakfast and lunch, transportation to and from work and the Defendants is also responsible for their medical treatment just like the other permanent employees. Besides the Defendants Company failed to prove that the Plaintiffs are independent contractors of the Defendants.

The Supreme Court on page 158 of the report in the ***Benjamin Aryee v Cocoa Marketing Company Limited*** case supra explained the rationale of its decision thus:-

> "We are satisfied by the evidence on record, that the work the Plaintiffs did, was not intermittent, but continuous. The fact that the remuneration of the plaintiff was calculated on daily rates alone, was insufficient to make them casual workers, as the other aspects of casual work as defined in Section 78 of the Labour Act, 2003 (Act 651) were absent from the work that the Plaintiffs were engaged in. Upon evaluation of the record of proceedings we find that the Plaintiffs were engaged continuously for a period exceeding six (6) months by the defendants. Accordingly, upon a proper and purposeful interpretation of Section 78 of the Labour Act, (Act 651), **we hold that the Plaintiffs were in law, not casual workers, but permanent workers of the defendant and as such, the plaintiffs were entitled to all the protection provided by the labour laws for permanent workers. To hold otherwise, would lead to injustice and also defeat the protection of workers from exploitation by employees, as provided under various constitutional and statutory provisions and also international conventions. Further, such a construction will offend the provisions of Section 10 (4) of the Interpretation Act, 2009 (Act 792) which mandatorily enjoins the**

court to construe or interprete a provision of the 1992 Constitution or any other law in a manner:

"Aids to interpretation or construction"

10(4) without prejudice to any provision of this section, a court shall construe or interprete 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 freedom;**
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" emphasis**

After the above statement of facts and law, the Supreme Court unanimously concluded this matter per Adinyira as follows:-

"We therefore, hold that there is sufficient evidence on record to support the findings of the trial Judge that the Plaintiffs were not casual workers, but permanent employees of the defendant in terms of the Labour Act, 2003 (Act 651) and we will not disturb that finding but rather set aside the decision of the Court of Appeal on that issue."

PECULIAR FACTS OF THIS CASE SIMILAR TO THE DECISION IN THE BENJAMIN ARYEE CASE

The Plaintiffs were carriers or loaders of flour into trucks and into the warehouses of the Defendants. They continuously worked for the Defendants for periods in excess of six months. What must be noted in particular is that the work they did was constantly

available. Unlike the situation in the Aryee and others v Cocoa Marketing Board Ltd. case supra where it was ingenuously argued that the loading and off loading of bags of cocoa was seasonal, in the instant case, the loading and unloading of bags of flour was an all year event. Once the Defendant company was in production, there was work for the plaintiffs to do all year round.

In this respect, the learned Justices of the Court of Appeal could not have stated the matter better when they held in their judgment as follows:-

> *"We take judicial notice of the fact that some companies/businesses exploit labour in this country by resorting to employing them as casual/temporary workers for six months or less, terminating them only to turn around and re-engage them for the same duties and for the same limited period. It is to cure such mischief of abusing the rights of labour while exploiting same that Section 75 of the Labour Act was enacted. Sadly this case demonstrates that this canker is yet to be uprooted from the labour landscape in Ghana. This court deprecates such practices and urges all who require the services of labour to desist from such inhumane exploitation of labour in aid of the shoring up of their profit margins"*

I also deprecate and dismiss learned Counsel for the defendants arguments that because the Plaintiffs do not have a letter of appointment to show that they were employed, meant they are not employees of the Defendants. Clearly, this argument is misconceived because Section 74 of Act 651 provides that a contract of employment of a casual worker need not be in writing.

Based on the above rendition, I fully endorse the erudite decisions of the justices of the Court of Appeal and accordingly hold that the Court of Appeal committed no error of law when they held that Plaintiffs were permanent employees of the Defendant Company.

CONSIDERATION OF GROUND B OF APPEAL

The next ground for determination is ground B of appeal which is that "the Court of Appeal erred in holding that all the ten (10) Plaintiffs had sanctioned the institution of the action at the High Court". It is the contention of learned counsel for the Defendants that there is an MOU which was tendered by one of the loaders during the trial to indicate that the loaders had not authorized the institution of the action and that some persons named as Plaintiffs specifically the 7th, 9th and 10th Plaintiffs in the suit had signed against taking a court action. Counsel further states that because it was admitted that the 5th Plaintiff was involved in a theft case and had never attended court, he could not have mounted the action.

The Plaintiffs instituted the action through a lawyer. It was the persons who instructed the lawyer to issue the writ who have their names appearing as Plaintiffs on the Writ of Summons and Statement of Claim. Lawyers are professionals who act on behalf of those who engaged them and have a duty to the court and are bound by the rules and laws governing them. Unless otherwise proven, a lawyer cannot institute an action in the name of a person who has not instructed him/her to do so. The fact that the 5th Defendant was never in court does not prove that he never authorized the institution of this action. Persons who bring an action in court may attend court and when they institute the action through a lawyer or engages the services of a lawyer, then the lawyer has a duty to attend court on behalf of the person(s). From the record, it can be seen that counsel for the Plaintiffs attended court as the legal representative of his clients which includes the 5th Defendant. There is no contrary evidence on record to prove that the 5th Defendant did not authorize the institution of this suit and his absence from court cannot be said to be the reason for the said erroneous unfounded and baseless allegation or contention.

As regards the 7th, 9th and 10th Defendants, those Defendants were in court. They attended court during the trial and even during the appeal at the Court of Appeal. The Court of

Appeal proceedings at page 305 of the ROA shows clearly that they were in court. If they were in court then it means despite agreeing initially in 2012 not to go to court, they were now in support of the court action. I do not think the MOU can completely bar the said Defendants from instituting an action in court for the enforcement of their rights. Indeed the jurisdiction of the courts cannot be completely ousted. Everyone has a right to bring an action in court for the enforcement of his/her rights. Even though the said Defendants may have signed the MOU, there could have been a change of mind prompting them to join the instant suit. Exhibit 5 is a letter written by some loaders of the Takoradi Flour Mills to the Director, Labour Commission. The contents of Exhibit 5 found at page 280 of the ROA is that the said loaders have disassociated themselves from those who have decided not to sign the MOU and that they are even prepared to meet management of Takoradi Flour Mills for the signing of the MOU and further negotiation of fee charged per service rendered. The names of those who want to go to court and those who are against court action was attached to the letter. The question here is can this letter prevent a person who want to go to court from proceeding to court? Absolutely Not. In fact the letter stated that the said loaders were prepared to meet management for the signing of the MOU and for further negotiations. Does it mean that if the negotiation fails to go as planned, the parties therein cannot mount a court action simply because they signed a letter indicating that they are against a court action at that time which was the year 2012? I do not think this argument should stand.

What should also be noted is that, even when a case is in court, the parties may with the approval of the court withdraw the matter for settlement or arbitration. Indeed that is why the courts have Alternative Dispute Resolution (ADR) mechanisms embodied in their scheme of work. The Mou's which learned Counsel for the Defendants is making reference to is nothing but a sham and a calculated attempt by the Defendants to not only

intimidate the plaintiffs, but also harass them. This is consistent sometimes with the bullying tactics of some multi nationals and or even domestic private employers.

It is however my view that, the time has come when the courts must rise up in defence of workers who stand for their rights in legitimate contests in the law Courts.

EPILOGUE

As I have already alluded to, my mind is firmly made up that, the defendants in this case are simply seeking to show the Plaintiffs where power lies. A contract of employment is not one of servitude. From the totality of the facts of this case, it is apparent that the Plaintiffs had been given a raw deal by the Regional Labour officer with his strange "Situational Report" which was unfortunately upheld by the learned trial Judge.

Fortunately, these specie of conduct which amount to oppression, intimidation and harassment had been outlawed by the decision of this court in the ***Aryee v Cocoa Marketing Company Ltd. case*** supra. The Court of Appeal was therefore right in applying the principle of law stated in the above case supra.

Having evaluated the contesting positions, I am of the view that the decision of the Court of Appeal meets the justice of the case. I would have ordered the re-instatement of the plaintiffs, but since a lot of water has passed under the bridge since the commencement of the Suit on 10th March 2014, to order their re-instatement would be ineffective and impracticable.

I will under the circumstances direct that, the plaintiffs who have been in the employment of the Defendants for more than six months after the Labour Act came into force in 2003 must be deemed as permanent workers.

Furthermore their dismissals should therefore be deemed as unlawful, illegal, null and void for purposes of computing their benefits.

Thirdly, the said plaintiffs must be paid all their salaries, benefits and other allowances due permanent workers at the time of their dismissals.

V. J. M. DOTSE

(JUSTICE OF THE SUPREME COURT)

COUNSEL

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NANA KONDUA ESQ. FOR THE PLAINTIFFS/APPELLANTS/RESPONDENTS.