

IN THE CIRCUIT COURT "A", TEMA, HELD ON MONDAY, THE 30TH
DAY OF JANUARY, 2023, BEFORE HER HONOUR AGNES OPOKU-
BARNIEH, CIRCUIT COURT JUDGE

SUIT NO. C11/7/21

GODSON GAKPO ---- PLAINTIFF

VRS.

LUCKY OIL --- DEFENDANT

PLAINTIFF

PRESENT

DEFENDANT COMPANY REPRESENTED BY ALERU LUKEMAN
(MANAGING DIRECTOR).

PRESENT

MAJOR DARTEH, ESQ. FOR THE PLAINTIFF ABSENT

RAYMOND AFAWUBO, ESQ. FOR THE DEFENDANT PRESENT

JUDGMENT

FACTS

The Plaintiff herein, a former employee of the defendant company caused a writ of summons to issue against the defendant praying the court for the following reliefs;

- a. A declaration that the termination of the Plaintiff's appointment by the defendant is wrongful.

- b. General damages for such wrongful termination of appointment.
- c. Costs.

The plaintiff's case is that he was employed by the defendant company in the year 2004. According to the plaintiff, through his efforts, the company has expanded its operations and opened fourteen gas and fuel stations. The plaintiff says that he worked assiduously until 21st February, 2020, when whilst on fourteen days leave, he received a letter from the Managing Director terminating his employment contract. According to the plaintiff, in the letter of termination, the defendant levelled certain allegations against him which he deems unfounded. The plaintiff says that throughout the long period he worked with the company, he was never queried or suspended for any untoward behaviour. The plaintiff says further that he has never appeared before any disciplinary committee to answer charges prior to the termination of his employment. The plaintiff therefore contends that the termination of his appointment is wrongful.

The Defendant entered appearance through its lawyers on 9th October, 2020, and filed a Statement of Defence. The defendant admits that the plaintiff was an employee of the company until the termination of his employment but deny that the termination is wrongful. In specific denial, the defendant states that the growth and expansion of the company is not through the efforts of the plaintiff but rather, through the sound investment drive and growth by the defendant and its Board of Directors. The Defendant avers that Plaintiff was a Senior High School leaver at the time, and through the wife of the Managing Director, he was employed by the company. According to the defendant, the plaintiff was initially employed at the Aflao branch of the company and later transferred to the Tema branch when the Managing

Director moved to Tema. The defendant also sponsored the plaintiff to study marketing to assist the company.

The defendant further states that when the plaintiff was on leave, many wrong doings were discovered and the plaintiff was confronted with them but had never denied them. According to the defendant, the plaintiff was queried several times to desist from those wrongdoings but all fell on deaf ears causing the defendant to suffer financial loss. According to the defendant, the plaintiff appeared before the Managing Director and the General Manager of the defendant company who constituted a Disciplinary Committee to answer charges preferred against him. The defendant states that plaintiff in his capacity as the marketing manager of the defendant connived and assisted employees of the defendant by covering the theft of fuel leading to financial loss. Again, the plaintiff was sent to its Kwabenya branch to investigate deliberate shortages of fuel caused by a driver and supervisor but the plaintiff rather covered the theft by claiming that the shortages were as a result of issues with the underground tank of the defendant until the Managing Director caught them and reported the matter to the Police. The defendant states that the conduct of the plaintiff as the Marketing Manager and supervisor in covering up artificial shortages created by unscrupulous employees was running down the company.

According to the defendant, it gave the plaintiff every opportunity to change but to no avail and the continuous stay of the plaintiff in the employment of the defendant was detrimental to the business operations. The defendant alleges that the subordinates of the plaintiff began to emulate the wrong conducts of the plaintiff who was influencing them to act against the interests

of the defendant. The defendant says that one of its tanker drivers by name Mawuli Asagbavi who is the in-law of the Plaintiff and got the job through the plaintiff created artificial shortages and when the plaintiff was sent to investigate same, the plaintiff ended up conniving with the said employee. The defendant lodged a complaint at the Police Station but the plaintiff divulged this fact to the tanker driver and he absconded.

Additionally, the defendant avers that it provided an official car to the plaintiff during his employment to motivate him and to prevent him from conspiring with others and on two occasions the defendant provided car loans to the plaintiff to make him comfortable but the plaintiff's conducts worked against the interests of the defendant. The defendant avers that the presence of the plaintiff at the defendant's workplace is injurious to the interests of the company hence, the termination. The defendant says that the Plaintiff is not entitled to his reliefs.

At the application for directions stage, the court set down the following issues stated in the application for directions and the additional issues for trial.

LEGAL ISSUES

1. Whether or not plaintiff was given a hearing before the termination of his appointment.
2. Whether or not the plaintiff was an SHS leaver washing cars for the Managing Director's brother.
3. Whether or not the defendant preferred any charge against the Plaintiff before the termination of his appointment.
4. Whether or not Plaintiff was queried several times to desist from wrong doings but all fell on deaf ears.

5. Whether or not Plaintiff connives or assists employees by covering theft of petrol, diesel and gas to the detriment of the defendant.
6. Whether or not the Defendants Managing Director and the General Manager confronted Plaintiff with the artificial shortages of fuel during Disciplinary Committee.
7. Whether or not the plaintiff is entitled to his reliefs.
8. Any other issues raised by the pleadings.

ANALYSIS

It is trite learning that in civil cases, the party who alleges must prove that which he alleges and the standard of proof is on a preponderance of probabilities. See **sections 10, 11 and 12** of the Evidence Act, 1975(NRCD 323). In the case of **Ababio v. Akrasi** [GBR 777 Vol 2, the Court per Aikins JSC held at page 777 thus:

“The general principle of law is that it is the duty of a plaintiff to prove his case i.e. he must prove what he alleges. In other words, it is the party who raises in his pleadings an issue essential to the success of his case who assumes the burden of proving it. The burden only shifts to the defence to lead sufficient evidence to tip the scales in his favour when on a particular issue the plaintiff leads some evidence to prove his claim. If the defendant succeeds in doing this he wins; if not he loses on that particular issue.”

The instant case borders on the termination of a contract of employment, and the issues raised by the parties for determination by the court are aimed at the resolution of the ultimate issue of whether or not the termination of the plaintiff's employment contract with the defendant is wrongful.

Consequently, the court will consolidate the issues set down and discuss them together.

The burden of proof in an action for wrongful termination of employment contract is stated in the erudite decision of the Supreme Court in the case of **Tagoe v. Accra Brewery Ltd.** [2017-2020] 1SCGLR 820, where the Supreme Court held in its holding one that:

“in a claim founded on wrongful termination of employment contract, the plaintiff assumed the initial burden of producing evidence to satisfy the court about his terms of employment and also that the termination of his appointment was contrary to the terms of his employment or existing law. The defendant would then be obliged to produce evidence to justify the termination. Thus, in the instant case despite the respondent company’s plea of assault as justification for termination of the appointment, the burden of proof did not shift on the respondent company before the appellant had made a case.”

The Labour Act, 2003(Act 681) defines a contract of employment under section 175 as *“a contract of service whether express and implied, and if express whether oral or in writing.”* In the case of **Ashun v. Accra Brewery Limited** [2000] SCGLR 81, the Supreme Court, per Date-Baah JSC stated that:

“a contract of employment is not necessarily a contract till retirement age. In other words, a contract of employment, though it may be for an indefinite period, does not mean life employment”

The Labour Act which sets out the rights and duties of employers prescribes the circumstances under which a contract of employment between an employer and employee may be terminated. Under **section 15** of the Labour Act, a contract of employment may be terminated under the following circumstances;

- a. By mutual agreement between the employer and the worker;
- b. By the worker on grounds of ill treatment or sexual harassment;
- c. By the employer on the death of the worker before the expiration of the period of employment.
- d. By the employer because of the inability of the worker to carry out his or her work due to sickness or accident, the incompetence of the worker and proven misconduct of the worker.

Additionally, **Section 17** of Act 671, provides that a contract of employment may be terminated at any time by either party giving the other party notice. The law further states the types of contracts of employment and the period of notice required. In the case of a contract of employment of three years or more, the law requires one month's notice or one month's pay in lieu of notice to terminate the contract. In addition, **section 62** of the Act provides for what amounts to fair termination and **section 63** provides for termination which may be deemed as unfair and **section 63(4)** provides that a termination is unfair if the employer fails to prove that the reason for the termination is fair or that the termination was made in accordance with a fair procedure under this Act. In the case of **Nunoo Fio v. Farmers Services Co. Ltd.** [2007-2008]2SCGLR 926@935, Wood JSC (as she then was) stated that:

*"In the more recent decision of **Kobea v. Tema Oil Refinery; Akomea Boateng v. Tema Oil Refinery (Consolidated)** [2003-2004) 2 SCGLR 1033 our unanimous view, on the legal requirements (as stated in holding (1) of the headnote was that:*

"At common law, an employer and his employee are free and equal parties to the contract of employment hence either party has the right to bring to the end with accordance with its terms. Thus, an employer is legally entitled to terminate an employee's contract of employment whenever it wishes and for whatever reason,

provided only that he gives due notice to the employee or pay him wages in lieu of employment" it being plain that the Defendant/Respondent the employer, complied fully with the conditions of service, exhibit "A", by paying all his terminal benefits including a cash payment in lieu of notice, the termination cannot be said to be wrongful".

The plaintiff testified that in the year 2004, he completed Senior High School at Denu, where he lived with his brother in the house of the Junior brother of the managing director of the defendant company. During the period, the defendant company started constructing a gas and wet fuel station at Aflao and he was engaged as a labourer at the construction site. Before the construction was completed, the Managing Director of the defendant took him to Tropical Oil, now Runnel Oil for training as a station Supervisor for about six months. After his training, the construction had not been completed so he went back to assist until the station was completed and officially opened on 21st September, 2005 under the name Unity Oil. He worked at the station from 2005 to 2007.

The plaintiff further testified that in the year 2007, the company started the construction of another station at Michel Camp and he was posted to the site to supervise the construction which was completed and commissioned on 12th February, 2008. Again, in the year 2009, the Managing Director started another construction at Kwabenya and he was again posted to Kwabenya to supervise the construction until it was completed and commissioned on 19th May, 2010. He was made to supervise it in the year 2012 and posted back to Michel Camp as Senior Supervisor and given supervisory role over three stations i.e., Aflao, Michel Camp and Kwabenya. According to him, initially,

the stations were opened under the name Unity Oil and when the company acquired its own license in 2008, it was changed to Lucky Oil. Presently, the company has eight service stations, six gas stations out of which the company built two by itself and purchased four from other companies.

The plaintiff further testified that whilst in the employment of the company, he travelled around the various branches to audit the stations and submitted reports to the Chief Executive Officer. Based on the audit reports, the CEO summoned workers with unexplained shortages and would ask them to pay for the shortages or have their appointments terminated. In the year 2014, he was promoted as marketing manager. On 3rd February, 2020, the Managing Director gave him a letter requesting him to proceed on fourteen (14) days leave and was scheduled to resume work on 24th February, 2020. In support, he tendered in evidence the letter granting him leave, admitted and marked as **Exhibit "A."**

According to the plaintiff, whilst still on leave, he was called on phone to pick a letter from the office. When he went to the office, he was given a letter terminating his employment stating a litany of allegations against him as a basis for the termination of his employment. He tendered in evidence a copy of the letter terminating his employment as **Exhibit "B"**. According to the plaintiff, in his sixteen years of employment with the company, he never appeared before any disciplinary committee to be heard on any charges. The plaintiff further testified that he was not permitted to take the reports submitted to management of his performance. According to him, the letter terminating his appointment amounts to wrongful dismissal.

In support of his case that he never connived with staff to cause financial loss to the company, the plaintiff called one witness. PW1, Emmanuel Asagbavi, testified that he worked with the defendant Company as a Tanker Driver from April 2016 but he is no longer working with the defendant company. The plaintiff is not related to him in anyway. He has never connived with the plaintiff to cause financial loss to the defendant company.

The Managing Director of the defendant company, Alhaji Aleru-Lukuman Akanfe testified on behalf of the defendant company that the plaintiff became an employee of the Company in the year 2004. He testified that the defendant has grown and established other branches as a result of the investment drive and growth by the defendant and its board of directors. The defendant has over one hundred (100) employees who manage and run the defendant branches under the strict supervision of the Managing Director.

According to his testimony, the plaintiff was washing cars for the younger brother of the defendant's managing director at Aflao and after opening the defendant's company at Aflao, plaintiff pleaded with the wife of the managing director for him to gain employment with the defendant company. The plaintiff was initially employed at Aflao branch of the defendant and when the defendant's Managing Director relocated to Tema, he came with the plaintiff. The defendant had to pay school fees for the plaintiff to train in marketing to help the defendant.

The defendant's witness further testified that when the plaintiff was on leave, many wrong doings were discovered and the plaintiff had been confronted with them but had never denied any of them. According to him, the plaintiff

was queried several times to desist from those wrongdoings but all fell on deaf ears leading to financial loss to the defendant. In support, he tendered in evidence a series of letters as **Exhibit "1"** - (Suspension Letter dated 28th July, 2009.), **Exhibit "2"**-(Reminder dated 5th February, 2015), **Exhibit "3"**, (Warning Letter dated 5th October, 2016), **Exhibit "4"** (Apology Letter dated 17th July, 2017), **Exhibit "5"** (Warning Letter dated 26th October, 2017), **Exhibit 6**, (Warning Letter dated 15th October, 2018), **Exhibit 7**:(Final Reminder dated 21st November, 2018), **Exhibit "8"**- (Termination Letter dated 21st February, 2020). Also, the plaintiff appeared before a disciplinary committee to answer charges preferred against him. According to him, the termination of the plaintiff's employment with the defendant was not wrongful since it was made in accordance with law. Also, the Plaintiff who was the Marketing Manager of the defendant connived and assisted employees of the defendant by covering the theft of fuel (petrol, diesel and gas) to the detriment of the defendant.

Additionally, the plaintiff was sent to its Kwabenya branch to investigate deliberate shortages of fuel by the driver and supervisor but the plaintiff rather covered the theft until Managing Director caught them and reported to the police. According to him, the plaintiff was well remunerated by the company with an annual salary of GH C24,861.96 together with other entitlements which exceeded his annual salary. The defendant witness further denied that the plaintiff's life has not been affected by the termination and maintains that his conduct at the workplace as a Marketing Manager and Supervisor was injurious to the growth of the company.

The Managing Director further testified that the plaintiff was given every opportunity to change but he refused to change his ways and this was negatively impacting the conduct of the Plaintiff's subordinates. Again, he says that PW1, Mawuli Asagbavi who is the in-law of the plaintiff that the plaintiff secured a job with the defendant company for as a tanker driver created artificial shortages and when the plaintiff was sent to investigate same, he connived with PW1. The defendant further state that it had provided an official car to the plaintiff during his employment to motivate him and to go prevent him from conspiring with others and on two occasions the defendant provided car loans to the plaintiff which he paid in an effort to make him comfortable but plaintiff's conducts worked against the interests of the defendant. The defendant avers that the presence of the plaintiff at the defendant workplace at work has become detrimental to the interests of the Company. The defendant says that the Plaintiff is not entitled to his reliefs. The defendant received a letter from one lawyer T.A. Darteh on behalf of the Plaintiff and adequately responded to same. He tendered a copy of the letter and its response as **Exhibits "9" and "10"**. According to him, it is not true that employment situation in the country is not gloomy and the plaintiff is already engaged in his private business.

From the evidence led by the plaintiff and his witness and the defence put up by the defendant company, there is no dispute that there is a contract of employment between the plaintiff and the defendant. It is also not in dispute that on 21st February, 2020, the defendant company terminated the employment of the plaintiff whilst on leave and was scheduled to resume work on 25th February 2020 as evidenced by the Plaintiff's **Exhibits "A" and "B"** and the **Exhibit "8"**. The gravamen of the plaintiff's case is that the termination is wrongful since the defendant company did not give him a

hearing and also did not prefer any charge against him. Act 651 does not require that a formal hearing before a disciplinary committee be given or that charges be preferred before an employer or employee can terminate a contract of employment.

Additionally, under **section 17** of the Labour Act, in the absence of any express notice period in the contract of employment or in the absence of a more favourable term in the contract, the employer may terminate the contract of employment at any time by giving the employee one month's notice or one month's pay in lieu of notice in the case of a contract of three years or more. In the case of **Kobi v. Ghana Manganese Co. Ltd.** [2007-2008] SCGLR 772, the Supreme Court held in its holding one of the headnotes that:

"a contract of employment of service is not a contract of servitude. Even if a contract of employment is silent on the question whether it is terminable, the common law implies a right to terminate the same by either side upon reasonable notice to the other. However, the right to terminate is dependent on the terms of the contract and must be exercised in accordance therewith. In some cases, a contract of service may provide for the right of termination simpliciter or with additional right of termination without recourse to disciplinary procedures."

The termination letter, **Exhibit "B"** same as the **Exhibit "8"** tendered by the plaintiff and the defendant respectively states that the plaintiff is entitled to three (3) months' salary i.e., February, March, April, 2020, and half plot of land the company designed for long service workers or its cash equivalent. Indeed, the plaintiff confirmed under cross-examination having received the salary in lieu of notice when he answered as follows;

Q: Exhibit B was served on you did you receive it?

A: Yes my Lord.

Q: Indeed, the defendant company paid you your entitlement including three month's salary from February to April 2020, Is that correct?

A: Yes my Lord.

Q: Indeed, per the same Exhibit "B", the defendant's company voluntarily added half plot of land to your entitlement. Is that not correct.

A: No my Lord. It was stated in the letter but I have not received it.

Q: After you received Exhibit "B", you never went for the half plot of land.

A: No my Lord. I have not gone for the half plot of land.

From the above reproduced cross-examination, the defendant complied with **section 17** of Act 651 when it gave the plaintiff termination letter and paid three months' salary since the law gives each party the right to terminate at any time provided one month notice is given or in lieu of one month notice the payment of one month's salary. Again, other benefits which long serving employees are entitled to was made available to the plaintiff in his letter but from his own admission, he has refused to access the half plot of land or in the alternative the value of the land and as such the employer is not blame worthy.

The plaintiff has not led any evidence that per their contract of employment the defendant company had no right to terminate his employment without recourse to a disciplinary procedure. The contention of the plaintiff that the defendant did not prefer any charges against him before terminating his employment is also untenable. The Labour Act does not require that charges

be preferred against an employee before his appointment can be terminated or that reasons must be given before termination. In the case of **National Labour Commission v. Ghana Telecommunications Company** Suit No. AHR 40/2007 HC, Accra, 18th January, 2008. Brown J stated:

“Nowhere in the above provisions (sections 15 and 63(4)) has the law made it a mandatory duty on an employer to provide reasons for the termination of an employment. The law is that a contract of employment not being a contract of servitude can be severed at any time and for any reason or none by the service of the appropriate notice. All the law requires is that it should be done in accordance with the terms of agreement between the parties and there should be mutuality based on the equitable principles in the exercise of the respective rights of termination by both parties.”

The Supreme Court in the case of Kobi, supra, qualified this position in its holding 3 when it held that the traditional rule in employer-employee relationship, is that in dispensing with the services of an employee, an employer is at perfect liberty to either give or refuse to give reasons. However, in exercising that right, fairness must be the watchword. In the instant case, although the defendant company was not required by law to assign reasons, in **Exhibit “B”**, the termination letter, the defendant gave the plaintiff a litany of reasons necessitating the termination of his contract of employment. The reasons include bad attitude and poor performance of work over the years and his failure to heed to several verbal and written warning letters, his failure to use his experience as a senior staff to help detect shortages in some of their Fuel and Gas stations somewhere in 2019, his support for a tanker driver when he stole LPG and his failure to report same to management.

In my respectful view, although the allegation of the plaintiff conniving with other employees to steal from the company was not proved, there is overwhelming evidence on record to show that on several occasions the defendant had reason to query the plaintiff about his conduct at the workplace which once led to his suspension. The defendant's witness tendered a number of reminders and warning letters concerning the conduct of the plaintiff which was not promoting the interest of the company. The Plaintiff in **Exhibit "4"** dated 17th July, 2017, apologized for his attitude for not picking the calls of the Managing Director of the company and pledged that if such behaviour repeats, he will have himself to blame.

The plaintiff, under cross-examination by counsel for the defendant answered as follows;

Q: You wrote an apology letter to the management of defendant dated 17th July, 2017. Is that correct?

A: Yes My Lord.

Q: You have been suspended by the management of defendant company before.

A: Yes my Lord.

Q: On several other occasions, the management of the defendant's company sent you several reminders to sit at your designated location during working hours.

A: Yes but not several.

Q: How many times.

A: I believe it is two times.

The above reproduced cross-examination contradicts the assertion of the plaintiff that in his sixteen years employment with the company he has never been queried or suspended to warrant the termination of his contract of employment. The evidence shows that the defendant complied with the law when it paid the plaintiff three months' salary in lieu of notice. From the plaintiff's admission under cross-examination, he has not taken possession of the half plot of land designed by the defendant company for long serving employees.

On the totality of the evidence led by the plaintiff and the defence put up by the defendant, I hold that the plaintiff failed to prove his claim on a balance of probabilities that his termination was wrongful. I therefore dismiss the claim of the plaintiff and enter judgment for the defendant.

Having regard to the duration of the case and costs reasonably incurred by the defendant, I will award costs of GHC8,000 against the plaintiff in favour of the defendant.

**H/H AGNES OPOKU-BARNIEH
(CIRCUIT COURT JUDGE)**