

**IN THE CIRCUIT COURT “A”, TEMA, HELD ON THE MONDAY 20TH
DAY OF NOVEMBER, 2023, BEFORE HER HONOUR AGNES OPOKU-
BARNIEH, CIRCUIT COURT JUDGE**

SUIT NO. C11/101/23

DELHI PRIVATE SCHOOL INT. ---- PLAINTIFF
VRS.

PATRICK OSTON AMPONG ---- DEFENDANT

PLAINTIFF CO. REP. BY BANJI OJEKUNLE (ADMINISTRATOR)

ABSENT

DEFENDANT ABSENT

**JOSHUA BOOWURO, ESQ. HOLDING THE BRIEF OF SAMUEL
CODJOE, ESQ. FOR THE PLAINTIFF PRESENT**

JUDGMENT

FACTS

The plaintiff caused a writ of summons to be issued against the defendant on 27th January, 2023 in the Registry of this Court for the following reliefs;

- a. General damages of Two Hundred Thousand Ghana Cedis (GH¢200,000.00) for breach of contract.
- b. Special damages of Ten Thousand Ghana Cedis (GH¢10,000.00).
- c. Costs inclusive of legal fees.

The plaintiff company’s case is that it is an international educational institution registered under the laws of Ghana and is into the business of providing quality

education, excellent learning and holistic, modern, comprehensive, and technology driven classes from Creche to Advanced Level with a student population of over one thousand (1,000). The plaintiff further avers that it was established in the year 2010 under the aegis of DPS International, a chain of schools all around the globe and known for its holistic education. The plaintiff states further that as an international educational institution, it operates within internationally accepted practices including the provision of quality teaching and learning materials and infrastructure. According to the plaintiff, over the years, it has built a reputation for providing quality education to children in Ghana and its neighbouring countries and is known for its excellence in the International General Certificate of Secondary Education (IGCSE), Central Board of Secondary Education (CBSE) and the Cambridge International A and AS Level programmes. As a result of its commitment to excellent service, the plaintiff was adjudged the best International General Certificate of Secondary Education (IGCSE) school at the British Council Awards Ceremony for Academic Excellence in IGCSE and A Level examination in or about 2021.

The plaintiff further states that the defendant herein was a math teacher in the plaintiff's school for six (6) years prior to the commencement of this suit. The plaintiff alleges that in those six (6) years, the plaintiff invested approximately Four Thousand United States Dollars (USD\$4,000) in the training, education, and development of the defendant to meet the high standards required for teaching the IGCSE, CBSE, A and AS level programmes. The plaintiff states that it employed the defendant by a contract of employment dated the 1st day of February, 2019 at a monthly salary of Two Thousand Five Hundred Ghana Cedis (GH¢2,500.00) and by December 2022, the defendant earned a gross monthly salary of Seven Thousand Ghana Cedis (GH¢7,000).

The plaintiff further avers that per the contract of employment executed between the parties, the defendant could only terminate the agreement by giving plaintiff one (1) month's notice in writing. This imposition, according to the plaintiff, was to give the plaintiff a reasonable time to procure a suitable and well qualified replacement and to ensure that the students are adequately provided for at all times. The plaintiff states that the defendant has neglected, failed and or refused to report to work since school resumed in January, 2023 without any reasonable excuse. The plaintiff further states that upon repeated attempts to reach the defendant, the plaintiff learned that the defendant has unilaterally abandoned his post at plaintiff's school and has no intention of returning to same and was feverishly preparing to leave the country.

Furthermore, the plaintiff contends that the defendant, by abandoning his post without giving due notice, has unilaterally terminated the contract of employment contrary to the terms of the said contract and is in breach of same for failing to give the plaintiff the mandatory one (1) month's notice under the contract of employment. The result is that plaintiff is left without a math teacher and this has caused much inconvenience, distress and embarrassment to plaintiff and its students.

The plaintiff further maintains that as result of the defendant's breach of the contract of employment, it has suffered damages. According to the plaintiff, some students of the school had no math teacher for a period of two weeks causing the students to lag behind in their academic work. This negatively impacted on the growth and development of the affected students since mathematics is a required subject in the IGCSE, CBSE, A and AS level programmes. The plaintiff states that defendant's breach of the employment agreement has also put the entire

academic term in jeopardy as the plaintiff has had to reschedule classes, tests and other events to accommodate the affected students.

In addition, as a result of defendant's breach, the plaintiff has suffered humiliation and a significant dent in its hard-earned reputation as parents and guardians of some affected students have both publicly and privately expressed their disappointment and dissatisfaction with the situation and in some cases, threatened to withdraw their wards from the school. The plaintiff states that as a result of the defendant's breach of the employment agreement, it has suffered losses in the sum of Ten Thousand Ghana Cedis (GH¢10,000) being the cost incurred by the plaintiff in engaging the services of a substitute teacher (temporary replacement) while it undertakes a search for a permanent replacement.

The defendant was duly served with the Writ of Summons and the Statement of claim by substituted service when personal service proved futile. On 11th May, 2023, this court entered interlocutory judgment in default of appearance for the plaintiff to lead evidence to prove its case for final judgment. The defendant was again served with hearing notices and witness statements but failed to appear to contest the suit. The court therefore granted leave to the plaintiff to lead evidence to prove its case in the absence of the defendant. At the trial, the plaintiff's representative testified on behalf of the plaintiff.

Based on the pleadings of the plaintiff and the evidence led by the plaintiff, the court set down the following issues for resolution.

LEGAL ISSUES

1. Whether or not the defendant breached his employment contract with the plaintiff
2. Whether or not the plaintiff is entitled to an award of an amount of GH¢200,000 as general damages for breach of contract.
3. Whether or not the plaintiff is entitled to an award of GH¢10,000 as special damages for breach of contract.

BURDEN OF PROOF

It is trite learning that he who alleges must prove. The burden on a party to prove his claim on a balance of probabilities remains the same in cases where the suit is not contested, as in the instant case. In the case of **Tei & Anor v. CEIBA Intercontinental** [2017-2018] 2SCGLR 906 at 919, per Pwamang JSC stated as follows:

“It must be remembered that the fact that defendant does not appear to contest a case does not mean that the Plaintiff would be granted all that he asks for by the court. The rule in civil cases is that he who alleges must prove on the balance of probabilities and the burden is not lightened by the absence of the defendant at the trial. The absence of the defendant will aid the plaintiff only where he introduces sufficient evidence to establish a prima facie case of entitlement to his claim.”

The need for a defendant to give evidence to explain his version of events culminating in the litigation cannot be gainsaid. Brobbey JSC (as he then was) in the case of **Ashalley Botwe Lands; Adjetey Agbosu & Others v. Kate and Others** (2003-2004) SCGLR 420 at page 464, underscored the need for a

defendant to appear to help his own case by participating fully in the trial and putting his rival version across to assist the court in weighing the balance of probabilities. The Court stated that:

“... A litigant who is a defendant in a civil case does not need to prove anything; the plaintiff who took the defendant to court has to prove what he claims he is entitled to from the defendant. At the same time, if the court has to make a determination of a fact or of an issue, and that determination depends on evaluation of facts and evidence, the defendant must realise that it cannot be based on nothing. If the defendant desires the determination to be made in his favour, then he has a duty to help his own cause or case by adducing before the court such facts or evidence that will induce the determination to be made in his favour...”

Therefore, the plaintiff who brought the defendant to court bears the burden to lead cogent and admissible evidence based on which the court can find on its behalf. The defendant must also help his own case by participating in the trial and giving evidence of facts and circumstances based on which the court will conclude that the balance of probabilities weighs in favour of the defendant rather than the plaintiff who alleges.

ANALYSIS

ISSUE 1: Whether or not the defendant breached his employment contract with the plaintiff

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.”

It has been judicially determined that a contract of employment is not a contract till retirement age and though it may be for an indefinite period, it does not necessarily mean life employment. See the case of **Ashun v. Accra Brewery Limited** [2000] SCGLR 81, the Supreme Court, per Date-Baah JSC (as he then was).

Act 681 sets out the rights and duties of employers and prescribes the circumstances under which a contract of employment between an employer and employee may be terminated. Under **section 15** of Act 681, 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 681 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 the case of **Nunoofio v. Farmers Services Co. Ltd.** [2007-2008] 2SCGLR 926@935, Wood JSC relying on the case of **Kobea v. Tema Oil Refinery; Akomea Boateng v. Tema Oil Refinery (Consolidated)** [2003-2004] 2 SCGLR 1033, stated 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 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] 1 SCGLR 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.”

Thus, the plaintiff in this case who is the employer must first introduce evidence to satisfy the court about the terms of its employment contract with the defendant. The plaintiff must further establish that the defendant has terminated the employment contract and that the termination of the employment contract by the

defendant was contrary to the terms of the contract or the existing labour law. The burden would then shift to the defendant to lead sufficient evidence to justify the termination of his employment with the plaintiff.

To prove that the plaintiff has a contract of employment with the defendant and that the defendant has terminated the contract in contravention with the terms of the agreement and the existing law, the plaintiff called one witness. The plaintiff's representative, Banji Ojekunle, described himself as the administrator of the plaintiff's school and testified in line with the plaintiff's pleadings by stating the objects of the school and the achievements of the school in the sphere of education internationally and in Ghana.

The plaintiff's witness further testified that the defendant was a mathematics teacher in plaintiff's school. By a contract of employment dated the 1st day of February, 2019, the plaintiff employed the defendant as a mathematics teacher at a monthly salary of Two Thousand Five Hundred Ghana Cedis (GH¢ 2,500), However, by December 2022, the defendant's salary had increased and he earned a gross monthly salary of Seven Thousand Ghana Cedis (GH¢ 7,000). In support, PW1 tendered in evidence **Exhibit "A,"** a copy of the contract of employment between the plaintiff and the defendant and a copy of the Pay Slip of the defendant for November 2022, admitted and marked as **Exhibit "B'** evidencing this fact.

Furthermore, the plaintiff testified that under the contract of employment, the defendant could only terminate same by giving plaintiff one month's notice in writing. The witness maintains that this requirement of one month's notice period was to ensure that plaintiff was given a reasonable time to procure a suitable and well qualified replacement and to ensure that plaintiff's students are adequately

provided for at all times. However, in breach of the terms of the contract, the defendant has neglected, failed and or refused to report to work since school resumed in January, 2023 without any reason or excuse. PW1 further states that upon repeated attempts to reach the defendant, the plaintiff learned that the defendant had unilaterally abandoned his post and had no intention of returning to same. PW1 firmly states that by abandoning his post without giving due notice, the defendant has unilaterally terminated the contract of employment contrary to the terms of the said contract and is in breach of same. This is more so when defendant has failed, neglected and or refused to give plaintiff the mandatory one (1) month notice under the contract of employment.

A cursory reading of the employment contract signed between the plaintiff and the defendant, reveals that under the heading, “Appointment and Duration” in *paragraph 1.0*, sub paragraph 1.5 provides that:

“This agreement shall continue in force until terminated by either party giving to the other one (1) months’ notice of their intention to terminate the Agreement or one (1) month’s salary in lieu of such notice.”

Under *paragraph 10.6*, if the employee is absent from work for more than 10 continuous days or for a combined period of ten days in any one month without any reasonable cause, he may be liable to summary dismissal or any other such sanction prescribed by the school. The grounds for termination are clearly provided for under *paragraph 14.0* as resignation of the employee, retirement of the employee upon attaining age 60 years, ill-health of the employee, notice of termination by the school.

It is provided for under **Section 17** of the Labour Act that 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.”

In the case at bar, the parties clearly stipulated the period of notice required for termination in their written contract of employment. Thus, under paragraph 1.5 of the contract of employment, the defendant was required to give one month's notice or in lieu of notice pay to the plaintiff, one month's salary. There is no evidence on record that the defendant complied with any of the provisions for termination since he failed to give the one month notice and abandoned his post without just cause. The defendant was duly served with all the processes in the suit but boycotted the proceedings. In the case **Ankumah v. City Investment Co. Ltd** [2007-2008] 1 SCGLR 1064 holding 1, the Supreme Court held as follows;

“The defendant, after several attempts, was finally served but failed to appear in court. The trial court therefore rightly adjourned the case for judgment. A court is entitled to give a default judgment, as in the instant case, if the party fails to appear after notice of the proceedings has been given to him. For then, it would be justifiable to assume that he does not wish to be heard”.

I therefore hold that the defendant breached the terms of his employment contract with the plaintiff when he left the employment of the plaintiff without giving the required notice or one month's salary in lieu of notice. I therefore hold that the defendant breached the contract of employment between himself and the plaintiff when he left the employment without the adequate notice and failed, neglected and refused to follow due process in the termination of the employment.

ISSUE 2: Whether or not the plaintiff is entitled to an award of an amount of GH¢200,000 as general damages for breach of contract.

The plaintiff contends that it is entitled to damages in the sum of Two Hundred Thousand Ghana Cedis (GH¢200,000) from the defendant for the wrongful termination of the contract of employment. The general principle is that a person who commits a breach of a contract is liable to pay damages and the damages to be in an action for breach of employment contract is not limited to the period of notice. In the case of **Nartey-Kotoli v. Volta River Co. Ltd. (No. 2)**[1989-90] 2GLR 341, CA, the court held that when there is a breach of a contract of employment, the affected employee shall take the salary in lieu of notice as a right under the collective agreement and are in addition entitled to damages. Thus, in the case of **Kobe v. Ghana Manganese Co. Ltd.**[2007-2008] 2 SCGLR page 771 at page 795 SC per Ansah JSC (as he then was) stated that the measure of damages is not limited to the amount of wages or salary but the affected worker was to receive his entitlements under the contract of employment due and earned but unpaid by the employer. These should also include leave allowance, bonus, long service awards and all other benefits the worker enjoyed during the tenure of employment, the period it would take for the employee to find another job subject to the duty of the employee to mitigate his losses.

A corollary of this rule is that an employee who terminates his employment in breach of the contract of employment is bound to pay damages to the employer in addition to the salary in lieu of notice. In my view, in the case of an employee who wrongfully terminates the contract of employment, in addition to the salary in lieu of notice that the employer is entitled to under the binding contract of employment between the parties, the employer should be entitled to damages and the period that it would take to find another employee, train the employee and the expenses incurred in advertising and training the new employee to assume the role of the defendant must be considered. Again, any other amount the employee took as a loan or salary advance from the employer but remained unpaid before the employee wrongfully terminated the contract and any assets of the employer in the custody of the employee must be considered.

To prove that the plaintiff is entitled to an award of damages against the defendant, the plaintiff's representative testified that during the period of defendant's employment, the plaintiff invested approximately Four Thousand United States Dollars (US\$4,000.00) in his training, education and development to meet the high standards required for teaching the IGCSE, CBSE and A and AS level programmes. When the defendant abandoned his post, there was no teacher to teach the children for about two weeks and these student lagged behind in their academic work and this has caused much inconvenience, embarrassment and distress to the plaintiff's students. PW1 maintains that some students had no math teacher for a period of two weeks and accordingly fell behind in their school work.

Additionally, PW1 states that the defendant's breach of the employment contract has put the plaintiff's entire academic term in jeopardy as plaintiff has had to reschedule classes, tests and other events to accommodate the affected students.

Further to this, the plaintiff has suffered reputational damage as parents and guardians of some affected students have both publicly and privately expressed their disappointment and dissatisfaction with the situation and in some cases threatened to withdraw their wards from the school as a result of the defendant's breach.

It can be gleaned from the pay slip of the defendant for the month of November, 2022, admitted and marked as **Exhibit "B"** that at the time the defendant abandoned post, his gross salary was Seven Thousand Ghana Cedis (GH¢7,000). The gross salary with statutory deductions and a loan deduction brought the net salary to GH¢3,153.25. From the payslip of the defendant in evidence, the loan component was GH¢1,666. Since this is a personal loan taken by the defendant for his own benefit, it is only just and equitable that this deduction is added back to the net salary stated on the payslip. This brings the defendant's net salary to GH¢4,819.25. In my view, this is the amount the defendant was required to pay to the plaintiff in lieu of notice and the plaintiff is entitled to recover same. In addition, the natural consequence of the defendant's abandonment of post is that the plaintiff would have to look for an alternate teacher replace him and the recruit would have to be trained and paid to perform his duties. From the period of notice stipulated in the contract between the parties, it presupposes that if the defendant had given the required notice within one month, the plaintiff should have found a suitable teacher to mitigate any perceived losses to the reputation of the school it would have suffered.

I acknowledge the impact the sudden abandonment of post by the defendant may have on the student's academic life and emotional well-being since it takes time for children to adjust to a new teacher. However, in my considered opinion, this

must not be a basis of award of damages to the plaintiff in its capacity since the impact is personal to the students who may want to apply to the appropriate forum remedy. Under the circumstances of this case, I find an award of Twenty Thousand Cedis (GH¢20,000) in addition to the salary in lieu of notice as damages for breach of contract adequate.

ISSUE 3: Whether or not the plaintiff is entitled to an award of GH¢ 10,000 as special damages for breach of contract.

The plaintiff witness also testified that the plaintiff has also suffered losses in the sum of Ten Thousand Ghana Cedis (GH¢ 10,000.00) being the cost incurred by the plaintiff in engaging the services of an emergency substitute teacher while it undertakes a search for a permanent replacement. In the case of **Tema Oil Refinery v. African Automobile Ltd.** [H1/213/2009] CA delivered on 11th March, 2010, Akamba JA (as he then was) stated at page 9 that:

“The position of the law as regards special damages is that as the name indicates they are special and must be claimed with such particularity that the defendants know, not only the amount of loss or damage alleged to be suffered but also how that amount is made up or calculated. Any monetary loss suffered by the applicant up to date of trial must be pleaded, particularised and proved or else it cannot be recovered.”

The Court further cited with approval the case of **Stroms Brucks Aktie Bolag v. Hutchison** [1905] AC 515 at 525-526, HL (SC) where Lord McNaughton stated that:

“Special damages...are such as the law will not infer from the nature of the act. They do not follow in the ordinary course. They are exceptional in their character, and, therefore, they must be claimed specially and proved strictly.”

In the instant case, there is no doubt that the natural consequences of the defendant's breach of the contract of employment was that the plaintiff would have engaged another person to teach the school children in the stead of the defendant. However, this should have been pleaded, particularised and specially proved. There is no evidence on record as to the mathematics teacher engaged to replace the defendant. The salary paid to the said teacher is also not proved on the evidence to assist the court to come to a determination in favour of the plaintiff. I therefore hold that the plaintiff failed to prove his claim for an award of Ten Thousand Ghana Cedis (GH¢10,000) as special damages for breach of damages on a balance of probabilities. I accordingly dismiss the claim for special damages.

CONCLUSION

In conclusion, I hold that the defendant breached his employment contract with the plaintiff when he abandoned post without giving the requisite notice to the plaintiff. I hereby hold that the plaintiff treated the abandonment of post as termination, and right so when it engage an alternate teacher and subsequently filed this action in court. I therefore hold that the termination of the defendant's employment with the plaintiff's school was in contravention of the contract of employment executed by the parties on 1st February, 2019 and therefore unlawful. I accordingly enter judgment for the plaintiff against the defendant as follows;

1. I hereby award an amount of GH¢24,819.25 being the sum of the one month salary in lieu of notice and damages for the wrongful termination of the employment contract.
2. The claim an amount of GH¢10,000 as special damages is dismissed.

COSTS

The plaintiff also claims costs inclusive legal fees. The enactment of the High Court Civil Procedure Rules marked an end to the arbitrary and capricious exercise of the court's discretion in the award of Costs since Order 74 clearly provides the rules on the exercise of the court's discretion in awarding costs. In the case **Owuo v. Owuo** [2017-2020] 1 SCGLR page 780, the Supreme Court at page 793 deprecated the practice of the arbitrary ward of costs when it held that; *“On the issue of the legal fees and costs of the proceedings, ... there is no basis for the award for the respondent made no attempt at the High Court at demonstrating, by way of invoices or receipts etc. how much costs she incurred in payments to her lawyer etc. Furthermore, the Court of Appeal, in making the order for the award also failed to name specific sums in relation to both costs and the legal fees, thereby leaving the issue at large, a situation which is far from satisfactory.”*

The court has heard the oral submission of Counsel for the plaintiff on costs, but the defendant spurned the opportunity to be heard on costs having failed to appear at the trial. In accordance with **Order 74 of the High Court (Civil Procedure) Rules, 2004 (C.I. 47)** and considering the nature of the case, the length of the trial and the number of court sittings, the fact that the action is uncontested, the reasonable expenses incurred by the plaintiff in filing processes in court and providing reasonable remuneration for Counsel for the plaintiff, I will award an amount of Ten Thousand Ghana Cedis (GH¢10,000) as cost in favour of the plaintiff against the defendant.

SGD.

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