

**IN THE CIRCUIT COURT “A”, TEMA, HELD ON THURSDAY 29<sup>TH</sup> DAY OF  
FEBRUARY, 2024, BEFORE HER HONOUR AGNES OPOKU-BARNIEH,  
CIRCUIT COURT JUDGE**

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**SUIT NO. C11/116/23**

**AMELIA PAGADDU** ---- **PLAINTIFF**  
**VRS.**

**PLATINUM PLASTICS LIMITED** ---- **DEFENDANT**

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**PLAINTIFF** **PRESENT**

**DEFENDANT** **ABSENT**

**PAUL SELORM KPODOVIA, ESQ. WITH JENNIFER MAKAFUI DANDZO.  
ESQ. HOLDING THE BRIEF OF MODESTO KPODOVIA, ESQ. FOR THE  
PLAINTIFF** **PRESENT**

**CLAUDIA BOATENG, ESQ. FOR THE DEFENDANT** **ABSENT**

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**JUDGMENT**

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**FACTS**

The plaintiff caused a writ of summons with an accompanying statement of claim to be issued against the defendant on 13<sup>th</sup> February 2023, praying this Court for the following reliefs;

- a. A declaration that the termination of the plaintiff’s employment contract was wrongful.
- b. An order directed at the defendant to pay the plaintiff an amount of Eighteen Thousand Dollars (\$18,000) or its Cedi equivalent being salary for the unexpired duration of the employment contract.
- c. Interest on claim (b) from November 2022 until the date of final payment.
- d. Damages for breach of contract.

e. General damages

f. Costs including legal fees.

### **THE PLAINTIFF'S CASE**

The plaintiff's case is that she is a Filipino resident and working in Ghana for over Fourteen (14) years. The plaintiff described the defendant as a Limited Liability Company with its registered office in Tema and engaged in the manufacture of plastic products, sacks and other things. The plaintiff contends that she was employed by the defendant Company in the year 2018 as a Quality Control Officer without a formal contract of employment stating the terms of her engagement with the defendant. The plaintiff says that she demanded the written contract but all to no avail. The plaintiff states that after working with the defendant Company for four (4) years, she again approached the Managing Director of the defendant Company, Mr Anil Lakhiani and insisted that she should be issued with a formal contract of employment to guide her employment.

Additionally, the plaintiff avers that on the 26<sup>th</sup> day of May 2021, she was issued with a renewal of employment contract which was to take effect from 1<sup>st</sup> June 2021 to the 31<sup>st</sup> day of May 2024 and was duly signed by the parties. The plaintiff further avers that she worked with the defendant Company diligently as a Quality Control officer overseeing the quality of the productions, weighing and scaling the products and also controlling the workers at the defendant Company. According to the plaintiff, she has never had any disciplinary issues with the defendant Company for the entire period that she worked with the defendant Company for over Five (5) years.

The plaintiff further avers that as per the terms of the employment contract, the defendant offered to pay her an amount of One Thousand Dollars (US\$1,000) as a monthly salary which the defendant paid to her till October 2022. The plaintiff states that the defendant, through its Managing Director, Mr Anil Lakhiani without any

reasons or explanations called her on the phone on the 4<sup>th</sup> of November 2022 to inform her to go home and take a rest and that she would be recalled in January 2023. The plaintiff avers that she enquired from the managing director of the defendant Company, Mr. Anil Lakhiani the reasons for the decision taken by the defendant but she received no explanations. The plaintiff again says that she waited for a week in January 2023 but did not receive any call from the defendant Company so she called the Managing Director of the defendant on the phone several times but he failed to answer his calls. The plaintiff avers that she then sent a WhatsApp message to the Managing Director of the defendant to enquire why she was still home and to her chagrin, the Managing Director, through a WhatsApp message informed her that her contract with the defendant had been terminated with no reasons proffered. The Managing Director further added that the economy of Ghana had made it impracticable for the defendant to re-employ more staff even though she had a subsisting contract of employment with the defendant.

Additionally, the plaintiff avers that per paragraph 7(f) of the contract of employment signed between the parties, the plaintiff was liable to pay the defendant Company three months' salary if she terminated the contract before the expiration date. The plaintiff says that clause 8 prohibited her from establishing or being an employee of or consultant for any business in direct or indirect competition with the defendant Company for two (2) years after the termination of the contract of employment. The plaintiff further avers that under the contract of employment, she was entitled to a one-way ticket from Accra to Manila, Philippines on completion of the years of service. The plaintiff avers that the defendant blatantly breached the employment without any reasons or due process or regard to the terms of the agreement at all.

The plaintiff says that on the 19<sup>th</sup> day of January 2023, she caused her lawyers to write officially to the defendant but the defendant refused or neglected to respond to same. The plaintiff avers that on the 26<sup>th</sup> day of January 2023, the defendant authorised the Managing Director, Mr. Anil Lakhiani to send a message through its Stock room

Manager Jeanette Rescar to the plaintiff that she should submit a resignation letter to be entitled to three (3) months' salary which the plaintiff refused. The plaintiff says that she felt disrespected and discriminated against by the defendant in the sense that she was being coerced to submit a resignation letter to the defendant Company against her will, especially as doing so has ramifications on the plaintiff in respect of the terms of the Employment Contract.

The plaintiff avers that the terms of the contract she signed with the defendant contained unfavourable terms but because she signed the agreement, she diligently complied with the terms but the defendant unlawfully breached the terms of the agreement with impunity. The plaintiff says that all efforts made by her for the defendant to pay her what is rightfully due her have proved futile. The plaintiff maintains that unless compelled by this Court, the defendant will not pay its just debt under the contract of employment.

### **THE DEFENDANT'S CASE**

The defendant in its statement of defence denied the claim of the plaintiff and stated that the plaintiff was employed in the defendant's company in the year 2018. Before the plaintiff was employed by the defendant, she misrepresented to the defendant that she had the requisite documentation to work in Ghana since she was married to a Ghanaian. However, the defendant later discovered that the plaintiff did not have valid work documentation to work in Ghana. Consequently, to secure the requisite documentation for the plaintiff, the defendant spent an amount of One thousand, Six hundred United States Dollars (US\$1,600) at the Ghana Immigration Service.

Additionally, the defendant states that the plaintiff's employment with the defendant was renewed on the 26th day of May 2021. The defendant in further denial of the claim of the plaintiff states that the plaintiff failed on numerous occasions to perform her duties as a Quality Control Officer. The defendant says that, as a company that deals

in manufacturing products, the quality of its products is what drives the business and the plaintiff's job was key in ensuring that they always provide quality products to their customers.

The defendant contends that, per the terms of the plaintiff's employment contract, the plaintiff was not to engage in drinking and smoking before the plaintiff assumed her shift, a clause the plaintiff constantly ignored and was cautioned about. The defendant further says that the plaintiff's conduct resulted in the defendant's company incurring losses as the plaintiff was unable to perform her functions as a Quality Control Officer in the company and the plaintiff's conduct created an uncomfortable and unsafe working environment for the employees of the defendant. The defendant through its Managing Partner, Anil Lakhani asked the plaintiff to go home on the 4th day of November, 2022 and that the plaintiff's misconduct was repeatedly brought to her attention but she failed to remedy same.

The defendant maintains that it has the right to terminate the employment of the plaintiff who breached significant terms of her employment contract with the defendant. The defendant says that it duly exercised its rights under the Termination Clause contained in the contract of employment executed between the parties. The defendant says that since the contract was terminated, the plaintiff is not entitled to the said remuneration. The plaintiff has not been coerced by the defendant or any of its officers to submit a resignation letter. The defendant says that it did offer to pay the plaintiff three months' salary which the plaintiff has declined. The defendant therefore says that the plaintiff is not entitled to her claim at all.

### **THE PLAINTIFF'S REPLY TO THE STATEMENT OF DEFENCE**

The plaintiff in reply generally joined issues with the defendant and said that before her employment, the defendant demanded her passport which indicated a resident permit. Thus, at all material times, the defendant knew that the plaintiff only had a passport with a resident permit since the defendant kept the passport of all expatriates

including the plaintiff. Also, for the plaintiff to be issued with a work permit, she needed an employment contract with the employer's details to be issued with the documents which the defendant promised to obtain for the plaintiff. According to the plaintiff, in the year 2018, when she was working with the defendant, officials of the Ghana Immigration Service came to their office to demand her work permit and two other Indians and the defendant promised to resolve the issue but the defendant has never informed her about how much she spent in procuring the work permit. The passport was only released to her when she had to receive a Covid vaccination at the Ghana Immigration Service.

The plaintiff says that at all material times, she diligently performed her duties as a Quality Control Officer without any issues. The plaintiff vehemently denies drinking alcohol before or during working hours and she had never been cautioned for doing that. She states that it was a normal practice for some workers with the defendant Company especially the Indians to smoke during break time at a designated area and accuses the Managing Director Mr. Anil Lakhiani of rather smoking in his office during working hours.

At the close of pleadings, the plaintiff applied for directions and the court set down the following issues for trial.

### **LEGAL ISSUES**

1. Whether or not the dismissal of the plaintiff by the defendant was unlawful.
2. Whether or not the termination of the employment agreement the plaintiff had with the defendant amounts to a breach of the contract.
3. Whether or not the plaintiff is entitled to salary for the unexpired duration of the employment contract with the defendant.
4. Whether or not the plaintiff is entitled to damages for breach of contract?
5. Any other issues arising out of the pleadings.

After the trial, Learned Counsel for the plaintiff filed a written submission on behalf of the plaintiff on 21<sup>st</sup> February 2024 and Learned Counsel for the defendant on her part filed a written address on 23<sup>rd</sup> February 2024. The Court has duly considered the addresses filed in the judgment.

### **BURDEN OF PROOF**

It is settled law that in civil cases, the party who asserts bears the burden to prove his or her case on a balance of probabilities. In the case of **Okudzeto Ablakwa (No.2) v. Attorney-General & Obetsebi Lamptey (No. 2)** [2012] 2 SCGLR 845, the Supreme Court in pronouncing on the burden of proof held at page 867 that:

*“...the established rule, which is that he who asserts, assumes the onus of proof. The effect of that principle is the same as what has been codified in the Evidence Act 1975(NRCD 323), s 17(a) ... What this rule literally means is that if a person goes to court to make an allegation, the onus is on him to lead evidence to prove that allegation unless the allegation is admitted. If he fails to do that, the ruling on that allegation will go against him. Stated more explicitly, a party cannot win a case in court if the case is based on an allegation, which he fails to prove or establish.”*

It is also trite that witnesses are not counted but weighed. Thus, it is not the host of witnesses that a party calls in proof of a case that matters but whether the witnesses called have been able to lead the requisite evidence in proof of the case of the party who calls them. The Supreme Court succinctly puts this principle in the case of **Aryee v. Shell Ghana Ltd.** [2017-2020] 1 SCGLR, 721-735, at page 733, where the Supreme Court per Benin JSC stated as follows:

*“It must be pointed out that in every civil trial all what the law required is proof by preponderance of probabilities: See section 12 of the Evidence Act, 1975 (NRCD 323). The amount of evidence required to sustain the standard of proof would depend on the nature of the issue to be resolved. The law does not require that the court cannot rely*

*on the evidence of a single witness in proof of a point in issue. The credibility of the witness and his knowledge of the subject-matter are the determinant factors...Indeed, even the failure by a party himself to give evidence cannot be used against him by the court in assessing his case.”*

Therefore, in the instant case, the plaintiff who brought the defendant to court bears the burden to prove her case on a balance of probabilities for a favourable outcome failing which her claim will be dismissed.

## **ANALYSIS**

**ISSUE 1: Whether or not the dismissal of the Plaintiff by the defendant was unlawful.**

**Section 175** of the Labour Act, 2003(Act 681) defines a contract of employment as

*“a contract of service whether express and implied and if express whether oral or in writing.”*

Under **Section 12** of Act 681, a contract of employment which is for six months or more shall be secured by a written contract of employment expressing clearly the rights and obligations of the parties. In the case of **Inusah v. D.H.L Worldwide Express** [1992] 1 GLR 267, HC relied on the case of *L’Estrange v. Graucob Ltd.* [1934] 2 K.B. 394 at 403 where Scrutton L.J. said

*“When a document containing contractual terms is signed, then, in the absence of fraud, or, I will add, misrepresentation, the party signing it is bound, and it is wholly immaterial whether he has read the document or not”*

It has been judicially determined that a contract of employment is not a contract till retirement age. 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). Also, 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 in 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 circumstances under which a contract of employment between an employer and an employee may be terminated are specified by Act 681. 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, as in the instant case, the law requires one month's notice or one month's pay in lieu of notice to terminate the contract.

The burden of proof in an action for wrongful termination of employment contract is stated in the seminal 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 employee bears the initial burden to prove the terms of her 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 between the parties or the existing labour law. The burden would then shift to the defendant to lead sufficient evidence to justify the termination of its employment contract with the plaintiff or the existing law. See the case of **Morgan & ors. v. Parkinson Howard Ltd.** [1961] GLR 68 Per Ollenu J.(as he then was).

The plaintiff, Amelia Pagaddu testified that she is a Filipino and lives at Community 2, Tema. According to her, she got married to a Ghanaian and has been in living Ghana

since the year 2001 with the required resident permit. In support, she tendered in evidence **Exhibit "A"** the marriage certificate. She further testified that she is a Quality Control Officer by profession and that she was employed by the defendant Company in the year 2018 as a Quality Control Officer without a formal contract of employment stating the terms of her engagement with the defendant. She demanded the written contract but the defendant failed to give her a written contract of employment. She again testified that after working with the defendant Company for four (4) years, she approached the Managing Director of the defendant Company Mr. Anil Lakhiani and insisted that she should be issued a formal contract of employment. On the 26th day of May 2021, she was issued a renewal of employment contract which was to take effect from the 1<sup>st</sup> day of June 2021 and end on the 31st day of May 2024. In support, she tendered in evidence **Exhibit "B"** the contract of employment.

The plaintiff further testified that she worked with the defendant Company diligently as a Quality Control officer overseeing the quality of the productions, weighing and scaling the products and also controlling the workers at the defendant Company. She testified that she never had any disciplinary issues with the defendant Company for almost six years that she worked with the defendant Company. The plaintiff states that per the terms of her employment contract, the defendant offered to pay her a monthly salary of One Thousand United States Dollars (\$1,000.00) which was paid until October 2022.

She further testified that in October 2022, the defendant, through its Managing Director, Mr Anil Lakhiani called her to come to the office on 1<sup>st</sup> November 2022. When she went to the office, he informed her that 4<sup>th</sup> November 2022 would be her last working day for the period and that she should remain at home and take a rest. He further informed her that she would be recalled in January 2023 with the excuse that the business was not doing well. When she enquired from the managing director the reason for the decision, he could not offer any tangible reason. In January 2023 when she did not receive a call from the company, she called the managing director on the

phone several times but he refused to answer. She then sent a WhatsApp message to enquire why she was still home when she was informed she would be called back to work. To her chagrin, the managing director, through a WhatsApp message informed her that her contract with the defendant Company had been cancelled without giving her any reasons. The managing director further stated that the economy of Ghana had made it impossible for them to employ more staff even though she had a subsisting valid contract with the company and not a new employee. In support, she tendered in evidence a printout of the WhatsApp communication between herself and the managing director informing her that her contract of employment had been terminated, admitted in evidence and marked as **Exhibit "C"**.

Additionally, the plaintiff testified that *paragraph 7(f)* of her Contract of Employment with the defendant titled "**Penalty Clause**" provided that she was liable to pay the defendant Company Three (3) months' salary in case she wanted to terminate her contract before it expires. Also, under clause 8 titled "**Prohibition**", after the termination of her contract of employment, she was prohibited from establishing or being an employee of or consultant for any business in direct or indirect competition with the defendant Company for two (2) years. Also, clause 6 titled "*Remuneration And Company Facilities Provided To You*", a one-way ticket for her will be borne by the defendant from Accra to Manila, Philippines on completion of the years of service.

The plaintiff contends that the defendant blatantly breached the employment contract she had with the defendant without any reasons, due process or regard to the terms of the contract of employment. On the 19th day of January 2023, she caused her lawyers to officially write a demand notice to the defendant but the defendant refused or neglected to respond to the letter. On the 26th day of January 2023, the defendant through its Managing Director, Mr. Anil Lakhiani sent a message through its Stock room Manager Jeanette Rescar to her requesting her to submit a resignation letter to entitle her to three (3) months' salary which she refused as the defendant unlawfully terminated her employment contract. According to the plaintiff, she felt disrespected

and discriminated against by the defendant in the sense that she was being coerced to submit a resignation letter to the Defendant Company against her will contrary to the terms of the employment contract. She testified that although the terms of the contract were not favourable to her, she dutifully complied but the defendant on the other hand blatantly breached the terms and conditions and all efforts made by her to get the defendant to pay her what is rightfully due her have proved futile.

The plaintiff, under cross-examination by Counsel for the defendant, the following ensued;

*Q: In the same contract there was no mention of the fact that should the defendant decide to terminate the contract, it needs to give you reasons. Not so?*

*A: Yes My Lord.*

*Q: So you will agree with me that both you and the defendant were at liberty to terminate the contract without any of you giving the other reasons?*

*A: No My Lord, I do not agree. The contract is up to 2024 and it ended even before 2022. They asked me to stay in the house and rest because of the economic crisis and they promised to call me back in January 2023 to work. I waited in my home and I called him several times in January to ask him when I would come back to work. He did not answer my call. I sent him a message through WhatsApp and he told me I should look for another job.*

*Q: After you were asked to go home in 2022, the defendant subsequently offered to pay you 3 months' salary. Is that not correct?*

*A: They asked me to sign a resignation letter for them to give me 3 months' salary but I did not agree.*

*Q: Is there any evidence before this court to prove that the defendant asked you to sign a resignation letter?*

A: *The stock room manager told me that our manager is ready to give me 3 months' salary if I sign the resignation letter.*

Q: *Did this stock room manager give you a resignation letter to sign?*

A: *No My Lord because I told him I would not agree*

Q: *Now while you were working at the defendant company did you deal with the stock manager in terms of anything relating to your employment at the time*

A: *No My Lord.*

Q: *Your Exhibit 'B' only states that you were to be given an air ticket from Accra to Manila at the completion of your years of service. Not so?*

A: *Yes My Lord.*

Q: *And you agree with me that you did not complete your service with the defendant company.*

A: *Yes My Lord.*

Q: *Miss Amelia, you will agree with me that the only thing you are entitled to is 3 months' salary.*

A: *I do not agree.*

Q: *Miss Amelia how many packs of cigarettes do you smoke a day*

A: *Half a pack but not at the workplace. We have a designated place for smoking. In the parking area, we only smoke there during break time. The expatriate including the MD smokes there. Sometimes I share my pack with the MD.*

The defendant's witness, Vinai Narayana Kaimal testified on behalf of the defendant that he lives in Tema and is a Factory floor manager in the Defendant's Company. He

states that he knows the plaintiff as someone employed by the defendant Company in the year 2017 as a Quality Officer and whose employment was renewed on the 26<sup>th</sup> day of May 2021 to terminate on 31st May 2024. According to his testimony, prior to the plaintiff being employed by the defendant, the plaintiff left the defendant with the impression that she had the requisite documentation to work in Ghana because she was married to a Ghanaian. The defendant later found out the plaintiff did not have valid work documentation to work in Ghana. The defendant had to secure a work permit for the plaintiff with Ghana Immigration for One thousand, Six hundred United States Dollars (US\$1,600) to enable the plaintiff to work at the Defendant company.

The defendant's first witness further testified that the plaintiff failed on numerous occasions to perform her duties as a Quality Control Officer leaving the bulk of the work to the other workers in the film department as she often showed up drunk. He states that the defendant is a company that prides itself in delivering quality products to its customers and as such made a point to hire Quality Control officers since the quality of its products drives the business. Thus, the plaintiff's job was key in ensuring that the defendant always provided quality products to their customers. He further testified that the contract of employment signed by the parties stated clearly that, the plaintiff was not to engage in drinking and smoking before assuming her shift, a clause the plaintiff constantly ignored and was cautioned about. DW1 again testified that the plaintiff's conduct of showing up for her shift with alcohol in her system and consistently taking breaks to smoke during her shift resulted in the defendant company incurring losses as the plaintiff was unable to perform her functions as a Quality Control Officer in the company.

Additionally, DW1 testified that on the 4th day of November 2022, the defendant through its Consultant, Anil Lakhani asked the plaintiff to go home. He states that the plaintiff's behaviour was repeatedly brought to her attention but she failed to remedy same. He again maintains that the defendant as a business had the right to terminate the employment of the plaintiff who breached significant terms of her employment

contract with the defendant. He says that the defendant, duly exercised its rights under the termination clause contained in the contract of employment executed between the parties and since the contract was terminated, the plaintiff is not entitled to the remuneration she seeks. He says that the plaintiff was not coerced by the defendant or any of its officers to submit a resignation letter.

DW1 testified further that, although it was normal for workers to smoke during break time, the plaintiff was smoking whilst she was on the clock and not during her break time. The defendant company keeping the plaintiff's passport was a normal practice and the same was made available to the plaintiff and the other expatriates as and when they needed their passports. He further states that the defendant was fully aware that it was required to give the plaintiff three months' notice or payment of three months' salary instead of notice and offered to pay the plaintiff, three months' salary which the plaintiff has declined. He, therefore, prays for and on behalf of the defendant that the plaintiff's claim be dismissed as she is not entitled to the reliefs following the termination of her employment with the Defendant.

The defendant's representative under cross-examination by Counsel for the plaintiff, the following ensued;

*Q: It is based on her good work that is why the defendant company renewed her contract for 3 years?*

*A: Yes My Lord, we renewed her contract because at that time her character and job was okay.*

*Q: Did you give the plaintiff any termination letter?*

*A: I think so. I do not know exactly because it was supposed to come from the HR department.*

*Q: I am putting it to you that the plaintiff was not issued any termination letter.*



*A: My Lord, the company issued her with a termination letter but I do not know if she received or accepted it. Maybe some communication came from the consultant or HR department.*

*Q: I am suggesting to you that your Managing Director Anil Lakhiani only sent the plaintiff a message on Whatsapp that her contract has been cancelled.*

*A: My Lord, I do not know about that.*

The second defence witness, Obed Tagoe testified that he is the Assistant Engineer in the film department at the defendant Company and knows the plaintiff as a former employee of the Defendant Company as he worked near her in the film department. For all the time he has been working with the plaintiff, she constantly showed up for work with alcohol on her breath and she regularly took smoke breaks during her working hours. The plaintiff's habit of showing up for work with alcohol on her breath created an uncomfortable and unsafe working environment for the employees of the Defendant. The plaintiff was constantly hurling insults at the workers in the film department during work hours in the office in such a manner that, they felt unsafe working with her as she consistently went into unprovoked outbursts insulting the workers and their families. Due to the abusive nature of the plaintiff, in the year 2021, the entire film department had to stop work and walk out of the factory costing the defendant precious work hours where there was no productive work done. Management had to set up meetings to resolve the issue before the workers returned to work. He testified that, more often than not, due to the plaintiff's tendency to drink before work, she constantly overacts at the slightest thing and starts overacting in the factory which does not create a conducive environment for us.

From the evidence led by the plaintiff and the defence put up by the defendant, it is clear that the defendant in the year 2018, entered into an oral contract of employment with the defendant for three years contrary to provisions of **Section 12** of the Labour

Act. The said contract of employment exceeded 6 months but was not reduced into writing. It is also not in contention that the said contract of employment was renewed in the year 2021 for a further three (3) years starting from 1<sup>st</sup> June 2021 to 31<sup>st</sup> May 2024. This time, the renewed contract of employment was reduced into writing as evidenced by **Exhibit “B”**. Under the said contract, the plaintiff was entitled to a revised monthly salary of One Thousand United States dollars (US\$1,000) and a one-way ticket from Accra to Manila upon the expiration of the contract of employment.

The contract further provided the following as the grounds for termination of the contract of employment by the company in clause 7;

1. If information regarding the employee’s drinking, smoking and dietary habits is found to be inaccurate.
2. If you are found to have consumed alcohol before resuming your shift work or during working hours.
3. If you are causing a disturbance at home (living quarters) by your drunkenness during working hours.
4. If the employee’s ability and qualification as stated in her biodata are found to be inaccurate and have much lower capabilities in performing daily duties than stated in the biodata.
5. If the Employee disobeys instructions from her superiors, misbehaves in any manner at home, off working hours or causes any problems to the rest of the management like during working hours if you are found away from the factory file or if you are found in your living quarters.

The contract also required the employee to pay the company three months’ salary if the employee wanted to terminate the contract before the expiration of the contract without the contract specifying the notice period required by the employer and the obligation to pay salary in lieu of the notice. However, from the cross-examination conducted by Counsel for the defendant and the evidence in chief of the defendant’s representative (DW1), there is a tacit agreement that the defendant was equally

required to pay the plaintiff three (3) month's salary in lieu of notice since the defendant claims that the plaintiff was offered this salary but rejected same. The plaintiff, under cross-examination by counsel for the respondent, the following ensued;

*Q: After you were asked to go in 2022, the defendant subsequently offered to pay you 2 months' salary. Is that not correct?*

*A: The stock room manager told me that our manager is ready to give me three months' salary if I sign a resignation letter.*

*Q: Did this stock room manager give you a resignation letter to sign?*

*A: No My Lord because I told him I would not agree.*

*Q: Now whilst you were working at the defendant company did you deal with the stock manager in terms of anything relating to your employment at the time?*

*A: No My Lord.*

*Q: Your Exhibit B only states that you were to be given an air ticket from Accra to Manila at the completion of your years of service. Not so?*

*A: Yes My Lord.*

*Q: And you will agree with me that the only thing you are entitled to is 3 months' salary.*

*A: I do not agree*

The plaintiff also contends that the defendant failed to give reasons for terminating her employment. As earlier indicated, in the absence of any express notice period in the contract of employment or 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. See **Section 17** of Act 681. 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.”*

Again, in the case of **National Labour Commission v. Ghana Telecommunications Company** Suit No. AHR 40/2007 HC, Accra, 18<sup>th</sup> 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 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 the 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 case at bar, the contract of employment signed between the parties provided the circumstances warranting termination of the employment by the defendant. The defendant claims that the plaintiff was drinking and smoking during official working hours but failed to satisfactorily prove same. From **Exhibit “C”**, the reason given by the said manager of the company who relieved the plaintiff of her post attributed the decision of the company to dispense with the services of the plaintiff to the economic exigencies at the time. They initially informed the plaintiff to rest and would be recalled

in January without notifying her of any breach in the terms of the contract of her employment. Thus, if the defendant, based on economic conditions needed to dispense with the services of the plaintiff, it ought, as impliedly admitted, to have given her three months salary in lieu of notice which the defendant failed to do. The issue of the plaintiff not having the requisite work permit is inconsequential to the obligations of the parties under the contract since the company worked with the plaintiff from 2018 to 2021 and renewed the contract when it found her work to be satisfactory as admitted by DW1. Also, at the time of renewing this contract which is in issue, the plaintiff had a valid work permit. It was not in the contract of employment that the plaintiff was liable for expenses incurred by the defendant in obtaining the permit. I therefore find that the termination of the contract without notice or the required three months' salary was contrary to the terms of **Exhibit "B"** and the Labour Act and therefore wrongful.

**ISSUE 2: Whether or not the termination of the employment agreement Plaintiff had with Defendant amounts to a breach of the contract.**

From the above analysis of the lawfulness or otherwise of the termination of the plaintiff's contract of employment, it can be inferred that the defendant breached the contract of employment it had with the plaintiff when it terminated the contract without due notice to the plaintiff and also failing to pay to the plaintiff three months' notice in lieu of notice as acknowledged by the defendant that it was supposed to do though not explicitly stated. The defendant also breached the contract by failing to pay the plaintiff the one-way ticket from Accra to Manila when it terminated the contract of the plaintiff.

**ISSUE 3: Whether or not Plaintiff is entitled to salary for the unexpired duration of the employment contract with Defendant.**

The plaintiff claims an amount of Eighteen Thousand United States dollars (\$18,000) or its Cedi equivalent being salary for the unexpired duration of the contract of

employment. The agreement signed between the parties does not expressly state that upon termination of the contract of employment, the plaintiff shall be entitled to receive salary for the unexpired duration of the contract. Under **Section 18** of Act 681, the remuneration due a worker upon the termination of the employment in accordance with **Section 15** of the Act are as follows;

- (a) any remuneration earned by the worker before the termination;
- (b) any deferred pay due to the worker before the termination;
- (c) any compensation due to the worker in respect of sickness or accident; and
- (d) in the case of a foreign contract, the expenses and necessaries for the journey and repatriation expenses in respect of the worker and accompanying members of his or her family in addition to any or all of the payments specified in paragraphs (a), (b) and (c).

The law states further that where no notice is required, the payment of all remuneration due shall be paid not later than the next working day after the termination. In the case of **Ashun v. Accra Brewery Ltd.** [2009]SCGLR 81 at 84, where a plaintiff sought among other reliefs, “an order for the payment to the plaintiff of all salaries, increments and all other benefits for the remaining six(6) years of service with the defendant company”, Date Bah, JSC ( as he then was) held that:

*“A contract of employment is clearly terminable. Even if it is terminated wrongfully, that does not give the aggrieved party the right to be paid salary till retirement age...In principle then, in the absence of any contrary statutory or contractual provision, the measure of damages in general damages for wrongful termination of employment under the common law of Ghana is compensation, based on the employee’s current salary and other conditions of service for a reasonable period within which the agreed party is expected to find alternative employment. The quantum is of course subject to the duty to mitigation of damages.”*

In my opinion, the plaintiff was entitled to receive the three three-month salary in lieu of notice and any earned but unpaid salary. There is no evidence that at the time of the termination, the defendant had not paid the plaintiff unearned salaries. The salaries that had not yet been worked for and not accrued cannot be claimed for by the plaintiff in the absence of any provision to the contrary in the contract of employment. In the contract, what the plaintiff is entitled to in addition to the three month's salary is a one-way airfare from Acraa to Manila in the Philippines. In my view, awarding the plaintiff salaries for work not done will amount to unjust enrichment. Accordingly, I dismiss the claim of the plaintiff for an amount of US\$18,000 or its Cedi equivalent with interest being salary for the unexpired duration of the contract of employment.

**ISSUE 4: Whether or not the Plaintiff is entitled to damages for breach of contract?**

The plaintiff claims general damages for breach of employment contract. The general principle is that a person who commits a breach of contract is liable to pay damages and the damages to be paid in an action for breach of an employment contract are 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 is 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 or her losses.

In the instant case, in awarding damages, the plaintiff is entitled to three month's salary in lieu of notice which was due and owing at the time of the termination but the defendant failed to pay. In addition, the plaintiff is entitled to a one-way air ticket to be borne by the company from Accra to Manila even with the termination of the contract since it is the conduct of the defendant that brought about the end of the service of the plaintiff. Additionally, with the termination of the contract, the plaintiff was left without a job at a time when the Covid pandemic had negatively impacted the economy and the chances of the plaintiff immediately securing a job were negligible. The court also considers that at this period companies were distressed with a lot of companies laying off workers albeit lawfully. The court also considers the restrictive terms of the employment contract on the companies the plaintiff could work with after the employment contract. In my considered opinion, three months is a reasonable period for a contract of employment of three years for the plaintiff to have secured another job. The plaintiff is therefore entitled to general damages in a sum equivalent to three months' salary. Thus, in addition to the three months' salary in lieu of notice (US\$3,000) that the plaintiff is entitled to, a one-way air ticket to Manila, I will award to the plaintiff an amount US\$3,000 or its Cedi equivalent as general damages for the wrongful termination of the contract of employment.

## **CONCLUSION**

In conclusion, I hold that the plaintiff proved her case in part on a balance of probabilities to entitle her to some of the reliefs endorsed on the writ of summons. I therefore enter judgment in part for the plaintiff against the defendant in the following terms;

1. I hereby declare that the termination of the Plaintiff's Employment Contract by the defendant company was wrongful.



2. The plaintiff shall recover from the defendant an amount of Three Thousand United States Dollars (US\$3,000) or its Cedis Equivalent at the prevailing commercial bank rate till the date of final payment, being three months' salary in lieu of notice due and owing under the contract of employment.
3. The defendant shall bear the cost of a one-way air ticket from Accra to Manila for the defendant.
4. I hereby award an amount of Three Thousand Ghana States Dollars (US\$3,000) or its Cedi equivalent as general damages for breach of the employment contract,

### **COSTS**

It is trite learning that the award of costs is at the discretion of the Court and like all discretionary powers, it must be exercised judiciously. See **Article 296** of the 1992 Constitution. **Order 74** of the High Court (Civil Procedure) Rules, 2004, CI. 47 governs the award of costs. Akamba JA (as he then was) in the case of **Tema Oil Refinery v. African Automobile Ltd.** [2010] DLCA 6596 stated inter alia that:

*“...It is significant to point out that an award of costs is designed to compensate for expenses reasonably incurred and court fees paid by the party in whose favour the award is made and provide reasonable remuneration for the lawyer of that party for work done by the lawyer. The court in assessing the amount of costs to be awarded may have regard also to the amount of expenses, including travelling expenses reasonably incurred by the party or his lawyer or both in relation to the proceedings; the amount of court fees paid by the party or his lawyer in relation to the proceeding; the length and complexity of the proceeding; the conduct of the parties and their lawyers during the proceedings and any previous order as to costs made in the proceedings.”*

The court has heard the oral submission of Counsel for the plaintiff and Counsel for the defendant on the issue of costs. The defendant's counsel is not in court to address the Court on the issue of costs. Thus, considering the nature of the case, the length of the trial and the number of court sittings, the plaintiff testified and called no witnesses, reasonable expenses incurred by the plaintiff in filing processes in court and providing reasonable remuneration for Counsel for the plaintiff, the industry put in the case, I will award an amount of Twenty Thousand Ghana Cedis (GHC20,000) as cost in favour of the plaintiff against the defendant.

**SGD.**

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