IN THE SUPERIOR COURT OF JUDICATURE

IN THE HIGH COURT OF JUSTICE

HO – VOLTA REGION

A. D. 2023

CORAM: H/L JUSTICE YAW OWOAHENE-ACHEAMPONG

SUIT NO. E12/54/2018

15TH JUNE, 2023

SAMPSON AGBLORTI KWAME

DRIVER, TEMA DEPOT

HO

VERSUS:-

METRO MASS TRANSIT LTD

KENESHIE –ACCRA

METRO MASS TRANSIT LTD

JUDGMENT

At the registry of the court dated 07/06/2018, the plaintiff herein instituted the instant action against the defendant herein and claims the following reliefs:

"1. An order for the defendant to reinstate the plaintiff after his acquittal by the Ho Circuit Court on a charge of Possessing Narcotic Drugs on 23/11/2027.

2. *An order for the defendant to pay the plaintiff his full salaries since his interdiction in July, 2014 till his reinstatement.*
3. *An order for the defendant to pay the plaintiff any benefits, allowances and any other entitlements due him since his interdiction.*
4. *Any other orders the court deems fit and appropriate.*
5. *Punitive costs".*

The Plaintiff's Case

The case of the plaintiff gleaned from his pleadings as contained in his statement of claim filed on 07/06/2018, his reply to the statement of defence of the defendant filed on 23/07/2018 and his witness statement filed on 24/10/2018 together with attached exhibits is fairly straight forward and not disputed entirely by the defendant.

The undisputed facts are that the plaintiff was an employee of the defendant company as a commercial driver.

On 11/04/2014, the plaintiff in line with his routine duty as a driver in charge of one of the defendant's fleet of buses with registration No. GR 6364- 10 was traveling from Accra to Anum-Bosso in the Eastern Region.

The bus upon reaching the Asikuma Police Barrier was intercepted by the Police.
And when a search was conducted by the Police some substances suspected to be Indian Hemp popularly known as "wee" were found concealed at the battery compartment of the bus.

The plaintiff was arrested and was charged with criminal offence of Possessing Narcotic Drug without Authority contrary to section 2 (1) of PNDCL 236/90 and arraigned before the Circuit Court, Ho for trial.

The plaintiff, after a full trial by the said court on 23/11/2017 was acquitted and discharged.

It is the case of the plaintiff that during the pendency of the court proceedings supra, he was interdicted and was put on half salary by a letter dated July 4, 2014 which the plaintiff relied upon in his evidence.

The crust of the plaintiff's case was that by a letter dated 12/09/2014, the defendant per its legal manager, stated that he (the Plaintiff) shall be reinstated and be paid whatever salaries that are due him if he was exonerated at the end of his trial in that criminal case referred to supra.

The above named letter which the plaintiff relied upon in his evidence was admitted as exhibit "A1" and the content of that letter has been the gravamen of the case of the plaintiff hence the instant action against the defendant.

The case of the Defendant

The defendant caused to file a statement of defence on 27/06/2018 denying the claim of the plaintiff.

Subsequently, on 27/01/2020, one Chris Kattah who described himself as the Manager in charge of Ho, Depot of the Defendant-company caused to file a witness statement on behalf of the defendant.

The defendant's case was that following the arrest of the plaintiff for having in his possession narcotic drug contrary to law, the plaintiff was queried and interdicted.

It was the case of the defendant that following persistent pressure from the plaintiff, the plaintiff appeared before the Disciplinary Committee and he admitted concealing Indian Hemp in the

battery compartment of the bus he was in charge and having confessed, the committee found him guilty on 19/01/2017.

The defendant tendered in evidence a letter of termination of appointment of the plaintiff as exhibit 1 and same dated 30/08/2017.

It is therefore the contention of the defendant that the plaintiff is not entitled to the reliefs he seeks.

The issues for Determination

The plaintiff set down the following issues for the determination by the court.

a. *Whether or not defendant through a letter dated 12/09/2014 stated that it shall re-instate the plaintiff after his exoneration from the criminal trial.*
b. *Whether or not the plaintiff faced disciplinary committee.*
c. *Whether or not the plaintiff admitted anywhere and before any person or person's responsibility for cancelling any Indian Hemp (Wee) in the battery compartment of the bus.*
d. *Whether or not plaintiff was informed of termination of the appointment.*
e. *Whether or not any termination of the appointment of the plaintiff if any was lawful or legal.*
f. *Whether or not by CBA or CA of the defendant, the plaintiff could be on interdiction for that long (sic) from 2014 to 2017.*
g. *Whether or not it is only the plaintiff or a driver of the defendant Company that had access exclusively to the battery compartment of its buses.*
h. *Whether or not it was the same case which was sent to the labour commission by the plaintiff.*
i. *Any other issues raised by and arising out of the pleadings.*

It is rather interesting to note from the written address of counsel for the plaintiff that despite setting down the above plethora of issues for determination, he indicated also that the issues would be dealt with simultaneously.

I agree with learned counsel on that point, because many of the issues are either inter-twined or are superfluous and need not attract the attention of the court at all.

For me, upon critical perusal of the pleadings of the parties the two main issues for determination should be:

(1) whether or not termination of the appointment of the plaintiff was lawful or legal?

(2). whether or not the defendant Company is bound by its own letter dated 12/09/2014, stating that it shall re-instate the plaintiff after his exoneration from the criminal trial.

Written addresses

On 11/05/2022, counsel for the defendant caused to file his written submissions.

He referred the court to the Evidence Act 1975 NRCD (323) and some judicial authorities and insisted that the plaintiff should not be granted his prayer as endorsed on his writ of summons *supra.*

On 12/07/2022, counsel for the plaintiff also caused to file his written addresses and he also relied upon NRCD 323, *supra* as well as case law to buttress his claim that the plaintiff be granted his reliefs sought in the instant action, *(supra).*

The stand of proof in civil cases

It is trite law that "*the standard of proof of allegation in civil cases is proof by preponderance of probabilities"*

See **Fenuku v John Teye [2001-2002] SCGLR 985.**

This principle of law has been given statutory blessings in section 12 (1) and (2) of the Evidence Act, *(supra).*

The burden of proof

It is trite learning that a party who makes an allegation in his pleadings has the legal duty to prove that allegation by producing cogent evidence so as to avoid a ruling against him.

The Supreme Court held thus:

> *"It is a basic principle of the law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail. The method of producing evidence is varied and it includes the testimonies of the party and material witnesses admissible hearsay, documentary and things (often described as real evidence), without which the party might not succeed to establish the requisite degree of credibility concerning a fact in the mind of the court or tribunal of fact such as a jury.*
>
> *It is trite law that matter that are capable of proof must be proven by producing sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of fact is more reasonable that its non-existence.*
>
> *This is a requirements of the law on evidence under sections 10 (1) and (2) 11(1) and (4) of the Evidence Act 1975 (NRCD 323)".*

See **Ackah v Pergah Transport Ltd & ors [2010] SCGLR 728 @736** per Adinyra JSC.

In similar fashion on the burden of proof, the Supreme Court speaking through Ansah JSC made the follow eludite pronouncement.

> *"The reason was that it was trite law (per Ollennu J). (As he then was)* ***Majolagbe v Larbi [1959] GLR 190 @ 192*** *that"*
>
> *Proof in law is the establishment of facts by proper legal means where a party makes an assertion capable of proof in some way e.g. by producing documents, description of things, instances or circumstances and his averment is denied he does not prove it by merely going to the witness box*

repeating that averment on oath, or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances from which the court can be satisfied that what he avers is true".

See **Abbey & ors v Antwi [2010] SCGLR 17 @ 27**.

For ease of reference see chapter 5 of pages 62-63 of Legal Resource Book by H/H Fred Obikyere Esq.

In the instant action has the plaintiff been able to meet the standard of proof so as to be entitled to the reliefs he seeks as canvassed by his Lawyer?

Or was he unable to meet the standard of proof as required by law as fiercely contested by counsel for the defendant company?

The evaluation of evidence on record

Whether or not the termination of the appointment of the plaintiff was lawful or legal.

It is the contention of counsel for the defendant that at the material time the plaintiff was facing criminal charges before the Circuit Court, Ho afore-said, Management of the defendant-company decided to wait for the outcome of that case and so the plaintiff was interdicted and was put on half salary pending the judgment of that court.

However, according to the defendant, the plaintiff pestered them to reinstate him compelling them (defendant-company) to take plaintiff through disciplinary Procedure laid down under Article 27 of the Collective Agreement of the parties.

It is the case of the defendant that, the Disciplinary Committee found the plaintiff guilty on 19th January, 2017 thereby terminating the appointment of the plaintiff. The letter of termination of

appointment of the plaintiff dated 30/08/2017 was admitted in evidence as exhibit 1 without any objection.

In response to the letter of termination of the appointment of the plaintiff referred to *supra* (exhibit 1) counsel for the plaintiff contends that the defendant breached the Collective Bargaining Agreement (CBA) of the parties.

Because according to counsel for the plaintiff, the plaintiff could not have been on interdiction from June, 2014 to September, 2017 and also that the defendant ought to have given the plaintiff legal assistance but they failed or refused to so do?

Furthermore, counsel for the plaintiff argued that the plaintiff never went through any proper or any disciplinary proceedings before the termination of his appointment, largely because the defendant did not tender in evidence any disciplinary proceedings.

Firstly, I hold a candid opinion that the absence of disciplinary proceedings per se at the trial cannot be a conclusive fact that there were no disciplinary proceedings.

I hold this view because, during the trial, counsel had all the opportunity to have demanded that the court ordered the defendant to cause to file any such proceedings, if it was available. But since no such order was made, this court cannot just assume that there was absolutely no disciplinary proceedings at all against the plaintiff.

What is more? Did counsel attach the proceedings of the trial court at the trial? The answer is in the negative. But counsel for defendant saw the need to tender in evidence the judgment of the trial Circuit Court dated 23/11/2017 which was in evidence as exhibit B1.

It is therefore my considered opinion that counsel for the plaintiff could not adduce any cogent evidence that there was no disciplinary proceedings at all against the plaintiff.

Secondly, I accede to the contention of plaintiff that the defendant in fact breached some provisions of the CBA, but on a different reason not anchored on counsel's position.

Fortunately, counsel for the plaintiff tendered in evidence as exhibit D, the Collective Bargaining Agreement (CBA) which is binding on the parties.

It has been provided in Article 28 of the CBA as follows:

> *"If an employee is suspected of having committed any offence which requires investigation he or she shall be interdicted on half (1/2) of his or her monthly pay pending the outcome of the investigation or final determination of the case*".

According to the defendant, the disciplinary committee which decided the termination of the appointment of the plaintiff sat on 19th January, 2017.

The letter of termination of the appointment of the plaintiff was dated 30/08/2017, afore-said and the termination was to take effect on 1st September, 2017 almost with immediate effect, it is noted.

The judgment of the trial Circuit Court which acquitted and discharged the plaintiff was delivered on 23rd November, 2017.

The breach or the non-compliance with Article 28 of the said CBA is so clear, glaring and blatant that I find the defence of the defendant that, the plaintiff pestered them to re-instate him very baffling, unfathomable, incredible and therefore unpardonable.

I wonder why the defendant did not wait till the outcome of the trial of the plaintiff before the Circuit Court, Ho as was indicated in their own letter to the plaintiff dated 12th September, 2014 (exhibit A1). I therefore make a finding of fact that the dismissal flowing from exhibit 1 was done *mala fide* and therefore unlawful and I so hold.

This brings to the last issue: Whether or not the defendant is bound by a letter dated 12/09/2014 which stated that it shall re-instate the plaintiff after his exoneration from the criminal trial?

It is the case of the plaintiff, that the defendant is entitled to reinstate him (plaintiff) and to pay him his full salaries, any benefits, allowances and any other entitlements due him after his acquittal by the Circuit Court, Ho.

And in support of his case the plaintiff tendered in evidence and heavily relied on the letter terminating his appointment which was admitted in evidence as exhibit A1 without any objection.

The gravamen of the plaintiff's case can be found at page two of the first paragraph of exhibit A1 in the following words:

> *"If after the investigation and/or the case itself he is exonerated, he shall be paid his full the other half of the salary withheld and re-instated in his employment as per the provisions of the CA".*

The above statement was a direct response from the defendant-company to a letter written by a former counsel of the plaintiff, Mr. Emile Atsu Agbakpe, Esq dated 4th September 2014.

And this is the letter the plaintiff is heavily relying on in support of his case.

The legal issue here is should the defendant be permitted to resile from their own categorical conduct?

I shall answer the above legal puzzle in the negative.

In law, the conduct of the defendant falls under the principle of law known as promissory estoppel which had been discussed in great detail at pages 345-346 at paragraphs 803-804 of the book, Practice and Procedure in the Trial Courts and Tribunals of Ghana by the distinguished jurist and author S. A. Brobbey JSC (Rtd).

According to the learned author, the principle of promissory estoppel was reputed to have been given prominence by Denning J, (as he then was) in the cases of **Combe v Combe [1951] 1 All ER 767 C.A** and **Tool Metal Manufacturing Co, Ltd v Tungeshen Electronic Co Ltd [1955] 2 All ER 657, H. L.**

According to the learned jurist Brobbey, the principle of promissory estoppel as restated by Denning L. J in **Combe v Combe** (supra) at page 770 is that:

> *"Where one party has by his words or conduct, made to the other party a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly then once the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relations as if no such promise or assurance had been made by him but he must accept that legal relations subject to the qualification which he himself has so introduced even though it is not supported in point of law by any consideration, but only by his word".*

According to the learned author, the venerable Justice Brobbey, a local case which applied the principle of promissory estoppel was **IBM World Trade v Hasnen Enterprises [2002-2003] 2 GLR 243, SC.**

In a recent Supreme Court decision, the principle of promissory estoppel was applied where it was held thus:

"Since the learned Justice of the Court of Appeal is basing the estoppel on the effect of an agreement (page) 350, he is, in effect relying on promissory estoppel and not the kind of estoppel that is contemplated in section 26 of the Evidence Act, 2975, (NRCD 323), which deals with estoppel in pairs".

See the case **of T. K Ferbeh & co Ltd v Mensah [2005-2006] SCGLR 341** @ 349 Dr. Date-Beh JSC (Rtd).

Taking inspirations from the above judicial pronouncement, it is my candid opinion that the defendant cannot be permitted to resile from their own conduct, the insurance they gave the plaintiff in their own letter.

I therefore hold that the defendant is bound by their own letter dated 12/09/2014, afore-referred.

From the foregoing legal analysis, I hold a candid opinion that the plaintiff has been able to establish his claim against the defendant on the preponderance of probabilities.

The plaintiff action therefore succeeds against the defendant company on the reliefs as endorsed on his writ of summons.

Costs of GH¢20,000.00 awarded in favour of the plaintiff and against the defendant company.

(SGD.) H/L JUSTICE YAW OWOAHENE-ACHEAMPONG

JUSTICE OF THE HIGH COURT

COUNSEL

GODWIN KPOBLE FOR PLAINTIFF

RAYMOND AFAWUBO FOR DEFENDANT

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