IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2023

CORAM: TORKORNOO (MRS.) CJ (PRESIDING)

PWAMANG JSC

OWUSU (MS.) JSC

AMADU JSC

ACKAH-YENSU (MS.) JSC

CIVIL APPEAL

NO. J4/69/2022

5TH JULY, 2023

ALPHONSE KLU ….. PLAINTIFF/APPELLANT/APPELLANT

HSE. NO. BE 99/8

HO, NEWTOWN

VS

YOUTH EMPLOYMENT AGENCY ….. DEFENDANT/RESPONDENT/RESPONDENT

GROUND FLOOR

LIBERATION TOWER, CASTLE RD., ACCRA

JUDGMENT

ACKAH-YENSU (MS.) JSC:-

INTRODUCTION

This is an appeal against the Judgment of the Court of Appeal dated 23rd July, 2021. The Appellant (Plaintiff/Appellant/Appellant) commenced an action at the High Court, HO on 12th October 2017 against the Youth Employment Agency (Defendant/Respondent/Respondent) for the following reliefs:

> *"i. An order directed at the Defendant to pay the Plaintiff all his outstanding salary arrears from January 2013 to date.*
>
> *ii. An order of the Honourable Court directed at the Defendant to migrate the name of the Plaintiff onto the service pay roll as required by law."*

The Appellant's claim was dismissed at the trial court. He also lost an appeal at the Court of Appeal.

BACKGROUND AND FACTS

The Youth Employment Agency was formed in 2005 to manage the National Youth Employment Programme (NYEP) that was meant to address the problem of unemployment among the youth, perceived to be a potential threat to National Security. The Agency operated directly under the Ministry of Youth and Sports, but a decision was taken in 2012 to make it an autonomous agency as a Public Service Organisation. However, the Agency still had no statutory foundation until February 2015, when the Youth Employment Agency Act 2015, (Act 887) was enacted. After that, a Legislative Instrument, Youth Employment Agency Regulations 2016, (L.I. 2231) was passed and gazetted to complete the legal establishment of the Agency as a corporate entity.

In the course of the transition from being an agency under the Ministry to becoming an autonomous corporation, various personnel were taken along and when the Act establishing the Agency as a distinct legal entity was passed, the management decided to formally engage the old workers on permanent basis through a process whereby they would be migrated on to the pay roll of the new entity as permanent staff. The Appellant herein was one of the old workers with the Agency in its earlier formative years and naturally expected that he would be migrated to the new organization as a permanent worker, but this did not happen. So, in October 2017 he took out a writ in the High Court Ho, against the Defendant/Respondent/Respondent (the Respondent) praying for the reliefs aforementioned.

At the trial High Court, the Appellant claimed that he was employed by the Respondent in 2010 and stationed at Hohoe as the Deputy Employment Officer. That, from January 2013 up to the date of the final judgment at the trial court, he had not been paid his salary despite persistent demands. The Appellant alleged that the Respondent refused to migrate him along with other staff onto the Public Service payroll because he had pointed out some corrupt practices in the Agency, so he was being victimized. According to him, the corrupt activity involved a lodgment in Respondent's account at the Ghana Commercial Bank, Hohoe Branch, of an amount of GH¢2,800,000 regarding which Appellant raised queries as to the propriety, legitimacy, and legality of same. He also claimed that he faced intimidation and harassment by the Respondent due to what he perceived as criminal motive or intent surrounding the lodgment of the said money and later events surrounding the demand and withdrawal of the same money.

According to the Appellant, despite the intimidation and harassment by the Respondent, he continued to work until June 2016 when he stopped going to the office due to financial challenges in paying his transport fare to the office. As a result of these frustrations from

Respondent, and also that all efforts to get Respondent to migrate Appellant into the Public Service proved futile, Appellant filed the suit at the High Court.

In its defense, the Respondent stated that it appointed the Appellant on a temporary basis in 2010, and the contract was renewed for a further two year period which ended in 2013. In the renewed contract, it was expressly stated that Appellant's temporary employment would terminate on 3rd October 2013.

Respondent contended further that before the expiration of Appellant's contract, a window of opportunity was opened for all old temporal staff, which included the Appellant, to regularize their employment to a permanent status. The regularization exercise involved a worker satisfying the Public Services Commission that he had the requisite qualification for the position he applied for. Applicants had to produce educational certificates from approved accredited institutions and attend an interview to be assessed by a panel of interviewers.

In the case of the Appellant, the Respondent stated that the Appellant applied for the position of Programme Manager but he could not produce the required certificates from the approved accredited educational institutions so he could not even attend the interview and was thus failed by the panel. He therefore could not be employed as a permanent worker. At the close of the migration process a Migration Report (Exhibit "3") was prepared and it captured the Appellant as having failed to present his degree certificate at the time of the interviews, which was a mandatory requirement. As the Appellant's contract had terminated automatically on 3rd October 2013 in accordance with the terms of his latest letter of employment, he ceased to be a staff of the Respondent.

FINDINGS OF THE HIGH COURT AND THE COURT OF APPEAL

At the close of the trial, the High Court held that it found no legitimacy in the Appellant's action, and that the Appellant's case was wholly devoid of any merits. The trial court found that the Appellant was a temporary or contract worker with the Respondent based on the employment status of Appellant per the Respondent's Exhibits "3", "4" and "5". Exhibit "3" is the Migration Interview Report submitted by the Public Service. Exhibit "4" is a letter dated 3rd November 2011 from the Respondent in response to Appellant's Petition, which reads as follows:

> *"RE: SALARY PAYMENT*
>
> *With reference to your letter on the above subject,*
>
> 1. *The migration report indicated that you needed to show your degree certificate to be interviewed.*
> 2. *Your salary ceased due to the expiration of staff contract letters which preceded the staff migration exercise.*
> 3. *Per the new Scheme of Service all new entry should be degree holders or equivalent certificates.*
> 4. *In view of the (3) above, you may re-apply through the Chief Executive Officer for consideration by attaching copies of your certificates and Curriculum Vitae (C.V.) by 31st March 2016."*

Exhibit "5" is a letter to Appellant stating the reasons for the non-payment of his salary.

The Appellant lodged an appeal in the Court of Appeal praying for a reversal of the judgment of the High Court, but the appeal was dismissed in its entirety. The Court of Appeal found that the Appellant did not lead sufficient evidence to establish that he was still in the

employment of the Respondent between the period 2013 and June 2016, and consequently, his claim for salary arrears failed. Also, he did not lead any evidence in support of his claim that he was a victim of workplace machinations because he refused to bow to attempts to be corrupted.

THIS APPEAL

It is against this decision of the Court of Appeal that the Appellant lodged the instant appeal on the following grounds:

" a. *That the judgment is against the weight of evidence.*

b. *The Appeal Court failed to appreciate arrears of salaries accrued within the contract period and those during the migration process after the contract period.*

c. *The appeal court erred therefore, in holding that, it is therefore not correct that, the appellant was entitled to any salary arrears which he had worked for.*

d. *The Appeal Court erred in holding that, it did not find that, the judgment was against the weight of evidence and same is in accordance with the law.*

e. *The Appeal Court erred in holding that, in its view, the appellant failed to gain its attention on all the grounds of appeal.*

f. *The Appeal Court erred in holding that the appellant was afforded the opportunity to attend the interview and produce his academic qualifications for the position he apply for and failed to leave up to expectation.*

g. *The Appeal Court failed to adequately address the issue of the migration process unto the payroll being a process and not an event.*

h. *The Appeal Court failed to adequately consider all the exhibits of the plaintiff/appellant/appellant.*

i. *The Appeal Court generally failed to adequately consider all the grounds of appeal filed by the plaintiff/appellant/appellant and dismissing his appeal entirely.*

j. *That further grounds may be filed upon receipt of the record of proceedings".*

The relief being sought by the Appellant is that *"the judgment of the lower court be set aside or reversed, and judgment given or entered in favour of the plaintiff/appellant"*.

As can be seen from the Grounds of Appeal reproduced above, the Appellant has mounted this appeal on numerous grounds. We note with utmost concern the defective formulation of some of the grounds. Rules 6(4) and (5) of the Supreme Court Rules, 1996 (C.I. 16) provide as follows:

> *"(4) The grounds of appeal, shall set out concisely and under distinct heads the grounds on which the appellant intends to rely at the hearing of the appeal, without an argument or a narrative and shall be numbered seriatim and where a ground of appeal is one of law, the appellant shall indicate the stage of the proceedings at which it was first raised.*
>
> *(5) A ground of appeal which is vague or general in terms or does not disclose a reasonable ground of appeal is not permitted except the general ground that the judgment is against the weight of evidence and a ground of appeal or a part of it which is not permitted under this rule, may be struck out by the Court on its own motion or on application by the respondent".*

Grounds (b) to (i), as formulated, appear to be narrative and argumentative. In the context of the rules regulating appeals in this Court, and the consequences of contravening the said provisions, the said grounds ought to be rendered inadmissible and unarguable as they are incompetent and liable to be struck out.

In the case of **International Rom Ltd. v Vodafone Ghana Ltd., Civil Appeal No. J4/2/2016 dated 6/6/2016**, this Court while striking out all the grounds of appeal settled by the appellant because they were narrative and argumentative in formulation, observed that;

> *"the magnanimity exhibited by this court over those obvious lapses and disrespect for the rules of engagement is being taken as a sign of either condoning or weakness hence the persistence of the impunity. It is time to apply the rule strictly".*

In **Multichoice Ghana Ltd. v Internal Revenue Service [2011] 2 SCGLR 783**, this Court per Wood C.J. reiterated the position of the law at page 789 of the report as follows:

> *"Under the Supreme Court Rules, 1996 (C.I. 16), Rule (4), grounds of appeal are expected to be set out concisely and without argument or narrative. More importantly, by Rule 6(5) aside from the well-known oft-used general ground of appeal – the judgment is against the weight of evidence – a ground of appeal which is vague or general is not permitted".*

In our view, Grounds (b) to (i) are in general, argumentative, and narrative. They are therefore struck out as being non-compliant with Rule 6, sub-rules (4) and (5) of C.I. 16. However, in order not to be seen to be yielding overly to legal technicalities, and not to visit the sins of Counsel on his client, we shall consider the appeal on the omnibus ground; **"the judgment is against the weight of evidence",** which actually constitutes the core complaint of the Appellant from his arguments in his statement of case. By pleading this omnibus ground, the Appellant has put the entire case before this Court for re-hearing.

As aforesaid, the Court of Appeal affirmed the decision of the trial High Court. The settled position of law remains that an appellate court is loath to disturb the findings of fact by the trial court. Where a trial court unquestionably evaluates the evidence and appraises itself of the facts in a case before rendering its decision, an appellate court will not substitute its own views for the views of the trial court unless, as settled in a number of decisions of this Court,

those findings are either perverse, palpably unreasonable, manifestly inconsistent with the drift of the evidence, or legally erroneous. This is premised on the reasoning that findings on primary facts are matters within the province of the trial court. There is thus a presumption that the findings of fact of a trial court or tribunal, are right or correct and so remain until dislodged by the party who challenges such findings.

When it comes to concurrent findings by the two lower courts as we have in this case, the principles of law applicable are well settled in cases like **Ntiri & Another v Essien & Another [2001-2002] SCGLR 451** where Bamford-Addo said at page 459 that:

> *"In this case, there has been concurrent finding of fact by two lower courts and in such circumstances an appellate court would not interfere with concurrent findings of fact unless it can be shown that there has been a patent error on the facts which had resulted in miscarriage of justice. As to when an appellate court would overturn the concurrent findings of fact made by the lower courts: see the following cases which sets out the conditions under which the Supreme Court will interfere with concurrent findings of facts made by the lower courts. The case of* ***Obrasiwa v Out [1996-97] SCGLR 618,*** *where the Supreme Court held (as stated in the headnote), in dismissing the appeal from the decision of the National House of Chiefs, that: "where the lower court, appellate court had concurred in the findings of the trial court, especially in a dispute, (the subject matter of which was peculiarly within the bosom of the lower courts or tribunals), a second appellant court would not interfere with the concurrent findings of the lower courts unless it was established with absolute clearness that some blunder or error which had resulted in a miscarriage of justice was apparent on the way the lower tribunes had dealt with the facts. The errors would include: an error on the face of crucial documentary evidence; and a misapplication of a principle of evidence and; finally, a finding based on an erroneous proposition of law such that if that proposition was corrected the finding would disappear. However, it is not enough that the blunder or error per se was established; it must*

further be established that the said error had led to a miscarriage of justice. ***Achoro v Akanfela [1996-97] SCGLR 209*** *…"*

In **Koglex Ltd. (No. 2) v Field [2000] SCGLR,** this Court further articulated the principle governing appeals against concurrent findings of fact by lower courts.

Understandably, the presumption of the correctness of a finding of fact by a trial court is rebuttable. As aforesaid, an appellate court must nonetheless, be wary in interfering with the findings of fact made by the trial court which are neither erroneous nor perverse. The onus lies on an appellant to show that there are compelling reasons to warrant interference by this Court with concurrent findings of fact by two lower courts.

In the instant case, one of the fundamental issues the trial court had to resolve was the status of the Appellant, whether he was a temporary worker or not. The basic principle of law as provided in sections 11 and 17 of the Evidence Act 1975 (NRCD 323) is that whoever asserts assumes the duty to provide proof of the claim by leading cogent evidence especially where an assertion is denied by the adversary. The standard test required of an appellant therefore is the degree and extent of certainly or probability of belief the appellant needs to create in the mind of the court, in order to tilt the scale in the appellant's favour.

From the pleadings and witness statement of the Appellant herein, it was abundantly clear that the Appellant was a temporary worker of the Respondent. At paragraph 12 of the Statement of claim, the Appellant averred that *"... all efforts to have his name migrated to public service scheme proved futile …".* This was a clear admission by the Appellant of his status as a temporary worker. In addition, Appellant's Exhibit "C" series, which were petitions written by the Appellant, were premised on the Appellant's status that he was a temporary worker

petitioning to be made a permanent worker. It was therefore not in doubt that the Appellant was engaged by the Respondent on a temporary contract basis and Appellant remained as such until the cessation of his contract of employment in 2013.

From the record, when the Appellant failed to satisfy the requirements of the Public Services Commission by his inability to present a degree certificate from an approved University, he disqualified himself from being migrated. By his own default, he shut the door on himself. It beats our imagination how the Appellant expects the Court to accept his case when he was not qualified for migration. Per Exhibits "C1" and "C4", the Appellant petitioned the President of the Republic. After the said Petitions, he received two (2) separate letters from the Respondent. The first letter was dated 3 November 2015 (Exhibit "4"), which reminded the Appellant that per the Migration Interview Report (Exhibit "3") submitted to the Public Services commission in October 2012, he was directed to submit his original academic certificate to be interviewed. In the second letter dated 10 March 2016 (Exhibit "5"), which addressed Appellant's demand for payment of the alleged salary arrears, the letter repeated copiously what the Appellant ought to have done and also what to do to be considered for reemployment with the Respondent. There is no evidence on record that the Appellant responded to Exhibit "5", or that he sent the requisite certificates to the Respondent or the Public Services Commission.

Therefore, the trial Court and the Court of Appeal came to the right conclusions on the evidence. In view of the express provisions in the Appellant's letter of employment and his own inability to meet the conditions for his migration as a permanent worker, it was by his unilateral voluntary act that he continued to be going to the office after 3rd October 2013, pretending to be a staff of the Respondent. The Appellant can only blame himself.

In our considered opinion, by the reliance on Exhibits "3", "4", and "5", the trial court rightly held that Appellant's case had no merit. The Appellant was unable to prove that but for his allegations of exposing corrupt practices at the Agency, he would have been migrated on to the Public Service pay roll of the Respondent as a permanent worker. In any event the Appellant failed to prove the allegations that there were corrupt practices taking place at the Respondent Agency.

From the drift of the evidence on record, there being no proof of his appointment by the Respondent between 2013 and June 2016, whatever services he purportedly performed for the Respondent cannot compel the Respondent to pay him any wages. Consequently, the trial court simply applied the requisite standard of preponderance of probabilities in reaching the conclusion it did and the Court of Appeal did not err by confirming the trial court's findings and conclusions.

CONCLUSION

On our evaluation of the evidence as a whole, the judgments of both the trial court and the Court of Appeal cannot be disturbed as the evidence supports the findings made. The judgments of the two lower courts are accordingly affirmed. In the circumstances the appeal fails and same is accordingly dismissed.

But before resting this delivery, we have to place on record our serious reservations about the Legal Aid Commission agreeing to take up this case to represent the Appellant in the Supreme Court. We do not have the full regulations that determine the types of cases that qualify for legal aid in the form of appeals against decisions of superior courts, but we think that where a party has lost his case in the High Court and the Court of Appeal, before public

resources would be deployed to prosecute an appeal on his behalf in the Supreme Court, the Legal Aid Commission ought to assess the reasonable prospects of success of such an appeal.

As explained from the judgment, the undisputed facts of this case did not support the reliefs the Appellant was seeking in court and there were no prospects whatsoever of this appeal succeeding, yet the Legal Aid Commission provided legal representation to this Appellant in this appeal. In our view, that is not prudent use of public resources, and the Board of Directors of the Legal Aid Commission should take steps to avoid this kind of waste of their scarce resources.

B. F. ACKAH-YENSU (MS.)
(JUSTICE OF THE SUPREME COURT)

G. A. E. SACKEY TORKORNOO (MRS.)
(CHIEF JUSTICE)

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

M. OWUSU (MS.)
(JUSTICE OF THE SUPREME COURT)

I. O. TANKO AMADU

(JUSTICE OF THE SUPREME COURT)

COUNSEL

GODWIN KPOBLE ESQ. FOR THE PLAINTIFF/APPELLANT/APPELLANT.

ODEI KROW ESQ. FOR THE DEFENDANT/RESPONDENT/RESPONDENT.